ABSTRACT

Title of Dissertation: LURKING IN THE SHADOWS OF HOME: HOMELESSNESS, CARCERALITY, AND THE FIGURE OF THE SEX OFFENDER

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This dissertation is a multi-methodological and interdisciplinary project that examines how those who have been designated as "sex offenders" and are homeless in the Maryland/DC area are managed and regulated by various technologies of governance such as social policies, sex offender registries, and civil commitment statutes. By looking at the cultural, social, and political geography of shelters, the suburbs, and the city, I challenge scholars to reconsider how we understand stigma, belonging, and home. More broadly, I consider how the very construction of *home* is bound up in processes of sexual regulation and management that produce certain people as homeless by virtue of their proximity to sexual impropriety, deviance, and blackness.

Put otherwise, some people are made to be or kept homeless as a result of their sexual practices or non-normative gender presentations, particularly when they are in direct conflict with dominant discourses about and legal definitions of

acceptable sexual and gendered behavior. Access to home is equally mitigated by race. There has been, and continues to be, a long history of racial minorities searching for, being denied, and yet building home in geopolitical spaces that often articulate them as outside of home—as, in fact, homeless. I examine how those processes happen in tandem with and in contradistinction to modes of regulation organized around sexual deviance and difference.

Drawing on scholarship in African American studies, carceral studies, and gender and sexuality studies, this project makes three critical interventions: 1) it frames sexuality as a central category of analysis necessary for understanding homelessness; 2) it offers new perspectives on the ways homeless sex offenders navigate and resist modes of racialized hypersurveillance; and 3) it argues that the structure of homeless shelters and housing policies are inherently designed to manage deviance. I draw on interviews of homeless service providers and homeless sex offenders, placing them in conversation with sex offender laws, public media, and popular film to map out the multiple contexts that structure the lives of homeless sex offenders. In doing so, I offer an alternative framework for policy interventions that attempt to address homelessness without centering the issue of race and sexuality.

LURKING IN THE SHADOWS OF HOME: HOMELESSNESS, CARCERALITY, AND THE FIGURE OF THE SEX OFFENDER

by

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Dissertation submitted to the Faculty of the Graduate School of the
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Preface

My project started twenty-one years ago when I found myself the victim of sexual assault as a seven-year-old child. The assault had actually begun prior to then, but it was not until I was seven that I could put a name on it. At the time, I had mixed feelings about the circumstances, as children often do. I was unaware of the seriousness—and what would later be described in a series of overheard conversations amongst social workers, therapists, and the police as the "perversity"--of the sexual encounters. They were, after all, described to me as "play," as "normal" interactions between children and adults. But more than that, I had no understanding of the legal, social, and psychological ramifications of the encounters. It was not until I was sitting in a fourth grade class (I had previously been identified as a "gifted" student, so I spent half of my day doing Math and English amongst fourth graders) that I realized these were not normal interactions. As part of a sex education curriculum, our English class was interrupted by a group of presenters who showed the class a brief video about child molestation.

The film, *A Time to Tell* (1989), was produced by the Boy Scouts of America and was specifically geared toward educating young boys about the appropriate times to tell adults or figures of authority about suspicious sexual behaviors with adults. The film had several scenarios, but the one that stood out especially was about a little white boy and his stepfather bonding on the couch over sports. The stepfather's shirt is unbuttoned throughout the scene, his bare chest showing. The narrative takes a quick turn when the stepfather puts on a pornographic film as part of the experience of the boy becoming a "real man." He offers to massage the boy the same way as is

on the screen. The boy initially agrees but then slowly becomes visibly uncomfortable; the stepfather then attempts to put his hands down the boy's pants. The boy jumps up in a fury, calls his stepfather's actions sick, and runs off. The conversation in the classroom quickly morphed into one about the boys bragging about what they would have done to the man had that been them—punched him, kicked him, etc. They characterized the younger boy as being strange and a "homo" for sitting so close to a grown man anyway. The consensus in the room, reinforced by the film, was that the behavior of the adult was wrong, that the boy did the right thing for realizing it was inappropriate behavior, and that he was equally correct in telling his mother so that the behavior did not continue.

I distinctly remember this moment in the classroom not because the film empowered me to go home and tell my parents about my uncle. I remembered it because it actually made me feel really sick about myself for not registering that what was happening to me was bad, for not being man enough to punch or kick or scream. In fact, I did not even understand that what was happening was wrong. My entire response had been inappropriate. These feelings were only hyper-exacerbated by my own feelings of attraction to other boys in my class. Reiterated in the conversation and the film was a sort of discursive slippage between "homo" and "pervert" that had me more concerned with what the film meant about *me* for not objecting than it did about my uncle. Moreover, the consistent refrain that child molesters belonged in jail had me equally worried about my family. My uncle had, after all, moved in with us to help offset the bills while also being the babysitter my parents could not afford. The seven of us (four kids and three adults) lived in a cramped two-bedroom apartment,

but we were stable and comfortable for once after a long stretch of rockiness. For me, not only did I not have the language to describe my feelings—I had not considered them "disgusting" or "sick" or "nasty"—but also I did not have the luxury of just having my assailant whisked away without material consequences on the stability of home.

I waited almost three months after watching the film to tell anyone. I remember spending hours rehearsing the speech; I wanted to tell my story in a way that did not make me sound like a pervert, because at that point it was not just about someone trying to reach into my underwear or massaging my back. It was not the first or second time. Nothing we had seen in class provided me with the necessary language to describe what was actually happening, without me sounding like the "nasty stories" my father would tell amongst his male friends after a few beers—stories my mother told me I could not be around. When I got the courage, I told my older sister. Only eleven months older than I, I figured she was the one who would understand the most. I could also use the film as a frame of reference, because I knew she had seen it, too. From there, she did the rest of the work.

As a result of the reveal, two things happened (whether by correlation or causation, I do not know): my uncle went to prison, and we became homeless. My family had to take up residence in a family shelter for six months; my father could not join, because they could not accommodate adult men in the shelter. During the time in the shelter, I was forced to go to therapy. After six months of therapy sessions, a social worker from the state arrived at the shelter, took all our belongings, and transported us to a foster home 30 minutes away. We stayed there for almost two

years until my mother was able to prove herself to be a fit enough parent to have us. We later learned that we were removed for child endangerment and negligence related to the incidents with my uncle.

I picked this project back up eight years after that when I came out as gay to my mother when I was 17. Our family had since relocated to West Virginia, my father no longer in the picture. We had put the past experience of homeless shelters and foster care behind us. We felt planted, stable. I had wanted to tell her for a while, but I kept putting it off. In part, living in a rural, conservative, all white town where heterosexist and racist jokes were regular occurrences, I did not feel safe doing so. The other issue was there was no pressing need. I was certainly not bringing home a boyfriend any time soon. In fact, I only knew one openly gay person, and he was not my type at all. My mother and I were not especially close, so I also did not feel the need to confide in her as part of a sort of natural progression of our relationship.

I decided to tell her my senior year, though, in anticipation for the future. I was becoming genuinely excited about the prospect of going off to college to meet gay people, and black people, and gay black people. I just *knew* all my friends would be some combination thereof, so I wanted to prepare her, especially because she was growing more and more staunchly conservative as the years ticked. As any reader might imagine, she did not take it well. Instead, she accused me of being a dirty pedophile. Her collapsing of my sexual identity with that of a sexual predator brought back all the anxieties I had as a child watching *A Time to Tell.* I left home and stayed with my childhood friend for almost all of my senior year of high school until I went to college. I did so because I did not feel welcomed at my mother's house—my

mother actually told me as much during the conversation. More than anything, I did not feel at home there.

This project called to me again six years ago when I found out my uncle was being released from prison and that he would have to register as a sex offender for the rest of his life. All of our family had since cut off ties to him; he had no income; he could not find a job because of his criminal history; so, inevitably he became homeless. I felt deeply conflicted. Not only had I since forgiven him and moved on with my own life but also I had started to develop critiques of the carceral state that made me very leery of ways in which anti-blackness, heterosexism, capitalism, and patriarchy structure the criminal (in)justice system and the extralegal, punitive outcomes it engenders. Simply put, I did not and do not think my uncle, after spending 15 years in prison, should spend the rest of his life on a sex offender registry, have unstable housing, be forced to submit himself to a local precinct every three months, have difficulty finding employment, or a whole host of other disparate outcomes that will—and have—shape the rest of his life for a crime he committed when he was 25.

My project crystalized when I started working at a men's emergency shelter in 2011 and started to see some of the procedural and structural ways that access to housing is fundamentally denied to people who have histories of sex crimes, despite other types of crimes not foreclosing housing outcomes for others. I began this dissertation, then, in response to my own personal journey. I have been doing research, living it, carrying it on my skin, since I was seven years old trying to make sense of what it meant to be a survivor of sexual assault who has shifting sets of

principles and politics when it comes to the social, political, and economic treatment of sex offenders.

Dedication

To the seven-year-old me who did not know what he knows now: every day is a struggle, but I assure you I have not forgotten the promise I made.

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importantly, my surviving graduate school was made possible because of you. I look forward to celebrating every success you ever have and to being there for you through failure. I cherish your friendships more than you know. Dr. Darius Bost, you have been more than just a friend to me; you have been a mentor and confidant, even though you might not have signed up for it. Your poise, compassion, and criticality are unparalleled. You are the Essex Hemphill of our time. To all my colleagues in homeless services—Thinn, Farha, Evan, Brittany, Jenny, Mary, Vanessa, Sabina, Isharmma, Josi, Diana, Krishna, Nikki, Christine, Priscilla, Lynn, Francesca, Mia, Alec, Tim, Penny, Rodney, Tony, and Kaylisa—learning from you has been an honor. The work you do is undervalued but so very much necessary. Thank you for your commitments. To Ray, your support has kept me through the end.

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Chapter 1: Introduction

On June 1, 2007, David pled guilty to the production and distribution of child pornography as well as the possession of visual representation of a child under 16 engaged in certain sexual acts. He spent three years in prison and an additional two years on supervised probation. David was 20 at the time of his conviction. He had a court-appointed attorney whom he described as "too busy to do shit let alone defend somebody" and whom he uniformly blamed for his taking a plea deal. David did not want the case to go to trial, but he did not know that would mean serving time in prison. At the time David was still living at home with his parents, pursuing a degree in Computer Science at a nearby college in Maryland. He described himself as a "shy guy" who had a "freak side to him." His parents did not know about his "freak side," often thinking he was a bookworm who preferred to have his head in books about computer programming or playing multi-player role playing games such as World of War Craft and Final Fantasy VII on his laptop, tucked away in the quiet of his bedroom. As such, they left him to himself, thinking he was "just like a nerdy loner kid who didn't have friends." He recounted that he distinctly recalled overhearing his parents discussing concerns about him not having friends or going to parties or joining sports. "I remember my mom tellin' my dad, 'at least he's not out runnin' the streets like all these other black boys. He's gonna *be* somebody, and it won't be because he could dribble a ball—they really didn't think I could dribble a ball. I remember being pissed at that; like, mah, really?" Despite his parents' certainty that they know their son, even insofar as being sure he was a loner who could not dribble a ball, David was a quite social person. He secretly used the liberty of isolation

afforded to a nerdy black guy studying computers to set up secret rendezvous with his high school boyfriend.

David's parents did not know he was gay; he lamented that he was often too scared to tell them, despite feeling like they would be okay with it. "They were okay with me being a kind of quirky nerd who listened to Blink 182…and wanting desperately to have a mohawk...I feel like they would have been more okay with me being gay than me wanting to be like a rapper or something. That would have probably worried them more." David chose not to be out to his parents not because of his fears of their rejection but because of his own fears about what that might mean about him. "I kind of enjoyed being misunderstood…and I…you know…I wasn't ready to be out…and I liked kind of being freaky on the low…like no one would suspect I was this huge sexual beast." Although he described himself as a sexual beast, David later admitted that he had only ever had sex with his then-boyfriend. His boyfriend was 17 at the time of his conviction; they met a year prior in an online gaming chat room and then later at a local zine festival in person. They quickly started dating and exchanging sexually explicit content with one another.

Because his boyfriend lived 30 minutes away by car and two hours by public transportation, they did not get to see each other that often. However, occasionally they would sneak moments to see each other. "We would like meet up in the park or I would sneak him into my house when my parents weren't there…since he was 16 when we first met he couldn't drive, and I didn't—still don't—have a license." They predominantly communicated via text, email, or through AOL Instant Messenger. "We would do this thing where we'd send these really graphic photos and messages

to each other…you know…like stupid horny teen stuff. And it was a competition to sort of one-up the other person, come up with the raunchiest scenario or whatever." David and his boyfriend dated for two years until things ended after David cheated. "I met a guy…and we hit it off…and he was black like me and I just got so caught up in it all that we sort of hooked up one day." A few weeks after, he confessed to his boyfriend that he had cheated, which led to their relationship ending.

A few months after the two broke up, David started receiving random text messages and AOL chats from numbers and contacts he did not recognize. "They knew me though…they would talk about how hot they thought my body was and things they wanted to do to me." Unbeknownst to him, his ex-boyfriend began distributing his private photos and contact information to his classmates out of spite. David, attempting to get back at him, began responding to the messages with explicit photos of his ex. "It was real petty but damn did that ruin me." A few short weeks after he started distributing the photos, he received a knock at his front door. It was the police. His boyfriend's parents had discovered sexually explicit photos were being shared of their son and filed charges, accusing David of child molestation, sexual harassment, and the possession and distribution of child pornography.

Because in the state of Maryland, sex between adults is considered consensual at the age of 16, the child molestation charges were dropped. It was during the preliminary hearing that David received even more devastating news: his boyfriend was actually 15 when they first met and was really only 17 at the time of charges, despite David thinking he was 18. Fortunately, Maryland's law also affords a "Romeo and Juliet" clause that permits persons between the age of 14 and 16 to consent to sex

so long as the partner is not more than four years older. What this meant was that in the eyes of the law, the sexual activities between David and his boyfriend were legal. However, what was *not* legal were the various photos David possessed and had taken of his boyfriend, who was actually 15 at the time their relationship began.

Not wanting to subject his parents to a trial that would reveal his late-night sexual forays, that he was secretly having sexual relations with a white boy, and how "immature" he was being, David decided to strike a plea deal. He thought he would be getting off easy, given that he was unaware of his boyfriend's age, the circumstances of the whole predicament, and that he had never violated the law before. Instead, he was sentenced to three years in prison, a sentence that he was not even aware he was agreeing to serve. "I thought there would be a whole meet with the judge kind of thing and my lawyer would give my side, and the judge would feel bad for me, and then I'd be doing community service or something not actually that I was *agreeing* to serve time." Having never been a part of criminal proceedings before, fearful of what a court trial would do to his family, and genuinely optimistic about the outcome of his circumstances, David pled guilty.

When released from prison in 2010, David spent two months living on the streets. His parents moved to Georgia, embarrassed by the fact that their son was a convict. Having been a loner in school, he did not have a social safety network to turn to for support. Without a place to call home, a couch to crash on, or the money to pay for a hotel, David went straight to the streets. He eventually found his way from his rural town in Southern Maryland to Washington, D.C., where he spent his first night in shelter. While there, he was physically assaulted by a group of homeless men. He

left the next night and went to a shelter in downtown Silver Spring, MD where he spent the following few months attempting to figure out his next steps. Having a criminal record and also being required to register as a sex offender for ten years while additionally being on probation meant that David could not find employment. Not having employment meant he could not pay rent. Not being able to pay rent meant he had to be on the streets or in shelters, places he has slept ever since his release.

I start with David's story to frame the stakes of my project. This dissertation analyzes the connection between homelessness and sexuality to think critically about the ways in which people's relationship to housing is often contingent upon their ability to be understood as moral sexual subjects. Conversely, it examines how the very construction and constitution of *home* is bound up in processes of sexual regulation and management that produce certain people as homeless by virtue of their proximity to sexual impropriety and deviance. That is, some people are made to be and/or kept homeless as a result of their sexual practices, as David's story elucidates. In this context, then, ending one's homelessness requires individuals to become proper sexual subjects.

By focusing on narratives like David's as well as the law, popular media and discourse, and popular film, I challenge dominant, commonsense representations of the sex offender as a violent predator by unpacking the very category of "sex offender" to provide more specificity to the term as it relates to shifts in how we think about sexuality and morality. I do so to highlight how home and homelessness are constituted through forms of sexual regulation that hinge upon racialized ways of

being, a critical intervention necessary for how homeless studies and homeless services constructs the homeless problem. That is, if we do not consider how sexual regulation works in tandem with modes of hypersurveillance that are predicated on race, we are missing part of the problem and thus our interventions are short-sighted.

Drawing on scholarship in African American studies, carceral studies, gender and sexuality studies, and homeless studies, *Lurking in the Shadows* makes three critical interventions: 1) it frames sexuality as a central category of analysis necessary for understanding homelessness; 2) it offers new perspectives on the various ways homeless sex offenders navigate and resist modes of racialized hypersurveillance; and 3) it argues that the structure of homeless shelters and housing policies are inherently designed to manage and police sexuality. My interest in pairing literature on homelessness and sex offense is to frame the everyday lives of homeless sex offenders and those structures and discourses that organize them. I ask: What is the relationship between homelessness and housing? What would a homeless studies that centers the experiences of sex offenders and sexuality more broadly look like? How might homeless services better account for the complicated histories of racialized, gendered, and sexualized violence that haunts the lives of sex offenders? Specifically, I am wondering how these histories bare light on the conditions of the homeless in Montgomery County, where 18% of the population is African American but African Americans represent 58% of the homeless population. What sexual logics structure the shelter? How do we understand the sexual lives of the homeless, both in and outside of the shelter? What is the relationship between carcerality and homelessness, beyond the indexing of homeless offenders?

In doing this pairing and asking these questions, I aim to broaden the scope of the literature on homelessness and sex offense to think about structures, systems and ideologies that are not inherently identity-based and involve different forms of violence. Because homeless individuals are chiefly understood as sexually grotesque and sexually violent, as I illuminate in chapter one and throughout chapters three and four, my work enters debates of homelessness through the lens of sexuality to shed light on how access to housing and belonging to home are grounded in a process of (moral) sexual subject making. This happens through the law, shelter policies, and technologies of governance used to produce good sexual subjects by policing the presumed violent sexuality of homeless individuals.

Rather than focusing exclusively on scholarship that explicitly names "sex offense," then, I instead review the literature that speaks more broadly to the ongoing historical desire to criminalize and police sexuality, even as I understand that the specificity of "sex offender" marks the bodies of these particular offenders as both a part of and separate from this very literature. Primarily, I focus on scholarship that deals with two themes that undergird understandings of sex offense: rape and consent, as illustrated in chapter one. I spend a bit of time thinking through the intricacies and complexities of the discourse on rape and the constitution of consent, because so much of this actually informs how the sex offender is constructed. The sex offender is popularly imagined as a rapist or child molester. Being labeled a rapist is often, though not always, intimately connected to colonialism, misogyny, and anti-blackness, with the intersections of these domains of power constituting the very grounds on which one can make claims to victimization, innocence, and

perpetration—three necessary components for a sex crime to happen. Being labeled a child molester is connected to a larger discourse on pedophilia, deviance, homosexuality, and mental illness. Thus, technologies of governance were developed to surveil and police sex offenders on the basis of these intimate connections. That the figure of the sex offender gets sutured to these complex histories helps make sense of why sex offenders are so hard to house, as was the case for David.

My intimacy with this particular literature is intentional. Part of what I am trying to do is tease out the variegated, nefarious structures and discourses that comingle to write the sex offender into existence before s/he arrives, to convict the sex offender before his/her trial, to deny certain people the means through which they can claim being violated, and to ultimately stretch the category of "sex offense" so broadly that it no longer provides the legal specificity it intended. This is significant, because such structuring erases the reality that "sex offense" is a very indeterminate term that on one hand signifies "rape" and "child molester" and on the other hand actually encompasses a wide range of offenses, from child pornography to incest to sexual assault and indecent exposure. Further, such arduous teasing—and moving through—requires that my analysis not require that I name the "root" cause of why sex offenders are or become homeless. Specificity is necessary, because while homeless sex offenders might inevitably arrive at a place of homelessness, the modes of punishment and repression that got them there are far more important.

As evidenced by the literature, there are significant contradictions embedded in the law, its enforcement, and the process by which people find themselves subjected to the law. Because "sex offenders" are those individuals who have been

convicted of violating very specific laws, for which they must register, thinking about these contradictions is important. Not only does it provide insight into the various degrees of structural inequality surrounding sex offenses but also it gestures at discrepancies that might arise around convictions. This is especially important, because many states have residency restrictions associated with certain tiers of sex offense. Because the registry is public knowledge, registered sex offenders often have difficulty finding housing, employment, or developing sexually intimate relationships. Further, registered offenders have to report in person at minimum once a year for 10 years—if the lowest tier—and up to every three months for life if at the highest tier *when they have a verifiable address*. Failure to do results in them being in noncompliance and potentially facing future jail time. In this way, sex offenders, differently than all other categories of offenders, are perpetually tied to their offense; I name this phenomenon as *carceral sexuality*, a term I explore in chapter one.

In order to attend to these dynamics that undergird, inform, produce, and manage homelessness vis-à-vis sexuality, my work locates itself theoretically at the interstices of American studies; African American studies; queer and sexuality studies; feminist and gender studies; and critical prison studies. Specifically, I draw on these fields for their attentiveness to the relationship between the state, neoliberalism, violence, and punishment; their focus on the particular experiences of African Americans and the role of anti-blackness in creating and maintaining poverty, producing carcerality, and mitigating access to home and the nation; their attention to the construction of deviance and how the state actively attempts to manage deviance as well as the relationship between sex acts and sexual identities, a relationship that is

integral to how sex offenders are constituted as an identity category by virtue of the sex crimes they commit; and their examination of the gendered dimensions of various forms of state violence and control while pushing me to think about these dimensions beyond the man/woman binary. All of these fields have been shaped and reshaped by grassroots activist-intellectual work that equally influences how I think about my own project, even as I recognize that my project does not actively engage social movements, activism, or grassroots organizing. Moreover, I acknowledge that the interdisciplinary nature of my project as well as these fields, themselves, means that there are many areas of overlap and departure—disciplinary, methodological, institutional, and scholars' own references for how and where they see their work. As a writing practice, it is hard to disaggregate and distill these fields while also accounting for these overlaps and departures. As such, I have organized key scholarship that frames my project through the lens of themes rather than disciplines, while attempting to still name and pay attention to fields, as to not undo the interdisciplinarity that I find so useful and compelling nor to privilege institutionalization or canonization.

Thinking through Neoliberalism, Violence, and Punishment

Neoliberalism, at its core, asserts that "state interventions in markets (once created) must be kept to a bare minimum because, according to the theory, the state cannot possibly possess enough information to second-guess market signals (prices) and because powerful interest groups will inevitably distort and bias state interventions (particularly in democracies) for their own benefit."[1] In *The Twilight of Equality?: Neoliberalism, Cultural Politics, and the Attack on Democracy* (2003),

[1] Harvey, David. *A Brief History of Neoliberalism*. Oxford: Oxford Univ., 2005. 2.

Lisa Duggan maps a genealogy of neoliberalism and charts the ways in which it informs/structures our world by attempting to mask the interrelated nature of culture and economics while at the same time functioning precisely because of this relationship.[2] She argues that neoliberal policies are presented as "neutral, managerial precepts for good government and efficient business operations, with the underlying capitalist power politics and cultural values obscured."[3] That is, endemic to neoliberalism is the obscuring of power relations and capitalist interests. Neoliberalism rearticulates hierarchies of power along the lines of race, class, gender, sexuality, and nationality; these hierarchies are legitimized by the state, which acts to then reinforce the permanence of the state. [4]

Building on the work of Duggan, Aihwa Ong attempts to parse out the complexity of neoliberalism, offering two modes of analysis for better understanding it: neoliberalism as exception and exceptions to neoliberalism. In *Neoliberalism as Exception: Mutations in Citizenship and Sovereignty* (2006), Ong argues "neoliberalism—with a small n—is reconfiguring relationships between governing and governed, power and knowledge, and sovereignty and territoriality."[5] This reconfiguration places neoliberalism as a biopolitical "technology of governing" centered on the potential and capacity of individuals and the population to operate as living resources that can be harnessed and managed by governing regimes.[6] These governing regimes are based on market-driven intrusions that realign "citizenship

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[2] Duggan, Lisa. *The Twilight of Equality?: Neoliberalism, Cultural Politics, and the Attack on Democracy*. Boston: Beacon, 2003. xiv.
[3] Ibid. xii.
[4] Ibid. 70.
[5] Ong, Aihwa. *Neoliberalism as Exception: Mutations in Citizenship and Sovereignty*. Durham: Duke UP, 2006. 3.
[6] Ibid. 6.

elements in different ways, thus challenging unified models of citizenship, on the one hand, and the national framework of its claims, on the other."[7] In essence, neoliberalism reconfigures our understanding of citizenship (the primary mode of belonging to the state) and calls us to rearticulate citizenship within an economic logic that promotes the protection of certain categories of subjects and not others. Whereas citizenship had primarily been connected to territoriality, under this new arrangement citizenship is tied to the shifting flows of global capital. Those disenfranchised, economically and politically marginalized subjects who clung to nation-state-based citizenship claims as a source of power now have to articulate their citizenship within the logics of the market, a structure that already seeks to exploit and marginalize them.

While Duggan points to a rebuilding of the New Left, and Ong points to the importance and viability of NGOs to start making demands for human rights as ways to combat neoliberal politics, Pierre Bourdieu is less than hopeful, ultimately arguing that new social formations cannot be envisioned under neoliberalism; rather, we can only build up what we have. In "The Essence of Neoliberalism," Bourdieu argues the only way to keep the social order from dissolving into chaos as a result of neoliberalism's overwhelming encroachment is through "continuity or survival of those very institutions and representatives of the old order that [are] in the process of being dismantled, and all the work of all the categories of social workers, as well as all the forms of social solidarity, familial or otherwise."[8] Bourdieu sees neoliberalism as being incapable of producing a stable social order of its own, because it continually

[7] Ibid. 15.
[8] Bourdieu, Pierre. "The Essence of Neoliberalism." - *Le Monde Diplomatique*. N.p., Dec. 1998.

creates chaos. All neoliberalism does is generate "the utopia of endless exploitation."[9] Under this logic, old and new social orders lack an ontological common standard of measurement and can only be understood as temporally incongruous. All we can do, then, is fight to keep the always-falling-apart social order fashioned together through our current social organizations, which are constantly under the atomizing powers of neoliberalism. This is not an easy task, as the neoliberal state is constantly producing new forms of punishment to deter us.

The state's investment in punishment as a form of social control is nothing new. The modern state is intrinsically one that is constituted through different formations of power and mechanisms of control. Michel Foucault argues the state uses a very distinct form of power to regulate, police, and manage individuals (or, more appropriately for Foucault, subjects): biopower. For Foucault, biopower functions for the modern state to manage and control entire populations[10]; it is the power over bodies. Biopower is the "explosion of numerous and diverse techniques for achieving the subjugations of bodies and the control of populations."[11] He argues that at birth individuals are brought into the world under the refrain of productive value; lives are fostered in order to be efficient workers. "Where discipline is the technology deployed to make individuals behave, to be efficient and productive workers, biopolitics is deployed to manage population; for example, to ensure a

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[9] Ibid.

[10] In *Seeing Like the State,* James C. Scott James C. Scott argues that twentieth century state has imposed order on those aspects of society it wishes to control through what he refers to as the process of legibility. That is, states "attempt to make a society legible, to arrange the population in ways that simplified the classic state functions of taxation, conscription, and the prevention of rebellion." (Scott, James C. *Seeing like the State: How Certain Schemes to Improve the Human Condition Have Failed*. New Haven: Yale UP, 1998. 2).

[11] Foucault, Michel. *The History of Sexuality, Volume 1: An Introduction*. New York: Vintage, 1990. 140.

healthy workforce."[12] Thus, biopower articulates the shift from control being "directed at man-as-body" to, "man-as-species."[13]

What Foucault makes clear is that the use of punishment to manage populations is nothing new; it has, however, become an increasingly common neoliberalized process for the poor, specifically.[14] As Loic Wacquant argues in *Punishing the Poor: The New Government of Social Insecurity* (2009), there has been a shift from the liberal social policies of the 1960s, which attempted to stave the punishment of America's poor, to a more punitive approach to managing impoverished populations.[15] In this regard, instead of seeing the government as something that is shrinking to the beck of neoliberalism, he argues that part of the neoliberal project (the governance of social insecurity) is the differential experience of the state by citizens based on race and class.[16] Wacquant uses this framework to brilliantly point out the combination of workfare and prisonfare—wealth is transferred to the top (welfare), workfare is offered as a new form of welfare (for the poor), and prisonfare is offered for all (poor, non-whites) unwilling to comply. In this set of dramas, the state criminalizes poverty and, in effect, punishes people for being impoverished. This punishment happens through violence.

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[12] Foucault, Michel. *Society Must Be Defended: Lectures at the Collège de France 1975-1976*. London: Penguin, 2003. 239-264

[13] Ibid. 243.

[14] See: Schweik, Susan M. The Ugly Laws: Disability in Public. New York: New York U, 2009; and Goldstein, Alyosha. Poverty in Common the Politics of Community Action during the American Century. Durham: Duke UP, 2012.

[15] Wacquant, Loïc J. D. *Punishing the Poor: The Neoliberal Government of Social Insecurity*. Durham: Duke UP, 2009. 82.

[16] Whereas wealthy whites are privileged to the modern state's benefits (tax breaks, avoiding coercion, and protection under the law), which suggests that the state is just as involved as ever, non-whites are being increasingly controlled by the state while simultaneously being denied benefits. The welfare state has not, in fact, disappeared. Welfare is just articulated differently as a state process.

Scholars in American studies have carved a critical space to think through the relationship between race, carcerality, sexuality, gender, violence and the neoliberal state as evidenced by the work of Chandan Reddy, who brilliantly argues that freedom and violence are coterminous in the U.S. According to Reddy, the nation-state's investment in claiming/providing freedom *from* violence for its citizenry actually requires an investment in using violence against irrational and nonnormative bodies. This "legitimate (state) violence"—violence that is considered legitimate because it is deemed necessary in order to protect citizen subjects—comes at the expense of enacting violence on queer U.S. bodies, both at home and abroad.[17]

Moreover, certain forms of violence are understood as necessary in order to produce safety for others. Or, as Christina B. Hanhardt brilliantly demonstrates in her book *Safe Space: Gay Neighborhood History and the Politics of Violence,* calls to prevent violence against sexual minorities in urban landscapes have relied upon and reproduced the rhetoric of real estate developers. In this way, calls for more police protection for gay spaces framed them as under obstruction by disorderly (often racial minority) residents. As such, challenges to police power made by residents of color were often silenced by calls for police protection by gay residents who saw people of color as threats to their safety.[18] Thus, the hyperpolicing of minority residents was understood as a necessary tenet of urban development for LGBT-identified

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[17] Reddy, Chandan. *Freedom with Violence: Race, Sexuality, and the US State.* Durham: Duke UP, 2011. See also: Nguyen, Mimi. *The Gift of Freedom, War, Debt, and Other Refugee Passages*. Durham, NC: Duke University Press, 2012; Puar, Jasbir. *Terrorist Assemblages: Homonationalism in Queer Times*. Durham, NC: Duke University Press; Wilson Gilmore, Ruth. *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California.* Berkeley, CA: University of California Press, 2007; and Harkins, Gillian. *Everybody's Family Romance: Reading Incest in Neoliberal Americ*a. Durham, NC: Duke University Press, 2009.

[18] Hanhardt, Christina B. *Safe Space: Gay Neighborhood History and the Politics of Violence*. Durham, N.C. ; London: Duke UP, 2013. 71.

communities. Thinking about legitimate forms of violence as part of the construction of home has been useful for my project, because doing so also helps me think through the larger questions about the criminalization of certain sexual practices that produce a type of carceral logics framing home and homelessness. The centrality of carerality in my project (sex offenders are sex offenders *because of the law*) requires that I also engage with the rich scholarship that names anti-blackness as a driving vehicle behind which the distribution of criminality is conferred.

Examining the role of anti-blackness and racialized forms of belonging

Scholars doing critical race theory have long been invested in centering anti-blackness as a primary analytic through which to interrogate violence, citizenship, state investments, capitalism, structural inequality, and identity politics as they relate to claiming the U.S. as home. Specifically, they have been attentive to not only the ways African Americans have been denied access to the nation-state by virtue of their relationship to blackness but also how the marginalization of blackness produced the nation-state. For instance, in his landmark text *Slavery and Social Death* (1982), Orlando Patterson argues that black enslaved people underwent processes of "social death" where they were made to be "geneaological isolate[s]" through the denial of social heritage to their ancestors—what he terms *natal alienation*.[19] "Not only was the slave denied all claims on, and obligations to his parents and living blood relations but, by extension, all claims and obligations on his more remote ancestors and on his descendants."[20] The process of natal alienation occurred through the law and through ritualized practices meant to wear on the bodies and minds black people

[19] Patterson, Orlando. *Slavery and Social Death: A Comparative Study*. Cambridge: Harvard UP, 1982. 7.
[20] Ibid. 5.

while producing capital in service to whites. He illustrates that even following the Thirteenth Amendment, which freed enslaved peoples, penal plantation labor was used to recreate the conditions of slavery and to mark the plantation laborer as enslaved, despite being free.[21] In this way, the production of social capital and wealth for whites came at the expense of producing social death for black people—they were forever stigmatized as inferior.

Mitchell Crusto illustrates how forms of social death, such as being understood as perpetual property of whites, were organized along sexual lines through what he calls "blackness as property." Building on Cheryl Harris's cutting-edge critical legal investigation of how whiteness functioned as a form of property, which secured white people's social, political, and economic status, Crusto argues that blackness, too, functioned as property. For him, though, blackness is being the property of someone else, not proprietors of self–ownership in the way that whiteness operates. "Black people were an inferior race; enslaved blacks were legally white property; enslaved black women's sexuality belonged to their white masters; white men could legally rape black women; concubinage or consensual sex between white men and black women was legally regulated; free blacks, legally, were friendly aliens, not citizens; and all blacks, no matter their status remained subject to political whims of white society."[22] Crusto, in his assessment of "blackness as property," states that a crucial component of blackness is that it was acquired through a "sexual economy" that provided freedom to slaves and their children through a system of concubinage, in which black women were forced to sleep with their masters in order

[21] Ibid. 130ff.
[22] Crusto, Mitchell F., "Blackness as Property: Sex, Race, Status, and Wealth" (April 1, 2005). *Stanford Journal of Civil Rights and Civil Liberties*, Vol. I, No. 51, 2005

to achieve a free status.[23] In this way, anti-blackness functions not just to police and own black people's labor; it attempts to control their sexual lives, too. Further, Crusto's remarks suggest that blackness is constituted through sites of violence.

Dorothy Roberts nicely illustrates how state-violence works to police and, in fact, kill the black body even as it simultaneously markets itself as saving black lives through the welfare state. In her seminal text *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* (1997), Roberts argues that racism has been central to the history of reproduction in the U.S., from slavery to eugenics to twentieth-century welfare reform policies. She masterfully illustrates how U.S. social policy has worked on the racist assumption that "black people's poverty is caused by their reproduction," arguing that "America's inadequate welfare system stems less from…a racist unwillingness to include Blacks as full citizens."[24] Welfare was never intended to work for black people; rather, it was used as a tool to promote anti-black sentiments that produced the figure of the black welfare queen as one who excessively procreated to manipulate taxpayers into giving them more money.[25] Welfare was, thus, a way to generate a liberal sentimentality that suggested the state was invested in remunerating the history of anti-blackness that produced the conditions under which black people were economically disadvantaged while still also reproducing these very conditions. In doing so, welfare policies ushered in new

[23] Ibid. 75.
[24] Roberts, Dorothy E. *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty.* New York: Pantheon, 1997. 243.
[25] Ibid. 11.

forms of violence for policing black women's reproductive capacities: forced birth control, sterilization, and even imprisonment for purported misuse of funds. [26]

The liberal framework that undergirds progressive social policies wherein the state is invested in the general welfare and good of the public is one that is inherently anti-black *through* its articulation as antiracist. As Jodi Melamed illustrates, we have moved from an age of racial liberalism to neoliberal multiculturalism. That is, she argues that liberalism has had a *racial politic*. The liberal race framework recognizes that racial inequality is a problem but turns to abstract equality, market individualism, and inclusive civic nationalism as the means through which racial inequality is resolved. With the rise of neoliberalism also came the shift to "neoliberal multiculturalism," which "sutures official anti-racism state policy in a manner that hinders the calling into question of global capitalism."[27] The goal of neoliberal multiculturalism is not a tolerant national citizen who is concerned for the disadvantaged in his/her own society but a cosmopolitan market actor who can compete effectively across state boundaries. Neoliberal multiculturalism produced, for instance, the passage of Arizona State Law SB 1070, an anti-immigration bill similar to New York's own antiblack "Stop and Frisk" policy, which allowed Arizona "to rationalize thousands as racially 'illegal' in an instant to simultaneously generate new forms of permissible state violence and capital accumulation."[28]

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[26] See also: Mink, Gwendolyn. *Welfare's End*. Ithaca, NY: Cornell UP, 1998; Fox, Cybelle. *Three Worlds of Relief: Race, Immigration, and the American Welfare State from the Progressive Era to the New Deal*. Princeton: Princeton UP, 2012.; Smith, Anna Marie. *Welfare Reform and Sexual Regulation*. New York: Cambridge UP, 2007; Naples, Nancy A. *Grassroots Warriors: Activist Mothering, Community Work, and the War on Poverty*. New York: Routledge, 1998; and Gordon, Linda. *Women, the State, and Welfare*. Madison, WI: University of Wisconsin, 1990.
[27] Melamed, Jodi. *Represent and Destroy: Rationalizing Violence in the New Racial Capitalism*. Minneapolis: Univ. of Minnesota, 2011. 14.
[28] Ibid. 224.

Melamed's pointing to the collusion of state interests and private capital through the emergence of private prisons is not a new line of critical investigation. Early prison abolition scholarship by black feminist cultural critic Angela Davis enumerated these arrangements in the late 1990s. In her 1998 article "Masked Racism: Reflections on the Prison Industrial Complex," Angela Davis provided a profound indictment of the "political economy of prisons," which she argued relied upon "racialized assumptions of criminality—such as images of black welfare mother producing criminal children—and on racist practices in arrest, conviction, and sentencing patterns" [29] She described a penal system that exhibits "structural similarities and profitability of business-government linkages in the realms of military production and public punishment" that organizes itself around the intersections of race and gender.[30] A decade later, she extended her critique to note that prisons emerged as a principal form of punishment in the nineteenth century in the U.S. and that the development of supermax prisons has functioned primarily as a form of hyperpunitive control of African American and Latinos.[31]

The recent work of Michelle Alexander illustrates the ways in which the war on drugs and crime created the conditions for a harsh retributive punishment system that disproportionately targeted and affected African Americans.[32] Tactics such as long prison terms, strict parole terms upon release, and being labeled a felon have systematically created on undo burden on black populations.[33] Analyzes such as these

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[29] Davis, Angela. "Masked Racism." *Sing, Whisper, Shout, Pray: Feminist Visions for a Just World*. Ed. Jaqui Alexander, et al. Canada: EdgeWork Books, 2003. 50-57.
[30] Ibid. 52.
[31] Davis, Angela Y. *Are Prisons Obsolete?* New York City: Seven Stories, 2003. 55.
[32] Alexander, Michelle. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New York: New, 2010.
[33] Ibid.

are useful for thinking through and locating the pernicious ways that race and other categories of difference get mobilized and embedded within legal apparatuses, a much-needed skill for my project. Equally, my project builds on this work to think about the role that anti-blackness plays in marking bodies as always already criminal, sexually deviant, violent, and therefore unhousable. Anti-blackness plays a central role in determining who is and is not accused of a sex crime, prosecuted of a sex crime, and convicted of a sex crime. This matters for whom, then, makes it on the registry and occupies the popular imagination's racial embodiment of a sex offender.

Constructing Deviance and Identity through Sexuality

The U.S. nation-state has been inconsistent and at times contradictory in its policing of sexuality and sexual deviants. Because of these discontinuities, deviant subjects who have come in contact with the state, whether via immigration, citizenship issues, censorship, or criminality, have been able to assert varying degrees of agency by putting the state's own classifications to work. By examining these moments that produce, contain, proliferate, and celebrate deviancy, I attempt not only to disrupt notions that would suggest that the state has been so repressive as to not allow for sexual agency but also to consider other sites where the state creates a discourse of deviancy that moves beyond capital and industry. One of these sites is the homeless shelter. By centering the shelter, I think about the liminality of certain categories—the men are homeless, but they also create ways to belong to home; they are sex offenders but they also think of themselves and construct themselves otherwise. To do this, I first turn to the work of queer and sexuality studies scholars

who have illustrated the various ways in which deviances has been constituted and managed and how identity has been constructed.

For non-U.S.-born citizens entering the United States, often one of the first, most visceral encounters with the U.S. state apparatus is through immigration policy; it is also a site where understandings of deviance become clearly articulated. Like much of the political work at the federal level, immigration regulation often enacts itself prior to the point where immigrants actually reach the U.S. border.[34] Immigration regulation sets the terms for who is and is not allowed to cross the border and on what conditions that crossing can and should happen; it apprehends deviance. Often, these exclusions were not simply tied to country of origin but were also cast in specific racialized, gendered, and sexualized ways so that not everyone, regardless of home country, could enter the nation-state and lay claim to home here.[35]

The pervasiveness of policing foreign bodies and subsequently constituting those bodies as perverse, deviant, and/or homosexual is exemplified in Nayan Shah's *Stranger Intimacy: Contesting Race, Sexuality, and the Law in the North American West* (2011). Shah's work elucidates the ways in which South Asian male migrant

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[34] In order to ensure that those entering the country were most viable to comporting with a proper citizenship rooted in independence and nuclear family structures, late nineteenth-century immigration law prohibited any alien who had been convicted of "moral turpitude" from entering. The Bureau of Immigration, which was one of the first bureaucracies established to screen aliens attempting to enter the country, defined moral turpitude as that which "is so far contrary to the moral law, as interpreted by the general moral sense of the community, that the offender is brought into public disgrace, is no longer generally respected, or is deprived of social recognition by good living persons." Under this definition, people who were perceived as sexual deviants, often racialized and gendered bodies, were excluded from immigration.

[35] For example, in 1882 the Chinese Exclusion Act was enacted to restrict skilled and unskilled Chinese laborers employed in mining from migrating to the U.S. for ten years. Penalty was deportation or imprisonment. Thus, the nature of immigration regulation cast certain bodies as always already suspect and deviant. In 1875, Chinese women were named as suspicious, and in 1882 Chinese mining laborers were cast as suspicious. During and following the seven year interim between the two acts, Chinese male immigrants—and various immigrants who were similarly residing in bachelor subcultures, such as the South Asian transient migrant laborers—grew more suspicious and therefore subject to a different level of regulation.

workers during the early period had to reconstitute their identities outside of *and through* the rhetoric of the law in order to both assert their agency and avoid criminalization. Though men were subjected to screening processes by the state that were meant to call into question their sexuality and gender, which would ultimately function to disqualify them from entry or extended stay in the country, men were not simply oppressed by the power of the state. Contrarily, many men used the state to their advantage in order to challenge public charge clauses and legitimate their perceived or real deviancy.[36] By strategically aligning themselves with family, property, and economic capital, these South Asian migrants demonstrated an awareness of legal exclusionary practices.

Shah's work points to the relationship between the border, immigration, and citizenship as an alternative site to understand the discourse of sexuality, positioning this discourse prior to World War II. Another scholar who takes seriously these constellations of relationships is historian Pablo Mitchell. As Mitchell argues in *Coyote Nation: Sexuality, Race, and Conquest in Modernizing New Mexico, 1880-1920*, "national (legalistic) citizenship and sexual habits and customs [were] conflated, expanding the notion of citizenship to include both one's legal membership in a nation and one's sexual customs."[37] Mitchell's maps three very important themes regarding the construction of deviance: first, racialized bodies were always suspect as deviant; second, the border, itself, marks the place for mitigating deviance. The U.S.

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[36] One of the ways South Asian men refuted the public charge clause was by proving their financial stability. South Asian migrants from Manila documented their "financial resources, paternal and fraternal support, ambition for business, trade, or education, and the existence of blood ties and family history to land- and business ownership" in order to gain entrance into the U.S. Ibid. 204.
[37] Mitchell, Pablo. *Coyote Nation: Sexuality, Race, and Conquest in Modernizing New Mexico, 1880-1920.* Chicago: University of Chicago Press, 2005. 71-72.

structured its borders as the site where deviance was locked out and normalcy was locked in; and third, bodily comportment is integral to understanding citizenship and sexualization.[38] By not expressing proper bodily comportment, individuals could also signal improper citizenship and deviant sexuality and race.

Margot Canaday elucidates a similar set of conditions wherein the state policed sexuality through the exclusion of immigrant populations who were marked as "sexual degenerates."[39] According to Canaday, the Immigration Act of 1882, one of the earliest laws used to assert control over immigration, provided for the deportation of people who became "public charges," those who appeared likely to require public support.[40] The public charge clause was employed broadly as a way to deny migrants entrance or to provide a very basic rationale for deportation proceedings. As such, the clause was an expeditious tool for marking and removing sexual deviants. For instance, immigrants who were accused—or found guilty—of sodomy, which was then a criminal act, were denied entry or deported based both on their lack of moral turpitude and their likelihood to become a public charge. Moral degenerates were unfit or unlikely to find work, and therefore they would be dependent upon the state.[41] Public charges were not privy to making claims to home, to rooting oneself in and to the US. This logic also extended to prostitutes, to gay and lesbian citizens, interracial couples, and "illegitimate children."[42] The border was not

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[38] Ibid. 56
[39] Canaday, Margot. *The Straight State: Sexuality and American Citizenship, 1900-1969*. Princeton: Princeton UP, 2004. 229.
[40] Ibid. 25.
[41] Ibid. 34-40.
[42] See Stoler, Ann Laura. *Haunted by Empire: Geographies of Intimacy in North American History*. Durham, NC: Duke UP, 2006; and Gilfoyle, Timothy J. City of Eros: New York City, Prostitution, and the Commercialization of Sex, 1790-*1920*. New York, NY: W.W. Norton, 1992.

the only space in which deviance was produced through the site of punishment or policing; prisons also functioned as a prime location.

Regina Kunzel, author of *Criminal Intimacy: Prison and the Uneven History of Modern American Sexuality*, argues prisons were seen as a place where perversion was lamentably fecund and yet a place meant to police those very perversions.[43] According to her, "sex was constitutive of the modern prison; the modern prison…was constitutive, in turn, of important shifts in understanding sex."[44] Though, prior to the early nineteenth century, prisons were not used for punishment; instead, they were envisioned as an alternative to corporeal punishment, built on a politics of isolation and separation as disciplinary control.[45] Through isolation and separation, individuals were intended to rehabilitate through remorseful self-reflection; equally, isolation was a way to reduce the likelihood of prisoners engaging in "vice"—from verbal exchanges with each other that might promote criminal acquaintanceship post-release to sex.[46]

With growing prison reform that attempted to police sexual desire, sex-specific prisons began to emerge and cohabitation amongst inmates was introduced, which created much fervor about mixing degenerates of varying different classes, races, ages, and criminal backgrounds. Out of all this, though, came an opportunity for same-sex desires to proliferate more easily, despite the development of sex-specific prisons meaning to curtail sexual activity.[47] Thus, the development of new

[43] Kunzel, Regina. Criminal Intimacy: Prison and the Uneven History of Modern American Sexuality. First Ed. University of Chicago Press, 2010. 11.
[44] Ibid. 16.
[45] Ibid. 19.
[46] Ibid. 23.
[47] Ibid 30ff

forms of punishment through the prison system also produced new ways of engaging in sexual desires, even as those desires were being constructed as deviant and therefore in need of policing.

Despite the way in which deviance is often constituted as needing to be contained and managed by the state, deviance is not simply a product of the state. As Cathy Cohen points out, it is also a site, itself, of resistance. Drawing on the work on Michel Foucault, she argues people with little power engage in "counter normative behaviors" that mark them as deviants: having children out of wedlock, structuring relationships outside of the nuclear family, or rejecting homosexuality. In doing so, they situate their lives in direct contrast—and conflict with—normative, dominant understandings of the family, sex, and desire.[48] Cohen urges scholars to think of these moments not simply as products of discourse on deviance or state-sponsored narratives attempting to pathologize blackness. Instead, she reads them as having a radical political potential that function as "acts of defiance" that create "new or counter normative frameworks" for understanding agency in black communities.[49] In this way, I read her as also suggesting we must distinguish between deviance as a *act* and an *identity* while also being attuned to the ways these two are conflated to reproduce narratives that attempt to stigmatize and pathologize those who fall outside of and against normative ways of being even as deviant identities become productive sites for mobilizing resistance. My reading of Cohen situates her within a broader intellectual debate in queer and sexuality studies around the relationship between acts and identities in the constitution of sexuality.

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[48] Cathy Cohen, ''Deviance as Resistance: a New Research Agenda for the Study of Black Politics,'' Du Bois Review 1, no. (2004): 27–45, 30.
[49] Ibid.

Scholars of queer and sexuality studies have been instrumental in framing the relationship between acts and identities, a distinction and tension that is integral to my project, as part of what I am attempting to do is to tease out the messy ways in which acts of sexual violence come to stand in for the sexual identity and subjectivity of the individuals committing those acts. Put otherwise, because sex offenders are people who committed *sexual offenses*, they are implicated in the same discursive processes by which sexual identities are constituted through sex acts and sex acts are used to constitute proof of sexual identities. This process has been best explored by queer theorists who have attempted to narrate how contemporary, commonsense[50] understandings of sexuality and sexual identities have been just that: a contemporary invention. Categories of identity such as gay, lesbian, bisexual, and transgender are historically produced and contingent; they are not *a priori* categories that we can impose across time.

In his groundbreaking text, *History of Sexuality, Volume I: An Introduction (1990)*, Michel Foucault argues that modern conceptions of sexuality are rooted in cultural discourses that began circulating in the sixteenth century but took foothold during the Victorian Era, the so-called period of sexual repression. According to Foucault, while this period was one wherein institutions like the law, family, and the state externally repressed sexuality in order to reproduce its labor force, it was also one in which sex was "put into discourse."[51] This was evidenced through the

[50] Throughout, I draw on the work of Wahneema Lubiano to think about that which is commonsense as "ideology lived and articulated in everyday understandings of the world and one's place in" as "everyday ideology" that gets circulated in popular culture, discourse, media, and print (See: Lubiano, Wahneema H. "Black Nationalism and Black Common Sense: Policing Ourselves and Others." The House That Race Built: Black Americans, U.S. Terrain. New York: Vintage, 1998. 232-52.)
[51] Foucault, Michel. *History of Sexuality*. 11.

introduction and proliferation of sexuality into psychoanalytic, political, and scientific discourses that made sex, like crime, an object of science that could then be dominated through knowledge production.[52] For instance, psychoanalysis focused much of its attention on establishing the foundation of sexuality through the processes of confession as a form of truth sharing.

Because of the link between sex and truth, sexuality developed into a marker of identity through one's own ability to articulate the truth about oneself. That is, the science of sex produced knowledge about normal and deviant sex acts and subjects; this knowledge functioned as a form of social control that people then internalized to monitor themselves and how they thought about themselves.[53] Or, as Foucault famously proclaimed, "homosexuality appeared as one of the forms of sexuality when it was transposed from the practice of sodomy onto a kind of interior androgyny, a hermaphrodism of the soul. The sodomite had been a temporary aberration; the homosexual was now a species."[54] As such, sexuality became not just an *object* of science; through the policing of the self, it became a truth about *subjects*.

Extending Foucault's work, George Chauncey argues that before the mid-twentieth century the labeling and self-identification of men as "queer" was based on "their ascribed gender status by assuming the sexual and other cultural roles ascribed to women" not their sexuality.[55] Put otherwise, being labeled a "queer" was about the inversion and adoption of gender roles not about one's inherently sexual subjectivity. Between 1930-1950, the division between "homosexual" and "heterosexual" on the

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[52] Ibid. 69.
[53] Ibid. 57.
[54] Ibid. 43.
[55] Chauncey, George. *Gay New York: Gender, Urban Culture, and the Making of the Gay Male World*. New York: Basic, 1994.

basis of the sex of one's sexual partner began to replace this line of thought and slowly became the hegemonic way of understanding this shift.[56] John D'Emilio attributes this shift to the development of new modes of capitalist production during the second half of the nineteenth century. In particular, he argues that prior to the emergence of wage labor, there were no sex-cultural networks that allowed for same-sex desiring men and women to assume gay or lesbian identities.[57]

The free labor system allowed for urbanization and a move away from the primacy of the heternormative family that subsistence farming and slave production engendered, which, in turn, allowed men and women to develop a sense of autonomy—financial and sexual. He argues, "only when *individuals* began to make their living through wage labor, instead of as parts of an interdependent family unit, was it possible for homosexual desire to coalesce into a personal identity."[58] In essence, people were able to move off to the urban city to live by themselves, with a disposable income to participate in different economies of desire and pleasure; and, in turn, people began to build communities around common sexual practices based on a discourse of sexual preference tied to the sex of their partner(s). As Eve Sedgwick details:

> What was new from the turn of the century was the world-mapping by which every person, just as he or she was necessarily assignable to a male or female gender, was now considered necessarily assignable as well to a homo- or a hetero-sexuality, a binarized identity that

[56] Ibid. 13.
[57] D'Emilio, John. "Capitalism and Gay Identity." *Making Trouble: Essays on Gay History, Politics and the University*. New York: Routledge, 1993.
[58] Ibid. 8.

> was full of implications even the ostensibly least sexual aspects of personal existence.[59]

It was this new development that left no space in culture that existed outside of the heterosexual/homosexual binarism.

Departing from this earlier historiography about the production of sexual identities, Barry Reay argues that sexual identities were not produced until the late nineteenth century, contrary to work of scholars like Chauncey and D'Emilio. Being attentive to the relationship to capitalism and sexuality in the way that D'Emilio mapped out, Reay's text looks at the history of New York male hustlers and trade in the postwar period. Through his exploration, he argues that neither homosexuality nor heterosexuality functioned as solidified, stable categories of identity for a large number of working class men until the 1970s.[60] Because there was a high prevalence and widespread exposure of popular representations of hustlers and trade in the American imagination, he asserts that the instability of sexual identity was well known to the American public. Not only did many men neither identify as gay or straight well after World War II but also the American public was well are of this. As such, sexual identity was constituted not through the sex of one's partner but through one's own understanding of self, and therefore had not been "made" in New York until the late-twentieth century.

These debates in queer studies make clear that the relationship between acts and identities is messy and imprecise. This messiness and imprecision is due to the very nature of discourse, which structures our understanding of sexuality and sexual

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[59] Sedgwick, Eve Kosofsky. *Epistemology of the Closet*. Berkeley, CA: U of California, 1990. 2.
[60] Reay, Barry. *New York Hustlers: Masculinity and Sex in Modern America*. Manchester: Manchester UP, 2010.

identity. According to Judith Butler, self-knowing and self-disclosure—the very claiming and naming of sexual identity—reiterates, through language and practice, the very terms upon which the ideas of normative and nonnormative sexualities are constructed. By reiterating these terms, identities are constantly reconstructed around very limited sets of meanings, which is to say that the naming of the self does not inherently refute or disavowal those very discourses that constitute the self as a sexual subject, even when those discourses are in contradiction.[61] In this way, sex offenders both become named by their sexual acts *and* their refutation of those categories. The same discursive processes that produced their sexual subjectivity, their sexual essence, as sex offender are the ones they have available to reconstitute themselves as something other. However, their reconstitution of sexual self, what I name in chapter three as self-fashioning, often relies upon pre-existing normative discourses—literally, many of them articulate that they want to be "normal" and to enjoy heteronormative lives.

Being a sex offender, despite not actively committing ongoing sex offenses or identifying with the criminal sex act that defines their sexual being, is inextricably linked to how the sexuality of those who have committed a sexual offense is constituted as only ever violent or deviant. The sex offender registry, as itself an archive of various sexual discourses, produces sexual knowledge about men who committed a sexual offense and constitutes them, then, as a sex offender. That is, their *act* constitutes their *identity*. A turn to queer and sexuality studies allows me to frame my own slippages between sex offense/sex offender. In some ways, I find it difficult to work outside these discursive slippages because they actively constitute the lives of

[61] Buter, Judith. *Bodies that Matter: On the Discursive Limits of "Sex."*New York: Routledge, 1991.

the homeless black men I interviewed, even as they work against those slippages. By naming them as sex offenders in this project, then, I aim not to reiterate state-sanctioned discourses that attempt to police and regulate them so that they internalize those processes of regulation to then self-modulate. Rather, I do so to be attentive to the fact of their existence within a milieu of discourses that structure their lives prior to their own arrival into any space.

Gendering State-Sanctioned and Sexual Violence

I position my research amongst a growing body of scholarship that critically engages the over-reliance on carceral institutions to address an array of criminal behaviors but especially violence against women, even as this violence often goes unaddressed. Black feminist and queer of color scholarship as well as critical prison studies have called attention to the disparate impact of the carceral state on women of color.[62] The work of Beth Ritchie has been instrumental in thinking about the way antiblackness is produced through punitive prison regimes as both deeply gendered and imbedded in the constitution of the U.S. nation writ large. In her groundbreaking text *Arrested Justice: Black Women, Violence, and America's Prison Nation* (2012), Ritchie lays bare the ways in which black women encounter emotional, physical, and sexual assault at the hands of their intimate partners, their community, and the state—what she calls "the male violence matrix."[63] She argues that anti-violence movements have historically focused on "neutral" (i.e. non-raced) forms of gendered and sexual

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[62] See Bernstein, E. (2007a). The sexual politics of new abolitionism. *Differences: A Journal of Feminist Cultural Studies, 18*(3), 128–151; Brown, W. (1995). *States of injury: Power and freedom in late modernity*. Princeton: Princeton University Press; Davis, A. Y., & Shaylor, C. (2001). Race, gender, and the prison industrial complex California and beyond. *Meridians: Feminism, Race, Transnationalism, 2*(1), 1–25.

[63] Richie, Beth. *Arrested Justice: Black Women, Violence, and America's Prison Nation*. New York: New York UP, 2012. 127.

violence. Doing so excluded entire groups of women whose racialized experiences and forms of racialized violence, particularly at the hands of the state and white people, were going unnoticed or actively being erased. The remedies to gendered and sexual violence were therefore insufficient for addressing the needs of black women. Black women were then trapped in a "prison nation," which depends on the ability of leaders "to create fear … to identify scapegoats … and to reclassify people as enemies of a stable society."[64] As such, the prison nation involves penalization through the criminal justice system *and* the penalization of non-normative practices of marginalized people.

Building on Ritchie's work, Sarah Haley astutely reveals how the criminal legal system required and reinforced black female deviance as part of a larger process of black devaluation and dehumanization integral to Jim Crow modernity. Further, she illustrates that "gender is constructed by and through race, and that the production of woman of other stable gender categories requires violence."[65] In examining southern convict camps, she points out how black female bodies were reduced to flesh for the ideological value of reducing black people to things and for the carceral value for southern racial capital through the use of black female convicts for labor.[66] Convict camps were, therefore, a site for producing gendered racial terror that used technologies of punishment such as lashings exclusive to black women and the denial of medical services in black women's convict camps. Haley's work points out how

[64] Ibid. 3.
[65] Haley, Sarah. *No Mercy Here Gender, Punishment, and the Making of Jim Crow Modernity*. Chapel Hill: U of North Carolina, 2016. 8.
[66] Ibid. 87.

gendered violence is racialized and how such violence is predicated on the construction of certain bodies as non-normative.

Violence against non-normative peoples happens in everyday ways outside of discreet carceral spaces and often structures everyday spaces and how what is or is not constituted as "normal" is understood. Dean Spade's *Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law* (2009) pushes scholars to think about multiple different registers and regimes of violence that happen through bureaucratic processes, discourse, and the law, with a particular focus on transgender men and women. He further pushes trans activists and scholars to develop what he calls a "critical trans politic" that "refuses empty promises of 'equal opportunity' and 'safety' underwritten by settler colonialism, racist, sexist, classist, ableist, and xenophobic imprisonment, and ever-growing wealth disparities."[67]

With this framework, he urges scholars and activists to move beyond the law as a site of remediation, because rights-based approaches collude with the state to render transgender communities invisible. Particularly, he notes how administrative processes produce gender violence through identification documents, sex-segregated facilities, and health care access. A critical trans politics need respond to these forms of administrative violence not through a call to more legal and media recognition, because these frameworks often erase the ways "race and gender operate as vectors of the distribution of life chances that cannot simply be solved by passing laws."[68] Instead, we must totally rehaul how we even conceptualize space, rights, gender, and the law.

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[67] Spade, Dean. *Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law*. New York: South End, 2009. 41.
[68] Ibid. 119.

Wendy Brown offers a similar critique of the law that helps think through the way the law produces gender violence vis-à-vis the state. In *States of Injury*: *Power and Freedom in Late Modernity* (1995), Wendy Brown critically engages late modern state power to reveal how the translation of identity politics into (political and social) rights oftentimes reinscribes the very systems of oppression these politics attempt to undermine. She argues that freedom "has shown itself to be easily appropriated in liberal regimes for the most cynical and unemancipatory political ends."[69] That is to say, if freedom is the measuring stick for democracy, we must understand that democracy is otherwise a way of constituting and distributing political power.

The problem, as she sees it, is that 'rights' articulate identity according to norms and regulatory practices. So, to make a claim to rights through identity is to in fact invest in the same regime—the State—which identity politics (through rights' based discourse) attempts to resist. Instead, she insists that rights are part of the myth of liberalism. Further, she argues that rights claims often articulate "identity as injury," depoliticizing the conditions under which victimization occurs and instead representing 'victim' as a natural identity.[70] Thus claims to victimhood by women necessarily erase the gendered processes that made such victimization possible and instead victimhood stands in for how we think about women. This point is key for how we think about the ways in which people can or cannot make claims to gendered and sexual violence and how those claims reproduce administrative violence or states of injury.

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[69] Brown, Wendy. *States of Injury: Power and Freedom in Late Modernity*. Princeton, NJ: Princeton UP, 1995. 5.
[70] Ibid. 134.

Given the law's limited ability to remedy various forms of violence or injuries and instead its capacity to produce such injuries, scholars have continued to move away from the law as a site of liberation. The edited collection *Captive Genders: Trans Embodiment and the Prison Industrial Complex* (2011) offers a series of differing ways to think about the relationship between gender, violence, and the carceral state as well as critical interventions for ameliorating the conditions of gender violence. As a collection, it features the work of scholars, scholar-activists, grassroots organizers, and folks inside and outside of the prison. As a critical resistance text, the authors of *Captive Genders* assert that prison abolition has to be at the center of queer and trans liberation through an attention to gender, what they call the "most volatile point of contact between state violence and one's body."[71] The authors highlight how "the abolition of policing, prisons, jails, and detention not strictly as a narrow answer to 'imprisonment' and the abuses that occur within prisons, but also as a challenge to the rule of poverty, violence, racism, alienation, and disconnection that we face every day."[72] By centering the experiences of trans people, the collection challenges prison abolitionist movements and scholars to consider the very material ways that trans people are made vulnerable through the gendered logics of carcerality not in addition to or outside of them.

Scholars in critical prison studies have continuously called into question the ways in which policies of the punitive state are rooted in and reproduce white supremacy while simultaneously challenging the myth that these policies deter crime at all. Instead, they explicitly call for a reduction in various acts of state-sanctioned

[71] Stanley, Eric, Nat Smith, and CeCe McDonald. *Captive Genders: Trans Embodiment and the Prison Industrial Complex*. Oakland: AK, 2011. 4.
[72] Ibid. 36.

punishment and violence precisely because of their imbrication in gendered, anti-black, anti-queer nationalist projects.[73] Simultaneously, as illuminated in *Captive Genders*, there has been a tenacious anti-prison movement in the United States, evidenced by the rise of organizations such as Critical Resistance; INCITE!; Survivors in Solidarity with Prison Abolition; and Anarchist Black Cross to name a few. In fact, Critical Resistance and Incite issued a joint statement in 2003 calling for a merging of prison abolition activists and anti-violence activists, noting there is a growing gap in approaches to state and interpersonal violence. More pointedly and importantly for my work, they articulated a point that I hold at the center of my project when thinking about the tensions between my scholarship and my feminist and queer politics:

> The anti-violence movement has been critically important in breaking the silence around violence against women and providing much-needed services to survivors. However, the mainstream anti-violence movement has increasingly relied on the criminal justice system as the front-line approach toward ending violence against women of color. It is important to assess the impact of this strategy.[74]

They then go on to outline the various ways mainstream approaches to anti-violence have actually reproduces anti-black and anti-queer policies through the rebuffing of state-sanctioned forms of punishment. I take very seriously their position, as throughout my ethnographic process all of the men I interviewed revealed

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[73] See Wacquant, Loïc J. D. *Punishing the Poor: The Neoliberal Government of Social Insecurity*. Durham: Duke UP, 2009; Schweik, Susan M. *The Ugly Laws: Disability in Public*. New York: New York UP, 2009; Harkins, Gillian. *Everybody's Family Romance: Reading Incest in Neoliberal America*. Minneapolis: University of Minnesota, 2009; Spade, Dean. *Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law*. Brooklyn, NY: South End, 2011; and Cacho, Lisa Marie. *Social Death: Racialized Rightlessness and the Criminalization of the Unprotected*. New York: New York UP, 2012.

[74] Critical Resistance and Incite! "Critical Resistance-Incite! Statement on Gender Violence And the Prison-Industrial Complex." *Social Justice* 30, no. 3 (93) (2003): 141-50.

differing ways that their were being punished by the state as an extension of their actual offense. Moreover, sex offender registries do not exist only for *violent* crimes, a definition that has shifted across time, as I demonstrate in chapters one and two.

Building on the framework of critical resistance scholars, my scholarship calls feminist and queer scholars and activists to challenge the persistence and promotion of sex offender registries as, themselves, extensions of the same forms of racialized and gendered state violence that they attempt to disrupt. The expansion of the sex offender registry, contrary to its promise, has failed to promote safety amongst those individuals most susceptible to sexual violence: women of color and queer-identified individuals. Research has shown the opposite. Criminalizing men who assault their intimate partners, for example, has led to a rise in the incarceration (and deportation) of poor men of color, not a decline in the number of women who are assaulted.[75] Being attentive to the ways that anti-blackness, carcerality, acts and idenitites, and gendered violence inform how we think about sex offenders, I turn to critical homeless studies to consider new themes emerging in our understanding of homelessness, particularly because my project focuses on homeless sex offenders.

(Critical) Homeless Studies

Homeless studies, which emerged at the end of the twentieth century, has focused almost exclusively on homelessness as a material condition that articulates one's lack of housing. Early scholars focused primarily on the ways in which individuals came to be without housing; though none of them agreed. Joel Blau,

[75] Ritchie, Beth. 2000. "A Black Feminist Reflection on the Antiviolence Movement." *Signs:* Journal of Women in Culture and Society 25, no. 4: 1133–37

building on the early work of Peter Rossi[76], argued that homelessness is a product of economic and political changes that undermined social welfare and increased the cost of living. As such, for one to end their homelessness, they just need to have access to affordable housing, a better national security net for social welfare on which to fall back, and a higher minimum wage.[77]

Departing from public debates about homelessness that centered poverty as the purported root of homelessness and therefore more affordable housing being the solution, social scientists Alice Baum and Donald Burnes argued for a sociological and epidemiological approach to understanding homelessness. In their foundational text, *A Nation in Denial: The Truth about Homelessness* (1993), Baum and Burnes assert that the rise in homelessness during the 1980s must be understood within the context of increased substance use in America, failed policies surrounding President Nixon's infamous war on drugs, and mental illness. Contrary to Rossi and Blau's assessment, more affordable housing was not the solution to homelessness, because the economy was not the problem; rather, the problem was "personal lives out of control," deinstitutionalization of mental patients, and the lack of facilities to treat substance abuse.[78] People were without housing because they were not stable enough to have housing; thus the challenge for America was to stop being in denial about a growing problem with drug use and mental illness and to instead invest in rehabilitative services to stabilize people so they could be ready for housing. Arguably, this forms the logical basis for subsequent "housing readiness" models of

[76] See Rossi, Peter H. *Down and out in America: The Origins of Homelessness*. Chicago: University of Chicago, 1989.
[77] Blau, Joel. The Visible Poor: Homelessness in the United States. New York: Oxford UP, 1992.
[78] Baum, Alice S., and Donald W. Burnes. *A Nation in Denial: The Truth about Homelessness*. Boulder: Westview, 1993.

emergency and transitional shelters that are predicated on assessing someone's readiness for housing based on whether or not they were engaged in substance abuse and mental health treatment.[79]

Despite these differences, the underlying assumption was that the project of homeless studies was to offer ways to solve homelessness. This assumption persisted—and still persists in many ways—in more critical studies of homelessness that take seriously the role of race, gender, and class in how we must analyze homelessness in America. These scholars, in opposition to much earlier research, argue that the punitive and managerial nature of homeless services aides in keeping people homeless opposed to ending their homelessness. Without departing from structural critiques of economic and political policies that render people homeless in the first place, these scholars seek to further the analysis beyond causality. For example, Elliot Liebow's *Tell Them Who I Am: The Lives of Homeless Women* (1993) offers ethnographic insight into the lives of women residing in homeless shelters outside of Washington, D.C. Unlike earlier accounts that point to structural inequality as the inability of the economy to provide adequate paying jobs, Liebow notes that many of the women he engaged were pushed into homelessness not simply because of the job market; they were pushed out because they were understood to have the weakest potential to earn wages.[80] In this regard, Liebow points to the gender distribution of labor and the market's inability to provide women equal access and

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[79] See Snow, David A., and Leon Anderson. *Down on Their Luck: A Study of Homeless Street People*. Berkeley: University of California, 1993 and Kusmer, Kenneth L. *Down and Out, on the Road: The Homeless in American History*. New York: Oxford UP, 2002.

[80] Liebow, Elliot. *Tell Them Who I Am: The Lives of Homeless Women*. New York: Free, 1993. 65. See also Desjarlais, Robert R. *Shelter Blues: Sanity and Selfhood among the Homeless*. Philadelphia, PA: University of Pennsylvania, 1997 and Golden, Stephanie. *The Women Outside: Meanings and Myths of Homelessness*. Berkeley: University of California, 1992.

pay—a level of analysis previous scholars continued to ignore. Liebow's intervention called for a more systemic approach to analyzing homelessness that hinged on the centering of gender and a category of analysis that helps makes sense of the rise of homelessness.[81]

Continuing to depart from approaches to homelessness that seek to both diagnose the problem of homelessness and prescribe the solution, Darin Weinberg's *Of Others Inside: Insanity, Addiction, and Belonging in America* (2005) traces the emergence of therapeutic models in shelters to a history of insanity and addiction management, which ultimately converge through what he calls the "moral community."[82] Drawing on sociologist Émile Durkheim, Weinberg argues that deviance functions as a mechanism in the maintenance of social solidarity; deviant subjects mark the boundary of social solidarity and keep solidarity intact.[83] Therefore, identifying people as mentally ill does more than just pathologize them, it positions them as on the outside, needing to be properly re-trained in order to make it back into the fold. Alex Vitale argues that this pathologization also gets mobilized within a quality of life paradigm that ultimately seeks to provide community residents a better

[81] In *The Unequal Homeless: Men on the Streets, Women in Their Place* (New York: Routledge, 1996), Joanne Passaro argues that women (especially women with children) are rapidly rehoused due to the ways that normative masculinity frame the proper place for women; that is, women are supposed to be in the home. And, therefore, homelessness is an inherently gendered construct that produces highly gendered policy results.

[82] Teresa Gowan's *Hobos, Hustlers, and Backsliders: Homeless in San Francisco* (Minneapolis: University of Minnesota, 2010) traces this within a history of "sick-talk," "sick-talk," and "system-talk."

[83] Weinberg, Darin. *Of Others Inside: Insanity, Addiction, and Belonging in America*. Philadelphia: Temple UP, 2005. 190ff.

life by policing the homeless and moving them out of developing and urban areas, because their presence presumably diminishes life for the housed[84].

More recently, homeless studies has begun moving in a direction that analyzes homelessness beyond the logics of poverty and pathology and instead has been increasingly critical of the state's role in the management of homelessness and deviance, as evidenced by the most recent work of Philippe Bourgios, Craig Willse, and Loic Wacquant. For example, Willse points out how housing insecurity and deprivation are forms of racialized subordination whereby individuals most affected by state racism, who then are more likely to be homeless the longest, are actually folded into a neoliberal economy through technical programs like chronic homelessness initiatives. Instead of understanding this as an investment in ending state racism, he argues, we must understand this as a management of costs that attempts to "transform illness and death into productive part of post-industrial economies."[85] Bourgois and Schonberg elucidate how punitive, profit-driven government models structurally impose "violent and destructive subjectivities" on vulnerable populations while dismantling the very services set up to recuperate these subjectivities, none of which are specifically sexual in nature.[86] However, their work begins to open a conversation about deviant subjectivity and the ways in which those subjectivities are punished by the state through homeless services. In this way, I am able to understand how sex offenders become punished through the homeless services

[84] Vitale, Alex S. City of Disorder: How the Quality of Life Campaign Transformed New York Politics. New York, NY: New York UP, 2008.
[85] Willse, Craig. "Neo-liberal Biopolitics and the Invention of Chronic Homelessness." *Economy and Society,* 39.2 (2010): 190.
[86] Bourgois, Philippe I., and Jeff Schonberg. *Righteous Dopefiend*. Berkeley: University of California, 2009. 307.

industry, which relies upon the state for funding and thus is often required to reproduce the same forms of punishment the state creates.

While also not explicitly focused on the sexual lives and practices of the homeless, Gowan's *Hobos, Hustlers, and Backsliders: Homeless in San Francisco* offers the beginnings of a theoretical framework to understand the place of sexuality by focusing on different forms of deviance. According to Gowan, discourse about poverty and homelessness—within and between both mainstream and homeless communities—shapes the everyday lives of homeless individuals on the streets by marking them as deviant and paradoxically providing them the means to undermine the managerial apparatus that is the "homeless archipelago" through participation in informal economies.[87] Put otherwise, even as the continuum of homeless services is organized to manage homelessness-as-deviance and those non-normative behaviors categorized as deviant, it simultaneously creates the conditions for people to work outside the continuum.

Gowan's work is significant, because it explicitly illustrates the relationship between homelessness, deviance, and the state, but with the focus being on economically immoral deviants: "hobos, hustlers, and backsliders." Building off this, my work intends to center sexuality to think through the technologies and bureaucracies that mark certain forms of sexuality as immoral—offendable—and how that results in the unequal distribution of housing insecurity and homelessness. Being a homeless sex offender means that housing is never quite secure, that making claims to home and housing is complicated, and that these forms of deviancy are not

[87] Gowan, Teresa. *Hobos, Hustlers, and Backsliders: Homeless in San Francisco*. Minneapolis: University of Minnesota, 2010. xx.

marketed as recoverable or treatable in the same way that poverty, mental illness, and substance abuse are. Sex offense also illustrates a type of deviance that is understood as one's inability to manage his/her excess desire and as *violent*, a configuration I trace throughout the dissertation but spend significant time examining in chapter four through a close reading of popular representations of homeless sexuality.

On Methods

As an interdisciplinary project with a broad scope, I use several different sources and methods to accomplish my interventions. I examine shelter policies; housing authority regulations' state and federal laws; documentary; popular film and discourse; and the everyday practices of service providers that sometimes supersede policy and regulation. My project takes multiple methodological approaches, including discourse analysis on the law and public media outlets reporting on homelessness and transgender inclusion, an auto-ethnographic account of my own experience as a homeless services provider, close readings of popular film, and interviews of homeless sex offenders and service providers in Montgomery County, MD.

Because so much about how we understand sex offense has to do with popular discourse and representation, I also examine these discourses, focusing on media representations, political campaigns, and local debates about the place for sex offenders in local communities. Since I am interested in the ideological underpinnings that inform these discourses, sociological discourse analysis is instructive. This approach understands discourse as a site of information and ideology and to be a social product. Because discourse contains knowledge about social realities, it is

useful in both situating the context out of which sex offender laws emerge but also helps me locate those informal ways in which laws are created. Not all law is codified by the state. There are informal laws, community agreements, and commonsense understandings of the law that get perpetuated in discourse and have real material consequences on the lives of individuals. To deepen this analysis, I use ethnography as a way to engage in community discourse, to name my own participation in the various circles in which I am located as a former service provider, and to capture those conversations that are not already indexed by newspaper articles, blogs, or local news media coverage.

I spent one full year in the field collecting data across Montgomery County, Maryland. I conducted 18 semi-structured interviews with homeless sex offenders, all of whom were black men, lasting on average about two hours each. I conducted at least four follow-up interviews with all of 18 of them. Each follow-up lasted equally as long as the initial interviews. I conducted four additional follow-ups with 10 of the men. Put simply, I conducted five interviews with eight of the men and 10 interviews with 10 of them. These lasted anywhere from one hour to five hours, depending on the person. These interviews were self-led, allowing each person to take ownership of the process. I also conducted one descriptive interview with two formerly homeless, queer-identified men who reached out to me wanting to tell their stories about life on the streets and in shelters. I supplemented this with a focus group I conducted with 14 homeless service providers in the county. For all these interviews, I posted flyers in homeless drop-in centers and sex offender therapy sites as well as used word of mouth to solicit participants. All of my participants were over the age of 18, and none

of them were people with whom I had directly worked—either as clients or as co-workers.

Location

Geographically, my project locates itself in Montgomery County, Maryland, the eleventh richest county in the United States as of 2012; this is important because most models for intervening on behalf of the homeless are drawn from urban spaces. Urbanity is understood as a space of possibility and freedom where queer subjects can embrace their sexual identities. This is evidenced by the popular notion that people go to San Francisco and New York to "be gay." It is not that they are not gay in other locations; rather, San Francisco and New York are understood as meccas for one to perform—act upon—their sexual desires. Rural and suburban spaces are locations for repression, with rurality marked as "backwards" and suburbia being enmeshed with normative ideals.[88]

Jack Halberstam refers to these spatial narratives as one that are configured around "queer metronormativity" wherein "the subject moves to a place of tolerance after enduring life in a place of suspicion, persecution, and secrecy" and accepts that moving to the city is the only option for rural and suburban queers.[89] In this way, the city is the space where deviance is produced and proliferates; as such, space has been designated (even though it has been contentious and not without battles) as queer in certain cities. Deviance has a place to call home. This is evidenced by spaces like Skid Row in San Francisco and Christopher Street Pier in New York City, for

[88] Tongson, Karen. *Relocations: Queer Suburban Imaginaries*. New York: New York UP, 2011; and Gray, Mary L. *Out in the Country: Youth, Media, and Queer Visibility in Rural America*. 1st ed. NYU Press, 2009.
[89] Halberstam, Jack. *In a Queer Time and Place: Transgender Bodies, Subcultural Lives*. New York: New York UP, 2005. 37-40.

example, where deviant subjects are able to make community. They become contingently acceptable sites to concentrate deviance, homelessness included. As someone who has provided direct services in Montgomery County, a suburb, for the past six years, it has become overwhelmingly obvious that the dynamics of homelessness are different precisely because of the de-centralization of homelessness. There is no one designated space where homelessness or other forms of deviance is located. In the most practical of senses, this means activities like homeless street outreach is much more difficult because homeless people are both everywhere and nowhere. When someone becomes homeless, it is hard to even figure out where s/he should go for assistance. Moreover, the suburb presents a problem around affordable housing.

In Montgomery County in 2017, the fair market rent—that is, the rent someone should pay without any social welfare support—is $1513/month for a one-bedroom apartment; this is a 7.9 percent increase from 2016. For comparison, fair market rent for New York City in 2017 is $1419; for San Francisco it is $2,411.[90] While these numbers fluctuate based on where one lives in any of these geographical locations, it is important to note these are the rates the Department of Housing and Urban Development uses to determine how deep a susbsidy one might need to offset the cost of housing in any given area. For Montgomery County, what this means is that the cost of living and property taxes are very high, so "affordable housing" is not quite affordable, particularly when minimum wage in 2017 is $10.75/hour. Compared to the other 23 counties in the state, Montgomery County has the second highest

[90] U.S. Department of Housing and Urban Development. Final FY 2017 Fair Market Rent Documentation System. 2016. HUD User. 03 February 2017 <https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2016_code/2017state_summary.odn>.

median household income but ranks eighteenth for poverty, with about 68,500 people living below the poverty line, of those 11.7 percent are black and 11.4 percent are Latino.[91] Despite being on the lower end of poverty rates in the state, it has the highest housing wage; one has to make $29/hour to afford the fair market rent without spending over 30 percent of his/her monthly income.

More than just cost, influential county residents hold idealized visions of what the county is supposed to be and represent, so the county "does not have a homeless problem;" homelessness often gets understood as a residual effect of the residents from the much poorer Prince George's County "fleeing" into Montgomery County to drain it of its resources. Because of these perceptions, shelters have been required to prioritize—and sometimes only exclusively admit—people whose homelessness originated in Montgomery County. This means that county dollars are being filtered to county residents. Gone are the days when people could come from Washington, D.C. or Baltimore to receive services in Montgomery County. Instead, individuals have to be able to prove they became homeless in the county *and* shelter service providers have to be able to articulate their ability to develop a housing plan for homeless clients. The latter is a function of "not having a homeless problem." Getting people out of shelter and into housing means reducing tax dollars funneled to the needy and maintaining an American dream aesthetic. It is in this set up that homeless sex offenders get trapped. Because there is shame and stigma attached to their bodies, which often materializes as denied access to employment or benefits, it is very hard to develop a housing plan for them. Equally, their very presence disrupts the suburban

[91] Maryland Alliance for the Poor. "2016 Maryland Poverty Profiles." http://familyleague.org/wp-content/uploads/2016/01/Maryland-Povery-Profiles-2016.

landscape. Sex offenders are not ideal citizens. They do not make ideal neighbors, so that they are in the suburbs homeless and as offenders means an attention to their particular realities helps better frame interventions for homelessness.

On Methodology

As a scholar, I am deeply committed to providing a space for individuals to narrate their own experiences. Often, the lives of marginalized individuals are theorized and articulated in abstract ways that either do not reflect how they understand their lives or is not done so on their terms. Being attentive to the power dynamics that play out in ethnographic methods, I draw heavily on the work of queer ethnographers, who are instructive for thinking about ways to engage stigmatized populations. For instance, Marlon Bailey's recent publication *Butch Queens Up in Pumps* (2013) explores the lives of black queer men participating in ballroom culture as a space of community, love, labor, and competition. Most moving in terms of my work is his call, borrowing from Dwight Conquergood, for a "coperformative witnessing" that "requires one to perform and lend one's own body and labor to the process involved in the cultural formation under study, particularly when it involves a struggle for justice."[92] This approach pushes ethnography to do something more than just witnessing and recording. It demands the researcher to act, as the lives of those we are witnessing demand action. I also consider the work of E. Patrick Johnson and

[92] Bailey, Marlon M. *Butch Queens up in Pumps. Gender, Performance, and Ballroom Culture in Detroit*. Ann Arbor: U of Michigan, 2013; See also Conquergood, Dwight. "Lethal Theatre: Performance, Punishment, and the Death Penalty." *The Sage Handbook of Performance Studies*. By D. Soyini. Madison and Judith Hamera. Thousand Oaks: Sage, 2006.

David Valentine, who provide invaluable instruction on how to engage queer sociality and vulnerable populations.[93]

Equally, part of my methodology is the practice of what Michael Awkward calls "critical self-interrogation," which builds on feminist calls for self-reflexivity in scholarship.[94] Because of the contingent position my informants have to housing, I consider how my social location as a former shelter service provider and a current researcher shapes our interactions. Throughout the dissertation I explore the ethics of ethnography and interviewing, especially in the long history of research on homeless and other vulnerable populations. Taking Bailey and Conquergood's call to heart and centering Awkward's call for critical self-interrogation, my ethnographic process has been one that has required me to think about my own experiences of sexual trauma, to sit in them, and to also know my limits so that I can do my work. This was no easy task, as it required that I be very much in tune with the ways that my own politics and personal experiences might have an undo effect on my reading, writing, and data collection processes. It also required that I be attentive to how I was situated in the field as someone who also worked in homeless services.

I began working in a men's emergency shelter in Rockville, Maryland in late 2011. I had just begun my doctoral degree and was looking for a way to involve myself in local issues. Prior to coming to Maryland, I spent six years in Columbus, Ohio where I had been actively involved in various initiatives and organizations that

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[93] See Johnson, E. Patrick. *Sweet Tea: Black Gay Men of the South*. Chapel Hill: U of North Carolina, 2012; and Valentine, David. *Imagining Transgender: An Ethnography of a Category*. Durham: Duke UP, 2007.

[94] Awkward, Michael. "A Black Man's Place(s) in Black Feminist Criticism." In *Representing Black Men*. Ed.Marcellus Blount and George Cunningham. New York: Routledge. 1996. 19.

focused on bettering conditions for queer people of color. Before I left, a growing concern over LGBT youth homelessness began to develop amongst the organizations and communities to which I belonged. Coming to Maryland, living right outside of the nation's capital, I decided I wanted to get involved in any local politics organized around queer homelessness. While searching the Internet for a place to volunteer, I stumbled upon a men's emergency shelter that was just 20 minutes away from where I lived. Naively, I showed up wanting to offer my time and any services I could, thinking myself to be a good listener and reasonably organized person. When I arrived, I was confronted with two realities: 1) there were significantly more men at the shelter than I anticipated; I was quite startled and yet intrigued by this; and 2) there was an entire bureaucratic infrastructure around homeless services that mitigated the level and type of participation I was allowed to have. Whereas I wanted to directly engage the homeless men, I was informed I could either help file papers, answer calls, or could get a group together to donate a meal. My other option was to apply for a job; I submitted my application instead.

Shortly after submitting my application, I began working overnight as a relief staff member. My job consisted of "monitoring" 60 sleeping men, setting out breakfast, dispensing medication, and mostly restocking the bathroom with toilet paper and handing out toiletries so the men could take showers. After a few weeks, I approached my boss about picking up additional hours, preferably when the men were awake. From there, I began working in the evening. This was when all the "action" happened. Many nights, a few men came in under the influence of drugs or alcohol, had verbal altercations, sometimes physical altercations, and were asked to

leave. My job transformed from being someone who had limited interaction with the men to one who was constantly placed in a position to deescalate conflicts or enforce shelter policies. On more than a few occasions, I was called a "C.O.", what I later learned was an abbreviation for "correctional officer." The longer I began to be fashioned as someone who was a figure of authority, the more uncomfortable I became with my job. Instead of quitting, I took on a promotion as a supervisor; this was important, as I wanted to be in a position to help shift the culture of the shelter from one that felt punitive to one that was more generative and generous.

After being a supervisor for a year, where I constantly found myself—perhaps at times too much—providing unsolicited advice about shelter policies to the shelter director and our contract monitor, I began to reconsider my investments in working in the shelter. I had watched the shelter grow increasingly more punitive—we had gone from 18 shelter polices to 25; we got more cameras to surveil the property; we installed new security doors, which required that someone be buzzed in before being able to enter; we started using security wands on clients as they came and left the shelter; and we had a growing list of men who had been banned from the shelter for failing to comply with basic, nonthreatening rules. All of these changes were precipitated by a growing concern amongst homeless service providers about the growing number of violent incidents happening in shelters—due, in part, to what they felt was a lack of concern about staff safety following a series of shifts the county was making in terms of homeless service delivery. At the same time, the county was starting to debate new ways of delivering homeless services to homeless people in a less punitive way, what they were calling "harm reduction." At the time, we did not

know what that meant, but we were all being pressured to implement these strategies. What we understood it to mean, and how we began to implement it, was that we could no longer penalize people for coming in under the influence, for being disruptive in nonthreatening ways, *and* that we could no longer *require* treatment for psychiatric or medical illnesses as a condition for being able to stay at the shelter. Seeing this as an opportunity to grow, I decided to stay.

Because the county began to shift its focus not just on how we delivered our services but also how people were determined to be eligible for different forms of housing, new forms of funding became available for homeless service agencies whose focus would be on ending chronic homelessness[95] and rapidly housing people. Prior to this shift, the shelter was operating on a "housing readiness" model that required the men to be "addressing their barriers to housing" through engagement in substance abuse treatment, mental health treatment, medical treatment, or vocational services to prove that they were serious about ending their homelessness. What the county was asking us to do, instead, was move to a "housing first" approach. The premise of "housing first" is that housing is a right, that people should not be required to engage in any forms of treatment in order to be housed, and that the primary goal of shelters should be to usher people to housing as quickly as possible. Once in housing, resources would be made available to individuals should they seek any form of treatment. What this shift did was open new opportunities for the agency I worked for

[95] At the time, people who were identified as "chronically homeless" were those individuals who had a disabling condition and four or more episodes of homelessness in three years or had one continuous episode of homeless lasting one full year. HUD has since revised the definition to clarify an "episode" as any break in housing stability that lasts for more than seven days; it also reframed the length of time requirements. Currently, people have to either have 12 continuous months of homelessness or four or more episodes of homelessness in three years that total 12 months.

to reconfigure its whole strategy for addressing homelessness. Specifically, this created the opportunity to hire a housing locator, which I became during my last few years at the shelter.

As a housing locator, my job was to locate various housing opportunities for all the men in the shelter. This meant building relationships with landlords, property managers, and real estate agents across the county in attempt to create partnerships that would lead to housing options. I was required to do an assessment of every client who came through the door, develop a housing plan for him, and help him reach his housing goal within 30, 60, or 90 days. It turned out, the push for rapidly (re)housing homeless people came with stringent guidelines about how quickly and efficiently that needed to be done. It was through the process of literally driving all over Montgomery County attempting to find housing for my clients that I started to get a clearer sense of who could or could not be housed and about the limitations in how we, as a network of providers, were even thinking about how to solve the "homeless problem." Placing a person into an apartment and then watching him return to shelter three months later (or less) showed me that what we were doing (or thought we were doing) was not working. Watching people move off to their "new home" without basic items like toiletries or cookware, furniture, or even forms of entertainment made me understand that creating home is much more complex than having a place to live. Sitting with clients as they spent their limited money on rental applications that were denied on the basis of poor credit, poor rental histories, criminal histories, lack of certain forms of identification or some combination thereof helped me to understand

the nuance involved in how we think about who deserves access to home. It also motivated me to start this project.

As a result of my being deeply rooted in, connected to, and employed by the homeless services sector in the county, doing this project has not been easy. I had to intentionally distance myself from certain aspects of homeless services work so that I could carve a space for me to step back and think more critically about both my own implication in these systems and how these systems worked outside of my own intimate understanding. This meant that I also set up parameters about whom I would and would not interview and what I would or would not consider as fieldwork. Outside of my auto-ethnographic accounts, the data I collected in the field comes not from my time on the clock but instead from additional hours I spent outside of paid time.

Toward trauma-informed ethnography

Since I spent my time working outside of office time, the interview process was an arduous one. This was compounded by the fact that the men I interviewed were transient, so locating them and coordinating how and when we would meet was a challenge. Moreover, since some of the men had histories of sexually violent crimes, given both my own history of sexual trauma and the types of questions my research attempts to answer, I had to at times really limit the terms of my interactions with the men. For instance, I limited their ability to narrate their acts of violence. This was an intentional effort to supplant the ability for their perspectives to outweigh or silence those of their victims. More than just the telling and writing, the collecting of data was time-consuming, which in turn meant I spent a lot of time "deep hanging

out" with men who at times triggered really emotional responses from me. I had to cut a few conversations short to create a type of critical distance from my past, the men, their pasts, this project, and myself.

I took great efforts to humanize the men in my stories, which also means I took risks. I chose to write many of my chapters with attention to what Clifford Geertz refers to as "thick description."[96] As a method, thick description is the process through researchers use detailed accounts of field experiences and phenomenon to make explicit the patterns of social and cultural relationships and puts them in context.[97] I include explicit detail about court cases that involve sexual misconduct; though, I do my best to exclude details about acts of rape or child molestation. I do, instead, narrate what happened up to and after the act, naming that rape, molestation, kidnapping, or any other sex crime happened. For many readers, this might be troubling or jarring; it also might trigger their own experiences or understandings of trauma. It, at times, certainly did for me as I wrote it. However, my intent is to keep in constant tension the "facts" that describe an incident and the oftentimes disconnect between those facts and the legal categories that codify them.

For instance, I give an example of a co-producer being charged with possession of child pornography. The child pornography turned out to, in fact, be *representations* of child pornography; everyone in the film was an adult; there were no children involved in the filming. It is in cases like these where the description of the incident versus the category that defines it (possession of child pornography) helps elucidate the limitations of approaches that might choose to make ineffable the

[96] Geertz, Clifford. "Thick Description: Toward an Interpretive Theory of Culture." *The Interpretation of Cultures: Selected Essays*. New York: Basic, 1973. 3-30.
[97] Holloway, Immy. *Basic Concepts for Qualitative Research*. London: Blackwell Science, 1997.

details. Further, by not including details, there is a risk of erasing the experience of trauma that often goes underreported and underdocumented as is. I try to balance between sharing enough and not sharing too much for the sake of indulgence at best or the reproduction of gendered violence at worst. Neither of the latter are my intention. I very intentionally have attempted to delicately balance between writing too much and writing too little. I do not want to let terms like "rape," "sexual assault," "molestation," or "sex offense" to continue to stand in as a metalanguages for a whole host of specific acts of gendered sexual violence while I also have no desire to narrate such acts of violence beyond the need to draw particular attention to a moment wherein these categories fail.

Writing about, reading about, narrating, and sitting with sexual trauma is a difficult task, but for this project it has been a necessary one. To do this, I used a few strategies that helped make it more bearable, even as sometimes these strategies failed. I wrote when I felt comfortable. Some of these chapters took much more time to write than others, but I needed to give myself the critical distance necessary to write. I needed to build myself up enough to write. Building myself up also meant that I engaged in therapeutic practices when necessary. I saw a therapist for part of the project; I did a lot of deep-breathing exercises, and I always took breaks when I felt it was too much.

I put space in between my interviews, never doing more than two in one week, in case the topics went into territory for which I was emotionally or psychologically less prepared. This also meant that not every interview was a strict interview. Some of them were rapport-building opportunities; building rapport was essential for both of

us—it helped me keep my project in focus on a larger scale, and it helped them gauge my politics. Even with all the critical generosity I attempted to extend to my co-producers, I still kept an eye for my own safety. I let people know where I was and what I was doing when I was out in the field. I always made sure to position myself closest to the door, and I was always attentive to the behavioral changes of any of my co-producers, paying attention to any time they would get too upset or too quiet.

Doing this work has been just as much about the lives of my co-producers as it as been about myself as a researcher and activist, in some ways. From this experience, I have started to think about the role of the ethnographer in doing trauma-informed work. Stated differently, I have started to think about how my own strategies are part of a larger process of trauma-informed ethnography. One of the recurring themes in homeless services is that "homelessness is traumatic;" we are therefore trained to approach people experiencing homelessness in a way that recognizes that they are experiencing and have experienced trauma. I center this in my own ethnographic work as well.

For example, during an interview, I noticed one of my co-producers kept scratching his genitals. I remember immediately thinking, "Is that a wink or a twitch?"[98] Being mindful that his behavior might have also been sexual in nature, I decided not to immediately address it. After it continued for almost ten minutes, rather aggressively, I finally asked, "you seem to be uncomfortable; is there something going on that you would like to tell me about?" Reluctantly, he told me

[98] In Geertz's "Thick Description," he describes the complicated nature of interpretation, referencing the difficulty of an observer to discern whether two boys rapidly contracting the eyelids of their eyes were winks, which have a particular social meaning and are intentional, or twitches, which are unintentional and might be connected more so to neurology.

that he had a rash on his genitals after "finally" having sex with a girl who knew about his offender status and was okay with it. He admitted the sex was unprotected because neither of them had ready access to condoms; he also said he did not have insurance to go to the doctor's to get checked. As an ethnographer who firmly believes in reciprocity and had enough relative knowledge about STIs, I offered to take him to a free STI clinic. He agreed to go. Turns out, he had herpes HSV-2. I also connected him with a resource to get his prescription medication free of charge as well as enroll him in Medicaid so that he could access medical services on his own terms and when he needed them.

I tell this story not to be self-aggrandizing or naval gazing; rather, I want to point out that my position as someone with access to resource *compelled* me to stop the interview and prioritize the life and health of my co-producer. Being in the field means not just being attentive to how different phenomenon take and shape meaning; it also means to act. It means to be subjected to, encounter, or potentially reproduce trauma. Thus, I have attempted to write this dissertation in a way that holds myself accountable to my own ethnographic experiences and politics.

Performance Ethnography

The process of doing and writing critical ethnography, according to D. Soyini Madison, necessitates a turn to performance studies. Because ethnography attempts to interpret social interactions, social cues, and social experiences through discourse, performance becomes a useful methodological framework. As she asserts, "experience is known through embodied performance" and the "words are indeed

performative and *do* have material effects…they *do something in the world*."[99] She further asserts that the *staging* of ethnography, both in writing and in the performance of those writings, is just as important to the ethnographic process as the methods by which data is collected. "Performing subversive and subaltern voices proclaims existence, within particular locales and discourses that are being witnessed—entered into one's *own* experience—and this witnessing cannot be denied" nor can one "undo or (un)know the image and imprint" being performed.[100] In thinking about writing as staging and the ethnographic process as performance, my project has been especially thoughtful in considering how I represent the lives of my co-producers. I do this not just because it is an ethical imperative in critical ethnography but also because the men, themselves, were critically cognizant of their own representations; they wanted to control the way they were represented because of their own acute experiences with the inability to undo and unknow images and representations about themselves. That is, as I explore in chapter two, these men took time to construct themselves in particular ways to actively refute the ways in which commonsense knowledge about sex offenders often overrepresented them. Moreover, as I take up in my final chapter, these men were simultaneously working against popular representations of homeless sexuality that narrated them as grotesque and sexually violent even outside of knowledge about their respective sex offenses.

Performance ethnography thus became a critical aspect of my methodology. None of the men except one would let me record his voice, as they were all suspicious of how their voice might connect them back to their narrative. I repeatedly

[99] Madison, D. Soyini. *Critical Ethnography: Method, Ethics, and Performance*. Los Angeles: Sage, 2012. 179.
[100] Ibid. 191.

affirmed for them that no one would actually hear the recordings, but they all still objected. With such limitations, I had to spend much more time with each person than I originally anticipated. I was sure to clarify for each person what the lack of recording devices meant in terms of my level of detail and accuracy. One of the men suggested I take notes about "big picture things" and then direct quote on all the subthemes in his interview. He then offered to proofread all my direct quotes. I took this model and extended it to the rest of my interviewees. All but one objected, which is how I got audio from one person. The process of writing and revising, rehearsing the quotes like scripts was as labor-intensive as it was informative. From the process, I became critically aware of two things: (1) how much ownership these men were taking in crafting their stories, a process many of them referred to as "setting the record straight"—they wanted to make sure I was recording their stories more accurately than their criminal records actually did; and (2) some of the inherent power dynamics that disadvantage those about whom researchers collect these narratives, particularly in the process of writing as retelling.

My attention to these power dynamics made me think differently about the relationship between the researcher and informant and my limited vocabulary to think of these relationships differently, a problem inherent to ethnographic methods. As critical anthropologist Bob Simpson argues, "the vocabulary of subjectivation used by anthropologists is far richer and ranges through informants, interlocutors, consociates, collaborators, consultants, and friends. All of these suggest a relationship with a person for which the reduction to a corporeal ethics is likely to be at odds."[101] I take

[101] Simpson, Bob. "Ethical Moments: Future Directions for Ethical Review and Ethnography." *Journal of the Royal Anthropological Institute* 17.2 (2011): 377-93.

his provocation to mean that while anthropologists have moved away from the 'research vs. human subjects' dichotomy there is still a tension around the ethical stakes of anthropological research.

Anthropological work requires researchers to forge relationships that blur the very lines that we are asked to draw in the name of creating sound, 'objective' research. And yet, our processes of writing and presenting far too often exclude those very same people we have created meaningful relationships with along the way. In this sense, while it felt like an odd practice to be literally transcribing and editing as I was collecting the data, it also seemed to be the most balanced process. After all, scholars spend hours upon hours revising their own sentences and ideas, using explanatory footnotes and endnotes to clarify and qualify their positions before putting them out for public consumption. Why not afford the same opportunity to the men whose words I would be using at face value to represent to the world?

In thinking along the lines of power, then, I started to conceive of the men as co-producers, not just informants or interlocutors. Rather, these were people who were crafting their narratives alongside me; correcting me when I got something wrong; and even sometimes physically writing out a quote to save me time or energy. For instance, one of the men noticed I was writing illegibly, tired from a long day's work. He, without prompting, took the paper and pen and decided to write down his own words for me, letting me know he could not have me "getting this wrong." He was not shy about intervening, but he also cut the interview short, telling me I should go home and get some rest. When next I saw him, he handed me a pile of loose papers. He had decided to keep a journal of things he wanted me to know, to make it

easier on me—but also so I could get the record straight. This interactive model of data collection and transcription was not something I had designed; it came out of a collaborative effort to make sure my due diligence had been done. More than that, they wanted to make sure I did justice to *how* they said what they said, an integral part of their own self-fashioning.

While preparing to present part of what is chapter three of this dissertation at the American Studies Association annual meeting, I checked with all my co-producers I would be citing to make sure they were okay with me doing so. It was important to me to not just assume the consent form they had signed many months prior would still resonate with them, so I asked again. What fascinated me was that none of them were at all worried about what I would be saying; they trusted I would "get it right." Instead, the concern that two of the four men brought up was *how* I would be saying what I was saying. They wanted to know *what I would sound like as them*. I spent almost an hour running lines with them separately.

One of the men, Charles, kept critiquing me for how "soft" I sounded; he would give me pointers on how to sound more edgy and "manly" like him. Finally, I threw in the towel and let him know I could not promise him I would sound anything like how we were practicing, as I would likely default to my normal voice, but I would try my best. I told him I would gladly add a caveat to note that I could not effectively reproduce his voice and as such my speech patterns and pitch would be by no means in his likeness. It seemed like a reasonable resolution, but he objected to this as well. Instead, he conceded that he actually liked how soft I made him sound, because he knew the softness of my voice would help with the telling of his story, it

would "make [him] sound less like a monster." Thus, a turn to performance ethnography helps me embody and honor the various practices these men used to define and represent themselves in light of a whole host of cultural discourses and representations that do so without their control or consent, a theme I trace throughout my dissertation.

Chapter Outlines

In chapter one, I historicize the creation of sex offender laws, the figure of the sex offender, and the sex offender registry, which all emerge to regulate sexuality. I start this chapter by mapping out shifts in rape laws and the logics that produced them, paying particular attention to statutory rape and age of consent. I do so because concerns about the safety of women and children were actually the basis for the development of sex offender registries. I then move to tease through the various technologies of governance—the registry, sex offender notification systems, and civil commitment practices—that were created in response to these concerns. I conclude with specific attention to Maryland's rules of evidence to think through the way in which sex offenders are constituted as having what I theorize as *carceral sexuality* that is constantly tethered to carceral institutions based on their being understood as nonrehabilitative

Building on the previous chapter, chapter two focuses on changes to homeless sex offender laws in Maryland, specifically regarding registration frequency and retroactive registration. I do this to document the ways the law vis-à-vis the state fails to fully contain, constrict, and hypersurveil the lives of sex offenders even as the expansion attempts to do so. Drawing on a series of ethnographic interviews I

conducted with homeless black male sex offenders in Montgomery County, Maryland, I argue that despite these attempts, homeless black male sex offenders use key strategies to resist surveillance. These strategies, such as refusal to enter shelter spaces, mobilizing transience as a way to exist outside of hypersurveillance, self-fashioning new ways to represent themselves to others, and direct legal challenges to the law, function as moments of what Simone Browne calls *dark sousveillance*.

Chapter three moves beyond the law to think through the extralegal ways in which discourses of sexuality construct people as sex offenders despite having never committed a sexual crime. Specifically, I analyze the discourses circulating in print media, blogs, and political debates in opposition to Maryland and D.C. legislation allowing transgender men and women to be placed in shelter and housing programs based on how they self-identify. In this chapter, I argue that these oppositional discourses draw on the figure of the sex offender and sexual violence to make claims to why transgender women should not be allowed in women's shelter nor transgender men in men's shelter. In doing so, transgender women are discursively figured as sex offenders and "real women" as always already victims whereas transgender men get constructed as always already victims to the potential sexually violent "real men" in the shelter.

The last chapter loops back to the issue of self-fashioning that I explore in chapter two and the question of extralegal constructions of sex offenders that I take up in chapter three. Specifically, I perform a close reading on two popular films, *Curly Sue* (1991) and *Trading Places* (1983) to consider the ways in which homeless sexuality is constructed as grotesque and sexually violent through representations of

the hobo aesthetic. I conclude with this chapter to help provide context for why the men I interviewed were so invested in helping produce representations of themselves, both in my actual dissertation and in my public presentations. This is precisely because, as I show in this chapter, homeless sexuality is connected to extralegal constructions of the sex offender; as such, prior to anyone even discovering, through the various technologies of governance I chart in chapters one and two, that these men are sex offenders their proximity to homelessness marks them this way. Thus, in order to belong to home, they are required to undergo a process of transformation through acts of cleansing intended to reconstitute them as deserving of housing and sexual intimacy.

Chapter 2: Having the Propensity to Commit: *Carceral Sexuality* and the Nonrehabilitative Sex Offender

Introduction

The law shapes and configures various categories under which certain behaviors, patterns of behaviors, and types of people are defined. It is the mechanism through which personal and public injury is articulated and consequences for those injuries are adjudicated. The adjudication, itself, is predicated on the behavior that leads to the injury, the type and level of severity of the injury, the source of the injury, the person or persons causing the injury, and who or what is injured. In a series of well-choreographed arguments, laws are codified to purportedly make the pursuit of justice for incurred injuries manageable and navigable while erring on the presumed side of justice. Put otherwise, the law is often turned to as the site of redress so as to make justice an attainable goal for those whose rights have been violated or whose body or property has been injured.

However, as Wendy Brown points out, such framings of the law cast "the law in particular and the state more generally as neutral arbiters of injury rather than as themselves invested with the power to injure."[102] That is to say, the law injures just as much as it attempts to remedy injuries; and some people only ever experience the law as injury. Heeding Brown's assessment, in this chapter I examine the ways in which the law, both at the federal and state level, aid and abed in the constitution of sex crimes as exceptional forms of injury that require exceptional modes of punishment to

[102] Brown, Wendy. *States of Injury: Power and Freedom in Late Modernity*. Princeton, NJ: Princeton UP, 1995. 27.

seek punitive restitution for sexual violence enacted against particular people. This manifests through the production of three distinct yet interrelated technologies of governance, intended to extend punishment to those convicted of a sex crime: sex offender laws and the subsequent registries they require, civil commitment statutes, and the notion of sexual propensity, which is used to establish as evidence the moral and sexual character of an accused sexual predator for purposes of more readily and easily prosecuting him/her.

As technologies of governance, these laws have had extralegal consequences making it hard, and by some accounts impossible, for those convicted of sex crimes to reconstitute themselves as (re)habilitated criminals deserving of basic human rights, such as housing, and have instead extended a logic of what I call *carceral sexuality* to over-determine the need to constantly surveil and police them. I use *carceral sexuality* as a framework to describe those sexual transgressions that are inscribed by the law as both illegal and immoral, in perpetuity, which then narrates the sexual desire of those who transgress as always criminal and their subjectivity as always intimately constituted by their disavowal and constant breaking of the law. In this way, sex offenders inhabit a *carceral sexuality* that need to be registered, searchable, and regulated beyond the terms of their conviction and incarceration precisely because of the perceived propensity to commit sexual violence again.

Carceral sexuality presumes that sex offenders cannot be rehabilitated, a pervasive idea underpinning fears about child sexual abuse that led to the development of the national sex offender registry as well as the legal debates around using sexual propensity as evidence for establishing one as an historical sexual

predator. Additionally, the notion of *carceral sexuality* helps make sense of the statutes that allow certain sex offenders to be civilly committed after being released from a correctional institution. Taken in whole, these various dimensions go beyond what scholars have referred to as "criminal sexuality" or "criminalized sexuality" insofar as the very sexual subjectivity of sex offenders is constructed as perpetually belonging to carceral institutions and therefore always needing to be policed precisely because of their inability to rehabilitate.[103] Unlike other forms of criminalized sexuality—prostitution, homosexuality, and HIV seropositive men held accountable for not disclosing their status—sex offenders are continually tethered to carceral institutions, literally able to be incarcerated at any given time, without the committing of an additional sex crime or sex act.

To lay out the development of *carceral sexuality,* I first map the history of rape laws, with meticulous attention to statutory rape laws, as these are the foundations for developing comprehensive sex offender laws and subsequently the sex offender registry. From there, I chart the terrain of social and clinical discourses regarding child sexuality and child sexual abuse through detailing high profile sex crime cases and foundational ideas about child sexuality. These discourses were part of a larger social and moral panic around sexuality, a larger history that I do not detail in this chapter but that informs the concerns I capture in these high profile sex crime cases.

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[103] For example, I am thinking of the work of Regina Kunzel, who articulates that homosexuality was constituted as a "criminalized sexuality" in her book-length study *Criminal Intimacy and the Uneven History of Modern American Sexuality* (2008). In her essay "Offending Children, Registering Sex" (2015), Erica R. Meiners uses this same framework to analyze child sexual activity; Sharon Ullman names prostitution as a form of "criminal sexuality" in *Sex Seen: The Emergence of Modern Sexuality in America* (1997). What these scholars name is a set of acts that were criminalized, but I am interested in how the sexual subjectivity of sex offender is constituted as, itself, carceral.

I spend significant time detailing the specific circumstances of these cases in attempt to be attentive both to the sexual trauma the victims experience and to the ways that commonsense understandings of sexual violence can stand in to narrate the specifics prior to their exposition.

I detail these circumstances not to invoke a type of panic or discomfort in the reader but rather to explicate the incidents that produce a host of legal changes. The specifics of these cases are important because prior to these cases, statutory rape laws and child sexual abuse claims were inconsistently enforced. As more fears about child sexual abuse emerged, two kinds of laws began to develop and proliferate—and with them came two different, yet interconnected, representations of sex offenders—sexual psychopath laws and sexually violent predator laws. These laws ushered in a set of new technologies of governance for regulating sex offenders, including the sex offender registry, sex offender notification systems, and civil commitment laws.

In each section, I introduce different themes that are each historical and necessary to frame the specific context of Maryland, which I come back to in the next chapter. I conclude this chapter by looking at the concept of sexual propensity as it relates to federal and state law, specifically examining Maryland law, to underscore how the character of sex offenders is admitted as evidence to prove they have the propensity to (re)commit sexual violence, which tethers their sexuality to carceral institutions, in perpetuity, as they are more likely to be convicted of sex crimes as such. First, though, I start with a racalized history of rape laws to intentionally frame the law around who it injures and who gets to claim injury, in the spirit of Wendy Brown.

Regulating sexuality: rape and the law, the foundation of sex offense laws

From the constitution of the U.S. as a settler colony, sexuality has been policed through the law and determined by historically specific social expectations, as evidenced through early laws policing prostitution.[104] Moreover, the relationship between sex, violence, and crime has typically been codified through the adoption of statutes prohibiting rape. These early statutes, drawing on English common law, had two specific assumptions explicitly embedded in them: it was not legally possible for a husband to rape his wife, because once women entered into a marital union with men they became the property of their husbands and he could therefore do with his property what he pleased; and there should be an age limit for when a man could engage in sex with a woman, to protect the property interest of the father.

The development of statutory rape law in colonial America hinged upon the assumption that women's premarital chastity was a commodity, a form of property that must be protected by the state rather than concerns about the ability for young women to consent to sex. As such, colonial laws succeeded in both policing the sexual lives of men and women while also constituting women's sexuality as a form of property. These two notions prevailed for several decades, often relying heavily on racialized narratives about who could or could not be property and who could and could not have the right to property. Rape was a crime of property, which inherently

[104] Ullman, Sharon. Sex Seen: The Emergence of Modern Sexuality in America. Berkeley: U of California, 1997; Levine, Philippa. Prostitution, Race, and Politics: Policing Venereal Disease in the British Empire. New York: Routledge, 2003. Stoler, Ann Laura. Haunted by Empire: Geographies of Intimacy in North American History. Durham: Duke UP, 2006. Fischer, Kirsten. Suspect Relations: Sex, Race, and Resistance in Colonial North Carolina. Cornell University Press, 2001; and Fissell, Mary Elizabeth. Vernacular Bodies: The Politics of Reproduction in Early Modern England. Oxford: Oxford UP, 2004.

meant that rape was racialized; or, as critical race theorist Cheryl Harris asserts, "rights in property are contingent on, intertwined with, and conflated with race."[105]

Sharon Block illustrates this conflation and intertwined nature. She argues in *Rape and Sexual Power in Early America* (2006) that not all subjects are understood as being able to make claims to rape. For instance, by accusing a woman of being a prostitute, one could then argue that all sexual interactions, forcible or not, were consensual. According to Block, "for lower-class women, men might assume that money could buy their consent and would use force only after the women refused to prostitute themselves."[106] As examples, at a midcentury Connecticut court, Margaret Pearle testified that she was offered eight pounds of money from Isaac Willow in exchange for sex. When she refused to consent, he forced himself on her. Rebecca Day, Jr., testified that a man first offered her a dollar to have sex with him, to which she refused; he then raped her. In a 1787 New Jersey rape case, a woman recounted that a man made promises of money and fineries if she would have sexual relations with him, but when she refused, he told her he would "have satisfaction of her without them." On these cases, Block concludes that "if the women had been as bereft of virtue as the men apparently assumed, they might have sold the sexual favors that were instead forcibly taken from them."[107]

Block's work illustrates that the relationship between rape and consent is enmeshed in questions of virtue, humanity, proper, femininity, and race. As she later demonstrates, at the end of the eighteenth century, "Americans first started to

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[105] Harris, Cheryl I., Whiteness as Property. Harvard Law Review, Vol. 106, No. 8, p. 1707, 1993; UCLA School of Law Research Paper No. 06-35.
[106] Block, Sharon. *Rape and Sexual Power in Early America*. The University of North Carolina Press, 2006. 27.
[107] Ibid.

institutionalize an image of rape that was expressly tied to race-based slavery. American statutory law harshly punished all enslaves men's sexual assaults on white women by viewing such attacks as akin to slave rebellion."[108] Simultaneously, black women, both as property and as being understood as always already sexually precarious, were understood to always be consenting to sexual advances. Thus, rape laws were also about institutionalizing white supremacy and anti-blackness.

Though the rape of white women has been a capital crime, should one be convicted of rape, diverging outcomes of cases involving white and black male defendants "contributed in powerful ways to the sense that sexual crimes meant different things, depending on the race of the accused."[109] As Kirsten Fischer elucidates, of fourteen complaints of rape or attempted rape made against white men in colonial North Carolina, seven became criminal actions, two went to trial, but neither defendant was found guilty. By contrast, all twelve of the enslaved black men accused of rape in the colony were convicted and executed for the crime. This was not just because of the rationale of white supremacy that understood black men as inferior, of incapable of telling the truth, and of being sexually aggressive. Nor was it just about maintaining the virtue and of white women and the white race. As Fischer also points out, "men understood that the rape of another man's wife [or daughter] was also an attack on the husband."[110] Rape was understood as a way to insult and

[108] Ibid. 162.
[109] Fischer, Kirsten. Suspect Relations: Sex, Race, and Resistance in Colonial North Carolina. Cornell University Press, 2001. 181.
[110] Ibid. 184.

humiliate a husband by emasculating him through the forcible seizure of his property[111].

The racialized and gendered logics of rape, while rooted in colonialism and imperialism, extend far beyond the colonial context. As Ida B. Wells' *The Red Record*, documented, concocted narratives of black men raping white women became the official narrative for lynching black men, a narrative that was used to obscure the real reasons these black men were targeted: the economic advancement of black men and family. As black entrepreneurs and businessmen began to do well, white capital and ideologies of white superiority were being challenged and destabilized. Black men were a threat to white capitalist patriarchy, and because white womanhood was constructed as being virtuous and chaste—and especially above consenting to sex with a black man—accusations of rape became an effective way to subject black men to capital punishment within the limits of the law.

The significance of pure white womanhood, even as it was being challenged by white men's claims about prostitution, licentiousness, and the like, cannot be overstated. Concerns about the purity of white women were not just tied to sex; they were also tied to race. In this way, even a white female prostitute, though understood to always already be consenting to white men, were always understood to be resisting black men. Thus, even those white women whose sexual virtue had already been

[111] See also Smith, Andrea. Conquest: Sexual Violence and American Indian Genocide. Cambridge, MA: South End, 2005; Smith, Merril D. Sex without Consent: Rape and Sexual Coercion in America. New York: New York UP, 2001; Paxton, Nancy L. Writing under the Raj: Gender, Race, and Rape in the British Colonial Imagination, 1830-1947. New Brunswick, NJ: Rutgers UP, 1999; and Gunne, Sorcha, and Zoë Brigley. Feminism, Literature and Rape Narratives: Violence and Violation. New York: Routledge, 2010.

challenged were understood to be beholden to racial purity, especially because the implications of her sexual forays with black men reflected her family and community.

While black men were constructed as sexually aggressive and violent, black women were constructed as sexually excessive. The "natural" state of black femininity was constructed as being opposite of the "natural" state of white femininity. White women were chaste and pure, and black women were promiscuous, impure, and lascivious. As Dorothy Roberts corroborates, "this construct of the licentious temptress served to justify white men's sexual abuse of black women."[112] Under slavery, white slave masters raped Black women for sexual pleasure and for profit; black women were understood as a sexual object.[113] Following emancipation, white supremacist organizations continued to sexually terrorize black women; white sexual violence undermined black men's claim to masculinity, as it questioned their ability to protect their family, and reinforced the notion that black female bodies were only objects of sexual desire, accessible at any time.[114]

As Marvin Wolfgang illustrates in *Racial Discrimination in the Death Sentence for Rape* (1974), between 1930 and 1972, 89 percent of all those executed for rape were black men who were found guilty of raping white women.[115] What this demonstrates is not only is there a racial bias in sentencing and convictions that disproportionately names black men as criminal but also that the likelihood of a perpetrator being convicted of raping a black woman is astonishingly low. Moreover,

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[112] Roberts, Dorothy E. Killing the Black Body: Race, Reproduction, and the Meaning of Liberty. New York: Pantheon, 1997.
[113] Hooks, Bell. *Ain't I a Woman: Black Women and Feminism*. Boston, MA: South End, 1981. 33-37.
[114] Carby, Hazel V. Reconstructing Womanhood: The Emergence of the Afro-American Woman Novelist. New York: Oxford UP, 1987. 38-40.
[115] Wolfgang, Marvin. "Racial Discrimination in the Death Sentence for Rape." *Executions in America*. By William J. Bowers. Lexington, MA: Lexington, 1974. 110-20.

a Texas study done in 1990 found that the average prison sentence for men convicted of raping black women were one-fifth of average sentences for men convicted of raping white women.[116]

Rape as a legal category has not only trafficked in contradictions rooted in issues of racism and patriarchy as they relate to consent and property but also has illustrated the ways in which age creates a set of critical distinctions that differs from the *act of rape*. The framing of rape as an act has largely been around, at its core, a question of force or lack of consent. While the issue of force and consent has certainly shifted throughout the years based on understandings of women as property, black men as sexual predators, and white women's femininity as chaste and virtuous while black women are lascivious, concerns about *age* of consent have been largely consistent.

Put otherwise, though there have been fluctuating sets of the boundaries on what constituted rape when it came to women, the issue of sexual interactions with children was not so clearly defined. On the contrary, sex with children was overwhelmingly practiced until the nineteenth century when the chief issue regarding sex with children was that of consent—who could and could not consent and at what age. These concerns were codified in the production of statutory rape laws—those laws that presume individuals are legally incapable of consenting to sexual relations. In the next section, I plot shifting conceptions about age of consent that produce the partial foundation of contemporary sex offender laws.

Creating consent through statutory rape laws

[116] Wriggins, Jennifer. "Rape," *The Reader's Companion to U.S. Women's History*. Eds. Mankiller, Wilma Pearl, Gwendolyn Mink, and Marysa Navarro. Boston: Houghton Mifflin, 1998. 612.

Early colonial statutory rape laws were imported interpretations of English common law, similar to rape laws. The Statute of Westminster of 1275 "prohibiteth that none do ravish…any Maiden within age," wherein that age was 12 or younger.[117] In 1285, the offense become one punishable by death, and in 1576 the age was lowered to 10, requiring that "if any person shall unlawfully and carnally know and abuse any woman-child under the age of ten years, every such unlawful and carnal knowledge shall be a felony."[118] The shift from "ravish" to "unlawfully and carnally" knowing marks a development that no longer required force, per se, and instead only required the carnal knowledge (sexual intercourse) of someone under the age of 10.

Most colonial states adopted similar statutory rape laws, with the difference being the age of consent—some states chose 10 while others chose 12.[119] Keeping in the same tradition of rape laws writ large, these laws were more about protecting the premarital purity of women as property than they were about penalizing men for violating the law or creating a standard on which women could claim consent or the lack thereof. In fact, despite states having age restrictions that clearly defined the age of consent, men were frequently found criminally negligible for having sex with underage women. These rulings were often due to statutory rape laws not just being about the age of the victim but also about the sexual life of the victim. Early statutory rape laws were gender-specific and state-specific; it was not until August 2000 that that all states passed gender-neutral statutory rape laws.[120]

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[117] "Statute of Westminster, The First (1275)." Text. Accessed August 15, 2016. http://www.legislation.gov.uk/aep/Edw1/3/5.
[118] Cocca, Carolyn. *Adolescent Sexuality: A Historical Handbook and Guide*. Greenwood Publishing Group, 2006.
[119] Ibid.
[120] Cocca, Carolyn E. Jailbait: The Politics of Statutory Rape Laws in the United States. Albany: State Univ of New York Pr, 2004.

Early—and well into the twentieth century—statutory rape laws were designed to hold men accountable for violating underage women. Because Puritanical notions of chastity and virtuosity defined the sexual worth of womanhood, many laws required that men violate the age limit *and* the sexual purity of a victim in order to be considered unlawful. For instance, in Mississippi, statutory rape law prior to 1997 specified that the rape was only prosecutable if it happened when a person had "carnal knowledge of an unmarried person of previously chaste character younger than himself or herself and over fourteen (14) and under eighteen (18) years of age."[121] Mississippi was the last state to remove language requiring a chaste character. Therefore, the prevailing assumption under the law was that licentious and lascivious women—women of unchaste character—were able to consent, as evidenced by their lack of sexual purity, regardless of age. The implication was that men could not be prosecuted for raping them. According to legal scholar James McCollum, early statutory rape laws, later upheld by the Supreme Court, understood women as "special property in need of special protection"[122] The law furthered the assumption that women's sexual purity was the property of their fathers and then later future husbands.

The notion of women being special property in need of special protection was upheld and affirmed by the U.S. Supreme Court in a 1981. In *Michael M. v. Superior Court of Sonoma County*, the first Supreme Court ruling on statutory rape laws, the court reinscribed the value of gender-specific rape laws on the basis of assumptions

[121] "Mississippi SB2780 | 2010 | Regular Session." *LegiScan*. Accessed August 15, 2016. https://legiscan.com/MS/text/SB2780/id/413065.
[122] James McCollum, Constitutional Law - Statutory Rape - Gender-Based-Classification Regarding Statutory Rape Law is Not Violative of the Equal Protection Clause of the Fourteenth Amendment, 25 How. L.J. 341, 355-56 n.147 (1982).

about chastity and the potential to deter teenage pregnancy. Michael M., the petitioner, was charged with violating California's statutory rape law, which defines the age of consent as 18 and requires that the act of sexual intercourse be "accomplished with a female not the wife of the perpetrator."[123] This law established three requirements: the victim of statutory rape be a female; she could not be the wife of the perpetrator, otherwise no such rape occurred without the presence of force; and she be under the age of 18. Michael challenged the charge on the basis of violating the Equal Protection Clause of the Fourteenth Amendment, which prohibits states from denying "any person within its jurisdiction the equal protection of the laws."[124] According to the Michael, California's statutory rape law violated the Equal Protection Clause, because it unequally applied to men and women.

At the time of the charge, Michael was 17 ½ years old. While at a gathering, he became sexually aggressive with Sharon, a 16-year-old female. According to Sharon, she denied his sexual advances and told him she did not want to have sex with him; he punched her and forced himself on her. Because Sharon was under the age of 18, Michael was charged with statutory rape, despite Sharon's account clearly articulating that there was force. Michael's challenge, asserting that the sex was consensual, raised questions about why he, also someone under the age of 18, was being targeted as the perpetrator in violation of the law and not Sharon, since the prosecution did not pursue any charges related to the *act* of rape. Was he not also a victim of statutory rape, then?

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[123] "Michael M. v. Superior Court." *Justia Law*. Accessed August 15, 2016. http://law.justia.com/cases/california/supreme-court/3d/25/608.html.
[124] "Constitution Annotated." Legislation. Accessed August 15, 2016. https://www.congress.gov/constitution-annotated.

The Supreme Court did not think so. Instead, it upheld California's statute on the basis that pregnancy was both an undue injury that could not be experienced by men and an issue of legitimate government interest that therefore allowed the state to construct laws protecting young girls in particular. Justice Brennan acknowledged these interests and assumptions in his dissent, noting, "…because their chastity was considered particularly precious, those young women were felt to be uniquely in need of the State's protection. In contrast, young men were assumed to be capable of making such decisions for themselves; the law therefore did not offer them any special protection."[125] The preciousness of women's chastity had to do with their capacity to become pregnant out of wedlock as well as the idea that young women were too naïve and innocent to understand their own sexuality, a naivety that would diminish their value. Citing the California Supreme Court opinion stated in *People v. Hernandez,* a 1964 case that ruled that mistaking a female's age is no defense for statutory rape, Justice Brennan goes to further note, "[E]ven in circumstances where a girl's actual comprehension contradicts the law's presumption [that a minor female is too innocent and naive to understand the implications and nature of her act], the male is deemed criminally responsible for the act."[126] Brennan names here the contradiction in the law while simultaneously explicating its gendered assumptions.

Statutory rape laws, as an extension of rape laws writ large, have been consistent in their gendered representations of property, vulnerability, and consent: women were property; women's ability to have children and lose their chastity made them vulnerable; and therefore underage women could not consent to sex whereas

[125] "Michael M. v. Superior Court."
[126] Ibid.

underage men could—this also meant underage women could be victims of statutory rape and underage men could not. These laws have not, however, been uniform in their construction of the age of consent due to each state getting to determine what this age is. For example, by 1880, the age of consent in most states was set at 10 or 12, excluding Delaware, which set it to 7. Two decades later, most states raised the age of consent to 16-18, with the exception of South Carolina (15), Colorado (15), and Hawaii (14). The last state to raise the age of consent was Hawaii, raising it from 14 to 16 in 2001.[127]

Sexual Predators as Sex Offenders: Rally around the child

The changes in age of consent laws across states paralleled the growing concerns near the end of the nineteenth century about child abuse, shifting the focus from the unchaste character of young women to the predatory character of some older men—particularly those men looking to engage in sexual activity with younger women out of wedlock. Likewise, the change in age of consent laws was informed by a broader cultural reframing of childhood, itself, as a category. Whereas childhood had been conceptualized as one indeterminant phase, scholars and clinicians began to instead think about childhood as happening in stages toward the turn of the twentieth century.

New definitions and meanings assigned to the category of "child" as it related to age, cognition, and innocence prompted a series of legal changes that needed to differentiate between those accounts of sexual activity that were on and against the body of a child by an adult, which would constitute abuse and perversion, versus

[127] Stephen Robertson, "Age of Consent Laws," in Children and Youth in History, Item #230. Accessed August 15, 2016. https://chnm.gmu.edu/cyh/case-studies/230.

those accounts of sexual activity that happened by and amongst children, a naturalized part of childhood development. It was in this broader milieu that child sexual abuse was constituted as a dominant form of sexual injury that needed to be prosecutable separate from those sexual encounters that happen between individuals around the same age. It was in this context, too, that sex offender laws began to take shape.

Statuary rape laws and the enforcement thereof began to, slowly, take seriously the real danger and vulnerability of children to adults when it comes to sex. In 1894, for example, Dr. Charles G. Haddock, then a professor of disease of the nervous system at Marion-Sims College of Medicine in St. Louis, Missouri and former Assistant Medical Superintendent of the North Michigan Asylum, argued in *A System of Legal Medicine* that the "rape of children is the most frequent form of sex crime"[128] He notes while there were no statistics showing the number of cases of rape and of those cases how many were children that it stood to reason there were a fairly concerning amount, if looking to France's relatively higher numbers was any indicator.

According to historian Stephen Robertson, from 1790 to 1876, between a third and a half of rape victims were under the age of 19; this number was at its highest in the 1820s, when the figure was 76 percent.[129] These figures indicated there was a clear need to crack down on sexual abuse of children without hyperpolicing those adult men who had younger wives and/or those teenage boys who were exploring

[128] Hamilton, Allan McLane. *A System of Legal Medicine, Vol. 2 (Classic Reprint)*. Forgotten Books, 2015. Dr. Haddock was the first to publicly make this claim.
[129] ROBERTSON, STEPHEN. "Shifting the Scene of the Crime: Sodomy and the American History of Sexual Violence." *Journal of the History of Sexuality* 19, no. 2 (2010): 223–42.

their sexuality at a young age, the latter of which was less concerning. That is, while on paper the age of consent laws established a minimum age at which one can either engage in sex him/herself or engage in sex with someone else, in practice these laws were much more malleable. This malleability was rooted in concerns about those consensual teenage flings that inevitably happen that result in sexual activity without force. It begged the question: should two experimenting sixteen-year-olds be convicted of statutory rape in the way that Michael M. was charged? It was also rooted in a lack of unified understanding and sense of urgency around child sex abuse. The former was an easy fix.

To protect young people from criminal charges for engaging in consensual sexual activity with others close to their own age, states developed close-in-age exceptions. These close-in-age exemptions to the rule of law have been popularly referred to "Romeo and Juliet" exceptions. They are intended to reduce the punitive implications of underage sex while still making it possible to prosecute individuals who target teenagers and young children for sex—child sex abusers. Though they vary from state to state, these exceptions do allow individuals within a certain age difference to have consensual sex. Child sex abuse, on the other hand, has not always been an historical given. Rather, it has been an ever-changing notion less concerned with what age constituted one as a child but instead with what constituted abuse. Tracing these changes is important to contextualize the rise of the sex offender registry.

Following the Civil War, the U.S. saw rapid urban development, a spike in divorce rates, an influx of immigrants, and shifting race relations. These changes to

the geographic, political, economic, and social tapestry of America produced anxieties about the future of the family as a constitutive form of social belonging and what the breakdown of the family through divorce would mean for children. This led to an increase in government involvement in the family as well as the emergence of professionals who specialized in offering advice about proper parenting practices and childcare. Municipal health departments made special divisions of child hygiene to disseminate information on child development and offer health care advice with the express goal of reducing maternal and infant mortality.

In 1912, the federal government established the Children's Bureau to report on children's health and welfare and to educate mothers in the principles of so-called "scientific motherhood," a fixed belief that women required expert scientific and medical advice to raise healthy children.[130] Simultaneously, reform movements began to arise using the rhetoric of "family preservation" and "child protection" to publicly vilify and condemn mothers who failed to parent properly or were lazy as well as those working-class fathers who abandoned or abused their wives and/or children. Child abuse was largely conceptualized as a physical act of violence against children as well as exploitative practices, either through labor or sex; this was especially exacerbated by the rise of unsupervised, "latchkey children" during World War II and immediately following.[131]

Concerns about child abuse were already solidifying outside of changes in the stitching of the social fabric of American life and values. Anxieties over the safety of

[130] Ross, Susan M. American Families Past and Present: Social Perspectives on Transformations. Rutgers University Press, 2006.
[131] Latch key children were those who were at home without adult supervision for some part of the day, especially after school until a parent returns from work. Wartime measures drafted men, so many women entered the industrial workforce requiring their children to stay home unsupervised.

children as being especially susceptible to physical and sexual violence were crystalized through the national media coverage of the trial of child rapist and serial killer, Albert Fish ("The Boogey Man") in 1935, the Lindbergh kidnapping in 1932, and the infamous Leopald and Loeb murder kidnapping of 1924. All three of these nationally covered cases began to dredge up fears about the safety of children and the need for better laws to protect them from mentally ill child killers, popularly articulated as sexual psychopaths.[132]

During the 1970s, another upsurge in divorce rates and single working mothers furthered anxieties over child sex abuse. Despite these heightened anxieties, though, through much of the twentieth century, child sex abuse was understood as an anomaly that was only committed by sexual monsters who were primarily characterized in psychological terms: pedophiles, sex fiends, homosexuals, perverts, deviants, predators, and sexual psychopaths.[133] This was buttressed by the lack of evidence, less an adult witness or confession, to prove that sexual abuse occurred. Even the presence of a sexually transmitted disease was not adequate to prove that sex had occurred; it was instead dismissed as proof, if anything, of poor hygiene practices of the child (s/he did not wipe well enough) or of the mother (she did not clean toilet seats well enough). Moreover, the sexual abuse of children was not an issue that was popularly understood, especially within a context wherein sex with children had been culturally normative in the confines of wedlock or sex with unchaste young women. The twentieth century heralded in a series of attempts to

[132] Jenkins, Philip. Moral Panic: Changing Concepts of the Child Molester in Modern America. Yale University Press, 2004.
[133] Ibid.

understand what, exactly, constituted the sexual abuse of minors and why, exactly, one would do so.

Departing from previously held beliefs prior to the eighteenth century that children's sexuality was connected to spirituality and sin as well as the early nineteenth century beliefs that sexual feelings in children was a sign of deviance and pathology, the latter end of the nineteenth century saw an explosion of theories on sexual development, with Sigmund Freud standing as a prominent figure shaping the debate. According to Freud, despite the common understanding assuming otherwise, children did have an innate sexual curiosity, evidenced through the sucking of thumbs, inspection of their own genitals, and sibling rivalry. Moreover, he famously posited that young boys focus their sexual desires on their mother, which in turn produces sexual rivalry with the father, what he coined as the Oedipus complex. However, the presence of sexual activity was evidence of either sexual abuse or seduction by an older child or adult. They would then enter into a stage of sexual latency wherein sexual urges were temporarily suspended.[134] In the case of child sexual abuse, the moment of puberty became a critical moment of development. Once puberty hit, the sexual memory would be retrieved from the subconscious, which would lead to neurosis, hysteria, and/or personality disorders.[135] Children, according to Freud, could not recall the cause of these symptoms and therefore often did not

[134] Freud, Sigmund, Ulrike Kistner, Philippe Van Haute, and Herman Westerink. *Three Essays on the Theory of Sexuality: The 1905 Edition*. London: Verso, 2017.
[135] Sauerteig, Lutz D.H. "Loss of Innocence: Albert Moll, Sigmund Freud and the Invention of Childhood Sexuality Around 1900." *Medical History* 56, no. 2 (April 2012): 156–83.

remember the abuse so while the abuse might have shaped their sexual health it was presumed to not cause traumatic impact.[136]

Freud's writings on child sexuality and child sex abuse were arguably the most influential account at the time, despite others also exploring these ideas. Even as he rewrote and revised his theories, he was still considered the leading expert. Another major actor in the debates about sexuality writ large and child sexuality and abuse in specific was Alfred Kinsey. His trailblazing study revolutionized how people even thought about human sexuality, as it framed children as actually having sexuality and being sexual. This meant that children might actually recall sexual experiences—enjoyable and traumatic. In this vain, it became ever increasingly important to protect the sexual innocence of children from those who would do them sexual harm.

The Kinsey Scale and new ways of conceptualizing sexual predators

Alfred Kinsey's controversial *Kinsey Reports* produced a shocking change in how sexuality was understood. His famous "Kinsey Scale" established human sexuality as falling on a continuum ranging from 0 to 6, from heterosexual to homosexual. His scale proposed that sexuality and sexual desire were not stagnant. Instead, levels and ranges of desires change over time, depending on age, gender, and socio-economics. In these same reports, Kinsey found that women were less sexually active than men, and they were less likely to participate in extramarital sex, suggesting that adultery was quite common.[137]

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[136] Ibid

[137] Kinsey, Alfred C. *Sexual Behavior in the Human Male*. Reprint edition. Bloomington, Ind: Indiana University Press, 1948 (1948).

The reports also concluded that children were sexual subjects and that they actually enjoyed sex, an arguably novel idea digressing from Freud. During his study of pre-adolescent male sexuality Kinsey reported that 57 percent of the older adults and boys in his study recalled having some sort of pre-adolescent sex play, and 70 percent of the pre-adolescent boys in his study reported having a sexual experience, most often with an older person.[138] Ultimately, Kinsey concluded that sexual experiences amongst children are an integral part of human development. These theories and similar ones began to dominate understandings of adult and childhood sexuality throughout the twentieth century.

While theories about child sexuality were changing, adults who had sex with children were regularly regarded as mentally ill and in need of psychotherapy treatment. The problem, as it were, was that although child sexuality was an integral part of human development, the transition to adulthood was by and large about having appropriate sexual experiences that corresponded with one's development. In this context, adults who had, and preferred to have, sex with children were understood as lacking sexual and emotional maturity, as "sick"; they were child molesters in popular discourse, pedophiles in psychiatric literature.[139]

The development of new theories on child sexuality and therefore abuse coupled with the development of new institutions for protecting children within the context of new waves of moral panic about child molesters as sick opposed to sexual psychopaths allowed for conflicting representations of adults who had sex with children. Films like *The Mark,* a 1961 film depicting the life of a convicted child

[138] Ibid.
[139] Leon, Chrysanthi S. *Sex Fiends, Perverts, and Pedophiles: Understanding Sex Crime Policy in America*. NYU Press, 2011.

molester who, once released, was ostracized by his community and harassed by the police after another local child was molested and beaten, and the 1955 novel *Lolita*, which described the sexual involvement and fantasy of a man and his 12-year old stepdaughter, Lolita, humanized child molesters. They also pointed out the unfair treatment and assumptions made about child molesters, because, as is the case in *Lolita*, where the 12-year-old initiated the sexual activity, children were not merely asexual subjects who could only be violated.[140] They could also experience pleasure, even when age of consent laws were being violated.

Though conflicting representation of child molesters circulated in the 1950s and 60s and children were being understood as, themselves, pleasure-seeking, the 1970s saw a rise in feminist and victim-based advocacy groups arising that pushed to create public awareness about the harm of rape and child abuse to the overall development of society, with specific focus on the psychological trauma experienced by women and children.[141] Pornography was often identified as a vehicle for the proliferation of deviant sexual fantasies and consequently an enabler of this trauma. Feminists argued that pornography helped teach and encouraged men to assert patriarchal dominance against women; pornography was about male pleasure and male power. It was also a site for the production and consumption of child sex.

Through these advocacy efforts, Congress passed the Protection of Children Against Sexual Exploitation Act of 1977, the first comprehensive federal legislation

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[140] Ibid.

[141] Feminists pushed back against the release of *Lolita* much earlier than the 1970s; rather, this was a time period in which mass mobilization of feminist organizing that specifically focused on the sexual exploitation of children. See: Ferraro, Monique Mattei, Eoghan Casey, and Michael McGrath. *Investigating Child Exploitation and Pornography: The Internet, the Law and Forensic Science*. Amsterdam: Elsevier/Academic, 2008.

that addressed child sexual abuse. It prohibited the use of children to produce pornography and established a ten-year statutory maximum for first-time trafficking offenders and a 15-year statutory maximum and a two-year mandatory minimum for subsequent offenders.[142] Additionally, there were attempts to regulate the production of pornography by prosecuting them as prostitution; the first case was brought forth in 1987, even though it was ultimately unsuccessful.[143] Feminist calls for the increased policing of those perpetrators of sexual abuse of children and rape of women often colluded with religious conservatives' rhetoric about the sexual perversion and immorality of sexual deviants. Feminist activists overwhelmingly, however, called for the prosecution of child molesters and rapists specifically; whereas, religious conservatives looked for both conversion therapy and imprisonment for sexual deviants writ large—prostitutes, homosexuals, rapists, and child molesters.

The primary mode of addressing sexual predators prior to the 1990s was civil commitment, intended to provide therapeutic treatment to cure the sickness of sexual predators; religious conservatives wanted to cure the sinfulness. These distinctions were often blurred, however, with the rise of the National Man-Boy Love Association (NAMBLA) in 1978, what was popularly understood as a pedophile ring.[144] The fear

[142] "NCJRS Abstract - National Criminal Justice Reference Service." Accessed August 15, 2016. https://www.ncjrs.gov/App/publications/abstract.aspx?ID=86631.
[143] E, Brigman William. "Politics and the Pornography Wars." *Wide Angle* 19, no. 3 (1997): 149–70.
[144] Not all feminist scholars or activists were anti-NAMBLA. In her essay, "Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality," Gayle Rubin argues that the fear mongering around and witch hunting of boylovers has "more in common with ideologies of racism than with true ethics" insofar as it becomes another way for the police to penalize a population. Moreover, she argues that the discussion of pedophilia relies heavily on normative tropes of good sexual behavior that, in effect, reproduce the same type of logics that allow for the policing of sexual deviance in the first place. Likewise, in Judith Levin argues that sex is not ipso facto harmful to minors but that instead what has been most harmful has been the conservatism that has undergirded sex education policies Equally,

of pedophile rings normativizing sex with children led to calls for harsher punishments for those convicted of sex crimes by victims-rights advocates and feminists as well as religious conservatives.[145] These calls, combined with shifts in conceptions of the prison system as one that was punitive instead of rehabilitative shepherded in the emergence of comprehensive sex offender laws, the sex offender registry, and the conflation of all forms of sex offense into one general category: the sexually violent predator. The sexually violent predator is one who cannot be rehabilitated and thus inhabits a *carceral sexuality* that must always be surveiled and contained, either through imprisonment or civil commitment, as evidenced by the sex offender registry and emergency petitions operating as technologies of governance that perpetually suture them to carceral institutions.

Registries as a form of surveillance and punishment: beyond imprisonment

Prior to the development of national, comprehensive sexual crime laws, each state had its own set of standards regarding sex crimes, much like in the case of statutory rape laws. Even with the existence of these regulations that named certain sexual practices as criminal, there did not exist a coordinated way to locate individuals convicted of such heinous crimes. This also meant there was no uniform system for tracking or labeling those convicted.

The first documented suggestion of a registry for those convicted of a sex crime was in 1937. Following the assault of two ten-year-old girls by a man in New

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organizations such as Generation Five and Stop It Now argued that sentencing of offenders who committed sexual crimes against children were often harsher and were accompanied lifelong stigma, which often prevented offenders from seeking help through sex offender treatment. For further details, see Whittier, Nancy. *The Politics of Child Sexual Abuse: Emotion, Social Movements, and the State*. Oxford: Oxford UP, USA, 2012; and Levine, Judith. *Harmful to Minors: The Perils of Protecting Children from Sex*. Minneapolis: U of Minnesota, 2002.

[145] Leon, Chrysanthi S. Ibid.

York, the NY police announced they would be compiling a list of known sex criminals and degenerates with the intent to do periodic checks on them to determine their whereabouts and ensure they were behaving properly.[146] This early gesture is reminiscent of the contemporary sex offender registry, despite it not becoming a uniform, enforceable system. It was not until 1947 that an official state-wide sex offender registration emerged.[147] This registry was modeled off the "convict registration" ordinance proposed by Los Angeles County district attorney Buron Fitts in 1933. "Convict registration" was originally designed as a way to cut down on mafia kingpins, who had begun to gain territorial power and prowess in major cities following the Great Depression. This registration system required those individuals convicted of any felony or lesser drug or weapon charges to register with the sheriff if they lived in the county or intended to visit for more than five days.

In 1938, the Los Angeles Police Department established the Bureau of Sex Offenses, which was tasked with keeping detailed records, including fingerprints and photographs, of people convicted of sex crimes, including homosexuals. It also operated a clinic where psychiatric evaluations of people arrested on sex charges were performed.[148] On April 4, 1940, the local chapter of the Parent-Teachers Association (PTA) asked city council to add certain crimes to the list of sex crimes that required registration, including consensual oral sex, indecent exposure, and child molestation.[149] An ordinance was signed and enacted on September 25, 1940. It

[146] Ibid.
[147] "Convict Registration." *Los Angeles Times*, September 27, 1931, A4.
[148] City Council File # 4788 (1933). Los Angeles City Council, September 11, 1933
[149] Ibid.

extended the PTA's list to include loitering around children, rape (intercourse with non-wife female under 18 by force, threat, or guile), and consensual anal sex.[150]

In July 1947 the state of California added Section 290 to its *Penal Code*, requiring anyone in the state convicted of a list of specific sex crimes to register with the local police. This list expanded the City of Los Angeles' to include incest, seduction by promise of marriage, and lewdly influencing a person under 21 to become delinquent. By1950, however, over 90 percent of registrable arrests in Los Angeles were for consensual homosexual acts, despite initial concerns for the registration primarily being organized around parent concerns for child sexual abuse, abduction, or rape.[151] This was made possible not only by the addition of consensual anal sex but also by the addition of "lewd vagrancy" in 1949. This charge was routinely used by the police to charge men hanging around in restrooms, parks, and dark alleys looking for sexual encounters with other men. In this way, "sex offender" often began to culturally signify "homosexual," despite most of these sex offenders never having engaged in sexual activity with those vulnerable women and children around whom the legislation had been passed.[152]

Following California's registration law, several other states followed suit, including Florida, Arizona, Nevada, Ohio, Alabama, Mississippi, and Montana. By 1993, 12 states had sex offender registry systems. It was in 1990 that the registry became a more active agent in the management of sex offenders through the addition

[150] Ibid.
[151] Jr, William N. Eskridge. *Dishonorable Passions: Sodomy Laws in America, 1861-2003*. New York: Viking Adult, 2008.
[152] Ibid

of a notification system, starting in Washington.[153] By 1990, the national conversation about child sexual abuse had already shifted to one that was geared toward the punishment and surveillance of sexual predators. These national conversations were often framed around local community injuries, making national panic one that was rooted in local, personal narrative. Thus, it was no surprise when in the same year the state of Washington passed legislation that carved out a tailored language to designate a specific category for a subpopulation of sex offenders, "sexually violent predators", following the murder of two Washington residents in both Seattle and Tacoma.

On September 26,1988, 29-year old Diane Ballasiotes was abducted, raped, and murdered by Gene Raymond Kane, a work release inmate who had previously served 13 years in prison for assaulting two women. Kane had just finished his sentence and was being transitioned back into the community, despite a prison psychologist reporting three years prior that his chances for successfully adjusting and integrating into society being "quite poor."[154] While in prison, Kane did not receive mental health treatment, because professionals thought he was too dangerous to handle. According to the secretary of the state department of corrections, Chase Riveland, "he could not have been retained indefinitely in maximum security. Law and court decisions demanded his release imminently."[155] The law required Kane's release; community opinion argued otherwise.

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[153] National Conference On Sex Offender Registries. (1998, May 91). Retrieved August 15, 2016, from http://www.bjs.gov/index.cfm?ty=pbdetail.
[154] Siegel, Barry. "Column One : Locking Up 'Sexual Predators' : A Public Outcry in Washington State Targeted Repeat Violent Sex Criminals. A New Preventive Law Would Keep Them in Jail Indefinitely." *Los Angeles Times*, May 10, 1990. http://articles.latimes.com/1990-05-10/news/mn-1433_1_sexual-predator.
[155] Ibid.

Fears of sex offenders recommitting violent sex crimes continued in Washington, when just a short eight months later a new case with eerily similar circumstances emerged; this time, instead of the victim being an innocent, vulnerable woman, he was a 7-year-old boy. On May 20, 1989, Ryan Alan Kade was abducted, raped, stabbed, mutilated, and left for dead in Tacoma, Washington by 39-year-old Earl Kenneth Shriner. Shriner was well-known to the police, having previously had 11 confirmed contacts with the police—incidents wherein there was sufficient enough criminal activity to prompt the police to go to his home.[156] He had a 24-year history of murder, assault, and kidnapping. At age 16, he strangled a 15-year-old girl to death; he tied her body to a tree roughly half a mile from the attack. He was confined to a psychiatric unit for 10 years as a result. A year after his release, he was sentenced to 10 years in prison after pleading guilty to assault and kidnapping in the abduction of two 16-year-old girls. He had recently been released from prison when he committed the crimes against Kade.[157]

In response to the attack of Kade, combined with the previous public outcry over Ballasiotes and grass-roots activist demanding substantive legal reform, the Governor created the Task Force on Community Protection to study the issue of sexual violence as well as to make recommendations for changes to the legal system with the intent of reducing instances of sexual violence. From this task force came the Community Protection Act, an omnibus package targeting violent sex offenders. This new statute allowed for the civil commitment of "sexually violent predators," those

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[156] Ibid.

[157] Associated Press. "Tacoma sex offender faces latest charges in mutilation of boy," *The Spokesman-Review*. May 23, 1989. https://news.google.com/newspapers?nid=1314&dat=19890523&id=0mRWAAAAIBAJ&sjid=WfIDAAAAIBAJ&pg=1133,1176933&hl=en.

individuals previously convicted of a violent sex crime that had been determined by a judge or jury to suffer from a mental abnormality or personality disorder that would make them likely to engage in predatory acts of sexual violence.

The shift from understanding those who committed sex crimes as "offenders" to "predators" is one that was, at its core, a characterization of one's innate propensity to recommit. Predators, after all, are "animal[s] that naturally prey on others," according to the online Oxford dictionary.[158] The turn to "predators" thus suggests that those who commit particularly violent sex crimes and suffer from a mental abnormality or personality disorder are *naturally* or inherently predisposed to sexual violence. As it were, this subpopulation of offenders cannot, therefore, be rehabilitated, because it is in their nature to commit crimes. In this way, they always have the propensity to be sexually violent; they are acting out their supposed natural urges. The proliferation of the term "sexual predator" in the 1990s helped reify this connection. According to Daniel Filler, the term was first used by FBI Director J. Edgar Hoover in the 1920s but was not popularized until the 1990s; in fact, the term was not found in newspapers during the late 1980s but occurred 321 times in 1992; 885 times in 1994; and 924 times in 1995.[159] What is clear is shifts in the law were drawing upon and producing discourses about sex offenders that relied on an understanding of them as habitually violent, despite most research suggesting that sex offenders typically only commit one crime and it is a crime of convenience. They often commit acts against family members or friends not people they stalk or

[158] "Predator." Def. 1. English Oxford Living Dictionaries. N.p., n.d. Web.
[159] Filler, Daniel M. "Terrorism, Panic and Pedophilia." Article Terrorism, Panic and Pedophilia Virginia Journal of Social Policy and the Law 10.3 (2003): 345-82.

specifically target for sexual violence in the way that the "sexual predator" suggests.[160]

Beyond the creation of a new category of offenders, the Community Protection Act also authorized the police to notify, on a "need-to-know" basis, the community of the presence of a convicted sex offender in the neighborhood.[161] Additionally, sentence ranges for all sexual offenses were increased, and there was a provision to allow for more treatment of chronic sex offenders through the establishment of a Special Commitment Center operated by the Department of Social and Health Services. At this center, treatment would be organized around individual and group therapy, focusing on sexual deviancy, substance abuse, anger management, social skills, relapse prevention, and specialized services for persons with developmental disabilities. Committed individuals were entitled to annual review wherein a judge would determine whether or not there was probable cause to believe s/he would no longer offend. If so, s/he would be released. If not, the state would have to determine beyond a reasonable doubt, in another trial, that the petitioner remained a sexual predator and needed to remain in confinement.

Washington's new law drew on pre-existing psychopath laws that allowed for the civil commitment of sex offenders while simultaneously extending them, an issue to which I will return later. More importantly, it allowed for a notification system that

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[160] See: Bureau of Justice Statistics. "Recidivism of sex offenders released from prison in 1994." Washington, DC: U.S. Department of Justice (2003); Freeman-Longo, R. E. "Prevention or problem?" Sexual Abuse: A Journal of Research & Treatment, 8.2 (1996), 91-100; Heilbrun, K. "Prediction versus management models relevant to risk assessment: The importance of legal decision-making context." Law and Human Behavior, 21 (1997), 347-359; and Prentky, R. A., Lee, A. F., Knight, R. A., & Cerce, D. "Recidivism rates among child molesters and rapists: A methodological analysis." Law and Human Behavior, 21.6 (1997), 635-659.

[161] Scheingold, Stuart; Olson, Toska, and Pershing, Jana. "The Politics of Sexual Pathology: Washington State's Sexual Predator Legislation," *University of Pennsylvania Puget Law Review*. Vol. 15: 809-820.

would allow the police to inform neighbors that a known sexual offender was in the area. Because police could use this system at their own discretion, there was no clear, unified way to determine who did or did not need to know. The prevailing presumption was that *everyone* in the neighborhood might need to know, especially if there were children involved. Following Washington's lead, 44 other states created similar notification systems.[162] What this illustrates is that steps by various states to secure the general welfare of their people pre-empted federal legislation addressing sexual crimes. In fact, it was not until 1994 that federal law even required states to have a registry system, with Massachusetts becoming the last state to develop a registry in 1996.[163] Again, it is no surprise this federal legislation was prompted by a local incident that made national news; and, again, it was around an incident involving a case of child abuse.

The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (Wetterling Act) was included in the Federal Violent Crime Control and Law Enforcement Act of 1994. The Act was named after 11-year-old abduction victim Jacob Wetterling, a St. Joseph, Minnesota native who was riding his bicycle home with his younger brother and friend on October 22, 1989 just after 9 p.m. when an armed man wearing a nylon mask interrupted their commute. Wetterling, his brother, and friend were ordered to lie face down in a ditch and declare their ages. Wetterling's brother was instructed to run to a wooded area nearby and not look back. Both Wetterling and his friend were told to turn over so the man could see their faces.

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[162] Ibid.
[163] National Conference On Sex Offender Registries. (1998, May 91). Retrieved August 15, 2016, from http://www.bjs.gov/index.cfm?ty=pbdetail.

Wetterling's friend was told to run. No one has seen Wetterling since.[164] Prior to the abduction, an unidentified man kidnapped and molested a ten-year-old boy ten miles away from St. Joseph. During the investigation, it was uncovered that, unbeknownst to local authorities, several halfway houses in St. Joseph housed sex offenders after their release from prison.[165] Knowledge of the halfway houses providing lodging to sex offenders coupled with yet another sexual assault against a child in the local area led to heavy public criticism of the pre-existing laws.

Minnesota previously had sex offender registry laws, but the law was not comprehensive and did not create a uniform system of reporting for all districts, as was the case in many states. The Wettlering Act mandated that each state create a narrowly drawn, stringent program for registering sex offenders, including life-long registration for a subclass of sex offenders classified as sexual predators, by September 30, 1997.[166] What I find interesting about this move—the creation of the category of sexual predators—is that while the act of having the boys lie down with their bottoms toward the unnamed aggressor might certainly be understood as a sexually charged instruction it is still unknown what happened to Wetterling. Equally, it is unknown whether the kidnapper had a sexually violent history or was sexually motivated. There was simply a presumption of these two things, which was sufficient to produce new laws.

The Violent Crime Control and Law Enforcement Act was amended two additional times in 1996 to create further provisions for sex offenders; both of which

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[164] Staff, C. N. N. "'The Hunt': Jacob Wetterling's Abductor." *CNN*. Accessed August 15, 2016. http://www.cnn.com/2015/07/03/us/jacob-wetterling-abductor-the-hunt-johwn-walsh/index.html.
[165] Ibid.
[166]Nation Conference on Sex Offender Registration. Ibid.

were subsequently named after their victims, a common occurrence in sex crime Acts. One amendment required the Federal Bureau of Investigation to establish the national offender database and to handle sexual offender registration and notification in states unable to maintain "minimally sufficient" programs of their own. It also required offenders who move to immediately notify local authorities. Failure to do so could result in a fine or further prison time.[167] This Act, the Pam Lychner Sexual Offender Tracking and Identification Act of 1996, was enacted in honor of Pam Lyncher. Lyncher, a Houston real estate agent, was attacked in September 1990 while waiting to show a vacant house to an alleged prospective buyer.

While waiting, William David Kelley arrived at the house claiming to that he forgot to clean under the sink; he was a workman from a cleaning company in charge of preparing the house for its showing. He was a convicted rapist and child molester, too. After being allowed inside, Kelley proceeded to attempt to rape Lyncher until her husband stopped him. Police found a knife and duct tape on him as well as a blanket in his pickup truck. Kelley pled guilty to aggravated kidnapping with intent to commit sexual assault. He was sentenced to 20 years in prison. Kelley was released in 2010 but then resentenced to an additional 20 years in prison after failing to register as a sex offender in 2012.[168]

Lyncher's experience identified a gap in the law and the ability of states to comply with the law, much less substantially meet the requirements of the law long-term. Kelley was a two-time convicted sex offender. Then-current laws only required

[167] Ormand, Danny and Cazort, Brad. "State Sex Offender Registry Protocol Training Manual, Fifth Ed. Arkansas Crime Information Center, Little Rock, AR.
[168] "Notorious Criminal William David Kelley Sentenced to 20 Years." *ABC13 Houston*. Accessed August 15, 2016. http://abc13.com/archive/8888844/.

him to register as an offender; he was not required to repeatedly register at any timed intervals nor was he required to report when and if he moved. The Lyncher Act added a tracking component that allowed the Federal government to assist in the surveillance and policing of offenders. The assumption was that the incident might not have happened if law enforcement was better aware of Kelley's whereabouts.

Four years after Lyncher's attack, 7-year-old Megan Kanka was lured into the home of her neighbor, Jesse Timmendequas, in the quiet suburb of Hamilton Township in New Jersey with the promise of seeing his puppy. Unbeknownst to Kanka or her family, 36-year-old Timmendequas had two previous convictions for sexually assaulting young girls, one in 1979 for attempted aggravated assault of a 5-year-old girl and one in 1981 for assaulting a 7-year-old girl, the latter for which he was imprisoned for 6 years at the Adult Diagnostic and Treatment Center.[169] When Kanka entered his home, he raped and murdered her, strangling her with a belt before placing her body in a toy chest and then dumping it in a nearby park.[170] He was convicted of kidnapping, four counts of aggravated sexual assault, and two counts of

[169] Glaberson, William. "In Megan Case, a Passive Suspect With a Violent Past." *The New York Times*, May 12, 1997, sec. N.Y. / Region. http://www.nytimes.com/1997/05/12/nyregion/in-megan-case-a-passive-suspect-with-a-violent-past.html.

[170] I include these details not to overburden the reader or to elicit a sensational response from the reader but rather to be attentive to the very violent circumstances that led to Kanka's death. The narrative was circulated in popular media this way to invoke a type of fear and panic from the general public. I do so not to reproduce those sentiments. Part of my challenge in writing about sexual trauma is, understandably, a challenge of balance: I do not want to erase the existence and fact of sexual violence in the way that patriarchy and misogyny engenders a rape culture that on one hand promotes rape while on the other actively refuses to acknowledge that it is a problem. I equally do not want to nonchalantly describe sexual violence in a way that, through excess, recreates the aforementioned practice. In describing the acts that led to her death, I hope to not simply gesture toward an abstract type of brutal violence and sexual assault that leads the reader to wander and imagine in ways that can be equally deeply problematic. Instead, readers have to sit with this egregious act to in some ways understand the real stakes and concerns people had that led to the development of Megan's Law.

felony murder. He was sentenced to death, which never came to fruition after New Jersey abolished capital punishment.[171]

The death of Megan Kanka re-engaged national anxieties about sexually violent predators and the ability to track them as well as their propensity to recommit. It also drew on concerns of parents and their inability to protect their children due to the lack of comprehensive information provided to them about dangers in the community. According to Megan's mother, she would not have let her daughter go out in the neighborhood unsupervised had she known that a sex offender lived across the street.[172] In response to the high-profile case, The New Jersey General Assembly passed a series of bills known as "Megan's Law" sponsored by Paul Kramer, who noted that "Megan Kanka would be alive today" if the proposed bills had already been law.[173]

Megan's Law required sex offender registration, which had not yet been required in the state despite the passing of the Wetterling Act two years prior, as well as public notification of all high-risk sex offenders moving into a neighborhood. The latter requirement—public notification—was added to the federal legislation, also known as Megan's Law, as an amendment to the Wetterling Act. At the federal level, this law established guidelines for state statutes, requiring states to notify the public of sex offenders; though, it did allow state's to determine the level of notification required based on the perception of danger posed by the offender.[174]

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[171] Ibid.
[172] Ibid.
[173] Mclarin, Kimberly J. "Trenton Races To Pass Bills On Sex Abuse." *The New York Times*, August 30, 1994, sec. N.Y. / Region. http://www.nytimes.com/1994/08/30/nyregion/trenton-races-to-pass-bills-on-sex-abuse.html.
[174] Bonnar-Kidd, Kelly K. "Sexual Offender Laws and Prevention of Sexual Violence or Recidivism." *American Journal of Public Health* 100, no. 3 (March 2010): 412–19.

The Jacob Wetterling Act, Megan's Law provisions included, was the prevailing federal legislation on sex offenders for a decade until Congress took to developing the first-ever comprehensive sex offender legislation following various inconsistencies across state governments. Exceedingly, concerns about registrable offenses varying by states, registration terms fluctuating on a state-by-state basis making it difficult to track sex offenders, and the lack of uniform requirements for transient and homeless sex offenders began to raise questions about the need for a comprehensive federal legislation. Consequently, in July 2006, Congress passed the Sex Offender Registration and Notification Act (SORNA), which is Title I of the Adam Walsh Child Protection and Safety Act of 2006, named after six-year-old Adam Walsh, who was abducted from a Sears department store at a mall in Hollywood, Florida on July 27, 1981. Adam was at the store with his mother, who was shopping for a lamp. He strayed away and joined a group of boys who were playing at an Atari kiosk in the store. After an altercation happened amongst the boys over whose turn was next, store security asked the group of boys to leave the store—Adam included. No one saw Adam following his exit from the store.[175] On August 10, 1981, two fishermen found Adam's severed head in a drainage canal almost 120 miles away from Hollywood. Two years later Ottis Toole, a drifter, confessed to abducting, murdering, and raping Adam, the latter of which was not known until the confession, as Adam's body was never found.[176]

[175] "Police: 1981 Killing of Adam Walsh Solved." *NBCNews.com*. NBCUniversal News Group, 17 Dec. 2008. Web. 21 Jan. 2016.
[176] Almanzar, Yolanne. "27 Years Later, Case Is Closed in Slaying of Abducted Child." *The New York Times*. The New York Times, 16 Dec. 2008. Web. 21 Jan. 2016.

Following Adam's death, his father John Walsh began working as an advocate for victims of violent crimes, eventually becoming a television personality, hosting and creating one of Fox's longest running programs, *America's Most Wanted*. Adam's abduction was also dramatized in a 1983 NBC television film *Adam,* which was broadcast in 1983, 1984, and 1985 and concluded with the photos and descriptions of missing children. Most notably, rapper Bizzy Bone from the 1990s rap group Bone Thugs-n-Harmony was rescued in 1983 after having been identified by his babysitter as one of the missing children whose photos appeared at the end of *Adam*.[177] Between John Walsh's advocacy, the television film, and the *America's Most Wanted*, Adam Walsh's story began to stand in for the national narrative around child sex offense, leading to the passing of the nation's first comprehensive sex offender registry on the twenty-fifth anniversary of Adam's disappearance.

The Walsh Act created a three-tier system for registering sex offenders based on the severity of the offense. Tier 1 offenders must update their whereabouts every year for 15 years; Tier 2 offenders must update every six months for 25 years; and Tier 3 offenders must update their whereabouts every three months for life. The Act also created a national sex offender registry and standard criteria every state and U.S. territory must use for registering offenders (name, date of birth, address, etc.). Likewise, it created the provision for sentencing individuals with up to ten years of imprisonment for failure to register; and, most notably, the Act mandated that registry be required of individuals who were convicted of a sexual offense prior to the

[177] Smith, Troy L. "Bizzy Bone of Bone Thugs-N-Harmony Details Being Kidnapped as a Child in New Interview." *Cleveland.com*. N.p., 18 Feb. 2015. Web. 21 Jan. 2016.

enactment of the statute. Pointedly, it required retroactive registration. [178] Additionally, the Act created a civil commitment provision, which authorizes the federal government to civilly commit, in a federal facility, any person who is "sexually dangerous" that is "in the custody" of the Bureau of Prisons, even after that person has completed his entire sentence. [179] Unlike previous revisions to the law, SORNA directly addressed the issue of transience and homelessness in an attempt to extend the impact of notification systems and the geospatial triangulation of sex offender whereabouts. Ottis Toole's status as a drifter suggests that the inclusion of transience and homelessness in the Act was not by happenstance. With this context in mind, I plot changes to the sex offender registration laws as they pertain to transience and homelessness.

Homelessness, Transience, and the Registry

In attempt to rectify inconsistencies across states as it relates to transient individuals or those who are homeless, SORNA made specific provisions that created a minimum standard for states. While it does not include regulations about where sex offenders can or cannot live, SORNA does require that homeless and transient offenders register, a provision that had previously been up to each state to decide. According to the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Trafficking (SMART), "Title I…is silent as to how a jurisdiction must handle homeless and transient sex offenders."[180] It is up to each jurisdiction to

[178] See Yung, Corey Rayburn, "One of These Laws is Not Like the Others: Why the Federal Sex Offender Registration and Notification Act Raises New Constitutional Questions" (August 1, 2008). *Harvard Journal on Legislation*, Vol. 46, p. 369, 2009.
[179] See: Barker, Emily, "The Adam Walsh Act: Un-Civil Commitment" (October 30, 2009). *Hastings Constitutional Law Quarterly*, Vol. 37, No. 1, 2009.
[180] U.S. Department of Justice. Office of Sex Offender, Sentencing, Monitoring, Apprehending, Registering, and Trafficking. *SORNA Implementation Documents*. N.p., n.d. Web. 10 May 2013

develop its own method for handling homeless sex offenders, but homeless sex offenders are still mandated to register. So while the federal government provided guidance, it still put the onus on states to come up with their own methods.

The vagueness of the law was largely influenced by the fact that some states had already passed legislation restricting sex offenders from living within a specified vicinity of certain building. For instance, California prohibits a sexually violent predator from living within one-fourth mile of a school; whereas, a high-risk paroled sex offender cannot live within one-half mile of a school, day care center, or a place where children congregate.[181] In Illinois, sex offenders cannot live within 500 feet of a school or school property.[182] The list continues, including 21 states total with existing residency restrictions—all of which have restrictions that are either exclusively or principally related to places in which children frequent.[183] The assumption of these restrictions is that sex offenders are those individuals who commit sex crimes against children, which has the undue affect of re-conflating "sex offender" with "child rapist," an already existing commonsense slippage codified by the law.

Compliance with SORNA came with its consequence, often experienced by sex offenders themselves rather than state agents. For instance, in July 2011, following a series of directives from the federal government, the state of Maryland became compliant with the federal standards set forth in SORNA after having previously been out of compliance. As part of the compliance, the state requires that

[181] Norman-Eady, Sandra, Chief Attorney. "Sex Offenders' Residency Restrictions." OLR Research Report. May 23, 2007.
[182] Ibid.
[183] Ibid.

transient and homeless individuals report to a police station and register weekly unless living in a permanent shelter. This requirement holds regardless of tier. While Maryland's sex offender laws permit offenders to reside free from residential restrictions, homeless sex offenders are burdened with checking in to the police station weekly.

Additionally, and more importantly to this project, though sex offenders can live wherever they want in terms of proximity to schools, day cares, and the like, in the state of Maryland, per federal regulation, they cannot live in subsidized housing if a they are a Tier 3 offender. The state and federal government preclude lifetime registrants from receiving housing subsidies. This is particularly important, given that SORNA requires those who committed an offense prior to the registry's enactment to register and to do so under the current federal tiers, not state ones. When state tiers contradict federal ones, the federal tier trumps.

In the state of Maryland, SMART found that at least two categories of sex offenses were improperly classified as Tier II offenses instead of Tier III offenses: engaging in a sexual act with another if the victim is 14 or 15 years old, and the person performing the sexual act is at least 21 years old; and engaging in vaginal intercourse with another if the victim is 14 or 15 years old, and the person performing the act is at least 21 year.[184] In essence, state compliance with federal standards produced two disparate effects: some offenders were (re)categorized as (violent) sexual predators and as such they became lifetime sex offender registrants, ineligible for federal housing subsidies.

[184] U.S. Department of Justice. Office of Sex Offender, Sentencing, Monitoring, Apprehending, Registering, and Trafficking. *SORNA Substantial Implementation Review State of Maryland - Revised*. N.p., n.d. Web. 11. July 2011. Accessed: 10 May 2013.

In tracing the history of sex offender registry laws, I have aimed to shed light on three key components of these laws: the basis of these laws arising from a history of regulating sexuality in and around questions of rape and age of consent; the ways in which high profile sex crime cases informed how these laws developed, often organized in relation to the vulnerability of women and the innocence of children; and the emergence of new technologies of governance, through registries and notification systems, that ushered in the construction of a new category of sex offender: sexually violent predators. I have also highlighted examples that elucidate how the law and gaps in its implementation have had material consequences for sex offenders leading to more punitive measures that presume, and sometimes create the conditions under which, rehabilitation is not possible.

In the next section I will return to the question of rehabilitation and recidivism as distinct tenets of *carceral sexuality* by looking at civil commitment laws and sexual propensity statutes to argue that, unlike other crimes and criminals, sex crimes and sexual criminals are always tethered to carceral institutions. This has been most clear through the registration laws that make failure to register a criminal offense that can send one back to prison. In this last section, I suggest that civil commitment laws function in the same way, with sexual propensity being a defining component of these laws.

Sexual propensity as evidence: civil commitment and the extension of time

Civil (involuntary) commitment is a process by which any individual deemed by a qualified agent as having symptoms of severe psychiatric disease is court-ordered into treatment in a mental health institution. The state grants itself authority

to civilly commitment its citizens under two legal principles: 1) *parens patriae* *Parens patriae*, an English common law tradition that assigns the government with the responsibility of intervening on behalf of those citizens who cannot act in their own best interest; the state is the "parent of the country" that gets to make decisions for impaired individuals; and 2) police power, which requires the state to protect the interests of its citizens.[185] The assumption here is that the state has an obligation to protect the general welfare of all its citizens, even when protecting the general welfare of its citizens infringes upon the individual liberties of certain citizens. Civil commitment therefore authorizes the state to court order individuals into mental health institutions for their own protection and/or the protection of others.

In 1964, following the civil rights movement and a long series of debates about the overuse and abuse of civil commitments by medical professionals as well as the need to deinstitutionalize the mentally ill, leading to the dismantling of many state hospitals and the slow transition to community-based institutions of care, civil commitment standards transformed from a need-for-treatment standard to one that required danger as the impetus for commitment. The need-for-treatment standard permitted medical professionals to commit individuals against their will simply on the basis of their need to address and manage their mental illness. The District of Columbia was the first to institute these new standards, requiring first that a person must be determined to have a mental illness before s/he could involuntarily committed and second, the person had to pose an imminent threat to the safety of him/herself or others or be shown to be "gravely disabled," meaning that he or she

[185] Testa, Megan, and Sara G. West. "Civil Commitment in the United States." *Psychiatry (Edgmont)* 7, no. 10 (October 2010): 30–40.

could not provide for the necessities for basic survival.[186] This standard was adopted by California five years later and then slowly by most states until "imminent danger" was established as the prevailing standard for civil commitment.

Despite dangerousness only becoming the prevailing standard for involuntary commitment within the past half-century, it has been the authorizing logic since the early twentieth century for sex offenders. In 1911, French physician Caesar Lombroso theorized that antisocial individuals were born with the proclivity to commit crimes. Because they were genetically hardwired to break the law, these individuals could not be considered criminally responsible, yet they still constituted a danger to society.[187] Drawing on this theoretical assumption, "defective delinquent" laws were developed to resolve this tension, allowing for them to be placed in facilities that would confine them but not necessarily punish them.

From 1900 to 1931, defective delinquent laws were used to confine political dissidents, leading to their abolition; however, they laid the legal framework for the development of mentally disordered sex offender laws.[188] These laws assumed that some sex offenders were mentally ill and could therefore respond to mental health treatment that they could not otherwise get in prison. The first of such statutes, commonly known as sexual psychopath laws, was passed in Michigan in 1937.[189] At the heart of these laws was the presumption that people who commit serious sex crimes have no control over their sexual impulses and would necessarily repeat their offense over and over; they were sexual psychopaths. Much like the antisocial

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[186] Ibid.
[187] Marshall, William Lamont, Yolanda M. Fernandez, Stephen M. Hudson, and Tony Ward. *Sourcebook of Treatment Programs for Sexual Offenders*. Springer Science & Business Media, 1998.
[188] Ibid.
[189] Ibid.

individual Lombroso described, some sex offenders were understood to be genetically hardwired with the proclivity to be sexual violent. As such, prisons were not an adequate place for them, and many would not voluntarily go into mental health treatment. Therefore, as the logic goes, the state had a vested interest in confining them to a mental health institution in order to protect others.

Between 1937 and 1967, twenty-six states and the District of Columbia passed legislation calling for the indefinite civil commitment of so-called sexual psychopaths.[190] Of these twenty-six states, 17 required that the person be convicted of some crime before s/he could be committed for treatment; of those states, Indiana, Vermont, California, Ohio, and Wisconsin did not require that these criminals be convicted of a sex offense. Seven states required the individual only be charged with a crime—Washington was the only of these states to require it be a sex related charge. Four states and D.C. did not require a charge or a conviction. Rather, commitment could happen simply on the basis that one was a sexual psychopath. Almost all states required that the individual be evaluated by at least two psychiatrists before being committed. They did not, however, have equal standards for determining the evidentiary basis for commitment.[191] California, for example, required a "predisposition to commit sex offenses dangerous to others plus any of the following: mental disorder, psychopathic personality, or marked departure from normal mentality."[192] Alabama, on the other hand, only required the mental disorder exist for

[190] Lave, Tamara Rice, Only Yesterday: The Rise and Fall of Twentieth Century Sexual Psychopath Laws, 69 LA. L. REV. 549, 579-89 (2009).
[191] Ibid.
[192] Ibid.

one year "coupled with criminal propensities to commit sex offenses; not mentally-ill or feeble-minded so as to be criminally irresponsible."[193]

The number of civil commitments authorized under sexual psychopath laws varied by state. Approximately 23 individuals were committed per year in Indiana; only 16 cases occurred in Illinois in the 10 years they had such laws. California had an overwhelming 435 commitments during the first 10 years of the laws enactment. Minnesota saw half as many in its first 10 years, in contrast. During the first four years of the initial state to pass a law, Michigan, 99 individuals were confined; of those, 29 were later released either by order of the court of parole, which was not significantly common.[194] In fact, most states allowed for indeterminate or lifelong commitment. New Jersey was the only state to restrict the amount of time a sexual psychopath could be committed, which could not exceed the amount of time associated with the underlying criminal charge that led to the person's designation as a sexual psychopath.[195] What is clear, then, is that psychopath laws both constituted certain sex offenders as being innately sexual violent, which was understood within a psychological model that considered them as mentally ill, and allowed them to potentially be indefinitely confined to an institution on the basis of their propensity to reoffend.

Sexual psychopath laws, because of their inconsistent standards, were often misused to confine all kinds of identified sexual deviants in mental health institutions despite them either not having a mental illness or not being dangerous. In his 1954 book, *The Sexual Offender*, Benjamin Karpman argued that the terms sexual

[193] Laws, D. Richard. Social Control of Sex Offenders: A Cultural History. Springer, 2016.
[194] Ibid.
[195] Ibid.

psychopath and sexual psychopathy "have no legitimate place in psychiatric nosology or dymanic classification."[196] The Committee on Forensic Psychiatry of the Group for the Advancement of Psychiatry was equally critical of the vagueness these terms suggested, noting, "…There is still little agreement on the part of psychiatrists as to the precise meaning of the term."[197] This lack of specificity led to the commitment of some individuals who were not actually mentally ill. In New Jersey, for instance, 18 of the first 100 individuals committed under New Jersey's sexual psychopath laws were considered clinically normal. Not only were some not mentally ill but also some were not dangerous.[198]

In an analysis of the first 14 individuals committed under sexual psychopathy laws for an unspecific jurisdiction, sociologist and criminal law professor Paul Tappan noted that some of those committed either did not have a previous dangerous criminal history or the crime for which they were committed was not dangerous. Some charges included habitual indecent exposure when intoxicated; a non-aggressive homosexual, convicted of passing a bad check; and public masturbation without indecent exposure.[199] Early enforcements of civil commitment practices were often predicated on the presence of sexual deviance as itself constitutive of danger rather than individuals behaving dangerously. In this way, sexual deviants—by virtue of being deviants—had the propensity to be sexual psychopaths and therefore the propensity to be sexually violent.

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[196] Karpman, Benjamin. *The Sexual Offender and His Offenses*. Second Printing edition. The Julian Press, 1957.
[197] Committee on Forensic Psychiatry, P*sychiatrically Deviated Sex Offenders*, GAP 1950a, Report No. 9,
[198] Lave, Tamara Rice, Only Yesterday: The Rise and Fall of Twentieth Century Sexual Psychopath Laws, 69 LA. L. REV. 549, 579-89 (2009).
[199] Ibid.

By the 1990s, many states abolished their sexual psychopath laws, with only thirteen states and the District of Columbia keeping them on the books.[200] This coincided with the increased range of sentences for sex offenses following the proliferation of standards set by the Washington Community Protection Act. Instead of experiencing extended confinements in mental health institutions, many sex offenders were often given more lengthy sentences in prisons for their crimes, without sexual psychopath laws buttressing an alternative. This did not mean civil commitments were no longer a common technology of governance enacted by the state. In fact, quite the opposite happened. The sexual psychopath was re-codified through the law as the sexually violent predator, also evidenced by the Washington Community Protection Act of 1990. Two decades later, some 22 states had laws allowing for the involuntary commitment of sexually violent predators.[201] By 2006, prior to the passage of the Adam Walsh Act, which allows for involuntary commitment by the federal government, almost 2,700 individuals were committed nationwide under sexually violent predator laws, ranging in ages from 18-102.[202]

Sexual psychopath and sexually violent predator laws hinged upon the ability to predict and curtail the propensity of individuals to commit a sex crime. The evidentiary basis for propensity has equally hinged upon the expertise of psychiatrists to determine those persons who are hardwired with the proclivity to commit a violent sex crime and those individuals who will not be habitual offenders. Sexual propensity

[200] La Fond, John. "Washington's Sexually Violent Predator Law: A Deliberate Misuse of the Therapeutic State for Social Control." *Seattle University Law Review* 15, no. 3 (January 1, 1992): 655.
[201] Ibid.
[202] Testa, Megan, and Sara G. West. "Civil Commitment in the United States." *Psychiatry (Edgmont)* 7, no. 10 (October 2010): 30–40.

has thus been a critical framework in the attempt to regulate sexual deviants, admissible, itself, as evidence within the court of law.

Unlike other forms of criminal evidence, sexual propensity is one of the few forms of evidence that is admissible through federal regulations for the purpose of proving that a person acted in accordance with a particular character on a particular occasion. As such, the law allows one's past evidence of deviance to prove that s/he might have acted in accordance with that deviance in a future or present criminal capacity. This standard allows sex offenders to be perpetually tied to carcerality in ways that other categories of offenders—thieves, murderers, and traffic violators, for instance—are not, simply on the basis that the existence of their deviance can be provided as character evidence to establish propensity.

The "propensity rule," dating back to seventeenth century common law, prohibits the use of character evidence to show a person's propensity to act in accordance with his/her character traits or prior acts.[203] Character evidence cannot be admitted in court by the prosecution *unless* the defendant opens up the door for his or her character to be called into question as result of something s/he declared in court. The inadmissibility of character evidence as a general rule allows defendants to have a fair and partial trial, making it so that the prosecution cannot taint the jury's perception of him/her by connecting a specific charge in a specific situation to a past charge. The "probative force" of a previous theft conviction could potentially be overvalued by the jury, or they could be punishing a defendant for the prior charge instead of the current one. A person cannot be declared a thief simply because s/he

[203] McCandless, Jason. "Prior Bad Acts and Two Bad Rules: The Fundamental Unfairness of Federal Rules of Evidence 413 and 414." *William & Mary Bill of Rights Journal* 5, no. 2 (May 1, 1997): 689.

has stolen in the past; the presence of previous theft does not make him/her guilty of current theft, so the logic goes.

In 1994, the same year as the passing of the Wetterling Act, and indeed amongst the same social anxieties about the need to protect children from sexual abuse, Congress enacted Federal Rules of Evidence (FRE) 413 and 414 to amend the previously worded propensity rule to include, as admissible evidence, sexual assault and child molestation. FRE 413 allows for evidence that a defendant committed any other sexual assault to be admissible and considered on any matter deemed relevant in the prosecutions for sexual assault.[204] FRE 414 provided the same rule for cases of child molestation.[205] These exceptions were made because of the precarious evidence that often exists in sexual assault and/or child molestation cases—victims do not come forward at the time of the injury, so there is no bodily evidence; the presence of bodily injury does not itself prove there was no consent; there are no other witnesses, so it is one person's word against another; or, as is often the case of children, there is a lack of sexual language to describe the encounter.

Sexual propensity allows for prosecutors to establish the sexual character of sex offenders as sexually violent and deviant, which becomes the evidentiary basis on which juries might convict them of future charges, even if s/he is innocent and even if the circumstances of the two crimes are remarkably different. These standards make it difficult to, within the context of the law, characterize sex offenders as anything other than always already violent. Consequently, they can never be fully rehabilitated;

[204] Ibid.
[205] Ibid.

therefore, they can more easily be recommitted, either through civil commitment proceedings or criminal proceedings.

Federal rules of evidence only apply to federal proceedings. Not all states have enacted the same exceptions as the federal government. For instance, in the State of Maryland, despite the push by several advocacy groups and legislators, the same provision does not apply. Maryland's sexual propensity exception is more stringent, requiring that the evidence involve the same victim and the same defendant to be admissible.[206] Numerous attempts have been made to amend Maryland code, but none have been successful. This has not stopped sexual propensity from extending beyond its intended use, however.

In November 2009, a jury in the Circuit Court for Charles County, Maryland convicted Kelvin Cousar of unnatural or perverted sexual practices, third degree sexual offense (the first two charges were combined, to be served consecutively), reckless endangerment, and wearing, carrying, and transporting a handgun. He was sentenced to 18 years of imprisonment in total. Cousar appealed the decision, citing the use of testimony of an alleged rape victim from an unrelated case violated his constitutional right to due process, because her testimony was in violation of the propensity rule.[207] The appeals court found that the state had not failed to omit any testimonies that would violate Cousar's due process on the basis that sexual propensity was not used to determine his sexual character but rather to refute one of his own claims.

[206] Kelvin Cousar v. State of Maryland. Court of Special Appeals in Maryland. Sept. 2009. N.p., n.d. Web.
[207] Ibid.

According to court documents, on April 12, 2009, Cousar met with a Ms. Stahl at the Masters Suites hotel in Waldorf, Maryland. Stahl offered erotic services on Craigslist, and Cousar made inquires for those services. They both met at the hotel, where she performed the pre-agreed upon acts in exchange for $200. Cousar then pulled a gun on Ms. Stahl and forced her to undress and lie on the bed while he straddled her face and defecated in her mouth (unnatural or perverted sexual practices). He proceeded to force her to engage in oral and anal sex at gunpoint (third degree sexual assault). Stahl testified that she did not consent to the oral or anal sex or being defecated on. Cousar asserted that the engagement was consensual and that the defecation was purely accidental not intentional.[208] To combat this latter claim of accidental defecation, prosecution introduced as evidence the testimony of Ms. Swanson, who testified she met Cousar two months prior to his encounter with Stahl; they had also met off Craigslist. She further testified that after a disagreement about payment Cousar pulled out a gun, told her to undress, and forced her to perform anilingus. He then defecated in her mouth while she was doing so; he proceeded to force her to perform oral sex on him with the feces still in her mouth. She testified she, too, had not consented to being defecated on.

According to Cousar, Swanson's testimony greatly outweighed its probative value in that it created a prejudicial effect by establishing his sexual character as one that was perverse and violent. By admitting the allegations on record in front of a jury, the prosecution, through Swanson's testimony, successfully painted Cousar as a pervert who liked to defecate in the mouth of women against their will. The similarities—the forced oral sex, gun, and money—also painted him as an habitually

[208] Ibid.

sexually violent person. The appeals court determined, however, that the evidence was used not to establish sexual propensity but rather to establish, contrary to his claim of the defecation being accidental, that the defecation was a prior act that proved "absence of mistake or accident," as allowed by Maryland Rule 5-404(b).[209]

The appeals court upheld the circuit court's ruling, and Cousar's initial judgment stood. What this case highlights, however, is the potential undue effect that sexual propensity has on the outcome of cases and therefore the sentencing of convicted felons. It is unclear whether one could determine that the jury applied the rule in the same way that the court did—the court briefed the jury on the definition of reckless endangerment but not on Maryland's evidence rules. It stands to reason that the jurors might have misapplied the rule, drawing on their own commonsense understandings of the sexual propensity of sex offenders to be violent as well as the then-recent public changes to Maryland's own sex offender laws, which required retroactive registry of certain child sex offenders, a move that also trafficked in concerns about the propensity of these offenders to reoffend. Put otherwise, jurors might have likely focused on the grotesque and violent parallels between the two incidents that then produced the character of Cousar as one that was perverse and violent rather than making a determination about whether an accident occurred.

What is certain, however, is that Cousar felt as if he was not given due process by the law as a result of the admissibility of Swanson's testimony. Had her testimony not entered, it is equally unclear if he would have been convicted of third degree sexual offense, an offense that requires he spend the rest of his life on the sex offender registry and makes him a sexually violent predator. Being on the registry for

[209] Ibid.

life, in that category, means he can be civilly committed indefinitely *and* could potentially be placed back in prison if he fails to report every three months to a police precinct to register. Cousar will always, as it stands, be a subject whose sexuality is intimated by and constituted through its relationship to carcerality as the result of his character being evidence of sexual violence. He cannot ever, then, be rehabilitated. Through the manipulation and misapplication of Rules of Evidence, Cousar's prior history becomes proof of any future potential to commit sexual violence. From an evidentiary standpoint, he will always have the character of a sexually violent pervert. He inhabits a *carceral sexuality*.

In drawing out the long history of rape laws and the logics that produced them, paying particular attention to statutory rape and age of consent, I have shown how concerns about the safety of women and children were actually the basis for the development of sex offender registries. In response to these concerns, various technologies of governance—the registry, sex offender notification systems, and civil commitment clauses—were created in an attempt to manage, through punitive practices, sex offenders. I conclude with specific attention to Maryland's rules of evidence to think through the ways in which sex offenders are constituted as having what I theorize as *carceral sexuality* that is constantly tethered to carceral institutions based on their being understood as nonrehabilitative. This chapter plots the terrain on which homeless sex offender laws in Maryland are created and also resisted, the topic of my next chapter, as well as the terms on which homeless sexuality is constituted and managed, which I explore in chapter four.

Chapter 3: Surveilled on the Streets: Black Male Sex Offenders and the Liminality of Home

Introduction

In Montgomery County, Maryland there are approximately 330 individuals who are on the sex offender registry (SOR). Of those on the registry, roughly 6 percent are homeless or transient—the majority of whom are lifetime-registered offenders, having been convicted of sex crimes that were violent in nature and/or involved a child. The registry functions to hypersurveil and stigmatize black men by disproportionately making and keeping them homeless. For example, black men make up 19 percent of Montgomery County's population and 27 percent of registered sex offenders in the county. However, an overwhelming 70 percent of homeless sex offenders in the county are black men. Put otherwise, as of May 1, 2017, there were 21 men who are registered as transient or homeless in the county; 15 of them are black men.[210] The unequal distribution of homelessness along racial and sexual categories is not by happenstance.

In this chapter, I will outline how juridical articulations of deviance transmogrify[211] and produce black men into perpetually homeless sex offenders who

[210] These numbers shift from month to month. Over the course of two years, I interviewed 18 male sex offenders. All of them were homeless in and out of Montgomery County, Maryland over the course of those two years, but at no point did the registry actually reflect them all on the registry at the same time in the county. Moreover, the average over the two years tended to be 20 homeless sex offenders broke down racially as follows: 14 Black; 3 White; and 3 Latino.

[211] While transmogrification is understood as a transformation that happens surprisingly or magically, which seems antithetical to my framing of the state as acting intentionally and methodically, I use it here to connote the grotesqueness of the transformation. Indeed the process of being marked and made into a sex offender is at once non-magical in its very juridical proceedings that facilitate this transition while it is simultaneously magical in the ways in which the naming of someone as a sex offender almost instantaneously changes one's perception of the individual. Within what can be minutes, a person goes from being human to grotesque, devoid of human sensibilities, qualities, or recoverable attributes.

then find themselves lingering on the streets of low-income areas and urban neighborhoods, those racialized geographies marked as the proper *homeplace* for black sexual deviance and violence. According to black feminist cultural critic bell hooks, *homeplace* is not just a place to live; it is also a place where people learn who they are and how they should be in the world. [212] The homeplace marked for my co-producers was not one they accepted; instead, they searched for their own. In searching for homeplace, these back men use key strategies in order to help themselves navigate and manage the day-to-day living a life on the streets under the regimes of hypersurveillance and visibility that make doing so seem impossible—what Simone Browne calls *dark sousveillance*.[213] That is, I argue these black male sex offenders take advantage of the very liminality of home afforded to them to carve space for belonging and living despite the legal and cultural frameworks that deny them home. Central to my analysis is the tension between house and home.

As African American historian Carol Stack very poetically asserts, "Home is a hard fact, not just a souvenir of restless memory, and for the people I know who made the journey away and back, home is in a hard land—hard to explain, hard to make a living in, hard to swallow."[214] Here, Stack is referring to the struggle of many African Americans returning from the Great Migration to claim home in the U.S. south; though, her statement speaks volumes to the overall precariousness of claiming the U.S. as home when black. Despite its hardness, though, there is still a relentless yearning to do so. The hardness of it all comes from the fact that the nation, home,

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[212] hooks, bell. *Talking Back: Thinking Feminist, Thinking Black*. Boston, MA: South End, 1989. 49.
[213] Browne, Simone, *Dark Matters: On the Surveillance of Blackness*. Duke University Press, 2015.
[214] Stack, Carol B. *Call to Home: African Americans Reclaim the Rural South*. New York: Basic, 1996. 18.

and locality all constitute what social geographer David Sibley calls "different sites of exclusion."[215] Black people—and many other non-white or privileged others—have been, to varying degrees and in varying different moments, excluded from claiming the U.S. as home. But they still do. Despite often not having or owning property, these claims articulate a sense of belonging that moves beyond territoriality and exclusion.

According to Toni Morrison, "'Home' seems a suitable term because… [it] helps me clarify my thoughts on racial construction. Second, the term domesticates the racial project, moves the job of unmattering race away from pathetic yearning...to a manageable, doable, modern human activity." In "home," race always matters and is bound to space and capital. Morrison's account of home requires that we pay serious attention to how race is built into landscapes and informs notions of legitimacy, authenticity, belonging, and community."[216] The mattering of race in the landscape does not lock us into the racist logics that structure the house of U.S. colonial power and its roots in the forced and displaced labor that destroyed (black) homes, dislocated and alienated blacks from their ancestral homes, and have left many blacks experiencing a sense of homelessness. Rather, she suggests that we can create space that is "formed by the inwardness of the outside, the interiority of the 'othered,' the personal that is always embedded in the public."[217] In this new space, we can imagine safety without walls, iterate unprivileged difference as prize worthy,

[215] Sibley, David. *Geographies of Exclusion: Society and Difference in the West*. Routledge, 1995. 90.
[216] Morrison, Toni. "Home." *The House That Race Built: Black Americans, U.S. Terrain*. By Wahneema H. Lubiano. New York: Pantheon, 1997. 5.
[217] Ibid. 12.

and conceive of a third, alternative, world that is "already made for me, both snug and wide open, with a doorway never needing to be closed. Home."[218]

As I illustrate through my interviews, the importance of the built environment, however, should not be replaced by a political yearning or imagination. Having a physical location with walls to exclude those outside forces that would impede healing, self-construction, and perhaps might have caused the trauma that requires a need for a homeplace is extremely important. Further, as Gaston Bachelard argues regarding the metaphor of the house, "a house constitutes a body of images that give mankind proofs or illusions of stability. We are constantly re-imagining its reality: to distinguish all these images would be to describe the soul of the house; it would mean developing a veritable psychology of the house."[219] Bachelard's argument points to the ways in which even the built environment (the house) is something that gets re-imagined. This re-imagining happens at the site of the body and the mind, where fear manifests; but, also, these are the sites where belonging and healing arise. In being attentive to the ways in which homelessness is about being without house *and* home, I conclude this chapter with content from eighteen semi-structured ethnographic interviews conducted over two years. In doing so, I point not just to the strategies the men use to navigate belonging to home under hypersurveillance but also to reimagine the very terms on which home is constituted.

Maryland sex offender regulations

Pushing the buttons intently, hoping to get buzzed into a complex in Baltimore, Maryland, ABC2 News correspondent Joce Sterman patiently waits for

[218] Ibid.
[219] Bachelard, Gaston. *The Poetics of Space*. First ed. Beacon Press, 1994. 17.

someone to let her in, but no such luck this time. The cameras are still rolling, so she moves on to the next location. She is on a mission, accentuated by the clacking of her pink heels as she briskly walks along the pavement.[220] As viewers watch, it is increasingly clear that there is an express sense of immediacy; the footage cuts from her swiftly moving feet to the pavement to the door to Sterman's speed walking form. At the next residency, an African American woman opens the door. With a printed photo extended toward the woman to review, Sherman immediately goes into action. "We're trying to find out if you recognize this guy; he supposedly lives down the street from you. Have you seen him before?" Sterman is searching for improperly registered sex offenders. Specifically, she is searching for offenders who registered as homeless but in fact have a home, thus breaking the law and infringing upon the rights of the general public to know when and if they are around a sex offender at any time. More than just cross-referencing the list of registered homeless sex offenders, which was roughly 100 people in 2010 when the report aired, Sterman is also seeking to enforce the law.

She opens the door to another apartment complex. The cameras cut to a man standing outside his door at the top of the steps. It is 31-year-old Joshua Bias, an African American male who was convicted in Ohio for sexual imposition and abduction. "We're doing a story about the sex offender registry, and you're on it and listed as homeless. Can we talk to you about that?" Bias waves his hand as if to suggest he is not interested, but to further illustrate his disinterest—and acute awareness of being on camera—he begins to back into the apartment. His initial

[220] The focus on her pink heels helps create a aesthetic juxtaposition of the vulnerable femininity Sterman embodies against the ruggedness of the urban landscape she walks and the black masculinity of her feature, Bias.

verbal response is unclear, because just as he goes to speak, a voice-over of Sterman gives viewers all the answers and information they need to know: "That's Josh Bias, a top-tier offender who was convicted of kidnapping in Ohio. He was listed as having nowhere to live," she narrates. Bias's then drowned out voice becomes audible, "I met with my…" He is unable to get all the words out before, clearly flustered, he lets out a heavy sigh and positions himself further in his doorway, out of view from the camera. "This is very uncomfortable," he states, almost pleading for her to go away and let him return to his daily life. The discomfort is in his voice. Before she leaves, Bias tells her that he is going to be registering at the address.

The interaction between the two is then replaced with updates on Maryland SOR laws as it pertains to homeless sex offenders. This moment has clearly been produced as a springboard for the supposed point of Sterman's segment: Maryland sex offenders who register as homeless or transient have to check in once a week with the registry or local police until they have a verifiable address. The Maryland General Assembly (GAM) passed the law in 2010 with "people like Joshua Bias" in mind. Sterman and Bias are brought back into view. This time, she has shifted from being at the bottom of the stairs to right outside his front doorway, hand on the doorframe, firmly planted. Comfortable. Authoritative. Bias's entire frame is completely out of view; he is hiding, tucked away. As if scolding him, she asks, "You're going to register this address…and comply with the law?" Moments after the interaction, he updated his address. Days later, he was removed from the property after the property management saw that he listed their address but was not on the lease for that—or

any—unit in the complex. Joshua Bias was now (properly) homeless. But, more importantly, he was in compliance with the law.

Sterman's anxiety over people like Bias manipulating the SOR is rooted in a broader cultural panic about the place of sex offenders in society. For the purposes of this chapter, though, what I find equally compelling about this exposé is the implicit recognition by lawmakers, the general public, and the media that the law cannot fully contain and manage offenders, so it is constantly shifting to account for ways that offenders have circumvented it. While the registry certainly creates obstacles to their everyday lives, offenders use various different tactics for gaining access to basic needs, joy, and pleasure despite a system of hypersurveillance that attempts to constrain them. Before I move to examining those modes of resistance, I will first map out the history of sex offender laws in the state of Maryland, specifically, as this is the terrain on and under which the sex offenders I interviewed have to navigate.

An Overview of Maryland Sex Offender Laws

In this section, I go through great pains to detail the changes to sex offender laws in the state of Maryland. My doing so at times seems and feels laborious and exhaustive, but I have only strategically included those changes that directly impact the lives of offenders. The minutiae are important, because every change to the law has a material consequence for the men I later interview. These changes also illustrate the overreaching extent to which lawmakers have endeavored to manage offenders. My focus in this section is intentionally on the changes in the law and the disparate effects of those changes and not the various cultural climates that produced these changes. I am interested in how the law shapes and frames the everyday lives of

offenders and how, through a series of sometimes haphazardly curated changes, the law and bureaucracy continually fail. It is through this failure and the perception of failure that the law continues to be amended. That is, the presence of amendment suggests failure; if the law was perfect, there would be no need to change it. The changes suggest something about the shifting ideas about sex offenders in the public and private sphere, but ultimately that is an arena I do not explore. This is not because of my lack of interest or efficacy; rather, all of the men with whom I spoke lived a life mitigated by the impact of the law. Thus, I chose to chart the shifts in the law that make these impacts, to varying degrees and at varying intervals, possible.

Maryland created its first registry in 1995, pursuant to the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program of 1994. This first rendition was codified under the formerly known Article 27, "Crime and Punishments," section of Maryland's Annotated Code. Building on the national panic and concern around child sexual assault and abduction, the law originally only applied to child sex offenders. Child sex offenders were anyone who had been convicted of child sexual abuse, any number of sex crimes against an individual under the age of 18, and anyone who had been convicted of a crime in another state that would constitute one of the aforementioned violations. Registrants were required to provide a signed statement to an offender's local law enforcement agency within seven days of release from an institution or change of address. The signed statement had to include the offender's name, list of aliases, address, description of the crime, date of conviction, place of employment, and Social Security number. They also had to submit themselves to the local law enforcement agency so that fingerprints could

be obtained and a photograph taken, which had to be included with the signed statement. Child sex offenders were required to register annually, provided no changes to address happened, which had to be reported within seven days. Registration lasted for a period of 10 years. Failure to register was constituted as a misdemeanor charge that carried up to three years imprisonment and a fine of $5,000.[221]

Upon registration, local law enforcement agencies were required to send notifications to the county superintendent. They could also, but were not mandated to, send notices to religious organizations, community organizations, and any other set of organizations that related to children or youth. This information was disseminated usually via a flyer notification or police check-in, as electronic notifications were not authorized because there was no provision allowing the Department of Public Safety and Correctional Services (DPSCS), the organizing state department agency in charge of enforcing and maintaining the registry system, to post information on the internet.

On July 1, 1997, the GAM expanded sex offender registration laws to include an additional three categories of sex criminals: offenders; sexually violent offenders; and sexually violent predators.[222] These expansions were an attempt to be in compliance with the federal Pam Lyncher Sex Offender Trafficking and Identification Act of 1996 and the Jacob Wetterling Improvements Act of 1997. The new categories were intended to distinguish offenders based on the persistence of the offender, the use and extent of violence, as well as those crimes committed against anyone 15 years of age and under. That is, unlike offenders or sexually violent offenders, individuals

[221] 1995 Md. Laws ch. 142.
[222] 1997 Md. Laws ch. 754.

falling into the category of "sexually violent predators" were defined both by the severity of the offense and by their prior record, which was understood as indicative of their risk of re-offense.[223]

The new law changed the very categories into which registrants fell as well as the duration and frequency of registration. Child sex offenders, offenders, and sexually violent offenders were required to register annually for 10 years. Sexually violent predators, however, were required to register every 90 days until the court determined they no longer fit into the category—until they were no longer perceived as likely to re-offend. Offenders and sexually violent offenders were able to register by sending in a signed registration statement via mail to the DPSCS whereas child sex offenders and sexually violent predators were required to register in-person. These provisions, congruent with the 1995 version, only applied to those offenses committed on or after July 1, 1997. They did not apply retroactively.

Two years later, the GAM enacted new legislation that began to tighten the constraints on sex offenders. Most notably, these amendments increased the length of time on the registry, expanded registration content, and allowed for information to be posted on the internet. Previously, the distinguishing temporal difference between registrants was the frequency with which they had to register, as every registrant had to uniformly register for a period of 10 years. The new law instead instituted a lifetime registration requirement for certain sexually violent offenders and certain child sex offenders. For instance, if an offender was convicted of sexually abusing a child 12 years of age or older, the registration term was automatically 10 years with an annual in-person registration requirement. If the offender was convicted of

[223] Ibid

sexually abusing a child 12 years of age or younger and penetrated the child orally, vaginally, or anally or caused the child to penetrate his/her abuser, the registrant was automatically given a lifetime registration term with an in-person registration requirement every 90 days.[224] Sexually violent predators were required to register in-person every 90 days for life.[225]

Under the new law, registration statements were mandated to include any information about an offender's school enrollment, sex offense history, any treatment received for mental health abnormalities or personality disorder(s), a physical description or any unique identifying characteristics, whether or not s/he met the definition of a sexually violent predator, and any anticipated future residence, if known. DPSCS was authorized to post this information on the internet, with the exception of mental health treatment, Social Security number, and sexual offense history.[226]

A new set of provisions were rolled out in 2001. These provisions were engendered through a series of procedural changes to Maryland law that were being made. Namely, the sex offender notification and registration provisions were recodified from Article 27, § 792 to the Criminal Procedure Article, § 11-701 et. seq. During this transfer, the GAM for the first time created the requirement for retroactive application of sex offender registration, making all provisions apply to any person convicted of a sex offense prior to the enactment of the 1995 statute. In other words, until 2001, sex offender registration and notification laws only applied to individuals who committed a sex crime on or after October 1, 1995.

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[224] 1999 Md. Laws ch. 317.
[225] Ibid.
[226] 1999 Md. Laws ch. 402.

As of October 1, 2001, Maryland law mandated retroactive registration for all categories of sex offenders for acts committed prior to 1995 or 1997, depending on the sex offense, who were also in the custody or supervision of a supervising authority for the qualifying sex offense.[227] Child sex offenders who committed their crime before 1995 and were in the custody or supervision of a supervising authority on October 1, 2001 were required to register for life every 90 days. Registration for all other sex offender category was mandated if the offenses were committed on or before July 1, 1997, and the offenders were under custody or supervision on October 1, 2001.

Maryland sex offender laws did not change in any substantive way until 2006 when they became more punitive in terms of registration lengths, punishment for failure to register, and restrictions on where offenders could go. The frequency of registration increased to every six months for offenders, child sex offenders, and sexually violent offenders, unless the crime was previously codified as one that required lifetime registration every 90 days. This change was intended to capture all those offenders who were previously only required to register annually. Sexually violent offenders and offenders were required to register in person as well, which in effect required that every category of offender register in person; there was no longer a mail-in option.[228] The GAM likewise increased the penalty for failing to register, authorizing any subsequent conviction for failure to register a felony punishable by up to five years imprisonment and a $10,000 fine. Additionally, sex offenders were prohibited from entering any real property being used for elementary or secondary

[227] 2001 Md. Laws ch. 221.
[228] 2006 Md. Laws Sp. Ses. ch. 4.

education or child day care, irrespective of the offense, and with limited exceptions, such as picking up a custodial child or with permission from a supervising authority.[229]

The 2006 legislative changes also ushered in two new modalities for tracking and policing sex offenders: First, the new law required offenders to provide samples of their DNA at the time of registration unless they had already done so.[230] Second, a new category of sex offenders was created: "extended parole supervision offenders." These were offenders who were also mandated to serve a term of extended sexual offender parole supervision lasting anywhere between three years and life.[231] Extended parole supervision could include being geospatially monitored through global positioning satellite (GPS) trackers, participation in a sexual offender treatment program, restrictions on where the offender could work and/or live, subjection to regular polygraph examinations, and prohibited use of drugs and alcohol.[232] These changes marked a decisive move away from the SOR being conceived of as just a mode of tracking and disseminating information about sex offenders to one that functioned as a form of punitive hypersurveillance. This hypersurveillance was characterized by the increased and extended frequency with which offenders were required to submit themselves to local law enforcement offices for registration, internet databases emerging that made their whereabouts more publicly accessible, GPS tracking devices used to locate specific offenders, mandated therapeutic treatment, housing and work restrictions, and higher penalties for failure

[229] Ibid.
[230] Ibid.
[231] Ibid.
[232] Ibid.

to register, despite the terrain of the law steadily changing, making it hard for offenders to keep track of their own legal obligations.

The punitive hypersurveillance only increased after 2006. In 2008, the GAM amended the law to require that sex offenders provide any former names, e-mail addresses, computer log-in, screennames, or identities, instant messaging identities, electronic chat room identities, a copy of his or her driver's license or identification card, and the license plate number and description of any vehicle they regularly operated.[233] The next year, retroactivity provisions were overhauled to include sexually violent offenders and sexually violent predators convicted on or after July 1, 1997 for offenses committed before July 1, 1997. This was a carte blanche retroactive registration requirement that, in effect, required anyone who had committed a crime prior to 1995 (or 1997, in the case of non-child sexual abuse cases) but were not convicted until after 1995 (or 1997, respectively) to retroactively register.[234]

Following the passage of the 2006 Adam Walsh Child Protection and Safety Act, sex offenders were reclassified into tiers. Tier I offenders had to register in-person every six months for 15 years with the possibility of a reduced term of registration.[235] Tier II offenders have to register in-person every six months for 25 years. Tier III offenders have to register in-person every three months for life. Unlike Tier I offenders, Tier II and Tier III offenders cannot petition for a reduction in the term of registration. Additionally, the window for registering was reduced from seven days following a qualifying event or release from an institution to three days. The same applied for reporting changes of address. Whereas offenders only had to inform

[233] 2008 Md. Laws ch. 352.
[234] 2009 Md. Laws ch. 541.
[235] 2010 Md. Laws chs. 174, 175

authorities if they intended to move prior to their moving, the 2010 provisions required that they inform authorities in writing an itinerary preceding any absences from their homes that was to last longer than seven days. [236]

The GAM also made more stringent retroactivity clauses. This new legislation required that any person who qualified as a Tier I, II, or III offender *and* was under the custody or supervision of a supervising authority on October 1, 2010 or was already subject to registration on September 30, 2010, as well as to any person convicted of any crime on or after October 1, 2010, who had a prior conviction for an offense for which registration as a sex offender, must register. What this provision meant was that people could be retroactively added to the registry for committing a crime that was not sexual in nature should they have already been convicted of a sex crime in the past for which they were not required to register so long as that crime happened after October 1, 2010.

The sweeping retroactive registration requirements were not the only jarring changes that happened in 2010 that make palpable the state's investment in hypersurveiling sex offenders. In 2010, the GAM amended the law to reflect a growing concern about sex offenders' abilities to potentially find legal loopholes to obscure their relationship to the registry, particularly when it came to homeless individuals. Prior to 2010, individuals who were homeless or transient were required only to register as homeless or transient and had to report a change in address within seven days. Because there were concerns that sex offenders would simply lie about their living situations, as demonstrated by Sterman's exposé, the new law requires that a homeless registrant also register in person with the local law enforcement unit

[236] Ibid.

in each county where the registrant "habitually lives" within 3 days after the earlier of the date of release or after registering with the supervising authority; and within three days after entering and remaining in a county. After initially registering, a homeless registrant "shall register once a week in person during the time the homeless registrant habitually lives in the county."[237] To habitually live in a place means to live, sleep, or visit that place "with any regularity, including where a homeless person is stationed during the day or sleeps at nights."[238] Further, it includes any place where a person visits for longer than five hours per visit more than five times within a 30-day period. Arguably, a person who works eight hours a day, five days a week or even just five times a month "habitually lives" at his/her place of employment.

The shifting sands of the SOR makes it not only difficult to narrate but also difficult to navigate. What is clear through all the shifts is that the state has made a deep investment in creating ways to target and police sex offenders and that each shift was an attempt to perfect an imperfect system. These shifts often included some form of reclassification of offender, had a temporal component related to time on the registry or frequency of registration, contained an aspect of physical approximation either in terms of where offenders could not be or how many close encounters with law enforcement they were required to have; and with the question of home. Having an address, a place to call home for the purposes of being visible to the state for surveillance was such a taken for granted assumption of the registry that new laws had to be created to define what constituted a residence or home. In this next section, I will briefly focus on two landmark cases brought forth by homeless sex offenders

[237] CP 2010 § 11-705(d). Section 11-705(d)
[238] Ibid.

that illustrate the challenges that sex offenders made to the law, as an act of resistance, which suggests that even though the law constructs their identity and polices them there are still limits of hypersurveillance. These cases are *Raymond Twine v. State of Maryland* and *Doe v. Department of Public Safety and Correctional Services,* respectively.

Challenging the State on Its own Turf

In this section, I map out key legal challenges to the law brought forth by convicted offenders. I do so not to continue to center the law and its (often failed) attempts to organize and define the life of sex offenders and the terrain of possibilities afforded to them. Rather, I take these cases to be indicative of sex offenders' attempts to challenge forms of hypersurveillance. They function as what Simone Browne refers to as *dark sousveillance*. Browne argues *dark sousveillance* operates as a critique of racializing surveillance and works as a way to render one's self out of sight; it is anti-surveillance and oppositional. Through her demonstration of the historical ways in which race informs surveillance practices as "technologies of social control" organized around and through blackness, she offers a critical framework for thinking about my own work with these black male sex offenders. According to Browne, *dark sousveillance* "charts possibilities and coordinates modes of responding to, challenging, and confronting a surveillance that was almost all-encompassing…it speaks to not only observing those in authority….but also to the use of a keen and experiential insight of [surveillance] in order to resist it."[239]

The SOR, as demonstrated by all of its developments, has attempted to be an all-encompassing mode of regulation, but the fact that it keeps changing to fill some

[239] Browne, Simone, *Dark* Matters. 21-22.

perceived void illustrates quite clearly that it is not. I want to argue that the men who challenge the hypersurveilling nature of the registry through the courts, as well as everyday acts of resistance, do so by drawing on their keen experiential insight and their unique position as hypersurveilled subjects, as black men who are sex offenders and homeless. Sometimes, as in the case of juridical challenges to the law, this means making oneself even more visible to modes of regulation and figures of authority; it means memorializing oneself and one's criminal history through the law; it means suturing oneself to one's crime beyond the registry and into precedential history that gets called upon and cited to make future decisions about other sex offenders. Other times, it means finding blind spots, creating loopholes, or lagging and shifting the same way the law does.

Raymond Twine v. State of Maryland

Raymond Twine was convicted of failing to register as a sexually violent offender due to his failure to provide notice of change of address to the Department of Public Safety and Correctional Services, which violated the state's requirement to provide a written notice of change of address to the Department within seven days of the address change.[240] On July 14, 2004, Twine reported to Montgomery County Headquarters to change his address from one location (18517 Eagles Roost Drive) in Germantown, Maryland to another (20013 Sweetgum Circle). Twine had not been living at Eagles Roost prior to moving to Sweetgum Circle. Rather, he was habitually residing at 11651 Nebel Street, the Montgomery County Pre-Release Center, where he had been previously confined for violating the terms of his probation. While changing his last-registered address from Eagles Roost to Sweetgum Circle, he was

[240] *Twine v. State,* 395 Md. 539, 910 A.2d 1132 (2006).

informed that, should he change residences again, he would have to give written notice of his changed address within seven days. Two weeks after moving to his new address at Sweetgum Cirlcle, 48 fliers were distributed to his neighbors and community organizations notifying them that Twine was a registered sex offender and had just moved into the neighborhood, pursuant with Maryland's sex offender notification provisions—almost twice as many fliers as had been distributed at his Eagles Roost apartment. The following month, Twine was evicted from his unit, which he indicated was directly related to the circulation of fliers that named him as a sex offender. As a result, he became homeless.[241]

While homeless, Twine contacted Detective Don Inman, one of the detectives who monitors the SOR, to inform him that he was homeless and therefore had no place to live. On neither occasion was Twine informed that he was in violation of the law, so he continued actively looking for a place to live. Meanwhile, on December 14, 2004, six months after he was evicted, the property manager at Sweetgum Circle reported to the police, who were presumably checking in on Twine because he was on parole, that he no longer resided in the unit. Twine was therefore charged with failure to register on the basis that he had not updated his address within the seven-day period required by law. Twine appeared in front of the Montgomery County Circuit Court, where he argued that he was not guilty because he had complied with the law by orally informing a detective that he was homeless and that the law only required him to provide written notice when he moved from one address to another, which he had successfully done when he moved from Eagles Roost to Sweetgum Circle. Instead, he argued, the language of the law was exceptionally vague when applied to

[241] Ibid.

homeless offenders because there was no clear definition of what constituted a residence. The court denied his argument and found him guilty; he was sentenced to ten days of incarceration, which was to be served concurrent to the time he was already committed to for parole violation.[242]

Twine appealed the Circuit Court's decision and was granted certiorari[243] by the Court of Appeals of Maryland, a process that took roughly one year. Twine's defense argued that the evidence at trial was not sufficient to prove that he violated the law, as the state had not proved that he had a residence to which he could register. In order to resolve the issue, the Court of Appeals turned to the rule of statutory construction to determine whether Twine changed residences when he was evicted and became homeless. The goal of statutory construction is to give effect to the intent of the legislature; that is, statutory construction only attempts to make sense of the terms of the law vis-à-vis the intent of the legislature. Through this process, the Court determined that Twine had not violated the law. In effect, the Court determined that the legislature had interchangeably used the terms "address" and "residence" in the body of the statute, which the Court interpreted to connote a degree of permanence or intent to return to a place rather than a constant transience. To reach this conclusion, the Court turned to both the Washington Court of Appeals and the Minnesota Supreme Court.[244]

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[242] Ibid.

[243] Latin for "to be more fully informed," this an a writ of order wherein a higher court agrees to review the decision of a lower court, most commonly the Supreme Court of the United States agreeing to review the judgment of a lower court. Granting certiorari is discretionary; higher courts are not required to grant review. It is the petitioner's job to present enough compelling evidence that the majority of judges (in the case of the Supreme Court, that is four judges) grant certiorari. A denial means the lower court's ruling stands.

[244] Ibid.

Some seven years prior, the state of Washington had considered a similar issue and reached the same conclusion, which was instructive to the Maryland Court. In the *State v. Pickett*, the Washington Court of Appeals determined that Washington's sex offender registration statute did not apply to homeless offenders because homeless individuals could not provide a "residence address" as required by the law.[245] The Court argued that residence constitutes a sense of permanence that homeless individuals are not afforded. A similar determination was made by the Minnesota Supreme Court wherein the court held in *State v. Iverson* that the defendant was not in violation of Minnesota's requirement to notify the authorities of a change of address. The Court asserted that if someone does not "live somewhere mail can be received and they can provide a five days' notice that they will be going there," the person could not comply with the statute. Thus, the defendant, who reported he did not have a stable living condition, could not be held to the standard of the statute.[246]

The Court was clear to establish that they were not, however, articulating that being homeless was sufficient enough to preclude someone from the statute. Rather, they argued, "A bald assertion that one is homeless may not preclude application of the residence requirements of the statute. A factual inquiry into the offender's living situation is required to determine whether compliance is possible."[247] The Court established that some homeless individuals experience moments of permanence that could allow them to establish a place as a residence. It was therefore the burden of the homeless offender to prove that s/he was in a living situation that did not make it

[245] *State v. Pickett,* 975 P.2d 584 (Wash. Ct. App. 1999)
[246] State *v.* Iverson, 664 N.W.2d 346 (Minn. 2003)
[247] *Twine v. State,* 395 Md. 539, 910 A.2d 1132 (2006).

possible for him/her to claim a place as a residence, even if just temporary. The Maryland Court of Appeals used these two logics to determine that Raymond Twine was not in violation, with emphasis placed on Minnesota's clarification that not all homeless individuals are inherently exempt from residence reporting. The Court found that because Twine reported he was "staying wherever he could" that he fell into the category of homeless sex offenders who were unable to meet the definition of having an address or residence.[248]

The Twine case set landmark precedence, through statutory construction, that established for future cases a clarification on how to interpret "change of address" and "change of residence" requirements proffered by the state. Twine's challenge to the state provided a framework of relief for homeless sex offenders whose inability to update their address left them vulnerable to incarceration and fines without legal recourse. It further pushed the state to more clearly define requirements for homeless sex offenders, which did not occur for another five years.

Doe v. Department of Public Safety and Correctional Services

Whereas the *Twine* case tackled the question of residence and address, the *Doe* case wrestled with the legality of Maryland's retroactive registration requirements, a recurring provision that was expanded from 2001-2010. This case was a milestone case, as it reversed earlier decisions that upheld the constitutionality of retroactive registration. In specific, it highlighted the extrapunitive nature of retroactive registration provisions, which often functioned to punish individuals who had either already served their time on the registry or who would not have otherwise had to be on the registry if it were not for such provisions. In practice, these

[248] Ibid.

provisions produced certain individuals as sex offenders who needed to be hypersurvielled as a way to manage and stigmatize them rather than to keep track of individuals who were actively violating the law, as was the intent of the registry.

John Doe, a pseudonym granted to the defendant after he successfully moved to have his name stricken from the record, was convicted on June 19, 2006 of a single count of child sexual abuse, a crime he committed during the 1983-84 school year when he had inappropriate contact with a 13-year-old student while he was a junior high school teacher. In 2005, a former student reported the sexual misconduct, for which Doe was charged with multiple different sex offenses related to children.[249] On June 19, 2006, he entered into a plea agreement wherein he pled guilty to one count of child sexual abuse, which had a maximum sentence of fifteen years incarceration. In the agreement, Doe was entitled to a pre-sentencing investigation, allowed to remain on bond until the sentencing date, given a five-year cap on the actual term of incarceration that would be imposed on him, and informed that the state would not pursue other outstanding charges or any related uncharged crimes. At no time in the plea agreement was it stipulated that Doe would have to register as a sex offender.

During the sentencing, the trial judge noted that Doe "appeare[ed] to have rehabilitated [him]self significantly since the time of [the] incident," while simultaneously acknowledging that child sex abuse was "a very serious and heinous crime" that he nonetheless did not think would occur again. As such, he sentenced Doe to ten years incarceration, suspending all but four and a half years, and three

[249] Doe v. Department of Public Safety & Correctional Services, 430 Md. 535, 62 A.3d 123 (Md. 2013).

years of supervised probation following release from prison. As a condition of his probation, he was ordered to register as a child sex offender and pay a fine of $500.[250]

Doe filed a Motion to Correct an Illegal Sentence a month later, arguing that the trial court lacked the authority to require him to register as a child sex offender or pay a fine. Specifically, Doe asserted that the prevailing legislation on sex offender registration only required retroactive registration if the child sex offense was committed on or before October 1, 1995 *and* the offender was under the custody or supervision of the supervising authority on October 1, 2001. At the time of the offense, there was no existing registry nor was he under the custody of a supervising authority on October 1, 2001.[251] The Circuit Court agreed with Doe and struck down both the fine and the requirement to register as a sex offender. He was released early from prison in December 2008.

Following his release from prison and subsequent judgment finding that he did not have to register, Maryland's child sex offender laws changed again. The new law in 2009 requiring that child sex offenders who committed a sex offense prior to October 1, 1995 but convicted on or after October 1, 1995 and for which an offender had not previously registered placed Doe back in the same predicament. His probation officer directed him to register with the threat of arrest and incarceration for failure to register. Subsequently, against the advice of his lawyer, he registered as a child sex offender in October 2009. The next year, the registration laws once again changed; this time, the development of varying tiers and extended registration times left Doe facing the reality of having to register for the rest of his life. With the weight

[250] Ibid.
[251] Ibid.

of that reality in mind, Doe filed a motion for a Declaratory Judgment with the Circuit Court of Anne Arundel County asking for a declaration that he not have to register as a sex offender under Maryland's new statutes.

Doe's argument relied upon the fact that he did not agree to be on the registry when he voluntarily pled out his case, which would in effect render his guilty plea an involuntary one.[252] The case was transferred to the Circuit Court of Washington County, the county where the crime was committed. The trial judge denied Doe's request for a declaration of relief and instead ordered that he not be removed from the SOR. Doe appealed to the Court of Special Appeals, which was unsuccessful. However, Doe was granted a writ of certiorari by the Court of Appeals of Maryland, wherein the Court was tasked with determining if retroactive registration requirements violated the *ex post facto*[253] prohibition under Article 17 of the Maryland Declaration of Rights, if the Maryland's sex offender registration laws violated Doe's federal and state constitutional rights to due process, and if Doe was entitled to specific performance of the plea agreement since it did not include or anticipate registration on the registry.

The Court did not reach to pursue or reach a conclusion on the latter two issues, as it found Maryland's registration laws in violation of the *ex post facto* prohibition of the Maryland Declaration of Rights. Article 17 states "… punishing acts committed before the existence of such Laws, and by them only declared

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[252] Ibid.

[253] An *ex post facto* law is one that changes the legal consequences of an action committed before the enactment of the law, which then produces retroactive consequences that were not enacted at the time of the committed action. This can include an array of consequences such as the criminalization of a crime that had not been previously criminalized; the increase in the status of a crime, placing it in a more severe category; increased punishment for a crime; or a change to the rules of evidence, as witnessed in the case of sexual propensity.

criminal are oppressive, unjust and incompatible with liberty; wherefore, no *ex post facto* Law ought to be made; nor any retrospective oath or restriction be imposed, or required."[254] The Court has interpreted that two critical elements must be present for a law to be unconstitutional under the *ex post facto* prohibition: (1) the law is retroactively applied; and (2) the application disadvantages the offender. Relying on the principle of *stare decisis,*[255] the Court committed to continue interpreting Article 17 as offering broad protections against disadvantaging offenders with the intent of preserving a basic sense of fairness—an offender should have fair warning of the consequences of his or her actions while being protected against oppressive, vindictive, or arbitrary legislation.

Based on the principle of fairness, the Court found that Doe's subjection to retroactive registry was both unfair and denied him the right to fair warning, as he was never informed he might one day be on the registry as a result of his plea agreement. Further, the Court asserted that requiring him to register had, essentially, the same effect on his life as placing him on probation and subjecting him to historical punishment of shaming through the public dissemination of his information, which are both forms of criminal sanction. Thus, retroactive registration imposed an additional criminal sanction beyond those to which he agreed and had been adjudicated. The judgment of the Court of Special Appeals as well as the judgment of the Circuit Court for Washington County were reversed, and the Circuit Court was directed to issue a declaratory judgment removing Doe from the registry.

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[254] MD. CODE ANN., CONST. art. XVII, § 2 (1981)

[255] A Latin term meaning, "to stand by things decided," this legal doctrine is an established principle whereby judges decide to uphold a previous precedence established by the court because that precedence has authoritative force in all future decisions.

Though a grueling legal process, Doe's persistence to challenge the constitutionality of retroactive sex offender laws resulted, ultimately, in his being removed from the registry, an act of dark sousveillance that is performed through the naming of the case itself. That the defendant is identified as "John Doe," as opposed to his legal name, was the result of his successful contestation of the law and removal of his name from public record—through both the registry and the legal case that produced its results. Here, I am suggesting that Doe's ability to use the law to refashion himself as anonymous fundamentally disrupts the intent of the SOR, which is geared at making hypervisible and accessible those individuals who have been convicted of a sex crime. This landmark case thus not only established as precedence the unconstitutionality of retroactive sex offender laws but also demonstrated how sex offenders manipulated the very technologies that codified them as offenders to also remake themselves into something other than offenders, as, indeed, John Dos. In the concluding section to this chapter, I draw on a series of interviews I conducted over the course of two years with street homeless sex offenders in Montgomery County, Maryland to establish alternative modalities for enacting dark sousveillance outside of direct challenges to the law—I focus on everyday acts of resistance.

Doing Dark Sousveillance on the Ground

At over 6 feet tall and 230 pounds, Charles is a big guy. His large frame squeezes into the small booth in the corner of McDonald's. This is a particular location he no longer visits because he has never been a paying customer there, and he has been cited a few times for disturbing the peace and disorderly conduct, common petty crimes waged against homeless people when loitering in a public place

or place open to the public. Charles chose this place intentionally. "I wanted to give a big 'fuck you' to that guy right there [he points to a round middle-aged white man with glasses]. That mothafucka is always riding us for bein' up in here, like it's his mothafuckin' house and we some type of invaders or squatters or some shit." He raises his voice a bit, "DON'T NOBODY WANT TO COME UP IN HERE NO WAY, WITH THIS STALE-ASS COFFEE." He stares at the employee, daring him to say something, holding his cup so it is visible, staking his claim to this space for today. I sit in silence, wondering what might happen if this escalates but proud to help bear witness to Charles' belonging. He breaks face, smiles, and apologizes for his behavior. "I'm not a bad guy; these cats in here act like I wasn't here before them. Like we wasn't here before them, ya feel me?"

Charles spent 25 years in prison in Florida for "you know…forcin; [his] girl," he leans in and whispers.[256] He had gone down to Florida in 1980 during college to meet his then-girlfriend with some of their college friends.

> *It was like a Spring Break trip…She had a crib, my boys wanted to hit up Miami, and so it seemed like a good time. But then things got out of hand; I got drunk, and I did something I can never take back…She ain't deserve that, and I'll never forgive myself. She ain't been the same since, moved back in with her mom, started doin' drugs and shit. I fucked up her life. I did that. I did. I carry that shit with me, and it really fucks me up, too. But then it's like, who am I to want pity? I ruined a life. She can't have kids I heard…*[257]

[256] In Florida, the charge itself is "Sexual Battery," an umbrella charge for a series of sexually violent charges, including rape.

[257] Charles later disclosed that he was not even sure whether or not her inability to have kids had anything to do with him nor was he even sure if it were true. However, there was an implied connection between her inability to reproduce and his sexual assault, even though he noted that the act itself was not physically heinous or forceful in nature. Rather, because he was understood to be a rapist, the extended assumption was that he had caused her to not be able to have kids. The murkiness of details and quick conclusion of causality illustrates the probative force associated with simply being

His words linger. He is trying to collect himself but quickly realizes it is not working. He stands up abruptly and rushes off to the bathroom. Ten minutes later, he returns, eyes pink. "Allergies," he says with a soft chuckle, grabs his coffee and chugs. "I can't believe these niggas thought I was really that pressed for this stale-ass coffee."

Upon his release in 2005, Charles came back home to Silver Spring, Maryland where he grew up, only to find out that things were different.

> Everything had changed. I mean I know they say life after prison is like comin' out to a whole new world, but this was some next level shit. It was like wow, this is another universe. This wasn't home no more. And I ain't have a place to live. It was wild. I remember thinkin, 'yo dumb ass was so quick to get out of prison, you ain't even have no place to go to. You could've stayed yo black ass right there and had three meals, a bed, and a roof over your head.

Charles could not return home in the metaphorical or literal sense—he did not know or belong to Silver Spring anymore, and his childhood home had been demolished; what stood there instead was a luxury apartment complex in which he could never afford to live, a complex from which he was trespassed for sleeping in the hallways one cold winter and therefore it was one to which he could not even return.

Prior to moving on his own to D.C. to attend college at Howard University, the first in his family to go to college, he grew up in a green and white 3-bedroom home right outside of downtown Silver Spring. His father worked for the city as a bus driver, and his mother worked at a day care center. His home was seized by the bank and then demolished after his mother foreclosed on it following his father's death in

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labeled a rapist. His being a rapist confirmed and made sense of a narrative that had never been verified—so much so that he internalized that narrative and blamed himself for it despite also being suspicious of it.

1992; she could no longer afford to make the payments despite only having 2 more years to go. His mother passed away in 2006, living in a HUD-subsidized apartment for seniors, one in which she could not allow her son to stay because federal regulations forbid lifetime registered sex offenders to live in federally-subsidized housing. She offered to risk it, but Charles would not let her, having already blamed himself for her losing her house in the first place. "She begged and begged, but I just couldn't see my 64 year old mother homeless on the streets with me over my mistakes. I slept in the woods that night instead, like an animal…I remember feelin' how I felt my first night in prison…like is this about to be my new home for the next 25 years, like for real for real?"

His interior scolding highlights the complicated ways that home and housing function as two distinct yet interconnected sites of belonging. The slippage, "this wasn't home" to "I ain't have a place to live" to understanding the prison and the woods as "home" suggests that home is often, if not sometimes exclusively, much more than just a place to live. Feminist cultural theorist bell hooks takes seriously the slippage between house and home and attempts to resolve the affective dimensions of home and the built environment of place (or house). Charles was looking for, and lost, what she calls *homeplace.* For hooks, *homeplace* is "that space where we return for renewal and self-recovery, where we can heal our wounds and become whole."[258] Indeed, Charles, like all of the men I interviewed, came to *homeplace* to heal the wounds he had inflicted on his then girlfriend, on his family, and on himself, but what he found instead was a system that did not want him there; he found out that despite his wanting and yearning that he would have to carve his own space for belonging

[258] hooks, bell. *Talking Back: Thinking Feminist, Thinking Black*. Boston, MA: South End, 1989. 49.

and living—homeplace—given the legal and cultural frameworks that denied it to him.

What Charles's narrative highlights is how access to home is equally mitigated by one's race and racialized experience, coterminous with one's sexual history and criminality. This issue is specific to the repudiation of black bodies such as Charles's in the Maryland/DC area and the nation more broadly as evidenced by the long history of racial minorities searching for, being denied, and yet building home in geopolitical spaces that often articulate them as outside of home—as, in fact, homeless. More pointedly, throughout the interviews I conducted, there was a continuous theme that emerged around the relationship between urban development and the men's homelessness. Many of the men had grown up in Maryland, scattered throughout Silver Spring, Rockville, and Gaithersburg, three of the largest cities in the county. These were also the locations where they became homeless upon release from prison. Charles's mother lost her Silver Spring home after she could not afford her mortgage so he had no home to return to and thus went to the streets. He acknowledges that he would not be able to afford to live in the area of his childhood home, anyway. More than that, returning to the space he called home had led him to getting trespassed, as his lingering black body on private property marked him as suspect.

Another co-producer, Ben, had a similar experience. When first released, Ben's sister offered to let him live with her in her newly built condo in the recently redeveloped area of Rockville, close to the metro station. This location was perfect for Ben, who at the time was actively seeking employment but did not have a car to

navigate the ever-changing landscape. Public transportation was his best option, and access to the metro opened up options about *where* he could look. Shortly after he moved in, his sister got a notification from the condo association threatening to take action against her if she continued to let a sex offender live on the property. Not willing to put his sister in the same predicament as him, Ben opted to leave of his own accord.

Having grown up in Rockville and wanting to still be close to his sister, Ben would frequently wander the area close to her home, stopping in at odd hours of the night for food and to shower—he was worried that the neighbors might see him if he came during the day. Ben did this for a few weeks until one day he was stopped by the police. Someone reported that a "suspicious looking man" was "lurking around the neighborhood at night." The interaction with the police resulted in him being arrested for failure to register; he had not reported that he was homeless. He spent six months in jail with 18 months of probation.

According to Ben, the encounter taught him to "keep [his] black ass in the ghetto where I belonged." This sentiment held throughout all of my interviews, with several men referring to similar experiences of being hyper policed in the places where they had grown up, all of which had gone through a phase of urban development resulting in the racial makeup changing. These changes also resulted in them standing out more, being visibly marked as not belonging to the landscape that some of them even helped build. All of them uniformly articulated that the best strategy for avoiding the hypersurveillance that comes with being a black male sex offender wandering the streets was to blend in or become invisible by aligning

oneself with racialized geographies where their bodies did not hail them as suspect, which almost inevitably led to them being targeted.

As an everyday practice, it was impossible for these men to make themselves invisible. When they needed food or sought pleasure or comfort, they had to remove themselves from the proverbial shadows in which they were expected to hide. Sometimes, they looked back, pushed back at and through the very systems that attempted to surveil them. They developed three key strategies aimed at helping them navigate and manage the day-to-day living a life on the streets as black homeless men convicted of a sex offense. These strategies, I argue, are examples of what Simone Browne calls *dark sousveillance*: 1) refusal to enter shelters and receive social service interventions as a modality for asserting and maintaining self-efficacy; 2) movement and transience as means of resisting the hypersurveillance built into the sex offender registration process; and 3) strategic non-compliance with sex offender regulations as a form of self-fashioning that allows these men to articulate their identity and desire outside of the registry or their sexual offense(s).

Refusing Shelter as a Form of Resistance

Doing intakes at a shelter is a mundane and often mind-numbing practice. You ask the same questions to different faces over and over again until the long line that wraps around the building has dwindled and everyone has a mat. People become check boxes, notations, and bed assignments. After six years of doing intakes in a shelter in Montgomery County, Maryland, it came second nature to me; I was never surprised by the answers I received, almost had the questions memorized by heart, and had become particularly talented at getting people to open up, to share their most

private information and deepest secrets in the name of service provision. I had gotten good at reading people. It is weird to say—or to think—but from time-to-time someone would cross the threshold into the shelter and that person would stick out. They would seem out of place, as if there was a certain somebody who belongs in a shelter. I could read it all over their bodies, though. THOSE intakes you remember.

It was hypothermia season, around mid-February back in 2012. A particularly bad storm had hit the area, so we had more intakes than usual for it to be so late in the season (hypothermia season starts in November). I was moving mechanically, trying to process as many people as possible; we were short-staffed yet again. I called for the next person, walked into my office, and waited. A young black man apprehensively entered, wearing a Pacific-ocean-sized hoodie that looked like it was actively swallowing him whole. He was about 5'4" and looked to weigh less than the clothes he was wearing. He seemed agitated, shifting back and forth in his seat, eyes darting around the room. Uneasy. I offered to get him a bottle of water, hoping that it might help calm him but also acutely aware of the symptomatic behavior he was displaying that could render my body a prime target for violence. I stopped in the front office, and my coworker nonchalantly asked me if I was okay. It seemed like a peculiar question, because no one is ever okay on days like this. He looked at me and continued, "the kid didn't try anything on you, did he? You know he's….'an offender'…I'll keep an eye on you" and then squeezed my shoulder, as if reassuring me of something. I almost absentmindedly nodded, not in agreement but confirming something to myself that I was already coming to realize: sex offenders were just as vulnerable in the shelter as they were on the streets. This was an observation not just

based on the interaction with my former coworker; it was one I was developing the longer I spent actively learning about the shelter's history.

The shelter, peculiarly named the Home Builders Care Assessment Center (HBCAC), was the only men's emergency shelter in all of Montgomery County, Maryland. Originally, the shelter—then named the Rockville Men's Emergency Shelter—was founded to keep men out of the inclement weather. The Rockville Men's Emergency Shelter consisted of three trailers where roughly 100 men slept every night on cold, bare floors with one blanket as bedding and one as a cover. There were two toilets and showers, and no food was served. In Spring of 2000, the Home Builders Care Foundation ventured a joint project with the Montgomery County Coalition for the Homeless (MCCH) and the Montgomery County Department of Health and Human Services to provide more stable, adequate shelter space for the growing population of homeless men in the county.

On November 1, 2000, a 5800 square foot, $1 million permanent shelter was erected. The new facility held up to 100 clients, and had 3 shower units and a kitchen. In 2009, an additional 3,800 square feet was added to provide more sleeping space, as the demand for more comprehensive services for homeless men began to increase. The current facility has 116 permanent beds, a kitchen, 6 showers, 6 stalls, 2 laundry rooms, a vocational lab, a multi-purpose room, on-site case management offices, 1 medical supply room, and 2 medical examination rooms. As the facility size grew, so too did the amount of services provided. Currently, "clients" have access to on-site case management, vocational and job training, in-house 12-step program meetings, medical care, mobile dental care, health education classes, and life skills training.

These services are largely funded by contributions from Montgomery County, accounting for just under $1 million a year of the $1.2 million budget. What this means, however, is that while HBCAC is part of a non-profit organization, MCCH, most of the funding comes from the county, which also means that the county plays a huge role in determining how the facility operates.

Every three years, HBCAC renews its contract with the county, making updates to its policies, procedures, and services. Over the past decade, there has been an increasing push from county officials for the coalition to better meet its mission, to end homeless in Montgomery County. This has had two significant impacts: 1) the number of clients taken in every year has steadily increased; and 2) the requirements for clients to become part of the program have also increased. Every year, between November 1 and March 31, HBCAC accepts any client who walks through the doors. Because the facility only holds 136 clients (116 in beds, and 20 on stacker bunks), every client beyond 136 gets sent to an overflow facility roughly 30 minutes and 13.5 miles away in Silver Spring, MD. At this facility, clients sleep on a mat in the gym of a community center, are given one blanket, have to be up at 5:30 a.m. every morning, and must be off the premises by 6:30 a.m., using public transportation subsidized by bus tokens they are given. However, on April 1 of every year, the client population is capped at 80. From roughly 200 people, 80 clients are picked to remain for "summer season." In order to remain, clients must meet the following criteria: 1) they must have become homeless in Montgomery County[259]; 2) they must be an adult male 18

[259]The county representative took great action to be very clear that there cannot be a residency requirement, but that this was to ensure that Montgomery County funding is going to primarily fund Montgomery County residents. The implication, however, has been that during the "winter season" (between November 1 and March 31) any client who did not become homeless in Montgomery County

years of age or older; 4) they have to be willing to work with a case manager; 5) a viable housing plan must be able to be developed for them; 6) they must be willing and able to address mental health and/or substance abuse issues; and/or 7) they have to be determined to be vulnerable.[260]

A major implication of the fifth criterion, the ability to develop viable housing plans for the client, has been that many clients do not get to stay during the summer season. Predominantly, these clients fall into three major categories: those who do not want to be placed into permanent housing; those who are unlikely to resolve their own homelessness expeditiously; and sex offenders. Sex offenders have time and time again proven to be very difficult clients to house due in part to the stigma around them—many people do not want sex offenders living in their neighborhood let alone their complex. The other obstacle is the state. Federal and state regulations have made it hard to (re)house sex offenders. Given these constraints and the sometimes oblique realties of the limited services that shelters can provide, particularly during the summer season, many sex offenders refuse to enter the shelter altogether.

Ben, like Charles and eight of the other individuals I interviewed, has never stayed in a shelter outside of extreme conditions for precisely the reasons my coworker represented. Since his release in 2011, he has slept on the streets of downtown Silver Spring, two blocks away from the shelter specifically designated to help provided emergency shelter for homeless people in the area during the winter

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must go to the overflow facility, and they can only be provided services for 30 days. The county, in some cases, will provide one-way travel vouchers to send those clients who did not become homeless in Montgomery County to either the location where they did become homeless or to a location the client has identified and verified will accommodate them.

[260] The county has defined vulnerability as physically or medically disabled. The number of clients who are 'vulnerable' and therefore do not generally meet the fifth criteria cannot be a 'substantial' percentage of the population, wherein the county has not defined what constitutes 'substantial' in this context.

months. Ben has never been there. He has had several homeless outreach workers approach him about going to the shelter to receive "life-saving" services, but he always politely declines. He does not want help. "They act like they have all these things they can do for me, but all they have is a bunch of people wanting to be in your business and not have anything for you." When Ben was first released, he stayed at a shelter in the northern part of the county, where he desperately attempted to get into case management services. "They told me they couldn't do anything for me, cos' they don't house sex offenders." Ben's statement is a reflection of the almost uniform, unofficial policy adopted by most shelters in Montgomery County.

At the time Ben entered the shelter, shelter and housing providers in the county had not begun moving toward a Housing First and harm reduction model of homeless services delivery wherein the idea was for shelters to be as low-barrier as possible—anyone can come—and housing providers would not require individuals to be addressing their barriers to housing as a condition of getting housing. Instead, all providers were operating on a housing readiness model that required case managers to assess how ready, and by default, how deserving one was of housing. As such, sex offenders were often not admitted to shelter as they were deemed "unhouseable" and therefore never ready or deserving of housing. In this context, Ben's refusal to stay at a shelter is also a rejection of social service intervention models that understand him to be without worth or value, as undeserving or not ready. More than that, though, Ben also witnessed first-hand the consequences of accepting so-called "life-saving" services that actually made him more vulnerable not to death on the streets but to death in the shelter.

> It was a normal day; I had been at the shelter for 2 nights—it was the weekend so I was waiting until Monday to see about a case manager—and there were all these guys sitting in the day room up at the Big House, and they had these two computers—why am I telling you this, you already know this—and there was this guy. Big and just loud like he was tryin' to make up for something. So there am I minding my business, I think watchin' the TV or somethin' and all of a sudden I hear the guy yell somethin' about a child molester. I don't pay him no attention, cos' he's always bein' loud, but then I see other guys walkin' over to him, and then they're lookin' back at me and then lookin' at the screen, and the staff is goin' over to look and then one of the guys charges at me from nowhere. I hit my head and was bleedin' and then another guy kicked me on my way down. I thought I was goin' to die. It took forever and the police to get them off me. I was pretty bruised up. I went to the hospital and when I came out they told me I couldn't even see a case manager anyway cos' they didn't work with sex offenders. I never went back.

Six of the men I interviewed shared stories of being assaulted in a shelter once others found out they were a sex offender. All of the men were called child molesters. None of them had a committed, or were convicted of committing, a child-related crime. Ben was found guilty of visual surveillance with prurient intent—he was identified as one of several men using mirrors to look up the dresses of women in a changing room of a Macy's Department Store—and unnatural or perverted sexual practices with an animal—he stuck fire crackers in the anus of a few neighborhood dogs that attempted to bite him; the latter incident led to his arrest, onto which they tacked the former charge.

In the context of a publicly accessible registration system that requires sex offenders to include their name, whereabouts, picture, date of birth, height, weight, and the address and name of their employer, refusal to engage in services that

might—and sometimes do—lead to the revealing of one's criminal history, a history from which one can never untether himself, becomes a critical modality for survival and self-efficacy. That is, despite shelters understanding sex offenders as "unhouseable" and therefore as deserving of perpetual homelessness, these men insisted on their ability to make and create home without help or housing. As Mike, another lifetime sex offender registrant, shared:

> These people think I need them to get off the streets, but the streets are my home…and not just because I can't get an apartment—I've had one—it's because I know the streets, and I don't have to worry about anyone kicking me off them. These are my streets too. Out here, we respect each other. I know this corner is so-and-sos and that tent belongs to this guy and so forth. I don't have to worry about these people trying to take shit away for me or me proving I deserve to have it. This space is mine, and no one can take it from me.

Mike's insistence that the streets are not just home but also *his home*, a home that he chooses to claim, refuses a narrative that might understand him as lacking and without, as a literal and metaphorical outsider, and instead suggests that he has accomplished a goal that was understood as unattainable by experts—he found home.

Refusal of resources, though often counterintuitive to many service providers, functions as a critical mode of creating and maintaining the boundaries of home, of how home gets defined and by whom. To be in a shelter meant, often, to be in a space that was constantly defined by one's sexual offense—that is, to constantly be defined by the "obstacle" to housing. Moreover, it meant being subjected to heightened levels of surveillance and scrutiny by shelter staff and shelter residents. This sometimes results in acts of public acts of physical violence. Refusing shelter, then, was a way to find home and safety differently.

Transience as Resistance

In July 2011, the state of Maryland became compliant with the federal standards set forth in the Sex Offender Registration and Notification Act (SORNA) after having previously been out of compliance. As part of the compliance, the state requires that transient and homeless individuals report to a "locally designated law enforcement unit" and register weekly unless living in a permanent shelter. This requirement holds regardless of tier. (Prior to 2011, homeless sex offenders were exempt from registration because The Maryland Court of Appeals ruled on November 15, 2006 that state laws made it impossible for homeless sex offenders to register, since the GAM had not made clear what it meant by "residency." The case was brought forth as a result of two sex offenders in Montgomery County being arrested for failure to register, even though they were homeless and therefore did not have an address for the registry.)[261] While Maryland's sex offender laws permit offenders to reside free from residential restrictions, homeless sex offenders are burdened with checking in to the police station weekly to update their profile in each county where they habitually reside or live. "Habitually reside or live" means any place where you live, sleep, or visit with any regularity, including where you are stationed during the day or sleep at night, and includes any place where you visit for longer than five hours per visit more than five times within a 30-day period.

This process has led to the hypersurveillance of homeless sex offenders. Not only are offenders on a searchable registry that can be accessed online, on a phone (there are at least seven downloadable apps that geospatially locate sex offenders) or

[261] Siegel, Andrea F. "Flaw Found in Md. Sex Offender Law." *Baltimore Sun*. N.p., 16 Nov. 2006. Web. 10 May 2013.

via a written notification that will be sent, upon request, to a household when an identified offenders moves into one's zip code, but also checking in to the police station once a week requires a constant, intimate surveillance that no other category of criminal offender experiences. The only way to reduce these ongoing engagements with the police is to be committed to a psychiatric unit, be remanded back to state custody, or have a permanent address. Transience, therefore, heightens the surveillance. And yet, the men I interviewed used transience as a way to, contradictorily, resist some forms of hypersurveillance.

Fred was released from prison in 2008. He spent 15 years behind bars after being convicted of sexually assaulting his wife and mother of his four children. Upon his release, he did not have anywhere to go, as his wife, who had not divorced him and was attempting to, slowly, reconcile for the sake of the youngest, 16-year old, daughter, would not allow him to move back into their home. His only relative, a sister, lives in Section 8 housing. She allowed him to stay with her for a few days but when she was asked to verify his address for the registry, she asked him to leave for fear of losing her housing. Between 2008 and 2011, Fred had multiple different apartments, usually room rentals or basement rentals, as the cost of fair market units without a housing subsidy was something he could not afford. Fred's income fluctuated, because he had a hard time maintaining employment once his employer discovered his status—most of the men did not disclose to their employers, for fear of shame and to protect themselves from the trauma of disclosure. They also did not disclose to their housemates or landlords.

> The first place I got when I got off the streets was this small basement efficiency from this nice white family; I

> met them at church, and they kinda checked on me and took care of me. They knew I was on the streets and that I had been in the pen and such so they helped me get a job and let me rent their basement...One day their daughter was talkin' to [the mother] and she said somethin' along the lines of, "I can't come home for Christmas with you havin that rapist in the basement" and that got them to talkin' and next thing I knew I was back on the streets.

Fred's experience was not unique. All of the men referenced having housing at some point and then losing it once their landlord or friend or coworker or neighbor figured out (or presumed to have figured out) their crime. "So I started to figure goin' into a livin' situation that I probably only have such-and-such long to stay, so I would get what I needed out of it—maybe some place for the winter or a place to, you know, bring my daughter and then I'd sort of go." Fred began only taking on month-to-month leases, so that he would not be caught off guard by being asked to leave. Living in the break, in the perpetual liminal space between being housed and then unhoused, made him feel safer.[262]

> You don't know how many times, once you put down that address, people start to change, start to treat you differently. Your neighbor that used to talk to you, she slowly starts talkin' less, starts to jump a lot more around you. The kids start to make up crazy stories about you. I've gotten notes and death threats, blamed for things I'd never done. I figured to hell with all that mess, so I don't stay in one place that long. I just get what I need and keep it movin'. It's easier that way. It hurts less.

Being untied to a place was a critical survival strategy for these men, as it allowed them to create an ephemeral sense of belonging, knowing that there was an

[262] I draw here from Fred Moten's In the Break: The Aesthetics of the Black Radical Tradition, wherein her describes "the break" as a liminal space wherein "a revaluation or reconstruction of value, one disruptive of the oppositions of speech and writing, and spirit and matter" occurs. (14) I understand the black male sex offenders as navigating and creating their own breaks wherein they are revaluing and re articulating their own ontology.

inevitability of the reveal, of the "knowing and speculating," as Charles described it, of their sexual crime. Settling down meant constantly feeling watched and scrutinized, policed and surveilled by neighbors and landlords and strangers walking down the streets. Having to check into the police station once a week, while difficult and degrading, was easier to process than the constant uncertainty of whether or not they would find themselves and their belongings back on the streets. Choosing transience was choosing control.

Non-Compliance as a Form of Self-Fashioning

Navigating the daily life on the streets for these homeless black male sex offenders was just as much, if not sometimes more, about creating home and controlling the terms under which homelessness happened as it was about recreating themselves. Because there is a prevailing popular mythos about black men as sexually aggressive and violent persons, as black men who were convicted of a sex crime, they frequently discussed having to negotiate sexual intimacy differently. Robert, a 45-year-old convicted of the possession and distribution of child pornography—he shared photos with his male colleagues of a 19-year-old girl posing and performing as a 15-year-old school girl—spoke at great length about how the sex offender registry makes it hard for him to find sexual intimacy.

> Everyone thinks I'm a rapist or some type of child molesting monster—I have two kids, for fuck's sake! But they see I had child porn and then it's like, "Oh he likes to touch little girls," and I ain't ever touched a little girl in my life. I just had this side hustle, and I didn't even know that shit was illegal. The girl was a grown ass woman. And now when I'm tryin' to pick up someone, it's hard enough I'm homeless and shit but now it's like people think I'm some kind of, you know, fucked-up pervert.

His tone and tempo escalated the more he talked about it, but it was clear it struck a chord with him, with most of the men. "This checking in every week shit makes it hard, but sometimes—between you and me—I just tell them whatever." Robert's confession of "telling them whatever" suggested, without him blatantly stating it, that he often fell into non-compliance with his registry requirements to obscure his location for the purpose of being able to stand a chance at intimacy. Charles referred to it as, "flying under the radar." Many of the men had deep concerns about the future viability of them being able to be seen as anything other than a sex offender, or a "child molesting monster," as Robert put it. The registry makes it hard for them; they all discussed having a romantic interest and at some point being confronted with their status—whether by their own admission or their sexual interest found out by checking or being told. In order to "really get to know someone to ease the blow," as Fred described it, many of the men would intentionally register in a different county or in the District of Columbia, with the hope of prolonging the inevitable.

> It doesn't always work…sometimes people just Google you, and it's right there…more people are doing that nowadays, and other times it's like you really have a chance to get to know someone, to maybe even hit it off and get a date, maybe some sex if that's what y'all want, without them being worried you're 'bout to rape them or some shit. It's like, for a second, you're normal. And then they find out you live on the streets. And then that you've done something 20 years ago that you ain't proud of, and it all gets taken away, but for like 3 weeks you was normal. Maybe a few months.

The desire to be something *other than sex offender*, to be "normal" was salient throughout all the interviews and interactions I had with these men. All of them, at one point or another, used their liminal relationship to home and their acute

relationship to the registry to their advantage as a way to refashion and redefine themselves, to create a sense of home that was otherwise denied to and for them, and to resist modes of hypersurveillance that otherwise destabilized their interpersonal connections and their relationship to housing.

Perhaps one of the most fascinating examples of this self-fashioning was Marcus. Marcus was a lifetime registered sex offender, having been convicted of raping his now ex-wife. He was convicted when he was 21. He did not go into detail about the terms of his sentencing, but he was very clear to state that the charges were "bullshit." As if to demonstrate how "bullshit" they were, he repeatedly mentioned that he and his ex-wife still sleep together and have, since his release, had a baby together. Marcus wanted very badly to have a child despite knowing taking care of one would be very difficult for him. His desire to do so was about his ability to recreate his identity and his legacy by making amends for his past.

> I am not who I was all them years ago. I'm a father now, somebody's daddy, somebody's role model. It's like…wow, I can do this all differently again. I'm a father first, all this other stuff, it don't mater. I'ma do right by my baby girl, and I'ma make sure she carries on my name, that she knows her daddy is a good man, that he loves her, and that none of these little wannabe gangstas or thugs are gonna touch her. I'm gonna teach her how to be loved—the right way. It's like I can sleep easier at night knowing I have a purpose…

Marcus went on to talk about all the things he planned on doing with her: taking her to prom, teaching her how to drive, showing her how to eat crabs, "the little shit" that makes a man feel like he matters. His spirit lifted as he talked about the endless possibilities for his and her future, even though he was often rushing off to do some under the table construction job so that he could help buy things she

wanted. His present conditions of homelessness and his desire to provide for his daughter seemed at odds with one another. I could not help but point out in my head that he was actually absconding from the law and that should he ever be arrested he would likely not see his daughter for quite some time, prolonging or perhaps altogether forestalling his vision. It was clear that Marcus was living for his daughter and refashioning himself not as *rapist* but as *father*.

Through redefining himself in relationship to his family opposed to the law and the subsequent criminal history that surveils him and forecloses possibilities for his future, Marcus's willful act of refashioning constitutes a mode of anti-surveillance. He works in direct opposition to his sex offender status to reconstitute himself as a father, provider, and a sexual subject capable of showing and practicing desire in non-violent terms. Moreover, his embracing of the framework of fatherhood bucks the popular myth of the absent black father. He is very much present in his daughter's life even as his status on the registry marks him as unable to be located. His daughter knows exactly where he is and vice versa.

By turning to the various strategies these men deploy to turn surveillance on its head, my intent is to draw attention to the limitations of the law, even as it attempts to be totalizing. Put otherwise, as demonstrated in the former half of the chapter, the law has morphed over time in multiple ways in attempt to constrain sex offenders through preemptively mapping out the various knowledges that might be useful to do so. These constraints, to me, speak more so to the inability of the law to fully capture or define sex offenders despite always trying to do so. That is not to say that the robustness of the law, engendered through bureaucratic processes that expand

its terrain, does not at times feel totalizing. Rather, my intent is to point out that the black male sex offenders with whom I engaged lived, imagined, desired, and found home *in spite of* the law's attempt to constraint them. They did so by using the limitations and contradictions of the law against itself, whether in court, through transience, or by refashioning their identity differently than the law or the popular imagination allowed.

Chapter 4: Shelter Denied: Trans Bodies, Bathroom Bills, and the Figure of the Sex Offender

Introduction

Lakiesha Washington. I had never heard her name before, but as I sat in a monthly meeting for homeless service providers, I had heard her name at least five times. She had sparked this meeting. Well, not her exactly. The idea of her. Lakiesha Washington is a black transgender woman who experienced homelessness in Washington, D.C.[263] She was denied access to a women's shelter because she could not produce documentation that she was a woman. From the perspective of the shelter staff, she was a man trying to access a women's shelter; from Washington's perspective, she was a black woman who needed a safe place to sleep for the night. That was why we were there. We were trying to figure out what our position was and should be as it related to the placement of transgender men and women in shelter. It was the first time we had ever addressed the issue as a collective. Historically, the issue would be left at the hands of whichever contract monitor was associated with the shelter. A transgender person would come to a shelter looking for a place to stay, the staff and program director would not know what to do, so the county contract monitor would be called.[264] From there, the person would either be placed into a men

[263] I write "experienced homelessness in D.C." to denote both a clinical language that describes her relationship to homelessness—she is not homeless as a subject position or identity; she is experiencing homelessness—and to name homelessness as relational and of the phenomenological. One can have a place to call and claim as home but live on the streets and therefore experience homelessness though typically not without home (i.e. homeless).

[264] In most shelter systems, and in Montgomery County in particular, shelters are managed by non-profit organizations who enter into a contractual agreement with local, county, and municipal governments to provide shelter services. In some instances, the government might also provide the shelter space as well. Non-profits are then reviewed on a continuing bases, as stipulated in their contracts, by a contract monitor who works as a government agent overseeing the contract. This person will typically do routine audits of financials, data, and client records to make sure the non-profit

or women's shelter, depending on the circumstances of the case and the climate of the shelter. If the shelter had been experiencing a few instances of homophobic or anti-gay outbursts by other clients, the transgender client might be welcomed but then told not to disclose his/her gender identity and to comport to his/her assigned gender at birth.[265]

For example, a transgender woman might be told she could not stay at the women's shelter for fear that too many of the women currently in the shelter had a history of sexual trauma and that having a "man" in the shelter would trigger that trauma. Instead, she would be placed in a men's shelter, because of her gender assigned at birth and the determination that her placement there would be less disruptive and therefore draw less attention to her. In this way, she would be safer. Upon being placed in the shelter, though, she would be encouraged to no longer wear women's clothing or disclose that she identifies as a woman or the men might harass her and call her gay. The slippage between being transgender and being gay relies upon an understanding of gender as a performance, as a mode of being that is expressed through one's actions, apparel, and stylization of the body. Therefore, to wear women's clothing and have male genitals signifies both a question of gender

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providing the shelter services are in compliance with the standards outlined in the contract. They also act as liaisons and consultants on issues that pertain to the daily operations and management of shelters. In Montgomery County, all contract monitors are licensed clinical social workers, which also means they will also provide behavioral health guidance and recommendations to shelter directors and shelter staff.

[265] I intentionally differentiate between "homophobic" and anti-gay to signify the varying degree to which some responses are rooted in a real fear of gay people based on past histories of sexual trauma, sexual delusions, or personal worry that engagements with gay people might result in one's own "becoming" gay, thus homophobia. Whereas, other responses are expressly against or in direct opposition to gay people and their "lifestyle," often manifesting in the desire to dominate and subjugate gay people. Anti-gay sentiments in this way differ from homophobia insofar as homophobia might result in an aversion to or avoidance of gay people while being anti-gay might result in antagonistic encounters, the systematic targeting of gay people for violence, and the denial of basic human rights by virtue of thinking of gay people as inferior to straight people.

and of sexuality. Within this milieu of competing definitions, ideologies, and practices as it related to our homeless system's broader understanding of what it means to be transgender and homeless, it was clear that if we were going to create a coordinated system across the continuum of care that would be attentive to these experiences, we needed some priming, so we invited a guest speaker to educate us in order to make an informed decision.[266] We invited Andy Bowen, who herself was heavily involved with the case of Lakeisha Washington through her own activism and job position.

For an hour, Andy, an activist and educator from the D.C. Trans Coalition, stood explaining to a room full of service providers, many of whom were licensed social workers, the difference between gender and sex, gender and sexuality, transgender and transsexual, and political morality and the law; most importantly, she explained why it was illegal and unethical to deny transgender men and women access to shelter and much-needed services simply because they do not possess official, state-sanctioned documentation of their identity. This had been the issue, after all. If the men and women entering shelters had official documents that matched their preferred gender identity, there would be no concern. Andy was met with resistance. Heavy resistance. *But what about the safety of the men and women who have experienced gendered sexual violence and have a traumatic response to seeing someone of the opposite sex in the place they sleep every night? Won't men just dress*

[266] In 1994, the Department of Housing and Urban Developments began requiring that each community serving homeless populations submit a community-based application for funding rather than the previous practices of submitting individual provider applications. This established the Continuum of Care (CoC) program, which is intended to be a more structured application process that stimulates communitywide planning and coordination of services so there is a more comprehensive system for mainstreaming services to clients without a duplication of services per client.

up like women so they can sexually violate already vulnerable women? How do we PROVE they are what they say there are if we don't ask for documentation? These questions came one after another, in rapid-fire secession.

The anxiety and frustration in the room was thick. People were raising their voices, interrupting Andy, and some left out of the room, flustered at not getting the responses they wanted. It was apparent that many of the people in the room were looking for validation about their own fears and beliefs and were less interested in having a dialogue about the very real ways that these policies negatively impact the lives of transgender people experiencing homelessness. The whole time, my heart raced; sweat trickled down my face as I squirmed in my plastic hard-backed chair. On a deeply personal level, I often felt inadvertently targeted by some of the anti-gay, normalizing discourse that circulated the room. I was, after all, the only openly gay person in the room.

There was a continued line of conversation that suggested the "trans issue" was just like the "HIV issue" of the 1980s, that as a continuum of care we needed to do how we did with HIV: stop stigmatizing it so much and also be silent. On at least two separate occasions people recommended encouraging clients to continue to go under the radar and just "dress like a man—or woman" depending on how the other clients presented. Doing so would allow them to just get through the system, get their own place, and go back to their normal lives. This was, as it was suggested, the same tactic providers encouraged people living with HIV in the 80s and 90s to do. "We can just put a special sign or symbol or something on their intake so all the workers know. Like how instead of saying some people had HIV we would write 'chronic health

condition,'" one of the licensed clinical social workers in the room offered as a solution. There were several affirming nods.

As an openly gay black man whose body regularly signifies HIV by virtue of being located close to the nation's capital, which at the time had the highest rates of HIV infection amongst black men who have sex with men, I often struggled to interject my own voice because of the peculiar side eyes and side glances I would get from the room the more and more we got away from talking about transgender people and the more we started talking about HIV and homosexuality. On a professional level, I was equally surprised by the positions people were taking—most of the people in the room had committed their life's work and scholastic endeavors to helping the most vulnerable populations. Some of them social workers, their guiding ethical mantra was to "do no harm." And yet, I watched as the same people who had taken otherwise progressive stances on women's reproductive rights, healthcare for the homeless, mass incarceration, and stigmatization against the homeless in general reproduce discourse that trafficked in the same kind of conservative undertones all of their other political beliefs attempted to undermine.

On several occasions, a few female service providers voiced their concerns about "trans-women-as men" potentially violating them on home visits (for those in a housing program) or overnight while working at the shelter.[267] A few others mentioned concerns about group homes. What happens when you place a "trans-man-as-woman" into a men's group living situation? Would that not be putting "her" in

[267] Because people could not agree on language, there was a recurring classification "trans-men-as women" and "trans-women-as-men" to distinguish between gender and biology. This provided a way to keep track of the "real" or "original" gender of individuals, which was to say that it was a way to index anatomy. These repeated refrains made clear that people were heavily invested in biological claims to gender opposed to thinking about identitarian claims.

harm if one of the men decided to violate "her" in "her" sleep? The countless questions hinged upon a deep-seated refusal to center the lives and experiences of transgender people and a concerted desire to also protect those very people from more harm, while still articulating the fear of them harming others.

Throughout the entire grueling one-hour meeting, Andy remained composed. Despite her hesitation to do so, on several instances she used her own body and experience as a transgender woman to reorient people's thinking as well as to humanize transgender people in a way, reminding people that *she* has never wanted to sexually assault women because *she is a woman and would not want to perpetrate further violence against fellow women.* I walked away that day realizing we had gotten no further as a continuum of care than when we started.

What we had clearly accomplished, though, was to point out how ill equipped we were to deal with the complicated intersections of race, gender, sexuality, and class in our shelter system. We had also made clear our investments in heternormativity and transphobia just as quickly as we had couched our desires not within the logics of anti-transgender inclusion but instead within the logics of safety and security for those *real* women who have experienced—or could potentially experience—sexual violence at the hands of a man. As we argued about the safety of trans men (or women, because no one could figure out the right language) who would be placed into a men's shelter, we simultaneously created monsters of our male homeless clients. If we allowed a trans man into the men's shelter, would the other men in the shelter not find out they were *really* women and sexually violate them as a result?

We wanted to accommodate trans men and women, really. That was the consensus; we just could not do so because we did not have the right bathrooms and showers, and we did not have the right population. Modifications to bathrooms cost money, and we did not have the money for that. Additionally, it was argued, the population we work with suffers from severe mental illness, substance abuse and sometimes cognitive impairments as a result of one or both of those. It was difficult to understand these concepts amongst "sane" service providers; how in the world would our clients understand? We walked away from the meeting with an understanding that we had a lot of work to do and many more conversations and trainings to be had.

As I drove to campus to make it in time for a graduate seminar I was enrolled in, "The Cultural Politics of Neoliberalism," I was reminded of what Lauren Berlant refers to as the "politics of sentimentality," which she argues is rooted in nineteenth-century U.S. liberalism through the discourse of social reform. Sentimentality as a national politic functions as "liberal rhetoric of promise historically entitled in the United States" that transposes questions of social inequality from the level of power to that of surplus feeling, where feeling bad indexes social injustice and feeling good registers triumph over oppression.[268] I felt bad. The room of service providers felt bad, but that feeling bad did not transform the collective reality of trans men and women who are denied access to shelter. It did not address the structural inequality that prohibited them from entering certain spaces.

It never could—due to the limitations of the politics of sentimentality and the ways in which structural inequality was concealed by the figure of the vulnerable,

[268] Berlant, Lauren. "The Subject of True Feeling: Pain, Privacy, and Politics," in *Cultural Pluralism, Identity Politics, and the Law*, eds. Austin Suart, and Thomas R. Kearns. Ann Arbor: University of Michigan Press, 1999.

potential victim of sexual violence against the backdrop of the victimizing sexual predator. Here, "vulnerability discourse not only obscure[d] but also render[ed] illegible a structural explanation of social inequality" that would have required us to interrogate the relationship between race, gender, sexuality, and class to understand how liberal sentimentality colluded with racist heterosexist transphobia to discursively produce the body of a homeless black trans woman as a weapon for sexual violence and non-trans bodies as sites of sexual victimization on the horizon.[269] Our desire to protect [real] vulnerable women reproduced the terrain on which trans women's vulnerability was erased and instead conscripted as an act of violence.

Moving beyond just feeling bad, this chapter aims to make legible the processes by which trans women (and their bodies) are denied access to shelters *and* to vulnerability but instead are hailed as potential sex offenders, a process that necessarily scripts non-trans women as helpless victims.[270] Further, it seeks to shed

[269] Fax, Joanna. "Vulnerability as Hegemony: Revisiting Gramsci in the Age of Neoliberalism and Tea Party Politics." *Culture, Theory and Critique* 53, no. 3 (November 1, 2012): 323–37.

[270] I use the refrain "non-transgender"/"non-trans" opposed to "cisgender" because of my own political motivations and reservations about using "cisgender" as a stable category to identify gendered subjects across various other axes of difference. While transgender study scholars such as Susan Stryker have articulated that cisgender "names the usually unstated assumption of nontransgender status contained in the words 'man' and 'woman,'" (22) as a gay black man whose flamboyance and queer affect have led me to spend much of my childhood being referred to as a sissy or sis, the linguistic slippage between cis/sis reminds me that 'man' and 'woman' are racialized categories that are enmeshed with assumptions about who gets to do gender and in what ways, and those assumptions are informed by understandings of sexuality. Thus, my queer affect and desire often made me susceptible to precisely not register as 'man' and therefore to equally not inhabit normativized associations with gendered ways of being. I was not *man* or *boy;* I was a *sissy*, which is to say I was a feminized racial other, stuck in the space between man and woman, between boy and girl. In being attentive to these dynamics, I hope to not reify the primacy of the sexed body to overdetermine gender categories and knowledge nor do I intend to erase the very material ways in which transgender individuals have a different relationship to gender (identity) than I do. Rather, I want to suggest that attention to race and sexuality makes it impossible for me to substitute in "cisgender" for all the moments in which I mean to mark someone as not transgender.

light on how trans men's perceived and real sexual vulnerability produces non-trans men as potential sex offenders.

In this chapter, I will first return to the story of Lakeisha Washington's denied access to a D.C. women's shelter. I do this because this story triggered a series of debates about transgender inclusion in Montgomery County-based shelters and led to the formation of a committee on transgender inclusivity in the county. From there, I will perform a discourse analysis on local news coverage, online blogs, and debates amongst homeless service providers, drawing on my own experience as a provider in Montgomery County, that focused on trans inclusivity and exclusivity from public spaces. Specifically, I trace the ways in which discourses surrounding the communal bathroom space in shelters interpellate homeless transgender women not only as gender deviants but also as almost already sex offenders. Despite service providers arguing that the denial of entry into shelters is based on the limitations of the shelter to accommodate transgender men and women due to the lack of financial resources needed to make these accommodations, as in the case of Lakeisha Washington, I argue instead that this denial is rooted in a larger commonsense understanding of the transgender body as a sex offender body.

Because of these shared spaces, which are organized around the figure of the trans sex offender, the introduction of gender neutral bathrooms offers insufficient resolutions, as transgender men and women are being denied access *prior* to their entry. Put differently, their bodies signify sexual violence before they enter the building, irrespective of architectural accommodations. To create a transgender-inclusive shelter, we have to move beyond bathrooms and showers and feeling bad

and instead focus on the ideological limitations that render their inclusion as suspect and dangerous. I end this chapter with the story of two transgender men, Colin and Brett, whose experiences make lucid the complicated ways that certain intersectional identities are scripted as vulnerable along the lines of gender, race, sexuality, age, and violence and others are scripted as sexually violent. Their experiences are a testament to the ways in which anxieties about trans bodies in public and private spaces actually rely upon and (re)produce commonsense understandings of black men, specifically, as sexually violent and homeless men, in general, as having the potential to always be sexually violent.

"We Don't Do Transgenders":

In a three-story, 200,000 square foot building spanning the entire length of 2nd Street NW between D and E Street NW, just three blocks from the U.S. Capitol and two blocks from the mayor's office, stands the largest homeless shelter in the District of Columbia. The Federal City Shelter (FCS), commonly referred to as the "D Street shelter," is owned by the District of Columbia government and managed by the Community for Creative Non-Violence. Originally intended to be a temporary structure when built in the 1940s, the facility has undergone several series of renovations as the need for emergency shelter in the district grew. Presently, FCS consists of multiple agencies that provide 1,350 beds for unsheltered homeless adults yearly, ongoing case management, job training, health care services, drug and alcohol treatment, legal services, and over 5,000,000 meals have been served since the

building's $14 million renovation in 1984.[271] These agencies include the Community for Creative Non-Violence, D.C. Central Kitchen, Unity Health Care, Clean and Sober Streets, Jobs Have Priority, Legal Services for the Homeless, and New Hope Ministries, which runs both Open Door Shelter for Women and the John L. Young Center for Women.

As a comprehensive facility, the Federal City Shelter provides services for the overwhelming majority of homeless individuals in the district as well as many of those homeless or transient individuals in the neighboring areas. Despite its size and scope of services, however, FCS has not been without turmoil. Residents and community members have often complained about the conditions of the building, safety of the area, and lack of adequate on-site services as a result of the large number of individuals seeking assistance and ongoing budget cuts FCS programs face as part of larger austerity measures in the district. For instance, in 2009 homeless services programs faced a devastating blow from Mayor Adrian Fenty's administration when $20 million in budget cuts ($9 million in federal government funding and $11 million in local government funding) were rolled out unexpectedly.[272] These cuts followed the closing of the Franklin School's men's shelter, which served roughly 300 homeless adult men, the previous year.[273] The closing of shelters, criticisms regarding the conditions at FCS, and growing population of homeless individuals in the DMV

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[271] Ford, Sam. "Community for Creative Non-Violence Could Close, Sparking Debate." *WJLA*, October 31, 2013. http://wjla.com/news/local/community-for-creative-non-violence-could-close-sparking-debate-96255.
[272] Fears, Darryl. "Cuts in D.C. Homeless Services Budget." *The Washington Post*, October 3, 2009, sec. Metro. http://www.washingtonpost.com/wp-dyn/content/article/2009/10/02/AR2009100205292.html.
[273] Nakamura, David. "Remaining Homeless Moved Out of Shelter." *The Washington Post*, September 27, 2008, sec. Metro. http://www.washingtonpost.com/wp-dyn/content/article/2008/09/26/AR2008092603645.html.

(D.C., Maryland, Virginia area) due to reductions in social welfare programs set the stage for Lakeisha Washington's experience when seeking shelter in 2013.

On April 5, 2014, a lawsuit was filed against Washington D.C.'s John L. Young Center for Women in the D.C. Supreme Court by the D.C. Trans Coalition. This suit, filed by the Coalition on behalf of Lakeisha Washington and another unnamed trans-identified complainant, asserted that the shelter denied both women access to shelter because neither could produce documentation of gender reassignment surgery or legal name change. According to the lawsuit, Washington attempted to gain admission to the shelter on April 3, 2013 when an unnamed shelter staff member asked Washington, "Are you a woman or a man?" When Washington replied that she was a "transgender woman," the shelter staff member asked her if she had any proof. Washington did not have documentation of her gender identity; she could not produce an official state ID that named her as a woman nor could she produce documentation from a doctor's office that she had gender reassignment surgery, a costly procedure that many transgender men and women do not undergo, which would have also been sufficient proof of her gender identity. As such, Washington was turned away, with staff informing her, "we don't do transgenders here; you have to leave." The lawsuit asserted that denying these women access to shelter on the basis of (trans)gender discrimination constituted a violation of the district's Human Rights Act.[274]

One month earlier, a separate discrimination complaint was filed with the Office of Human Rights, alleging that the shelter had a history of discriminating

[274] Wrigley, Will. "D.C. Homeless Shelter Sued For Turning Away Transgender Women." *The Huffington Post*, 49:30 400AD. http://www.huffingtonpost.com/2013/04/11/district-shelter-transgender_n_3063608.html.

against transgender women.[275] In response to both the suit and complaint, John Shetterly, the executive director of New Hope Ministries, attempted to rationalize the shelter's policy as one that, rather than being exclusionary, was actually put into place because the structural design of the shelter did not allow for transgender inclusivity. The goal was purportedly not to discriminate against transgender women; instead, the shelter could not "appropriately accommodate" the women since the shelter had communal bathrooms and showers. "Because of the layout of the John Young Center, which has a communal bathroom and shower area and one large sleeping area, we just didn't know how to appropriately accommodate them," he reported.[276] The requirement for having sex reassignment surgery was put in place, as the argument goes, to ensure the safety of non-trans identifying women and to make sure trans women were not being subjected to harassment due to their being "outted" as trans based on the unforeseen yet inevitable exposure of their genitalia in the bathrooms or sleeping areas. In attempt to resolve the issue, the D.C. Supreme Court issued a temporary restraining order requiring the shelter to admit transgender residents, finding it discriminatory for staff members to deny access on the basis of gender identity and proof of reassignment.[277]

New Hope Ministries did not contest the restraining order; Shetterly told staff at the *Washington Blade* that the organization is in fact supportive of transgender

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[275] "DC Shelter Accused of Rejecting Trans Women." *Washington Blade: Gay News, Politics, LGBT Rights*, April 10, 2013. http://www.washingtonblade.com/2013/04/10/shelter-sued-for-rejecting-trans-women/.
[276] Ibid.
[277] "Shelter Drops Ban on Trans Women | LGBT News | Washington DC." *Washington Blade: Gay News, Politics, LGBT Rights*, April 14, 2013. http://www.washingtonblade.com/2013/04/14/dc-shelter-drops-ban-on-trans-women/.

people and would never intentionally discriminate against them.[278] The problem, as he kept insisting, was that the shelter was not designed to accommodate trans people. Following the restraining order, Washington was permitted to stay at the shelter amongst the other 87 women who resided there, and staff members were offered a sensitivity training by the mayor's Office for LGBT Affairs as part of a mayoral directive. Additionally, Shetterly reported he would actively seek the financial assistance of the D.C. Department of Human Services to fund structural changes to the shelter so that bathrooms and sleeping areas could be updated. Doing so would make it safe for all the women in the shelter and would reduce the burden on staff to mitigate the potentially dangerous encounters between trans and non-trans women.

In the case of Lakeisha Washington and the John L. Young Center, an architectural/design argument was made to mask the cultural politics that made Washington ineligible for shelter and therefore eligible to be subjected to violence on the street or in a men's shelter. Organized around a discourse of safety, inaccessibility, and economic deficit, Shetterly was able to rationalize a form of structural inequality orchestrated through anti-transgender renderings of Washington's body that would have her named as violent sexual deviant. Ironically, his attempts to couch New Hope Ministries' intentions within a liberal discourse of sentimentality that both supports transgender people (through exclusion) and critiques the architectural insufficiencies of an outdated facility were actually successful. Instead of challenging the ideological premises and assumptions about transgender bodies and their propensity to enact violence, the real problem became the communal space of the bathroom. This same logic emerged in the service provider meeting I

[278] "DC Shelter Accused of Rejecting Trans Women." *Washington Blade:*

attended, which ultimately devolved into a conversation about the cost of installing gender-neutral bathrooms. As the headlines that circulated after the decision to allow transgender women and men entrance into shelters based on how they identify would go on to proclaim: this was a win for transgender rights. But, at what cost?

Exactly one month and 10 days following Washington's lawsuit in D.C., Maryland's Governor Martin O'Malley signed into law SB 212, the Fairness for All Marylanders Act of 2014, a bill that prohibits "discrimination based on gender identity with regard to public accommodations, housing, and employment."[279] The bill does not apply to a private facility in a place of public accommodation, if the place of public accommodation makes available, for the use of persons whose gender identity is different from their assigned sex at birth, a space that is functionally equivalent to the space made available to users of the private facility. The bill defines "private facility" as a facility (1) that is designed to accommodate only a particular sex; (2) that is designed to be used simultaneously by more than one user of the same sex; and (3) in which it is customary to disrobe in view of other users of the facility.[280]

Despite its limits, SB 212 is being lauded by LGBT rights advocates as a legislative tour de force on behalf of transgender equality in the state of Maryland, which has now joined the ranks of 17 others states, along with the District of Columbia, in its commitment to protecting residents and visitors against discrimination on the basis of gender identity and expression. As Dana Beyer, Executive Director of Gender Rights Maryland, boldly asserted at the bill signing

[279] MD SB. 212, 431st Session (2014)
[280] Ibid.

ceremony, "I applaud the governor for his completing the process by which the transgender community has risen to *full legal equality in the state of Maryland* [emphasis mine]."[281] Indeed SB 212 has been imagined as an articulation of full incorporation into the state's body politic for formerly disavowed and disenfranchised transgender citizens. Against the backdrop of a national—and global--cultural arena that often ignores or erases the experiences of trans men and women, particularly those of color, SB 212 must certainly be understood as a step in the right direction. However, I want to resist the impulse to understand this as complete or totally sufficient. Here, I am reminded of the fact that just three days before SB 212 was signed into law (and three days before the International Day Against Homophobia and Transphobia), the Transgender Violence Tracking Portal released its first report, noting that in the first four months of 2014, 102 acts of violence against transgender people had been logged.[282] This is compounded with the 2011 National Transgender Discrimination Survey, conducted by the National Center for Transgender Equality and the National LGBTQ Task Force, which found that:

- 34 percent of black and gender-nonconforming respondents had a household income of less than $10,000 a year
- 44 percent of black and transgender and gender non-conforming respondents had experienced homelessness at some point in their lives
- When they attempted to access shelters, 40 percent of black respondents were denied access altogether.[283]

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[281] "Martin O'Malley Signs Maryland Trans Rights Bill." *Washington Blade: Gay News, Politics, LGBT Rights*, May 15, 2014. http://www.washingtonblade.com/2014/05/15/breaking-omalley-signs-maryland-transgender/.

[282] Vuto, A. J. Walkley Author of, and Queer Greer. "Transgender Violence Tracking Portal: One Year Later." *The Huffington Post*, 06:51 400AD. http://www.huffingtonpost.com/aj-walkley/transgender-violence-trac_b_5948606.html.

[283] "National Transgender Discrimination Survey." *National Center for Transgender Equality*. Accessed September 2, 2016. http://www.transequality.org/issues/national-transgender-discrimination-survey.

These figures suggest that while a much-needed intervention to provide legal recourse for trans community members, this legislation simultaneously fails to take seriously and centrally the issue of violence as it is intimately sutured to the lives and everyday experiences of transgender men and women, an opportunity that quickened at the heels of its very passage. That is, one need not look beyond the discourses surrounding the bill itself to gain a rich understanding of the violence(s) to which transgender bodies are subjected. These discourses, themselves, as I aim to illustrate, demonstrate a type of epistemic violence that both erases the visceral and corporeal violence enacted on and against trans bodies and interpellates transgender women as progenitors of gender and sexual violence by interpellating non-trans women as always potential victims of such violence.

Showering at the Ballot: A Local Affair

While the proliferation of rights for transgender citizenry is on the rise, this has not been without opposition and offense—nor has SB 212 stood alone in either producing rights or objections. It is also clear the conversation that took place in the conference room of the Mental Health Association in Rockville, Maryland where my colleagues were wrestling with their liberal sentimentalities was not by chance. Rather, SB 212's historic passage actually had its roots in Montgomery County. These debates were not unique to the political atmosphere of 2014. If anything, local politics in Montgomery County were playing out on a statewide scale. But, peculiarly, it was a national discourse that compelled us to have Andy Bowen in our meeting on that dreary Tuesday. We had forgotten—or perhaps never known—our own history. Never once did anyone mention that Montgomery County had long since

made a decision about transgender discrimination, and that this work—and the concerns it produced—was being recycled.

In 2007 the Montgomery County Council took to amending the county's human rights code to include protections for transgender community members. The law prohibits "discrimination in housing, employment, public accommodations, cable television service and taxicab service on the basis of gender identity."[284] At the time, thirteen states already had laws prohibiting discrimination on the basis of gender identity and/or expression in employment. According to chief sponsor of the legislation Councilmember Duchy Trachtenberg (D), the measure was identified as "the continuation of a tradition" wherein the county "has historically taken the lead in protecting its most vulnerable citizens: Minorities, gays, the poor, women, children and senior citizens…an expression of our best and most noble principles."[285] Notwithstanding the historically liberal underpinnings of the county, there was much controversy around the bill even preceding its passage. Indeed, while the vote ended a month's worth of heated debates, email exchanges, and public demonstrations on both sides of the issue, it did not reconcile tensions in the room much less in the community writ large. Even though there was a unanimous, 8-0 vote in favor of the bill, audience members were very vocal about their discontent for the ruling.

For example, Montgomery County Republican Central Committee member Adol T. Owen-Williams II screamed "Heil Hitler…wait until little girls start showing up dead all over the county because of freaks of nature" from his third-row seat in the

[284] Montgomery County Code, 23-07 (2007) (enacted).
[285] Council Office. Councilmember Duchy Trachtenberg:"Separating Fact from Fiction About Montgomery's Transgender Legislation Rights Protection Measure Scheduled for Nov. 13 Council Vote." News release, November 02, 2007.

council chamber immediately following the vote.[286] Owen-Williams' assertion, drawing comparisons to Nazi Hitler, while hyperbolic in nature speaks to a prevailing sentiment amongst conservatives, and some liberals alike, that trans people were abnormal, violent, and would enact their violence against the bodies of vulnerable children. Such concerns are evident in the creation of the Maryland Citizens for Responsible Government, a group that launched a vicious campaign called "Not in My Shower" to block— and then later to repeal—the measure through a voter referendum.

As "Not In My Shower" spokesperson Michelle Turner asserted in a 2008 interview, "Our concern is this would leave the door wide open for an individual to dress as a woman, giving him access to private areas," arguing that "'cross-dressing" men could use women's restrooms and locker rooms as sites for assault.[287] According to the group's now-defunct website: "the outrageous legislation may result in forcing even religious schools to hire transgender teachers; and then also allow cross-dressing but biological males in your daughter's school locker room."[288] Aside from the lack of evidence in their claims, what is most interesting to me about these passages is the fixation on bathrooms as sites of sexual violence by virtue of the exposure that occurs in them; the continued galvanization of women and children being represented as the victims of this sexual violence; and consistent reproduction of the mythical figure of the "cross- dressing" male (read: transgender woman) lurking and waiting to launch a

[286] Davis, Janel, and C. Benjamin Ford. "Council Bans Transgender Bias; Opponents Plan to Lobby for Veto." Gazette, November 14, 2007. http://www.gazette.net/stories/111407/montnew63522_32362.shtml.
[287] Crazy, David. "Transgender Rights Laws Spread, Not Always Calmly." Fox News, June 12, 2008. http://www.foxnews.com/printer_friendly_wires/2008Jun12/0,4675,TransgenderRights,00.html
[288] Ibid.

sexual assault against unsuspecting others. These discursive themes emerge almost uniformly as arsenal in the fight against transgender rights.

In a correspondence between the Advocates for Faith and Freedom's general counsel and the Montgomery County Council, Advocate members pled with Council Member George Leventhal (D) not to support changes to the county code, relying on vulnerability discourse to construct transgender women as potential sex offenders whose bodies become weaponized for sexual assault. Advocates cited an email exchanged between a concerned mother and Leventhal to anchor their opposition. According to the unidentified email author:

> Please do not pass the proposed transgender law. As it stands, it will permit transgenders [sic]with male genitals into women's lockerrooms [sic] and restrooms. This is indecent. Spend the money and build transgenders [sic] separate facilities. I have a 10 year old daughter who uses the locker room at the Germantown Indoor Pool. She must undress in front of women who she also sees naked as there are no changing rooms there (just bathrooms and showers). Under this law, she could be changing right next to a person with male genitals. A naked person with male genitals. This is not right. This is indecent and immoral. This could also happen, and undoubtedly will happen, in the schools around the county. Please do not do this. Our children deserve protection from our laws.[289]

This mother very clearly draws connections between transgender women and sex offenders through the discourse of indecency. In the State of Maryland, indecent exposure is not a registrable sexual offense; rather, it is a misdemeanor. The mother's concerns about her daughter's exposure to male genitals thus do not inherently make the presumed female imposter a sex offender in the juridical sense. Though, it should

[289] Marimow, Ann E. "Leggett Signs Bill For Protection of Transgender People." *The Washington Post*, November 22, 2007, sec. Metro. http://www.washingtonpost.com/wp-dyn/content/article/2007/11/21/AR2007112101708.html.

be noted that until 2009, those convicted of indecent exposure had been required by judges to register as sex offenders.[290] Rather, it is a *moral* offense. The "immorality" of the exposure is clear in the last sentence, as she pleas for the "protection from our laws." Here, she is both critiquing the law's failure to protect children, both in terms of indecent exposure not being a sexual offense in the most extrapolated interpretation and in terms of changes to the county code subjecting children to immoral sexual exposure.

Beyond this, though, the other implicit concern is that the "transgenders with male genitals" will also see her 10-year-old daughter's naked body, a rhetorical augmentation of fact that positions transwomen as potential perpetrators of visual surveillance with prurient intent, a Tier 1 sex offense requiring 15 years on the sex offender registry.[291] What she fails to register, though, is that irrespective of transwomen being present or not in these spaces, women might not want to be seen by other women in general and that her daughter might not want to see or be seen by anyone who is a stranger. Thus, her desire to protect her daughter narrates women and children as only potentially being victims of sexual violence in these spaces when there are transgender women present. Further, it erases the possibility that non-transwomen might themselves be perpetrators of violence, not just victims.

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[290] In 2009, the Maryland Court of Appeals ruled in *State of Maryland v. Michael Raheem Duran* that indecent exposure was not a statutorily enumerated crime that required registration as it did not constitute a crime that was "by its nature a sexual crime." Duran pled guilty to three counts of indecent exposure and was asked by the State to register as a sex offender. He objected by the Circuit Court judge ordered him to register; he appealed to the Court of Special Appeals, which vacated the condition of probation requiring registration.

[291] MC §3-902 defines visual surveillance with prurient intent as "A person with prurient intent may not conduct surveillance when the victim is in a private place, using a wide variety of means, on a person's private area (for example genitals or breasts) without their consent. An offender may be sentenced to one year's imprisonment and/or a fine of up to $2,500" where visual surveillance includes direct line of sight.

As another example, Chuck Colson's March 05, 2008 segment on *Breakingpoint Commentary,* a daily Evangelical Christian radio program, echoed these same concerns, this time organized around the fear of an innocent white woman, Mary Ann Andree, whose story circulated as evidence that conservative fears about trans women being allowed to enter women's bathrooms were justified. Andree was innocuously drying her hair in the Rio Sport and Health Club in Gaithersburg, Maryland one evening when she allegedly became a potential victim of sexual assault. "The women's locker room suddenly opened. In came a man, wearing a blue ruffled skirt and make-up," Colson tells his audience, recounting Andree's story.[292] The two never had an official exchange, but the insertion of the trans woman's body into a communal space became the official narrative of concern, because "there [was] a lot that could have happened," according to Andree.[293] The concern is reflected in the way Colson framed the encounter; his language is intentional, doing epistemic violence to the identity of the transgender woman by naming her as a "man wearing a blue ruffled skirt and make-up." This also cues his audience to imagine what is assuredly not the image of a trans woman but rather a male caricature, a comedic figure with lecherous intent. He goes on to explain in a daunting and troubled voice that Montgomery County's code:

> "...Means men will have full access to a woman's restroom and locker room. A woman taking a shower after her aerobics class might look up to find a man turning on the shower next to hers. A little girl using a movie theatre restroom will now have to worry that a strange man might walk in…. And what is to stop non-transgendered men from entering the ladies' room?

[292] Colson, Chuck. "Not My Shower." Not My Shower. March 05, 2008. http://thepoint.breakpoint.org/bpcommentaries/breakpoint-commentaries-search/entry/13/10524.
[293] Ibid.

> Nothing. *A child molester or rapist could put on a dress and go right in. So could pornographists. It is an appalling, shocking law* [emphasis mine]"[294]

Colson's translation of the law is significant as not only does it reproduce the image of the transgender woman as man in disguise but also it names the transgender woman as sex offender even as it disaggregates between transgender men and non-transgender men. For Colson, and inevitably his listeners, there is no difference between transgender women, who he calls "strange" men, and non-transgender men, whom are presumably just as strange in their desire to be in a ladies room. Moreover, his immediate transition from "non-transgendered men…entering the ladies' room" to "child molester or rapist" discursively constructs all "non-transgendered men" in spaces intended for women as potentially sex offenders. In this formulation, anyone who looks likes a "man wearing a blue ruffled dress" or who appears "strange" is suspicious—and therefore guilty—of being a sex offender. Strange, here, also means being a man in a woman's space. Being a sex offender—those child molesters, rapists, and pornographists—is not, then, about violating the law. Rather, it is about violating the moral and natural laws that register in gendered forms (i.e men belong in a man's bathroom and women in a woman's bathroom) predicated on biological determinism.

These discursive slippages between juridical law and natural law that produced the figure of the sex offender, embodied in the trans woman, pushed the County Council to reconsider its gender non-bias law. Whereas the law had previously included those public spaces like restrooms, locker rooms and showers, conservative backlash led the Council to adopt in its final version a law that included

[294] Ibid.

a vaguer and more nebulous phrasing: "this division does not apply to accommodations that are distinctly private or personal," which the County's General Counsel has taken to mean that bathrooms, showers, and locker rooms are exempt.[295] This shift underscores two very critical and central points: 1) fearmongering tactics that conceptualized trans women's bodies as perpetrators of sexual violence in their ability to always already potentially be tools for sexual assault were compelling—and accepted; and 2) the trans women-as-sex-offenders nexus *transformed and necessitated the transformation of* space from public to private such that the state does not have a compelling interest to regulate it. Bathrooms and locker rooms went from being public spaces to private ones so they could not be regulated.

Bathroom Bills: The Battle Ground for Identity Formation

Introduced by Senator Richard Madaleno (D) some six years after the controversy over changes to Montgomery County's code in his very own district, Maryland's SB 212 produced an eerily similar moral panic discourse that connected transgender bodies to sexual assault by drawing on the figures of women and children as victims and bathrooms as sites of violence, this time in a more pernicious and vicious way. Making more explicit the connection between the publicly private space of bathrooms and the assumed stakes of transgender equality legislation, SB212 was popularly referred to as the "bathroom bill." Promoting a more aggressive discourse, opponents of the purported "bathroom bill," began moving beyond simply suggesting a sexually predatory and assaultive agenda associated with transgender men and women (though especially women); instead, they begin more uniformly naming them as such.

[295] Montgomery County Code, 23-07 (2007) (enacted).

Propaganda material quickly circulated as it became public knowledge that legislation regarding transgender discrimination had—for the first time—made it beyond committee and onto the floor. "Action Alerts" were disseminated, warning constituents about the bill and encouraging them to contact their senators to vote no on it. One alert referred to the bill as the "gender identity theft-bathroom bill," which the authors argued will "put cross-dressing men in women's bathrooms, locker rooms, store dressing rooms, and showers."[296] Another such alert, distributed by the Maryland Citizens for a Responsible Government (MCRG), purported that "women and children will face one of the greatest threats to privacy, safety, and security that Maryland residents have ever known" because it "completely disregards the safety of vulnerable women and children" by opening up restrooms and showers to "cross-dressing or female affirming men thereby allowing undressing in front of women and children in a woman's locker room."[297] Using the same vulnerability discourse, MCRG members discursively constructed the body of "real" women as vulnerable and those of transgender women as progenitors of sexual violence through (mis)gendered bodies.

An MSNBC news article entitled "Maryland legislature passes transgender equality bill," originally written by Emma Margolin on March 23, 2014, was renamed and reposted on East Valley News Net (EVNN), an online conservative news source that boasts itself as the East Valley's first conservative news network. The site has been linked to over 13,000 times, which indicates that it has been utilized as a site of

[296] Maryland Citizens for a Responsible Government. "Tell Your Legislator To Vote NO on SB 212 'The Bathroom Bill.'" *MCGOP - District 16*. Accessed September 2, 2016. http://district16.mcgop.com/2014/03/24/tell-your-legislator-to-vote-no-on-sb-212-the-bathroom-bill/.
[297] Ibid.

knowledge accumulation and production at the very least amongst conservative thinkers, the major base of opposition the SB 212. The article was newly refigured as "Bathroom Rape Promoted in Maryland Legislation" and included a note from the editor, which crystalized all the fears and sentiments opponents to SB 212 were propagating. "When legislation is used to make crime legal, what is one to do?" the editor opens his post with a rhetorical question.[298] Harkening back, perhaps unwittingly, to concerns of the unnamed mother of the 10-year-old soon-to-be-victim girl in the locker room, this query construes a proposed paradox in the law: instead of making crime illegal, "bathroom bills" legalize crime. Not just any crime. Rape, as the new title suggests. As the editor writes, "all a rapist has to do is put on a dress and he can walk right into a womans [sic] bathroom and no one can stop him."[299] Adjacent to his text is a meme that illustrates the stakes he lays out in the bill. Only, even in the meme, would-be rapists (read: trans women) do not even go through the rigmarole of changing their attire, to signify a female aesthetic. They just drop (literally and figuratively) straight into their ravishing and sinister practices.

As the meme, which picked up momentum and eventually became the nonverbal representation of bathroom bill opponents' arguments, illustrates: trans women are really men on standby to sexually assault unsuspecting women. In the meme, the male figure is not only peeping over the stall divide, his body is contorted in what looks like a humping position. He is perfectly poised to pounce on her. There is an immediacy to this pouncing: her hands at her side, a common stance that articulates that one's guard is down and she is vulnerable; she has not even had time

[298] "East Valley News Net." Accessed September 2, 2016. http://www.eastvalleynewsnet.com/blog.php?article=1677&category=50.
[299] Ibid.

to sit down before he is taking a peek. She is faced forward, oblivious to the set of eyes and encroaching frame that will descend on her at any moment. Interestingly, the image does not represent the stereotypical blue and pink combination to signify gender through color. She is red, as if telling him to stop before she even knows he is there. This is a purely nonconsensual interaction. It is rape.

East Valley News Net's repurposed news article and the meme that cogently accompanies it shifts from a passive, suggestive tone that alludes to maladaptive sexual behavior to one that interpellates transgender individuals as rapists.[300] The continuous interpellation of transgender individuals as almost-already sex offenders circulated within Congress as votes came to call. Rep. Neil C. Parrott (R-28) voted against SB 212 and advocated for the veto referendum, arguing, "the problem is you send your daughter into the bathroom, and you expect it's going to be girls and women in the bathroom. And instead you find out there's a 45-year-old man in the bathroom with them. It really goes against nature."[301] Rep. Kathy Afzali (R-4A) voted against the bill as well using the same logic. According to her, "sexual predators and pedophiles are mentally ill. So having them say 'I sincerely feel in my

[300] Here, I am borrowing from the work of Louis Althusser, who writes that ideology, interpellation, and subjecthood mutually reinforce each other so that "ideology has always-already interpellated individuals as subjects, which amounts to making it clear that individuals are always-already interpellated by ideology as subjects, which necessarily leads us to one last proposition: individuals are always-already subjects."[300] Interpellation happens to those who are—or appear—transgender through these public discourses that name them as rapists. As the individual is hailed in this manner, he or she then becomes the subject of ideology (here, the subject of transphobic ideology that polices public accommodations through sexual regulation).

[301] Kunkle, Fredrick. "Md. Senate Passes Rights Bill for Transgender People." *Washington Post*. Accessed September 2, 2016. https://www.washingtonpost.com/local/md-politics/maryland-senate-passes-bill-banning-discrimination-against-transgender-people/2014/03/04/56fbb722-a3c8-11e3-84d4-e59b1709222c_story.html.

heart I'm a woman' is not a stretch. This leadership in Annapolis would rather ram this down on citizens than respect and protect women and girls."[302]

Afzali's condemnation of the Maryland assembly both fed into the newly recurring trope of the transgender woman as sex offender and extended a preexisting discourse on transgender identity. Her focus on mental illness was strategic, as transgender identity has historically been understood as a mental illness, otherwise known as gender dysmorphia. Afzali and Parrott were not alone in their public condemnation of the bill. On her blog, Del. Kathy Szeliga (R-7) informed her constituents that SB 212 "jeopardizes the safety" of women and little girls by "allowing predators and pedophiles" access to women's locker rooms, showers, and bathrooms.[303] In these discursive formations, transgender identity *is interpellated as sex offender* at the moment in which trans bodies are imagined to enter gendered public spaces (women's bathrooms, women's locker rooms, and women's showers). - They are hailed into existence as such prior to their materialization. Unlike the Althusserian "hey you there!" that requires the presence of a material body whose subjectivity is constituted through the hail (i.e. recognition), trans bodies need not be present for trans women to be hailed as sex offenders. They become violent sexual subjects without their realizing "that it really is [s]he." In this configuration, they can be denied access to spaces on the rational basis of safety—both their own and those women their bodies make vulnerable.

As demonstrated, the discourse on public accommodations and transgender individuals (women particularly) relies on a commonsense ideological understanding

[302] Ibid.
[303] Ibid.

of transbodies as shape-shifting perverts whose agenda is to sneak into bathrooms and enact sexual violence on unsuspecting women and children. In this way, the transgender subject-as-rapist amends juridical articulations of sex offenders as individuals who violate sex laws and statutes and instead produces sex offenders through inclusion and protection by and of the law. That is, opposed to them becoming sex offenders by virtue of them breaking those discrete sex laws that are prosecutable, they become sex offenders through the very discourse that attempts to incorporate them through the law. It is not violation of the law that makes them sex offenders; it is the attempt to protect them by the law that does. This reconfiguration positions transgender subjects as almost-already sex offenders, waiting to be hailed as such by proxy of their relationship to public bathrooms and communal spaces.

Back to the Beginning: Shelter Denied and Those Solutions that Fail

Following the (disturbing and deeply problematic) info session by Andy Bowen, a few colleagues and I joined together to create a committee on transgender inclusion amongst the homeless services continuum of care for single adults. The goal of the committee was not lofty. We wanted to educate service providers, and ourselves, on the needs of transgender men and women experiencing homelessness; identify gaps in resources that might adversely impact how and if they access services; develop a standardized statement on diversity that all providers could adopt in their agencies; and provide staff members with pertinent training so that they would have the skills to properly and respectfully engage transgender-identified clients. We accomplished all of our goals. That was not the hard part. The hard part was figuring out how we would institutionalize structural changes that would model

best practices for servicing transgender clients. For this we turned to 59-page guidebook published by the National Gay and Lesbian Task Force Policy Institute in conjunction with the National Coalition for the Homeless.

Published in 2003, *Transitioning Our Shelters: A Guide to Making Homeless Shelters Safe for Transgender People*, offers a comprehensive overview of the issues transgender and gender non-conforming individuals encounter while trying to seek shelter services. From being denied access altogether to being shamed and harassed to being sexually assaulted, transgender and gender non-conforming individuals are more likely to experience trauma during their episode(s) of homelessness than their gender-conforming counterparts. In fact, according to a National Transgender Discrimination Survey (NTDS) of 6,450 transgender and gender non-conforming adults, 19 percent reported experiencing homelessness at some point in their lives because they were transgender or gender non-conforming; the majority of those trying to access a homeless shelter were harassed by shelter staff or residents (55 percent), 29 percent were turned away altogether, and 22 percent were sexually assaulted by residents or staff.[304] Of those turned away from shelter, an overwhelming majority sited shelter policies regarding sex re-assignment surgery and improper accommodations due to shared sleeping areas, bathroom, and showers.

To reduce barriers for all residents but specifically trans-identified and gender non-conforming residents, *Transitioning Our Shelters* recommends that intake forms have open-ended questions opposed to pre-determined categories of identity. This would allow individuals to identify however they prefer without staff members either

[304] "National Transgender Discrimination Survey: Full Report." *National Center for Transgender Equality*, January 21, 2015. http://www.transequality.org/issues/resources/national-transgender-discrimination-survey-full-report.

making assumptions about their gender or limiting their options. As a best practice, the guide recommends that staff members only refer to residents by the gender pronouns and name the resident reports upon intake to ensure they feel respected, their privacy is protected, and they are not targets of discrimination by other residents.[305] Other recommendations are peppered throughout such as placing trans-identified or gender non-conforming residents in sleeping areas that are closest to staff, allowing them to shower during non-traditional hours so they can avoid harassment and exposure, and when possible offering gender neutral bathrooms opposed to communal bathrooms so that all residents have privacy.

Functioning only as recommendations, alone these practices require that homeless service providers take these steps as a good-faith effort or as a display of a particular set of political-ethical investments on behalf of themselves or their respective agencies. That is, even as our committee was championing these practices and pushing conversations, there was nothing that mandated providers act in any particular fashion—until the County's Continuum of Care supported our efforts by issuing a guidance to those providers receiving their funding through county contracts. This guidance reiterated the laws the Montgomery County Council had previously enacted in 2007 and provided a directive to service providers within the continuum. The directive required shelters receiving government funding to admit residents based on how they present or report their identity and not based on their biology or official documents, when those documents contradict the resident's self-

[305] Mottet, Lisa and Ole., John M."Transitioning Our Shelters: A Guide to Making Homeless Shelters Safe for Transgender People." *National LGBTQ Task Force*, January 15, 2003. http://www.thetaskforce.org/transitioning-shelters/.

reporting. This was especially important because the Montgomery county council's law did not inherently apply to shelters. Six months later SB 212 went into effect.

A critical component that was left out of both SB 212 and the County's directive was the necessary funding to implement these changes. While both state and county laws have been interpreted to preclude shelters, the county has made it a point to uphold their directive. This commitment has been supported by a recent guidance issued by the Department of Housing and Urban Development (HUD). This guidance was meant to clarify its 2012 Equal Access Rule. The Equal Rule, officially named the *Equal Access to Housing in HUD Programs – Regardless of Sexual Orientation or Gender Identity*, makes the following provisions:

> Requires owners and operators of HUD-assisted housing, or housing whose financing is insured by HUD, to make housing available without regard to the sexual orientation or gender identity of an applicant for, or occupant of, the dwelling, whether renter- or owner-occupied; prohibits lenders from using sexual orientation or gender identity as a basis to determine a borrower's eligibility for FHA-insured mortgage financing; clarifies that all otherwise eligible families, regardless of marital status, sexual orientation, or gender identity, will have the opportunity to participate in HUD programs; and prohibits owners and operators of HUD-assisted housing or housing insured by HUD from asking about an applicant or occupant's sexual orientation and gender identity for the purpose of determining eligibility or otherwise making housing available.[306]

Because these rules did not establish a clear set of best practices for serving transgender persons in single-sex shelters, many shelters have not been in compliance with the Equal Access Rule, as evidenced by Lakeisha Washington's experience a

[306] Sullivan, Brian. "HUDNo.11-006." HUDNo.11-006. January 20, 2011. http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2011/HUDNo.11-006.

year after the Rule was established. As such, the guidance, released on February 20, 2015, attempts to provide clarity both on the standards single-sex shelters must follow and how to best meet those standards. According to the guidance, "A client's or potential client's own views with respect to personal health and safety *should be given* serious consideration in making the placement" and providers should not "have any basis to deny access to a single-sex emergency shelter or facility solely because the provider possesses identity documents indicating a sex different than the gender with which the client or potential client identifies."[307]

If a client expresses concerns about his/her safety, "the provider must at minimum permit any clients expressing concern to use bathrooms and dressing areas at a separate time from others in the facility."[308] To best facilitate these accommodations, HUD has clarified that Emergency Shelter Grant (ESG) funds and Housing Opportunities for Persons with AIDS (HOPWA) funds can be used to renovate an emergency shelter. While on paper these provisions sound appealing, neither the county nor HUD appropriated *additional* funds to support them. Instead, service providers have to redistribute their existing funding to make room for costly renovations and ongoing trainings. This has become a major barrier to constructing trans-inclusive shelters within a framework that identifies the underlying problem of shelters to be its architecture.

Notwithstanding the aforementioned budget cuts in D.C., the Montgomery County Council voted in July 2015 to cut $54.2 million from the 2016 budget after the Supreme Court ruled Maryland was illegally double taxing residents who earned

[307] Ibid.
[308] Ibid.

income out of state. Consequently, those residents will receive unexpected refunds, which will reduce revenue streams for county governments. The proposed reductions include the elimination of extra pay for workers who provide services to the developmentally disabled ($969,000); decreased funding to Montgomery College ($5,000,000); and 30 fewer subsidized housing units for homeless veterans and families with children ($650,000).[309] All of these cuts, combined, will have an adverse impact on poverty levels and could potentially increase the number of homeless individuals in the county. Under these conditions, and with the uncertainty of future cuts, shelter providers cannot afford to use limited funds to make renovations to often diminishing buildings. It would cost too much. This has produced a stalemate. Shelters want to be inclusive but cannot afford to be inclusive. The resolve has been to accommodate transgender residents as best as possible without specifically targeting them as individuals who need extra care or attention.

HUD's ruling highlights the limitation of our attention to bathrooms and showers, to the architecture. Either we cannot afford to make changes due to the extensive cost, which potentially promotes exclusionary practices, *or* we use limited funds to make these changes and potentially have to cut other important programs. What both of these propositions fail to register, and what our attention to the architecture actually reifies, is the presumption that transgender people are always-already sexually violent. Even when bathrooms are gender-neutral, sleeping quarters are not. Multi-purpose rooms are not. Shelters are shared spaces, making contact inevitable. As such, the presumed threat of violence against [real] vulnerable women

[309] "Montgomery Council Cuts $54 Million from Budget, Says More Trims Possible." *Washington Post*. https://www.washingtonpost.com/local/md-politics/montgomery-council-cuts-54-million-from-budget-says-more-trims-possible/2015/07/28/be744f6a-3556-11e5-adf6-7227f3b7b338_story.html.

by [sexually violent] trans women does not go away when space is reconfigured. Rather, an integral part of making shelters (and all other spaces) habitable for trans men and women is a serious ideological augmentation that debunks and resists these narratives that would make us believe trans people to be perpetrators of violence opposed to victims of violence, often the reason they become homeless in the first place.

Transient and Transitioning: Trans Men Speak

Colin and Brett asked to meet me at the food court in the Lakeforest Mall in Gaithersburg, Maryland. I found the location peculiar, as it was quite public. I worried that perhaps they did not realize the nature of the questions I would be asking, the very *private* questions I would be asking. I was also concerned I would not be able to pick them out of the crowd; it was a Saturday, so the mall was quite busy. It was packed with predominantly black and Latino youth, especially the food court. As I sat quietly sipping on my Diet Coke, scanning the room for anyone I perceived to be a Colin or Brett, I was startled by the presence of two figures standing closely behind me. I jumped a little, and Colin, as I later found out it was he, patted me on the shoulder and apologized for the abrupt appearance.

Colin, a taller, thin black guy, wore glasses and had long black hair that was tucked under his Dallas Cowboy's cap while Brett donned the Redskin's, a football rivalry that runs deep in the Washington, D.C. metropolitan area. Brett had on a baggy white t-shirt and loose-fitting green cargo shorts. Brett's shorter blonde hair, grey hoodie, black sweatpants, and pale white skin stood out as a distinct contrast to Colin; he also looked hot. It was, after all, ninety-five degrees outside. "Haven't

started my replacement therapy," he responded, pulling at his cotton hoodie, helping to make meaning of his clothing choice. They did not sit down.

I had picked a table off to the corner for the sake of privacy. I wanted to at least create the illusion of privacy even though I knew at any given time someone might walk by and overhear our conversation. However, they asked that we move to a more centrally located table. They had picked one out earlier and, much like me, had apparently sat scanning the food court for someone they perceived to be a researcher. I was the third person they approached. The table was in the literal center of the food court. a choice that I also found odd. "Everyone thinks you have to be off to the side, hidden, out of eye's and ear's reach to not be noticed, but the *real* trick is to be in the thick of things. Everyone is so busy doing their own things, they forget to notice you; that's how we manage--," Brett explained. "We also want to make sure others can see us, you know, in case *you* try something—or *anyone* tries something. One of us died right behind the mall last winter. We had to make sure *you* could be seen in public with us, no offense," Colin interjected. We spent the next ten minutes plotting how we would record the interviews while remaining inconspicuous and nonchalant. "Blending in" was critical to the whole engagement. They went back and forth over where I would place my phone, how many times we would take a break, if I should bring out my laptop instead. I felt like I was in a play, and they were the stage managers. We settled on placing my phone behind my cup of Diet Coke, leaving my laptop in the bag, and *everyone* having paper and a pen. "We're part of a study group, like a college study group!" Colin excitedly remarked, hunched over whispering to me like it was the biggest secret in the world.

The two first met in 2013 at the Wanda Alston House, an LGBT youth transitional shelter, in D.C. At the time, they were both living as "butch lesbians with bad haircuts." Colin was 17, just joining the house, and Brett was 19, on his way out. The Wanda Alston House provides case management, individual counseling, job training, and supportive services for up to 18 months. Brett had already come to the end of his time at the house when Colin arrived; he had plans of moving out to stay on campus at George Washington University where he would pursue a degree in Architecture.

Brett only stayed there for 4 months as a "middle ground" before college. Once he turned 18, his parents kicked him out of the house, because he decided he wanted to live his life as a man "full-time" and not just "hiding in the shadows of [his] parents' basement or father's closet." His father, a trash collector for the District of Columbia, caught Brett trying on his work boots and flannel shirt one day. "He went ape shit; called my mom in the bedroom and started screaming they had a dyke for a daughter. She started crying; I started crying; and my dad just kept screaming. It was like a really bad movie, you know?" Brett's father suggested therapy but upon refusing Brett was given two choices: to either be "a girl who hated herself and often thought of committing suicide and have a place to live or be a 'confused dyke' [Brett uses air quotes here] who had a reason to live but would be homeless." Brett packed his belongings and left that night. He spent a few months couch surfing until he got a call that a bed opened up at the Wanda Alston House. Brett had already gotten accepted into George Washington and just needed a place to stay to finish out the summer before school started.

A homeless outreach worker referred Colin to the house. Unlike Brett, Colin had a longer history of homelessness. He, his mother, and two older sisters had been in and out of homeless shelters since he was 5. His mother was a "recovering domestic violence victim," as Colin described it. His father died from a heroin overdose when he was 5. A few months later, his mother could not keep up with the bills. Between the funeral, rent, and childcare, her full-time, minimum wage job as a cashier at a nearby grocery store was insufficient to sustain their cost of living. "She tried to keep things together, but it all just made her more and more depressed. Hopeless." They became homeless on June 2, a day after Colin's birthday:

> I remember sitting camp-style in our vacant living room—we weren't supposed to be there, the sheriff had already served our eviction and our things were sprawled out on the sidewalk—but the maintenance man was nice enough to let us in; I think mom was sleeping with him at the time. So we're sitting there, singing happy birthday like nothing is happening. Mom had got two packs of Twinkies, and put a candle in each one, and so we each had a little birthday cake. And I blew out all the candles. I remember feeling guilty because I should've been wishing for a new place to live or something, but I wished for a *penis*.

For the next few days, they stayed at a bus stop until they were put up in a hotel until beds became available at a family shelter. "The hotel was like a huge drug den. It was like all these homeless people on the same floor, and my mom would just hop from one room to the other, getting her fix of whatever drugs would make her stop being so depressed."

Colin was housed and homeless three different times and placed into foster care once between the ages of 5 and 15. One of his older sisters ran off when she turned 17 and became a sex worker. The other one attempted to run away several

times, but she always returned. “I guess she felt guilty about leaving me. It sure as hell wasn’t because our life was so good.” It was at the age of 15 that Colin decided to start transitioning to a man:

> I was just ready, you know? My mom was a strung out drug head whose boyfriends were always abusing us, beating my mom and taking advantage of her, trying to ‘put me in my place’ and ‘make make me a woman’ they would say. I never let any of them touch me, though. They tried, but I kept a knife on me, and they knew I would kill them.

Colin’s demeanor shifted as he talked about his mother’s boyfriends. He became more somber, at one point getting misty-eyed. Brett would give an occasional pat on the back, making sure to not let the touch linger too long but long enough to provide comfort.

> I know you probably think my mom was a piece of shit druggy who left me when she found out I wanted to be…me. No offense, Brett. But, she was actually really supportive. She sobered up for a while after that, told me she was going to get a job and save money to help me with the surgery and everything. Of course, I knew it was just as much fantasy as me being a girl was, but you could tell she really wanted to, and who was I to wake her up from her drug-induced dream? No. Me, I went back to the streets because she couldn’t take me with her.

Colin’s mom had gotten a space at Sarah’s Hope, and he could not stay because of his age and sex.

Sarah’s Hope is an emergency shelter in Baltimore, MD. It provides shelter for women and children, men and children, and intact families (unwed families with at least one biological child in common). Like many family shelters, there is a limited capacity for space. During the time of Colin’s family’s’ arrival, the shelter had the capacity to serve 75 clients; it has since undergone an $8.5 million renovation that has

increased that capacity. With those renovations, too, the space was reorganized to better accommodate different family compositions.

> When my mom got there for an intake—it's in this old school on Mount Street—just up the block from where Freddie Gray was killed—they told us I couldn't stay. They didn't have the space for a boy my age. Cos', see, they group all these families together in big dorm rooms and sometimes they gotta split them up because of space and sometimes they get their own room, but a guy was already there with his children—they gotta keep the single dads in a separate room for safety and what not, you know how it goes—so they couldn't take me because I wasn't under the age of 12.

This type of splitting up is fairly common. According to a former case manager at the shelter, mothers frequently had to make decisions about what to do with their teenage sons, particularly if the family had to be spread out across other rooms:

> But really, it doesn't matter a lot of the times if the family has to be split up or not. It's just not safe having little kids around boys that are that much older. You gotta remember, this ain't Pleasantville. Here in Baltimore, in this part of Baltimore, boys grow up faster. We have an obligation to protect young girls from potential predators and threats. Sometimes, the best defense is a good offense. And I hate to put it bluntly like that, but you gotta remember for a lot of these girls this is the *only* safe place for them.

Due to the limited resources for homeless youth, parents are often encouraged to have the teenage child stay with family or friends.

> We tell them it's a difficult decision—choosing between one child over the others—and many of them choose to not make that decision. That either or decision. They are all or nothing. We explain that it's usually for about 3 or 4 months, so if they can find a place for them for just that time we can work something out for them as far as their long-term housing goes, but they walk instead. Some of them stay, and they tell us

> the son is staying with a family member or something. We have to check, of course, because the state mandates that we report to CPS if we suspect they're unsafe. And we tell the moms that. Like, sometimes they'll tell us the son is sleeping at an aunt or uncle's but then later we find out they're on the street. So, in those cases, the child might be placed in a group foster home or something until the mother is stably housed.

What the case manager illuminates is the tension between child safety and the need to create places where young, predominantly black, girls can feel safe from sexual violence while reconciling the need to provide shelter for young, predominantly black, boys who are understood as potentialy violent sexual subjects. Colin's position as a black transgender man further exacerbated these tensions.

Before leaving the shelter, Colin's mom tried to get him to stay—but as a girl. The shelter could have accommodated him that way.

> We had agreed that I would start using male pronouns, would be introduced as a guy. I had already started reading up on different blogs and things—at the library and stuff—about how to make 'the transition.' That's what they always called it. So I told my mom going in that no matter what I was going to be Colin. We had this problem at a different shelter before, and I needed her to know. I couldn't pretend anymore. But when the lady told us I couldn't stay cos' they couldn't accommodate me or some shit like *I was asking for special accommodations*, my mom begged me to go by my birth name. I told her if she told them people my business I would never see her again. I was serious. She knew it. My mom's might have been high all the time, but she knew when I meant business.

Colin's mother resigned to taking the shelter bed with his older sister. She also told the case manager he would be staying with her brother in D.C. "Mom had this old drug dealer friend she had the social worker call up and everything and vouch for the whole story, so they wouldn't ask questions. Cos' I wasn't going back to no damn

foster home." Colin spent the next few days jumping from abandoned houses to friends' couches until he caught the train down to D.C.:

> I had this old girlfriend whose parents were real cool. They were out of town for a few weeks and left her alone—she was 17, white, so you know her parents ain't care about babysitters and if that shit was legal. I called her up, and she let me come crash there for a while. But that got fucked when her dad came home early for work and saw me sleeping on the couch in the living room. I mean he was cool about it for his daughter to have this random ass black dude sleeping on the couch; he let me stay the rest of the day and then I lied and told him I'd be staying with my uncle and I left.

Colin tried to sneak into a few shelters in the D.C. area, but being under the age of 18, none of the men's shelters would take him. It was during an extremely hot day in D.C. that he went to a drop-in center, and "after a bunch of calls and people telling me they were pulling favors and stuff," he found himself at the Wanda Alston House.

Colin and Brett were the only trans-identified youth at the house. They connected instantly. "I hadn't met another trans guy while on the streets, so I was super excited when I met Colin," Brett explains. "You read all the research and blogs and stories about trans homeless teens and about us all sticking together, and I kept thinking I would run into them. Like they were some underground community that once you go on the streets some secret door opens and BAM you find them! But, nope." Brett met a few gay and lesbian homeless people but did not encounter any trans-identified people while on the streets.

> I searched and searched, but instead I found a group of older women, homeless like me. They kind of showed me the ropes. One lady was this real old school lesbian. Rambo dyke but she also wore dresses [shakes his head] She took me aside and told me to ditch the boys' clothes or some of the other ladies might get

> uncomfortable. One of the women had been raped, another molested, and so on and so forth. Sometimes, the one—she was an older black lady, about 5 foot tall, round—she would wake up in the middle of the night screaming. We'd take turns calming her down, you know? But it took a while for her to warm up to me.

The older black lady had been raped while sleeping behind the dumpster of a 7-11. The police told her she should have been more careful, that it was not safe for a woman to sleep behind the dumpster. She became irate and cursed them out, at one point throwing a rock at one of them. She was arrested and charged with disorderly conduct, what Brett relayed was described to her as a "favor" because of her "unfortunate experience." She had since been having terrible nightmares and a few failed suicide attempts. She would often go off of or lose her medicine, prescribed for PTSD. The other women would take turns making sure she was taking them. Brett never volunteered out of fear that he would trigger her panic attacks and then they would not let him stay around:

> When I left my house, I told myself, 'fuck it! Fuck everyone! I'm gonna do me and be whoever I want to be, however I want to it!' But then you stay a few weeks on the streets and you've traded your dad's work boots for some cash so you could buy food and these women are trying to help protect you from all types of predators and grimy shit—dudes who think I'm a lesbian who just 'needed some dick in my life' and *they* were just the ones to turn me back straight, or straight for the first time, or whatever. And then wanted to *force* me to be straight, if you get me. And they don't know that yeah, I wanted a dick but not a dick *from them*. And so then you start to realize this is about survival. It changes things when you think that way. So I stopped dressing so much like a dude—as much as I could, you know, it's not like I could just go out and buy new clothes. And I told the ladies I was just dressed that way to keep the men away, and some of them bought it. And of course they called me Britt.

Brett never disclosed that he had ever been a victim of sexual assault or an attempted sexual assault, but the rhetorical, "if you get me?" at the end of his statement about men trying to "force" him into being a straight woman, coupled with the very disgusted, upturned face he made while narrating these types of encounters, suggested that presuming as much would not be a stretch. His interspersed jocularities that accompanied his deep, monotone voice and flat affect when describing his want for a dick but not from "all types of predators" were a consistent part of the conversation, as both Brett and Colin balanced those two acts (playful and serious) while talking about traumatic experiences. At one point, Colin stopped to make sure I was not confused, "Don't get me wrong, I'm laughing and shit about this, but I'm dead ass. Sometimes all you can do is laugh, but make sure you know it's serious. It's not a game out here." What both of them made palpable throughout our interaction is the way in which sexual violence and the threat thereof continually lingered in the background of their experiences, despite the moments of laughter and all the smiles. "Something like 40% of homeless youth report being victims of sexual assault; that's what the research says, and I'm sure it's much higher if you're gay or lesbian. So I don't want you to think I'm joking about this shit, it's fucked up on the streets," he continued.

Brett's close proximity to victims of sexual violence as well as the real danger he faced while on the streets informed how he thought of and constructed himself as a man and how he navigated "safe spaces" for various different groups of people, even though he never really felt safe himself. "When I got to the House, I was so excited to be in a place where there were 1) teens and 2) teens like me. You know. Gay.

Lesbian. Trans. Bi guys who were too afraid to come out as gay. I was the oldest at the time, but it still felt good." Brett did not immediately identify to anyone as trans, despite feeling like it could have been a place where he could.

> It was tricky, ya know? I had just come from an environment where a lady would freak out if she knew I was a guy and here there were these other kids like me, trying to pick up their lives, probably seeing some sick shit, and I didn't know if I would mess that all up. Plus, I wasn't sure if they'd be like the gay friends I had at school who were cool with me wanting to transition or like some of the people I met on the streets who treated me like shit. I was still in survival mode—I'm *still* in survival mode.

Brett did not begin living as a man until he turned 19. He had begun seeing a therapist with the help of his case manager at the shelter and with her help had started to gain the courage to start the transition "again," according to him:

> I felt like I put it on hold, like I wasn't in transition. I know that sounds stupid, because transitions aren't one straight line or thing, but that's how it felt. I started identifying as Brett at the shelter. We had a family meeting and my case manager talked to the other people in the house. People had questions, but everyone was cool with it for the most part. Some thought it meant I was also a prostitute, but I guess that's kind of the only way you hear about trans people besides like Laverne Cox and stuff. *I'm not, by the way*. But, yeah, for the first time, I felt like I could be myself. And then Colin showed up and things started to feel normal—as normal as being in a house full of a bunch of caddy queens can be!

When Brett left for George Washington, Colin stayed in touch. They regularly met up for lunch and just for Colin to get away.

> I attended a few of his classes and would crash at his dorm some nights when his roommate was away. I felt like I was in college. I was working on my GED, because I'd missed so much school while on the streets and didn't really want to go back. My mom got a place

> through Section 8, but I didn't want to move back to Baltimore especially not in the neighborhood she was in. It just wasn't safe. That's crazy, right? It was safer for me to be in a halfway shelter than in my mom's house.

Colin's mom was living a few blocks from Sarah's Hope, an area he frequently avoided because it "wasn't a place for people like [him]." Instead of reuniting with his family, which was his housing plan on paper, Colin moved in with Brett when he turned 18. During his second year of college, Brett moved off campus into a basement apartment he rented from a classmate's family friend, so he let Colin move in with him. "I knew it was in violation of the lease, but I couldn't let him go back to his mom's or on the streets again." The arrangement worked for six months until the landlord got wind of the situation. "They understood the circumstances, but were really against it, so Colin had to leave. I couldn't risk being on the streets again, and he was pretty adamant that he wouldn't let me. It was wintertime, so I knew he'd get in somewhere. It's always hardest in the summer." Colin, being 18, could go to an adult shelter but did not want to risk going to the Federal City Shelter on D Street in D.C.

> I've heard stories about that place from some of the people at the House and from some of the dudes my mom used to run with. There was no way in hell I was going there. It just wasn't a safe option. I'd rather sleep on the streets. I couldn't go to my mom's cos' I wasn't on her voucher, so I crossed the D.C. line into Montgomery County. It was supposed to be nicer.

Colin stayed a few nights sleeping in the lobby of Holy Cross Hospital in Silver Spring, MD until he was referred and cabbed 10 miles north to the men's shelter in Rockville, MD.

Three years prior to Colin's arrival, the Montgomery County Continuum of Care made a decision that anyone in the county in need of shelter services could utilize those services so long as they were homeless. However, because of budget issues and concerns from taxpayers, it was determined that the amount of time people could receive services would be capped by program if they could not prove they had become homeless in Montgomery County. This was not a residency requirement, per se. Rather, it was a requirement to prove that one's homelessness originated in the county and therefore it was the county's responsibility to provide services to help end said person's homelessness. While this proof often and foremost came in the form of state-issued IDs with Montgomery County addresses listed, one could prove homelessness originated in the county through a series of other forms of documentation: official mail, paystubs, letters from other providers, leases, or letters from community members.

The intent was to cut down on the amount of county taxpayer dollars spent on servicing people who were not even from the county. It was also meant to discourage transient people from coming to the county to utilize its services, as there was a longstanding understanding that Montgomery County, as one of the richest counties in the nation, had better shelter services in the country than most other jurisdictions. In practice, what this meant is Colin could receive 35 days of shelter, maximum, in the county since his homelessness did not originate there: up to 30 days sleeping at a men's shelter in Rockville, MD and up to an additional 5 days sleeping at a co-ed shelter in Silver Spring, MD.

Colin arrived at the shelter at almost midnight due to a series of delays regarding the payment and scheduling of the taxicab. During his intake, he reported to the worker that his name was Colin and he identified as a man.

> The intake worker had already written down my name as my legal name before he ever asked me what my name was. There was a bit of back and forth and confusion about the discrepancy, but when he called his supervisor in, his supervisor explained that since I identified as a male they would accept me and identify me how I wanted to be identified. It was a huge relief, because you hear a lot of crazy shit about things happening around this stuff, and I didn't even for real know where I was, so I was like…damn, am I gonna be stuck in the middle of nowhere assed out in the cold

The intake took about another hour, with Colin having to correct the intake worker a few times. "He made a lot of assumptions about me, and so that was a red flag, but I was used to it. So I just went along." Colin was told he would be provided a mat and blanket. He was taken to a large multipurpose room where people were already sleeping. "I requested to be placed in the center of things or kind of like amongst everyone, but the guy told me his supervisor said I should be closer to the door where they could see me. I thought that was strange, because he had to pull a mat closer to the door, and I felt like I was in everyone's way." At around 3 am, while dozing off to sleep, Colin's mat was kicked by a stranger, and he heard a loud yell. "I woke up, and some guy had tripped over the corner of my mat—it was sticking out in the walkway. He cursed at me for moving my mat, and then the staff guy came running down yelling, 'I moved him there! Just go to the bathroom and mind your damn business!' and things like that." Colin stayed in the same spot every night for two weeks, despite continually requesting to be moved. "They told me it wasn't 'best practices,' but here I was telling them what the best practice for me was!"

Unbeknownst to Colin, a few months before he arrived, the committee on transgender inclusion helped a couple agencies pull together funds to offer a training on working with transgender clients and were informed that one of the best practices for placing transgender clients was to 1) place them in shelters that match the gender to which they identify and 2) to place them in locations easily accessible to staff due to the higher rates of assault and victimization that happen in shelters. That is exactly what they did, despite Colin's desire to blend in with everyone else. By his third week in the shelter, Colin had not yet showered. "People started telling staff I stunk and things, some of them started harassing me, staff included." He was approached by two different staff members on various occasions and threatened that if he did not shower he would either have to leave or the Crisis Center would be called and he would be taken to the psychiatric hospital for evaluation; his behavior suggested he was willing to subject himself to harm, which was a concern that needed to be evaluated. Colin, for fear of being placed in a psychiatric hospital, agreed to shower.

> I told the supervisor on shift that I didn't feel comfortable showering because staff aren't really ever in the bathrooms, and I didn't want to be attacked. He kind of got this weird look on his face and told me I'm in a men's shelter and that guys will be guys, so the best he could tell me is to take a shower in the middle of the night when not a lot of people would be up.

The supervisor's reaction and Colin's fear relied upon a commonsense understanding that the men, by virtue of being men and being homeless would be prone to attack Colin because of his perceived sexual identity and his biology:

> I didn't think the supervisor would attack me. Well, I guess he could have said some fucked up shit to me and maybe hit me, but we were in a room with a bunch of glass windows. Everyone could see. The difference is clients go to the bathroom to jerk off and shit. You get

> *naked*. These already horny as fuck men who make all these fucked up sex jokes all day long were going to see me naked.

Colin's naked flesh within the context of a presumed heterosexual space that is organized around a patriarchal wanting and desire full of fucked up sex jokes and horny men who can only jerk off in the bathroom where no staff can see was marked as a target for assault. "It's common knowledge that trans people aren't safe in public restrooms because they are more easily targeted because there's no surveillance and you can actually *see* what you otherwise *imagine* is there."

Colin's fear about being sexually assaulted was rooted in both his own knowledge and experiences with these unfortunate encounters as well as a popular image of the sexually violent predator lingering in the background of public spaces who comes out to prey when trans people enter those spaces. However, dissimilar from popular narratives that circulated making it almost impossible for Colin to be in the shelter in the first place—the image and discourse of the trans figure as potential sex offender—Colin and the supervisor instead imagined *everyone else* as a potential sex offender. This is precisely because of Colin's sexed body.

Whereas, the debate around bathroom bills drew on the image of the vulnerable woman and innocent child being raped or molested by a "trans woman" (read: straight man dressed as a woman), the body of trans men elicits a narrative that interpellates homeless men as the sexual predator who will, inevitably, rape the innocent trans man (read: straight woman dressed as a man). In the context of the men's shelter in Rockville and in D.C., both of which are predominantly composed of black men, this meant in a literal sense that Colin's fear, as real as it might have been, constructed a shelter full of black men as potential sex offenders—himself excluded.

That is, Colin's sexed body, equipped with female anatomy, trumped his gender identity to preclude him from the formula that hailed all the black men in the shelter as potential sex offenders. Colin was, after all, a black man, but neither he nor the supervisor on shift considered him to be a sexual predator by virtue of his sexual anatomy.

When Colin finally took a shower, he was surprised to find another client in the shower. "He was a younger black guy, closer to 21 or 22. He was pretty lean and had a lot of tattoos all over him. He had just gotten out of the shower, so I could see his whole naked body. He was not shy." Instead of immediately showering, Colin went into the stall to kill time. "I sat on the toilet and kind of just waited, you know, until he left. I figured if I could just get in the shower without anyone seeing me that would be half the battle." The guy, instead, struck up a conversation with him. "It was real nonchalant at first. He started out talking about the water not being very cold. Small talk. I could tell he was going to be in there for a while, and I didn't want to risk others coming in, too." The showers are not communal at the shelter. Each client can shower privately behind a shower curtain. "There's enough room that, if you do it right, you can change and everything in the shower without really getting your clothes wet, so I thought I'd do that." Colin got in the shower and proceeded to bathe. He left on his underwear, to be safe. "The guy and I were still chatting, and then suddenly, I felt a hand touch my waist. He had stuck his hand in the shower. I pulled back the shower curtain, and he was standing there jerking off. I was afraid he was going to climb in the shower with me or *do* something to me. I screamed!" A staff member came in and found the two of them. Colin gave his account, and the client was

immediately removed from the shelter. “I felt bad on one hand because it was so cold outside, and then on the other hand I felt good because they acted so quickly. I wasn’t expecting that.” Colin only remained at the shelter for two more nights.

> After that, it got worse. Some of the guys had heard the news and had sort of made up their own stories—you know how it is—so some of them would come up to me and ask me to do things with them. It was too much, so I left and went back to this house I knew where a few of the kids who didn’t make it at the House were crashing. I heard later from someone that I guess the guy, the one who groped me, I guess some of his friends gay bashed him or something. He was pretty bad off, in the hospital with broken legs and stuff. People are fucked up.

While Colin’s unfortunate experience in the bathroom corroborates many of the fears and concerns trans men and women have about public-private spaces, such as bathrooms, showers, and locker rooms, it also highlights the complicated ways in which homophobia, transphobia, heterosexism and patriarchy collude to deny people access to shelter.

Narratives of victimization and safety compete around a discourse of vulnerability to hierarchize some forms of violence over others, to protect some bodies over others, even as there are constant failures. Colin was a victim of an unwanted sexual advance, indeed, sexual assault, by a person who was always marked as having the potential to sexually assault someone. And yet, the injury was not Colin’s alone. Rather, the assailant was also injured, aided by the fact that the bathroom serves as space for sexual activity in the absence of any other forms of privacy and the consequences for performing private sex acts in public view could be to be kicked out by staff and/or assaulted by other clients. In this way, shelters are heterosexist *and* transphobic by design. Thus, Colin’s assailant was “gay bashed” as a

way of reprimanding his same-sex desire, despite Colin's anatomy being the site of anxiety for his, and staff's fears.

In a twisted logic, homeless men in the shelter are potential sex offenders not because they will rape other *men* but because they will rape Colin-as-*woman*, as a form of a sexual dominance that is supported by patriarchy. And yet, the assailant's behavior was deemed intolerable and therefore worthy of violent reprimand *not because* Colin was a woman; in fact, it is unclear that he registered as a woman by his account. Rather, the violent reprimand came because of the perceived same-sex act. In focusing on ways to create transgender-inclusive shelters, a failure to recognize that, despite critical assertions by various scholar and activists, gender and sexuality are often conflated, an opportunity for real interventions are missed. Might there have been a way to mitigate the incident that would make Colin feel safe and at the same time would have allowed his assailant to avoid injury? What does a rally around the trans body that does not take seriously the material consequences of sexual difference risk at the gain of single-use bathrooms? "It's really ironic, when I think about it. Had I been a trans woman, people would have thought *I* was the rapist, because I had a penis and I'm a black man but here I was lucky enough to not have a penis yet, and so people thought maybe I could be the victim instead. Wild."

I conclude with a thick description of Colin and Brett's experience in the shelter in order to highlight the ways in which non-legal discursive contexts produce individuals as sex offenders despite there being no violation of the law. This is my broader argument for the chapter—transgender men and women become interpellated as sex offenders through discourses about bathrooms and inclusive shelter practices.

Further, their experiences highlight how these non-legal discourses in many ways required them to navigate life on the streets differently and to construct their identities in contradistinction to both the sexually violent subjects they were presumed to be in one context and sexual assault victims in another. Moreover, I want to consider how Colin's experience was made possible through a racialized logic that organizes who does and does not have intimate familiarity with homelessness and how that translates into who does and does not get understood as potentially sexually violent. That Brett's family did not experience a long history of homelessness, was not marked by a constant negotiation with the state—through shelter services, foster homes, or subsidized housing—and Brett was able to go on to pursue higher education at an elite school speaks to the ways in which homelessness is mitigated along racialized and sexualized modes of difference, even as Brett's and Colin's gender identities subjected them both to specific forms of violence. The acute awareness of one's identity, public perception(s) of that identity, and how those perceptions shape one's lived experience is at the heart of my next chapter, wherein I explore popular representations of homeless sexuality, which equally functions as another non-legal discursive context in which homeless individuals are constructed as sex offenders. In doing so, I highlight how homeless people use cleansing practices to fashion themselves out of these constructions, and how—as we saw through the marked difference between Colin and Brett—these constructions are racialized.

Chapter 5: Representations of Homeless Sexuality on the Screen

Introduction

In June 2013, I attended a daylong training on LGBT homelessness, with an emphasis on youth homelessness, offered by a specialist from the Department of Housing and Urban Development (HUD). HUD wanted our county network of homeless services providers to begin collecting data on the number of homeless people we serve who identify as gay, lesbian, bisexual, or transgender, particularly those between the ages of 18-24. LGBT homelessness had become a part of a national conversation thanks to the efforts of LGBT rights organizations across the country.

In particular, as was referred to multiple times throughout the training, an almost 200-page report on LGBT homelessness was released in 2006 as a result of the collaborative effort of the National Gay and Lesbian Task Force Policy Institute and the National Coalition for the Homeless. The report, entitled *Lesbian, Gay, Bisexual, and Transgender Youth*: *An Epidemic of Homelessness*, detailed the myriad of factors that contribute to LGBT homelessness: mental health issues; substance abuse; risky sexual behavior; victimization; and incarceration.[310] With this framework at the core of our conversation, we were being trained on how to work and provide services to gay and lesbian youth. In a field of work that is organized around a model of intervention that is social services oriented, this inescapably meant we were having a conversation with and like social workers. We were mapping out the root(s) of the

[310] Ray, N. (2006). *Lesbian, gay, bisexual and transgender youth: An epidemic of homelessness*. New York: National Gay and Lesbian Task Force Policy Institute and the National Coalition for the Homeless.

problem(s) that make LGBT youth homeless so we could determine what services we should provide that would help lift them out of homelessness.

Being in that room was the first open conversation I had with a group of providers that involved thinking about and naming the sexual lives of homeless people. Sure, we had talked about how hard it was to house sex offenders and how clients had experiences of sexual trauma, but we had never actually considered that people we served might have sexual lives outside of these limited framings. And yet, the conversation, much like the literature that places sexuality and homelessness in conversation, was prescriptive in nature; it sought to define the problem to prescribe a solution. We were examining data sets that reported the statistical prevalence of physical, emotional, or sexual abuse; sex work; and "risky sexual behavior."[311] It was a very *clinical* approach to homeless organized around what Teresa Gowan refers to as *sick-talk*, those discourses that narrate homelessness as a symptom of "addiction, mental frailties, post-traumatic stress syndromes, and other sicknesses."[312] In her brilliant history of homelessness in San Francisco*,* Gowan argues that homeless policies, informed both by state interests and the research about homelessness, can be characterized by three major discourses: *sin-talk* (homelessness is a consequence of moral offense), *sick-talk* (homelessness is a consequence of drug addiction and mental health), and *system-talk* (homelessness is a consequence of structural inequality). To say, then, that we were using *sick talk* is to say that we were

[311] As a catch-all category, risky sexual behavior generally includes survival sex, teen pregnancy, unprotected sex, and polygamous sex acts.
[312] Gowan, Teresa. *Hobos, Hustlers, and Backsliders: Homeless in San Francisco*. Minneapolis: University of Minnesota, 2010, xviii.

(re)pathologizing the sexual lives of the LGHT youth in order to figure out a way to help them out of their own pathology.

Numbers served as evidence that made legible the existence and prevalence of queer youth homelessness and the ways that their sexual desires impacted their everyday lives negatively. Numbers narrated and constructed the worlds and interiority of LGBT people writ large and queer homeless youth in particular. They produced narratives of loss, trauma, and violence to represent the sexual realities of LGBT-identified youth, which by extension shaped our understandings of LGBT life in general. Doing so formed the basis on which our demands for services, shelter, and state-based interventions on behalf of these sexual subjects got articulated. While a sometimes useful project, as evidenced by the federal initiative to prevent LGBT youth homelessness established in 2014 as well as the training I found myself attending at what seemed like a much too late moment, such a characterization through numbers erases the relationship between homelessness and sexuality outside of identity categories and sickness.

Because my project centers sexuality as a category of analysis opposed to just an identity, and because the men I interviewed were often struggling with the fact that their identities were cast as sexually violent by virtue of being on the sex offender registry, it is important for me to think beyond the confines of the training I was attending to consider popular representations of homeless sexuality. I do so to not only push back against the limited frameworks in homeless services used to usher in conversations about sexuality but also because I want to think about what other non-legal discursive formations narrate homelessness and sex offense. This is especially

integral to my project, as many of the men I interviewed talked about how they were understood as potentially sexually violent or grotesque even when people did not know they were sex offenders. This characterization was because of them being *homeless*. Thus, part of their self-fashioning was about finding ways to mark themselves as belonging to home and precisely not homelessness so that they would not seem suspicious. Moreover, doing so helped them have a better chance at establishing sexual relationships that were not defined by their past criminal history.

For instance, both Charles and Fred described similar encounters wherein their being homeless narrated their propensity to be sexually violent and not actual knowledge of their status on the registry. Recounting his first date post-release, Charles described the anxieties he felt about getting prepared for his date. He met his interest at a Safeway grocery store; he had been outside trying to discreetly gather cigarette butts when he noticed her struggling to carry a pack of water. He offered to assist, having "been taught how to be a gentleman by [his] mama." The two struck up a long conversation and agreed to meet at a nearby Panera the next day. The problem Charles had was that he was not able to do laundry at the drop-in center that week due to having been banned for a week for getting into a verbal altercation with a client at dinner.

The cleanest clothes Charles had were the ones he had been wearing, and he did not want to wear the same clothes the next day. He was worried his date would notice and that any chance of making a good impression would be ruined. Charles spent the evening at public laundry mats going through unsupervised washers and dryers until he was able to find a set of clothes that fit him—he only had "somethin'

like twenty-three dollars from hustlin' cigarettes," which he needed to pay for lunch. He spent the morning on the opposite side of the county using a shower at a gym where his cousin worked. "I needed to have my shit on point. I couldn't have her out here thinkin' I was some kind of bum. I needed to be presentable, ya know? Sharp, clean-shaven, like a man's supposed to look. Not like some homeless bum." Charles's concern about being understood as a "homeless bum" was a pretty salient point. After pressing him on the issue, he simply stated what he thought was obvious:

> No one wants to date no damn homeless guy. That means I can't take care of myself. That means she's gonna be suspicious of me, think I'm tryin' to take advantage of her, then she gonna ask a bunch of questions and next thing you know she's on the internet tryin' to figure out who I am...and BAM...it's over. Just like that.

Charles partially clarified what he meant by her thinking he would want to "take advantage of her" by telling me about all the "creepy ass homeless dudes" who cat-call at women and "just seem desperate to get with a girl." He did not want to be conflated with them, so he made sure to keep his appearance up and only go to the places homeless people congregated for short periods of time out of necessity—food, laundry, and showering.

Fred articulated a similar concern within the context of his strategy about being transient. While he made clear that he went into every housing situation understanding it was temporary because the sex offender notification system often made it so, he also resisted taking on any aesthetic that made him look transient. Put frankly, Fred did not want to "look homeless." He kept a small storage unit where he would keep his belongings in the breaks between being housed and unhoused. He would use it as a changing room and a place to take "bird baths and freshen up." For

Fred, "looking homeless" made him just as suspicious as being a sex offender, a lesson he learned the first he was on the streets carrying around a series of bags, having just been kicked out of his sister's condo. It was a rainy day, so all his belongings got soaked. He spent the night at the Silver Spring metro station, trying to stay dry and warm. For the next few days, he went around looking for a place to stay, unfamiliar with the shelter system in the county. He went to his old church, where he had hoped to run into an old friend or friend of the family. He approached an older woman who he thought he recognized as one of his mother's old friends.

> I don't know if it was the fact that I had all these bags, that my clothes and stuff stunk from the rain, or that I was just this dirty lookin' dude kinda followin' her to her car—I was tryin' to figure out if it was her and get the courage to approach—but she freaked out, started screamin' she had mace and would call the cops.

Fred later ran into her after he got a room rental. He apologized for the incident, worried that he had really scared her. Much to his surprise, she did not even know it was him; she did not recognize him with the facial hair and disheveled look. What surprised him even more was that she gave him a hug and told him she would pray for him. "It kind of threw me off cos' she knew me. She *KNEW* what I had done, but there she was hugging me, offering me her number and to take me to church some time." Fred realized that it was not the fact that she knew he was a sex offender that immediately scared her; she had not, in fact, registered who he was. It was, instead, the fact of his appearance—that he looked like "a dirty hobo"—that startled her.

While Fred and Charles directly commented on how their homeless aesthetics mitigated their interactions, particularly with women, throughout all my interviews, the preoccupation with aesthetics became apparent to me. Many of my co-producers

did not want to meet me in places where other homeless people hung out, a sign I took as one about their privacy but what many of them articulated as a strategy to not draw attention to them or be lumped in with the rest of the homeless people. Many of them worked hard to aesthetically separate themselves from what they commonly referred to as "looking homeless" so as to not draw additional unwanted attention to themselves, attention they feared would lead to a reveal about their status on the registry. Moreover, they would not meet me in places where they felt they would not be able to blend in. They did not want to meet me anywhere that seemed too upscale or aesthetically clean for fear of being marked as not belonging by virtue of their not being able to meet accepted aesthetic standards. As a result, we met in mall food courts, fast food restaurants, and occasionally in a park or coffee shop. Time and time again, though, when I asked what "looking homeless" meant—many of the homeless people with whom I worked did not have any monolithic image—they would just reassure me that "I knew" and "everyone knows." What I took them to be telling me is that there was a commonsense popular representation of homelessness and that representation indicated something about homeless sexuality such that they were working against that popular representation.

In this vein, I am interested in thinking about popular representations of homeless sexuality beyond the recent emergence of literature on LGBT homelessness, arguably the most visible engagement of sexuality and homelessness. Departing from this new scholarship, I aim to instead think of the central role sexuality plays in naming someone as deserving or not deserving access to home, of belonging or not belonging to home because of the ways in which sexuality itself

mitigates this access. The management of sexuality is just as much integral to producing the conditions under which people become homeless as it is in constructing home itself. Thus, I turn to popular representations of homeless sexuality to foreground my research. This shift allows me to scaffold how homeless sexuality is constructed outside of those conversations with service providers or homeless individuals themselves and helps provide a framework for the types of representations my co-producers were actively working with and against to construct their own sense of self.

Homeless sexuality, a purview

Homelessness has historically been represented through three different, though overlapping, categories of vagrants: the hobo, the tramp, and the bum. According to Dr. Ben L Reithman, the distinction between the three categories is one of work and pleasure: "the hobo works and wanders, the tramp dreams and wanders, and the bum drinks and wanders."[313] Hobos were wandering workers, traveling across the frontier in search of employment, usually labor-intensive. The tramp wandered for various attractions: pioneering, work, transportation, and different climates. Bums were characterized as lazy drunkards; they neither worked nor dreamed.[314] Despite these arbitrary, sociological distinctions, the unifying trait was that they were all without home. In all these subcategories of homelessness, little has actually been written about the sexual lives of homeless people.

The exception is with that of the tramp, who was constructed as a sexual pervert by virtue of his proximity to homosexuality. Because tramps were almost only

[313] Anderson, Nels. *The Hobo: The Sociology of the Homeless Man*. Chicago: U, 1923. 87-89.
[314] Ibid.

men by virtue of the gendered privilege one has to inhabit in order to travel the world in search of exoticism, they were often constructed as having the propensity to "lure" other "road kids" into sexual relations with the promise of showing the ropes of tramp life. Moreover, sexual companionship was limited for wayward men, as they could never settle down. Thus, they were believed to have sought sexual company from prostitutes. Purportedly, these prostitutes were generally women who had "seen their best days and [were] not attracted to the average tramp. Thus isolated [from a good sexual companion, the tramp] must seek elsewhere for his sexual expression…he substitute[d] the boy for the woman."[315] The tramp was therefore just as much a wayward vagrant as he was a sexual deviant.

The connections between the tramp and sexual deviance were crystalized in vagrancy laws that were adopted across states as a way to police homosexuality. For instance, in North Dakota, the first state to enact anti-sodomy laws, vagrancy laws were expanded to capture sexual practices often associated with homosexuality making palpable the connection between vagrancy and homosexuality. The law prohibited "all persons who are idle and dissolute, and who go about begging…*lewd, lascivious, and wanton people*…and all persons who are idle or dissolute, and who neglect all lawful business, and who habitually misspend their time by frequenting house of ill-fame."[316] Homosexuals were often legally constructed as lewd and lascivious, as I illustrated in chapter one. Aside from these indirect characterizations of homeless sexuality that rely more on heterosexist framings that sought to police

[315] Anderson, Nels, and Raffaele Rauty. *On Hobos and Homelessness*. Chicago, IL: U of Chicago, 1998. 111.
[316] *The Compiled Laws of the State of North Dakota, 1913*. Rochester, NY: Lawyers Co-operative, 1914. 2241.

same-sex desire, understood as proliferated more frequently on the streets than in the home, direct scholarly engagement with homeless sexuality are limited.

Within the context of homeless services, the figure of the tramp was actually the impetus for the rise of sick talk; rather than focus on the sexual perversion of tramps as the general public was doing to characterize them as sick, therapeutic discourses focused on the wanderlust nature of tramps instead as a sign of pathology.[317] Thus, there is a dearth of scholarship that focuses specifically on how homeless sexuality is popularly conceptualized. My interest in this chapter, then, is to interrogate the role of sexuality in popular representations of homelessness, particularly through the rise of representations of hobo sexuality emerging in the late-twentieth century. I do this by performing a close reading of two popular films that represent mainstream understandings of homeless sexuality on the screen: *Curly Sue* and *Trading Places*.

I place these two films in conversation with each other because both rely upon and reproduce a common refrain that emerges across films of homelessness, which started to proliferate in the mid-1980s and well into the 1990s and early 2000s: the relationship between cleanliness and sexual desirability. During these two decades there were at least twelve popular Hollywood films, based on my own searches through online motive databases, that featured homelessness either as the central plot or whose central character was homeless, an almost 400% increase since the previous three decades combined. Amongst those films, many of them engage some scene wherein the homeless figure becomes a sexually desirable subject through the act of cleansing—Nick Nolte's character Jerry Baskin in *Down and Out in Beverly Hills*

[317] Ibid, 40.

(1986), Joe Pesci's character Simon B. Wilder in *With Honors* (1994), and Samuel L. Jackson's character Romulus Ledbetter in *Caveman's Valentine* (2001), to name a few. I chose these two films because of their critical reception; *Curly Sue* received horrible reviews, despite doing well at the box office. *Trading Places* got an Oscar nomination, and received rave reviews. While these two films were polar opposite in reception, they both relied heavily upon a commonsense script of homeless sexuality in general and hobo sexuality in specific as being one that is organized around an aesthetic of excess—excess filth, excess sexuality, and excess things—that mark them as undesirable. Each film narrates, differently, the role of aesthetic transformation as necessary for reading and registering homeless sexuality as something other than grotesque or aggressive.

My attention to aesthetic transformation vis-à-vis cleanliness is intentional, as I use this as an occasion to think differently about the relationship between what Gowan historicizes as "sin talk" (homelessness is a consequence of moral offence) and "sick-talk "(homelessness is a consequence of drug addiction and mental health) that discursively organize what she calls the "homeless archipelago" of homeless service organization[318] As I have demonstrated up to this point, discourses about homeless sex offenders have drawn on both moral and clinical conceptualizations—sex offenders are marked as immoral and as in need of clinical treatment. In this way, I want to shift attention to the ways in which cleanliness is not just a "sick talk" discourses insofar as it is used to describe the need for homeless people to engage in mental health treatment and substance abuse treatment—to "get clean" [from drugs] in order to deserve housing. It is just as much a discourse about sexuality; homeless

[318] Gowan, Teresa. *Hobos, Hustlers, and Backsliders.* 185-195.

people have to "get clean" [from the dirty hobo aesthetic] in order to deserve housing. For sex offenders, whom I have articulated inhabit a *carceral sexuality,* there is no "getting clean" in the rehabilitative sense that substance abuse treatment confers. However, as I will demonstrate through these close readings, via the practice of aesthetic transformation, they are able to fashion themselves a "clean" and thus no longer legible as sexually violent and grotesque, even as they are tethered to carceral institutions through the registry.

That there was a proliferation of films on homelessness in the 1980s and into the 1990s is not by happenstance. The 1980s saw a drastic increase in the number of homeless people, having "outstripped anything seen since the Great Depression," according to Kim Hopper.[319] These numbers were in part due to the redistributive economics that plagued the President Ronald Reagan's fiscal policies, which relied on the dismantling of the welfare state. This was evidenced, for instance, by his budget cuts to the Department of Housing and Urban Development (HUD), from $32 billion in 1981 to $7.5 billion by 1988, and reduction in tax incentives for private developers to create affordable housing options for low-income families and individuals. Under Reagan's administration, the federal poverty line rose from 24.5 million to 32.5 million between 1978 and 1988.[320] As a result, more and more people found themselves living on the streets, despite HUD official Philip Abrams's infamous declaration in 1982 that "no one is living on the streets."[321] In this context, coupled with the deindustrialization of the 1970s and 1980s, homelessness became a part of

[319] Hopper, Kim. *Reckoning with Homelessness*. Ithaca: Cornell UP, 2014. 176.
[320] *Ryan, Barbara. Feminism and the Women's Movement: Dynamics of Change in Social Movement, Ideology and Activism. New York: Routledge, 2010.* 102.
[321] Hopper, Kim, and Jill Hamberg. The Making of America's Homeless: From Skid Row to New Poor. New York, NY: Community Service Society of New York, 1984. 47.

the social tapestry of the U.S. and a matter of public concern, as demonstrated by the rise of homeless advocacy groups in the 1980s, such as the Coalition for the Homeless, which was formed in New York City in 1980, and similar organizations popping up in Atlanta (1981), San Francisco (1982), Phoenix (1982), and Chicago (1983).[322]

In addition to the rise of homeless advocacy organizations and the subsequent changes to federal regulations and funding policies they demanded, which demonstrates the growing public attention to homelessness across the U.S., another key set of discourses and representations were being combatted in public spaces, which also help frame my attention to these popular films on homeless sexuality: debates about ugly laws. As Susan Schweik demonstrates in her book *The Ugly Laws: Disability in Public*, from the late 1860s until the 1970s, several American cities, such as San Francisco, Chicago, New Orleans, and New York, to name a few, passed versions of "ugly laws" which attempted to "prohibit street begging" and "prohibit certain person from appears in streets and public spaces" who were discursively constructed as "diseased, maimed, mutilated…and unsightly beggars."[323] Schweik brilliantly illustrates how aesthetics were mobilized as a form of social control to determine who could and could not be in public spaces and how certain "unsightly" bodies were policed in public spaces by virtue of their not being understood as public bodies, including the homeless. Put otherwise, "today's struggles to erase the vestiges of ugly law also include the many forms of organizing that combat antihomeless city ordnances, which, like ugly law before them, raise 'a politics of aesthetics above the

[322] Hopper, Kim. 179.
[323] Schweik, Susan Marie. *The Ugly Laws: Disability in Public*. New York: New York U, 2009. 3.

politics of survival'"[324] The "unsightly beggar" was thus "designed to trouble the boundaries between the deserving and undeserving."[325] Crackdowns on "unsightly beggars" took the form of rehabilitation in the form of care, understood as vocational rehabilitations—beggars were trained to get jobs as a form of rehabilitation.[326] Through rehabilitation the disabled would "disappear and with them all that is lacking, in order to assimilate them, drown them, dissolve them into the greater and single social whole."[327]

Bearing in mind both the context of the 1970s and 1980s as ones in which many of my co-producers came to understand homelessness along with the larger U.S. body politic and the public debates of ugly laws that looked to aesthetic transformation as part of a rehabilitation politics that would transform disabled people into slightly bodies, I take up *Trading Places* and *Curly Sue* as two texts that illustrate a similar model of rehabilitation that emerged to make sense of homeless sexuality. These forms of representations of homeless sexuality through the practice of aesthetic rehabilitation—cleansing—suggest that homeless sexuality is grotesque and violent but can be transformed into something other, something more appropriate for the public spaces they occupy. Through close reading, I consider what this narrative looks like and the racialized ways it operates. I do so because I want to suggest that these models of framing homeless sexuality help make sense of why homeless service providers have limited frameworks for understanding the sexual lives of the homeless in general and for thinking about the ways in which homeless sex offenders inhabit a

[324] Ibid. 209; quoting Mitchell, Don. *The Right to the City*. New York: Guilford, 2003.
[325] Ibid. 61.
[326] Ibid. 232.
[327] Stiker, Henri-Jacques. *A History of Disability*. Trans. William Sayers. Ann Arbor: University of Michigan Press, 2000. 128.

carceral sexuality. In this way, not only can homeless sex offenders not untie themselves from carceral institutions but also the supposedly model for rehabilitation that exists for them as homeless is quite delimited by virtue of their intimacy with the sex offender registry. Put otherwise, the men in these films are imagined to be able to rehabilitate their sexuality in ways that I have spent significant attention in the previous chapters illustrating how they cannot. However, what they are able to do is use these models as ways to obscure their legibility as sex offenders.

The Racial Logics of Homeless Sexuality in *Trading Places*

Trading Places (1983) is an Oscar-nominated American comedy directed by John Landis. Set in Philadelphia, the film narrates the story of two commodities brokers, brothers Mortimer Duke [Don Ameche] and Randolph Duke [Ralph Bellamy], who use their socio-economic privilege to resolve a debate they have about nature versus nurture. To resolve this debate, they wager a bet, a strategy the two brothers have historically used to resolve any disputes. The premise of the bet is an experiment to determine whether or not people are predisposed to success or if, given access to resources and a supportive environment, they could become successful. The wager comes after they encounter a black wayward hobo, Billy Ray Valentine [Eddie Murphy] being chased inside their firm by the police at the behest of their managing director and shining star employee Louis Winthorpe III [Dan Aykroyd]. While exiting the firm with a briefcase full of payroll checks, Winthorpe crashes into Valentine, who is not paying attention to where he is going because he is attempting to avoid an encounter with the police he has just spotted.

When the two collide, Winthorpe drops his briefcase, which Valentine notices and tries to return, but Winthorpe assumes he is trying to steal it. Winthorpe screams for help from the police. A very long chase inside the building ensues, and Valentine is eventually subdued at gunpoint and arrested. The nearby Randolph Duke, concerned, asks what will happen to Valentine. An officer states emphatically he will be booked on "assault, attempted robbery, and resisting arrest." Mortimer Duke, the least concerned of the brothers, rewards Winthorpe with adulation, who in turn requests that "full charges" be pressed because "people like this are a menace to decent society." Winthorpe's declaration sparks Randolph's interest: "you're from a broken home, of course…you have a history of juvenile arrests, I presume. Drug abuse, reform school, state prisons, and all that." Valentine affirms all his presumptions before being hauled off by the police. This encounter leads the brothers to debate whether Valentine is a "product of a poor environment [with] absolutely nothing wrong with him," as Randolph asserts or if there was something inherently wrong with him being "a Negro, probably been stealing since he could crawl," as Mortimer conjectures.

The stark contrast between well-mannered Winthorpe and the urban misfit Valentine inspires them to try their hand at experimenting. Randolph surmises that Valentine would be just as successful at Winthorpe's job and lifestyle if given the same resources and grooming provided to Winthorpe and that, further, Winthorpe would turn to the same criminal practices as Valentine if he lost everything he had. Mortimer objects, arguing that Valentine has a predisposition to criminality and could not be reformed. A wager is made, and the two agree to use their power and privilege

to make the experiment come to life. Valentine and Winthorpe literally trade places, unbeknownst to them that it has happened. Valentine becomes a rich manager at a commodities brokerage, and Winthorpe becomes a hobo. Through the process of trading places, this film exposes the ways in which the hobo aesthetic affords different sexual possibilities and limitations along racial lines. More broadly, it reveals how representations of homeless sexuality privilege the ascendancy to whiteness as part of the transformative process of securing housing.

We are first introduced to Billy Ray Valentine earlier that morning, outside of the firm. He is wheeling himself on what appears to be a homemade wooden mechanic's creeper while attempting to get the attention of one of the Duke brothers, who had just gotten out of his chauffeured car. Valentine is wearing a faded brown trench coat draped with an accompanying scarf made of tied together plastic bags, a dirty grey hat, red hoodie, and a sign that reads "A GRATEFUL WAR VETERAN THANKS YOU MERRY CHRISTMAS." Between his body and the wooden creeper lies a pile of what appears to be dirty clothes. He holds out his hand, begging for money from the Duke brothers as they walk inside their multi-million dollar firm. When that does not compel them, he resorts to clutching on to Mortimer's legs, who proceeds to beat him with a stack of paper, as if beating a dog off his leg. The brothers shake Valentine off with the help of the doorman pushing him away. Valentine shouts requests of "a couple of dollars, quarters, anything" as he rolls away to no avail.

While wheeling away from the building, having unsuccessfully secured any contributions from the Dukes, Valentine notices a younger looking black woman

walking alongside him. She is wearing a long blue top coat, matching brown leather gloves and boots, and a light brown purse she clutches as she walks. Interested, Valentine stops the woman by grabbing the hem of her coat. "Hey baby, what's happenin? How you doin?" he asks as she attempts to walk away but cannot because he has not loosened his grip. "Hey, once you have a man with no legs you never go back," he tells her while she struggles to free herself from his grip. She looks unamused but does not say anything. "I know what you're thinkin', you seen *Porgy and Bess*?" he continues to assault her with an onslaught of questions while relentlessly grasping her coat. Eventually, she is able to rip her coat out of his hands and walk away. "We can make it baby! Me and you! *You bitch!*" he screams while she flees. Nearby, two officers watch the entire exchange happen from start to finish.

The scene of harassment that introduces us to Valentine—harassment of the Dukes and harassment of the unnamed black woman—marks him as an aggressive hobo. The almost commonsense way that he moves through the urban landscape harassing people suggests that this is a normal practice of his. That the police do not interject and the woman does not scream or appear fearful illustrates the everydayness of this exchange. Intrinsic to Valentine being a hobo, then, is sexually violent nature—he does not hesitate to assault a woman in broad daylight without fear of recourse. When rejected, he publicly hails her as a "bitch," screaming it across the landscape. This public display of gendered violence *in front of the police* demonstrates the almost ingrained nature of Valentine's sexual aggression. Even the presence of the law does not deter him from behaving inappropriately toward women. The absentminded, lackadaisical response of the police, however, signifies that his

sexual aggression need not be taken too seriously, despite the woman's clear struggle to free herself from his clutch.

When the police finally approach, their concern is not over the act of sexual harassment they just witnessed. Instead, they are concerned about "some complaints about con men pretending to be blind and cripple." There is no mention of the scene they just witnessed. Valentine immediately returns to pretending to be blind, despite his exceptional visual prowess having aided him just prior. Head swaying left to right with eyes crossed, he tells the officers that he would graciously help them in their search but he "hasn't seen nothin' since [he] stepped on that landmine in Viet Cong back in 72'" His invocation of Vietnam veteran status is deliberate because it is conceivable.

According to the first national survey on homelessness, conducted in 1996, 47% of all homeless veterans were black, and nearly half of all homeless veterans served during the Vietnam War.[328] Thus, Valentine's con artist narrative of being a blind crippled Vietnam veteran offers a critique of the nation that scammed black people out of the inclusive citizenship for which they fought and instead polices them for scamming others so that they might provide for themselves in light of the nation's failure to do so. The police officers are therefore there to intervene on the scam itself, literally lifting Valentine from his creeper to expose him. His legs extend, and he is able to walk. And, miraculously, he can see. He praises the police officers, agents of the nation-state, for their assistance in lifting him up and curing his ailments—as he walks away

[328] Fendrich, James M. "The Returning Black Vietnam-Era Veteran." *Social Service Review* 46.1 (1972): 60-75.

As an introduction to Billy Ray Valentine, I read these moments as instructive; they teach us who Billy Ray Valentine is. They frame our understanding of him, only further corroborated by Randolph Dukes' assessment of him as having come from a broken home, having a history of imprisonment, and drug abuse. The construction of Valentine as a black hobo who is a sexually aggressive con artist criminal from a broken home is made possible through his aesthetics and proximity to the streets. His body is marked as out of place and suspect even when he is not violating the law or doing anything suspicious. This is evidenced by his crashing into Winthorpe and the subsequent interaction that ensues. Winthorpe is leaving the firm when he and Valentine collide, knocking Winthorpe to the ground. Valentine apologizes, attempting to assist Winthorpe by picking up and returning his briefcase. "Help! Help...Don't shoot; take it," he cries out, arms stretched as if trying to create a barrier between the two. "Please don't kill me; I'm getting married," Winthorpe continues to protest. Valentine, still with a smile on his face, attempting to be helpful, assures his concerned counterpart that he does not want his bag. Before he can explain any further, the doorman grabs him, and that is when he is chased inside.

Winthorpe's immediate assumption that Valentine was attempting to rob him and probably had a gun, which he later yells out during the chase, is in response to Valentine's black body, cloaked in layers of dirty clothing, and not his actual behavior. The irony of this exchange is that Winthorpe's fixed assumptions about what a criminal looks like actually leads him to misrecognize who the criminals throughout the film are: the Duke Brothers, who have been illicitly obtaining reports

from various government agencies to make financial investment decisions that help them produce large profits.

Despite the film's tethering of criminality and sexual aggression to the hobo aesthetic through Valentine's body, I argue that blackness engenders this triangulation in ways that whiteness instead opens up possibilities for reformulating the sexual lives and socioeconomic mobility of hobos. That is, when Winthorpe trades places with Valentine through a series of strategically crafted misfortunes orchestrated by the Duke brothers, his experience of hobo life is starkly different. Winthorpe is framed for stealing petty cash from the Duke brothers for which he is arrested in front of all his colleagues. Before being booked, Winthorpe's interaction is drastically different than Valentine's—or the series of black men who stand in silence, hands behind their back, in the background. Valentine ran from the police; Winthorpe confronts them, head on. "Boy are you two going to be sorry. Do you know who I am?" The authority with which he speaks comes from a place a privilege not afforded to Valentine or the black men behind him. When directed to strip, Witnthorpe warns the black male officer that he is "making a career decision" that might "ruin him" for the rest of his life. His threat is immediately dismissed, but that he even felt like he was in a place to issue a threat demonstrates the classed and racialized privilege he is used to receiving. He acquiesces, much to his dismay. While being searched, the officers find a bag of Phencyclidine (PCP).

Unlike Valentine, who is only bailed out of jail by the Dukes as part of their scheme, Winthorpe's girlfriend has the means to post his bail. She is repulsed by his appearance. "You look awful…I'm so ashamed; those clothes and those shoes…and

you've been fighting, and you smell." Winthrope is wearing a hodgepodge medley of random clothing given to him after he was beaten up and had his clothes stolen by his fellow cellmates. His hair is messy, and he has a five o'clock shadow, which only adds to the dingy hobo look he is sporting: lime green fishnet undershirt; red, oversized Hawaiian-island themed button up; brown leather jacket with fur collar; red leather bell bottoms; and dirty Chucks.

As if to add insult to [aesthetic and physical] injury, a white female sex worker has been prepaid to interrupt the two and pose as if she has been receiving drugs from him and is "feigning" for more. In front of his girlfriend, she kisses him and offers to do "all those things [he] likes," unzipping his fly on the precinct steps. His girlfriend slaps him and rushes off, but not before calling him a "lying, filthy, disgusting creep." This moment elucidates how his whiteness actually obscures his filthiness and creepiness in ways not afforded to Valentine. Whereas Valentine has to literally harass a woman to get her attention, reinforcing scripts about black male virulence, Winthorpe is positioned as having an overabundance of sexual desirability—so much so that he even mentions the men in jail attempted to bend him over and have sex with him. Rather than be the aggressor, he is positioned instead as being sexually vulnerable within a cell of black men.

Winthorpe's experience of hobo-life is further mitigated through his whiteness by the fact that he never has to spend any significant amount of time on the street—nor does he ever have to work it. He is immediately found to be a sympathetic character by an unlikely source: the sex worker, Ophelia [Jamie Lee Curtis], the Dukes hired to help alienate Winthorpe from his significant other. She takes him in

when no one else will. His home has been handed over to Valentine; his friends are ashamed of being seen around him; his bank accounts have been frozen; and his girlfriend has left him. He literally has nowhere to go when Ophelia allows him to stay with her—she even permits him to sleep in her bed even though he is a complete stranger. The prevailing assumption is that Winthorpe is not a threat to her and that she, having literally worked and walked the streets, is much more adept at handling herself against him than vice versa.

While Winthrope is never required to develop any skills to help him navigate life on the street since he has a white woman companion to do so for him, Valentine is very much required to transform himself in order to belong to the home that corporate America has created for him. This transformation is necessary to belong to home, and it is primarily aesthetic in nature. When he first arrives at his new home, he hardly believes it is his—he does not own the things inside, in his mind, despite them having been given to him by the Dukes. He is encouraged to have a hot bath, which the Dukes think will help him feel more comfortable. He does not just have any type of bath, though. He bathes in a Jacuzzi. When his new butler offers to turn it on, the foreignness of the tub becomes clear.

> **Butler:** Jacuzzi, sir?"
>
> **Valentine:** Hey see man, I knew y'all was faggots man, you can't Jacuzzi nobody.
>
> **Butler**: It's a whirlpool bath, sir. I think you'll enjoy it.
>
> **Valentine:** Bubbles, man! See, when I was growin' up if we wanted a Jacuzzi, we had to fart in a tub. This is bad man.

Valentine's immediate reaction that the rich white men were "faggots" indicates that, opposite of Winthorpe's experience, being a poor black man in the company of rich white men is how sexual violence happens, not the other way around. Further, his confusion about the operation of the tub signifies the backwardness of Valentine as it relates to technologies for maintaining cleanliness. The butler exits the bathroom and asks the Dukes what to do with his dirty clothes. Mortimer instructs him to have them washed so that Valentine has something to wear "back to the ghetto" after he wins the bet. which is to say that his aesthetic ensemble belonged to the streets.

Valentine emerges from the bath a new man. Dressed in a navy suit jacket, grey slacks, white dress shirt, red striped tie, and black Oxfords, he "fits" the Victorian decor that styles the home. He appears to belong there—a belonging that is contingent upon his looks, as he still yet does not believe he belongs there. He spends the first few minutes in his new home going around stealing things from himself that he could pawn, a sign of his lack of belonging. It is not until he breaks a $30,000 vase and no one calls the police on him that he begins to believe the place to be his home, so much so that he later throws a huge house party. He invites a bunch of people from a bar he used to frequent while homeless.

The party quickly spirals out of control—drinks are spilled on his furniture, cigarettes are put out on his carpet, and one white woman is even naked in his bed. She invites him to have sex, but he declines and instead kicks everyone out of his house; the naked white woman in his bed is the act that motivates him to remove everyone. Contrary to his earlier attempt to coerce a passerby to have sex with him or

his flirting with a woman at the bar about how "sexy" he is, the woman's offer of sex actually tips him over the edge. I read this moment as a part of his sexual transformation following his cleansing. He has washed away his street sensibilities and ways of being and instead replaced them with a more refined set of sexual practices.

Valentine's sexual transformation is part of a racialized narrative that is juxtaposed Winthorpe's own transformation. Winthorpe is getting *dirtier* the longer he stays in Valentine's place whereas Valentine is getting more pure. As the film progresses, he grows more and more fond of Ophelia, whom has teamed up with him to help him get his lifestyle back. The feelings are reciprocated. At one point, she turns down a client so that she can take care of Winthorpe, who has fallen sick after standing in the rain outside of an upscale restaurant watching Valentine eat with his old associates. To comfort him, Ophelia climbs in bed with him and caresses his head, but not before stripping down to just her underwear and earrings. She tells him she is just protecting her "investment," but he is too caught up in how good the caressing feels, obviously enjoying her touch despite having earlier berated her for being a prostitute. What is interesting is how Winthorpe's relationship with the white prostitute, despite her being all but naked, is one that is not overly sexual in nature. Winthorpe is able to develop the restraint that Valentine never had but is simultaneously learning. This restraint even goes as far as Valentine limiting his own use of profanity the longer he stays housed and clean.

The film ends with Winthorpe and Valentine eventually joining together to outsmart the Duke brothers by intercepting the confidential reports the brothers use to

increase their chances of growing their profit margins on the stock market. With Winthorpe's ivy-league education, Valentine's street savvy sensibilities, and Ophelia's money from years of prostitution, the three are able to trick the Duke brothers into investing in stocks based on falsified reports. The end result is Mortimer and Randolph losing all their assets and their company and Winthorpe, Valentine, and Ophelia becoming rich. The closing scene depicts the three lounging on the beach. Valentine no longer has to wander for work, and having become socially mobile, also has an assumed sex interest by his side. The narrative thus comes full circle. As a wayward black hobo, Valentine's sexual desire could not but play out through expressions of aggression, shaped by his aesthetic of excess that marked him as hobo. Following his transformation into a cleaner person, he is able to properly manage his desire and secure a sexual interest that he does not have to clasp on to while she attempts to flee his possession.

Homelessness, Violence, and the Act of Deep Cleaning in *Curly Sue*

Released in 1991 as a romantic comedy, director John Hughes' box office hit *Curly Sue* follows the story of a homelessness father-daughter duo, Bill Dancer [James Belushi] and Curly Sue [Alisan Leigh Porter], navigating life on the streets of Chicago in the 1980s. To meet their basic needs, the two work together to scam people for money. They are hustlers. As the plot goes, the two devise a plan to con affluent divorce attorney Grey Ellison [Kelly Lynch] into believing she hit Bill with her Mercedes. They then attempt to milk the situation for as much as they can, using it as an opportunity for a free meal and maybe more, but they are interrupted at dinner by Grey's overbearing, chauvinistic fiancé Walker McCormick [John Getz]. Grey

leaves the restaurant concerned about Bill and Curly Sue, impressed by Curly Sue's ability to spell polysyllabic words but worried about her well being. As luck would have it, Grey runs into the duo the next day; only this time, she actually hits Bill with her car. She takes the two into her home and begins to slowly develop romantic feelings for Bill and motherly feelings toward Curly Sue, a surprise for her partner at the firm.

The film ends with her asking to be bought out of her firm, leaving Walker, and Bill and her sending Curly Sue off to school together after Grey decides to adopt her. Throughout, Grey is introduced to a lifestyle of poverty that is very much foreign to her but from which she experiences a sense of freedom and joy, and Bill and Curly Sue gain a sense of stability and luxury afforded to them vis-à-vis Grey's affluence. At the center of the film is a narrative of moral and sexual transformation that is aesthetically represented through the process of cleansing. Specifically, I am interested in how the act of cleansing and the performance of cleanliness narrate Curly Sue and Bill as desirable subjects and how their proximity to homelessness marks them as only ever having the potential to be desirable. That is, through the act of deep cleaning, of literally washing off and discarding the materiality of the street from their bodies and practices, they are able to make home and to be read as sexually desirable subjects.

The duo is first introduced in the opening scenes when Curly Sue is just a baby, and Bill is nursing her with a bottle. The footage is interspersed with a set of small hands with dirty finger nails crafting jewelry, rolling dice, playing with string, sprinkling confetti, drawing, and playing with toys as the camera cuts back and forth

between these activities and a young Curly Sue in her crib and then cradled in Bill's arms. The scene shifts to the two, Curly Sue now older and able to walk, unsuccessfully attempting to hitchhike down the road. Bill has a worn duffle bag on his shoulder, loose fitting jean trousers, tucked in flannel shirt, and jean jacket; Curly Sue has on a pair of jeans that have been rolled to her knees, long white socks, oversized coat, and bucket hat. The sepia filter used to frame the image makes the two seem almost dingy and dirty. This dirtiness is materialized when next viewers see them inside of what appears to be a 1980s model Mercury Grand Marquis being transported via freight car.[329] The proceeding close-up shows Curly Sue's dirt-smudged face followed by a wide panning that further makes clear how unkempt her hair is underneath a wool cap; Bill is no better. He has an unshaven, disheveled face and filthy hands that grip the steering wheel. They smile as they are hauled down the tracks on their way to Chicago, with fields of tilled, barren dirt at their flank.

This opening montage of juxtaposed imagery cues the viewer to understand Bill and Curly through an aesthetic of filth, or the grotesque marked by excess—excess dirt and excess things. Despite the two having minimal clothing and minimal hygiene practices, it appears, they do have a lot of things. The trinkets, spinning tops, dice, jewelry, buttons, pins, and figurines found inside of and haphazardly attached onto the duffle bag give the sense that while they have many things they do not have the *right things*. That is, they have a duffle bag full of (albeit potentially sentimental)

[329] Mercury, then a division of Ford Motor Company, had headquarters in Dearborn, Michigan. The move from Detroit to Chicago through transportation in a Mercury is symbolic, as the Detroit metropolitan area saw a rise in white flight from as poverty and unemployment levels were at an all-time high with declines in the automobile industry. Simultaneously, Detroit saw a raise in violent crime rates, being named the murder capital of the world in several publications. Further, large scale drug distribution in the city marked it as an epicenter of the crack cocaine epidemic spreading across the U.S.

junk. Coupled with the sepia filter and faded jean clothing, their wandering selves capture a hobo aesthetic that prominently emerged in the 1930s during the Great Depression. In fact, viewers later find out Bill travels from Detroit to Chicago to find work, which he eventually does find in a factory. As a factory worker, Bill is not afraid to get dirty; as homeless wanderers looking for work, then, Bill and Curly Sue are expected to be dirty.

The dirtiness and excess of Bill and Curly Sue is immediately juxtaposed the sterile and orderly life of attorney Grey Ellison. The camera pans up the busy downtown high-rise building and into the manicured office where Grey sits opposite her client, Mrs. Arnold [Barbara Tarbuck]. Mrs. Arnold is divorcing her politician husband, and Grey is laying out her legal options, first making clear that she cannot sympathize with Mrs. Arnold but that she can support her. “I’m not married, so I don't know what it's like to face the conclusion of a decades-old relationship. And I don't have children, so I can't say how the final disposition of the offspring would impact me emotionally. But I can say this much: you have it within your means to grind your husband into the ground.” Grey’s own description of Mrs. Arnold’s marriage and experience of motherhood is very much sanitized and distant, referring to the child in clinical terms—as an offspring whose “final disposition” would likely impact her as a mother, if she were one, but uncertain how or to what extent. She later goes on to explain that she can provide financial protection, to “grind [Mr. Arnold] into the ground,” but not sympathy. “If you want sympathy, you won't get it here. You won't get emotion from me, I'm not an emotional person.” Grey’s flat, unbothered affect, stoic delivery, and monochromatic jacket and blouse combination

contrasts Mrs. Arnold's bright blue skirt suit, grimacing face, and genuine concern about her marriage. She does not, in fact, want a divorce. Grey suggests that she grind him into the ground by threatening his image through the documentation of his "sexual improprieties," which she articulates as his weakest spot as a politician. This would force his hand to give Mrs. Arnold the half she is entitled to for "living with him when he was nothing" and suffering his youth.

That the exchange between Mrs. Arnold and Grey is happening at the same time as Bill and Curly Sue are on the way to Chicago via hitching a ride on a freight train is telling. The contrasted imagery sets up a dichotomy between life on the streets with its accompanying hobo aesthetics and an idealized ascendance to social mobility and status embodied in two white women. The lawyer and politician's wife are discussing how to divide up the meaningful things that one accrues when one reaches a certain level of wealth and stability that Bill and Curly Sue have not yet attained. Here, three different models of family are constructed: the single, childless, unmarried woman whose relationship to family is on the horizon—she is engaged; the married mother who is fighting to keep her family together, reticent to grind her husband into the ground, a testament to her commitment to him and her humility; and the single transient hobo with non-biological daughter struggling to find stability. In all of these models, only one is homeless, which suggests that non-normative family structures do not belong to home, even as they might be happier.

Further, what Grey's threat to expose the sexual improprieties of her husband makes clear is that sexual deviance can mark someone as outside of home; it can be grounds for which home is dissolved. The logical extension is that sexual impropriety

can also prohibit home from happening in the first place, as represented by Bill and Curly Sue. Curly Sue's mother's sexual impropriety, of having a baby out of wedlock and without clear ties to the father, left Curly Sue without home. In fact, the larger narrative that operates between Curly Sue and Bill is not just that Bill is looking for work, as hobos do, but that he is also looking for a mother for Curly Sue so that she can have home. The hobo aesthetic only complicates and delimits Bill's ability to be read as anything other than sexually deviant and undesirable, which makes it hard for him to even have access to the places where he could find the right mother for Curly Sue—it is clear that the streets are not the appropriate place for his search.

Bill's inability to access those places that supposed good mothers go is made most palpable when he gets denied a table at a fine dining, French restaurant in downtown Chicago—a restaurant that we later find out Grey frequents. Bill and Curly Sue are witnessed pressed against the window gazing longingly at the smorgasbord of excess food in the dining area. Curly Sue licks her lips while Bill squints, eyes darting to map out the layout. Meanwhile, two white female patrons seated by the window scoff at their leering. The two women are wearing dinner jackets and appear to belong on the inside. Both Bill and Curly Sue are wearing layers of clothing and carrying dingy duffle bags; they are of and from the outside.

When they walk in, the host notices them at the door while casually walking by. He suddenly doubles back, as if just realizing they are *inside*. His distaste is written all over his face. "Table for two please—nonsmoking. By the window if you have it," Bill nonchalantly asks. The host snaps his fingers, calling over another staff. "Tesio, messieur, go and notify Albert that we have…a situation." He has not yet

addressed Bill's request, but the smirk on his face suggests that he has something planned. "I have no tables. They're all reserved," he informs Bill. His hands are drawn close to his body, as if worried he is going to catch something. All the while, Curly Sue is sneaking by and grabbing food from off a nearby platter. Bill, prepared for the denial of services, turns to the law to make claims to his belonging. "Are you familiar with the city ordinance...Title 2, Chapter 160, Section 010? 'All persons shall have equal access to public services,' and so forth and so on. In short, I have every right to be in this restaurant." Not to be outsmarted by a vagabond, the host dismisses Bill, diverting his eyes while delivering his response, "Not so long as that restaurant has a dress code...and that dress code requires a tie..." Bill quickly produces one. The host's response is visceral. The tie he is shown visibly repulses him. The exchange is abruptly ended when Bill notices someone come from the kitchen—it is Albert, and he looks mean. "Well, I guess it's time for me to be moving on. Thank you very much..." Albert grabs him and tosses him face first into a service van for "Butler's Pride Linen Service" that is parked outside.

While Bill lies on the ground after having been assaulted, Albert stops to fix his white chef hat and jacket making sure he is not disheveled following his physical interaction. The sterile white outfit stands out against the backdrop of the off-white Butler's van and Bill's still body. Here, the imagery makes clear that cleanliness matters. The restaurant is not a place for people who look like Bill and Curly Sue; everyone from the host to the cook agrees. Put otherwise, everyone from the front to the back of the restaurant agrees.

Bill's invocation of the law fails him. Not only does it not protect him but also the law does not seem to apply to him. His body is marked as outside of the law's purview, as demonstrated by his ejection from the restaurant. Chapter 2-160, Section 010 of Chicago's Human Rights Ordinance, does, in fact name that that all persons within the City of Chicago "have equal access to public services and shall be protected in the enjoyment of civil rights, and to promote mutual understanding and respect among all who live and work within this city."[330] The act further goes to name any behavior which denies equal treatment on the basis of "race, color, sex, gender…source of income, or credit history (as to employment only) undermines civil orders and deprives persons of the benefits of a free and open society."[331] Bill's failed rights-based appeal demonstrates the limits of the law by virtue of its disparate and disproportionate enforcement. The inhumane treatment of Bill—the way he is thrown out like trash—suggests that the law does not apply to him. Whereas the restaurant and its employees are above the law, Bill is outside of the law, even as he is criminalized by it, a criminalization that occurs later in the film when Child Protective Services takes Curly Sue away from him after he is reported to them for child endangerment and neglect (having her on the streets) as well as through the discursive construction of him as a potentially sexually violent person.

In light of the law's limited protections, Bill and Curly Sue turn to the informal economy to meet their basic needs. The duo agree to follow the plan they had been devising since Detroit: she will whack him in the head with a piece of wood, causing a knot; he would then jump behind a car as it exits a nearby garage, and she

[330] Chicago, City of, and Commission on Human Relations. *ORDINANCES* (n.d.): n. pag.
[331] Ibid.

will hit the bumper with the same piece of wood. The unsuspecting stranger will get out of the car and assume she hit Bill while his daughter wails out in fear that her father is dying. That unsuspecting stranger happened to be Grey Ellison, who just left a meeting with her senior partner at the firm who has scolded her for telling Mrs. Arnold to get sexually impropriate photos of her husband. Instead, Grey was instructed to "go easy" on the divorce to protect the "law firm, a wife, kids…things [she] wouldn't know[s] nothing about" and for which he feels sorry for her. She walks intently to the vehicle; the camera scans upward from her shiny black heels to her leather purse and gloves, cloaked by her oversized cream cashmere coat, to the keys to her new Mercedes 500 SL coupe. The scam is commenced; Curly Sue swings, screams, and Grey comes to a screeching halt. Grey screams for help, but resolves to take them to dinner instead, despite her fiancé waiting on her in his penthouse loft and despite her having just presumably injured Bill with her car. Dinner is at Rocky Feller's House of Beef, a more appropriate place for the duo to eat in contrast to the restaurant from which they were just denied.

It is in the dive restaurant that we learn that contrary to what their aesthetics suggests they have a guiding set of ethics that organize their everyday practices of survival on the street. "I almost had that lady's purse, but you blew it," Curly tells Bill. His response is instructive. "Tough. We don't steal." "But we cheat," she rebuts. "A little, but we don't steal." "We lie," she reminds him. "A little more than we cheat, but that's not right either," he remands. "*It's because of the times*," she deduces. "Right, we don't steal, and we don't break any laws." Here, Bill and Curly Sue come to agree that their unethical and immoral behavior is "because of the times"

not because of their inherent desire or propensity to violate. They only violate the law to the extent to which they need to survive. As such, they steal *food* and other such necessities not purses or money. Their guiding ethos is, in effect, to do no harm even though the prevailing assumption is that they are harm doers, as evidenced by Walker's (Grey's fiancé) concern upon his arrival.

When Walker learns Grey hit a man with her car his immediate response is that the scenario "stinks like trouble." His lack of concern for Bill mirrors the same disregard for Bill's humanity extended by the host and chef at the upscale restaurant. Bill and Curly Sue do not deserve to be worried about or cared for; rather, they *stink* and should thus be discarded—like trash. Walker's initial lack of regard for Bill is intensified when he learns where they are. "Did anyone see you enter?" he asks. His concern is about image. There is a lingering, implied "*with them"* that hangs at the end of the question. This is made more evident when he arrives and addresses Grey as "Doris" several times, attempting to mask her identity so that no one knows they were in a place where he has "ridden better looking meat" than what they serve. It is clear he is trying to withhold identifying information from Bill, of whom he is suspicious. The stark juxtaposition between Bill's hodgepodge, layered outfit and Walker's tuxedo marks them both as out of place—Walker does not belong in the dive restaurant, and Bill does not belong in their company. The two couples go their separate ways. Grey and Walker head back to their chic lofts in the sky while Bill and Curly Sue take up refuge in a shelter—the "proper" place for the two, even as it is clear that Curly Sue does not belong in the shelter by virtue of Bill having to hide her under the cover.

The narrative arc continues with Grey and Bill not being able to take their minds off one another. The camera moves back and forth between the gritty life on the streets and the posh life of upper class living; this is intended to heighten the viewer's awareness of the stark distance and difference between the two. Through this interchange, viewers learn that Bill chose not to scam Grey for more money because, as he tells Curly Sue on a church pew while sharing the scraps of a small sandwich, she was "too pretty." Grey's visual appearance made her undeserving of maltreatment, the same maltreatment that is made hyperaccessible to Bill by virtue of his lack of prettiness. And yet, the vast cleavage between the two does not keep them apart, in true romantic comedy fashion. Fortuitously, they reunite when Grey hits Bill with her car—again. And, again, she chooses not to take him to the hospital. Instead, she brings him home with her where she brings the doctor to him. The storylines converge at the place of home. It is at home (Grey's home) that Bill and Curly Sue begin to transform into desirable subjects, where romance is made possible. The transformation happens not only through their removal from life on the streets into a stable home but also by the washing away of street life that comes with belonging to home. Underneath the dirt and grime and tangled curls we find two people with the potential to deserve love. This potential also marks Bill as having the potential to be both non-grotesque and non-sexually violent. Thus, the transformation is *sexual* in nature.

Unlike Eddie Murphy's sexually aggressive homeless character in *Trading Places,* Bill is never directly framed as sexually violent through his actions. Rather, it is by virtue of his proximity to homelessness and the hobo aesthetic that he is cast as

having the propensity to be sexually violent. His propensity is narrated through an exchange between Grey and the doctor who does a house call to check on Bill after the second car accident. "There are no broken bones, no contusions, no abrasions; a few lesions, not of your doing. The wound on his forehead is a day or two old," the doctor informs Grey. "I did that yesterday," she admits. Sidestepping the question of his overall health and wellness, the doctor instead opts to "What he needs is soap…a razor, a good meal, bed rest, and then a good swift kick in the behind. You're crazy to let a person like that stay in your house." The doctor's prescription of good hygiene practices and nourishment followed by physical assault suggests there is a commonsense understanding that homeless people, even after being cleaned and fed, are still undesirable. The "swift kick in the behind" functions, too, as a form of protection against "a person like [Bill]." There lies a presumption of safety risk in having him in the house, being a "single woman living alone" as the doctor explains.

The invocation of Grey's marital status signals the concern is one of a sexual nature. The doctor is worried Bill might sexually injure her. "This is the stuff of 10 o'clock news lead stories, but you're over 21…I'm in the building; I can be here in two seconds if you need me." The doctor's warning about "10 o'clock news lead stories" in conjunction with his resignation that she is "over 21" traffics in a discourse that simultaneously expresses the potentially sexually violent nature of Bill and names Grey as old enough to engage in her own risk practices, to take on the responsibility that comes with her decision. That is, it narrates her as responsible for anything that happens to her, an all too familiar script that circulates around sexual violence against women. The doctor is, in effect, telling her that if something happens

to her she *asked for it*. Moreover, his hailing her as over twenty-one ushers in a discourse about age of consent. She is *old enough* to ask for it. The slippage between the doctor's concern about Bill staying in her house and his resolve that she is old enough to consent reifies the trope of the sexually violent homeless man while also affirming commonsense rape culture logic.

Despite Grey's insistence that she can protect herself by "sleep[ing] with [her] door locked," she is still suspicious of Bill. After tending to Curly Sue, she checks in on Bill and lets her suspicion known to him *after* he uses what is clearly a cheesy pick up line: "Are your folks religious people...I'm surprised…because you're a saint." The potentially flirtatious nature of his comment changes her demeanor. "I have the apartment wired for security. There's a man downstairs; I need only touch a button. I don't mean to be harsh or unkind…but I don't know you, and you're in my home. Now, if you have dishonest inklings, I caution you that I'm no fool." Her shift from worry for Bill immediately prior to her suspicion of Bill suggests that the weight of his strangeness, heightened by the doctor's scolding, hit her. The realization that he might be a danger to her came not because of anything Bill *did* but rather because of *who* Bill is: a hobo. In an effort to set the record straight, Bill defends himself: "Ma'am, for the record, I'm no criminal." That is, he might be a flirt but he is not a criminal.

In this section, I have carefully charted the representation of hobo aesthetics and the accompanying sexual implications of such aesthetics that structure the relationship between Bill and Grey in specific and Bill and the social world around him in general. Two competing tropes emerge: the grotesque and the potentially

sexually violent predator. These tropes overlap to narrate Bill's potential to commit sexual violence through his lack of cleanliness as a result of his proximity to the streets. Lack of cleanliness also marks Curly Sue's potential for motherly love as always on the horizon. In this context, the practice of deep cleaning becomes a transformative process. Bill is able to transform into a sexually desirable man who is able to manage his sexual desire appropriately, and Curly Sue becomes a pretty little girl who is able to transform Grey into a woman desiring motherhood.

The transcendental property of cleanliness

In *Curly Sue,* the gradual cleanliness of Bill and the scene of deep cleansing that happens to Curly Sue represent a shift away from the hobo aesthetic toward a normative, rights-bearing citizen subject who has access to home. These acts function as rituals that help the two transcend both their material condition of homelessness and the narratives of deviance, undesirability, and violence wrapped up in the hobo aesthetic. Simply put, being cleaner makes them more desirable. That desirability translates into having love, family, and a home—both for Curly Sue and Bill *and* for Grey.

The longer Grey spends with Bill and Curly Sue, the less polished and stoic she becomes. Her behavior change is seismic enough that her client, Mrs. Arnold even notices. Mrs. Arnold has produced the documentation of her husband's sexual impropriety as Grey requested, to "grind him into the ground." Distinct from their last meeting, Grey is actually sympathetic toward Mrs. Arnold and her desire to maintain her marriage this time, offering to help her work on staying married. The stark change in Grey's disposition causes Mrs. Arnold to express worry. "Are you all right," she

asks with a distressed look on her face. “You seem a little…nice.” Grey looks directly at the camera, raises her eyebrows as if just reaching the same realization, turns back to Mrs. Arnold and offers her thanks. When she returns home, she and Curly Sue bond over having a long day—Grey at the law firm and Curly Sue cleaning along with the maid. Bill arrives shortly thereafter to excitedly announce that he got a job, a praiseworthy moment for a hobo. The more Grey and Bill exchange pleasantries about the job, the more Curly Sue’s face falls; she looks up between the two, noticing that a romantic connection is developing. His face is clean and better groomed. Curly Sue pushes Bill and storms off.

Curly Sue’s rejection of the two’s budding romance does not thwart Grey’s excitement. Rather, she takes this as an occasion to celebrate by taking them out to the same restaurant from which the duo had been previously ejected. This required, first, a wardrobe change, what marks the beginning of the cleansing process. There is a proceeding montage of Grey and her assistant going to a boutique store to pick out clothing for the occasion. The store salespersons sift through a series of various suits and dresses for the two, with the men modeling the clothes, demonstrating how the clothing might look on Bill. The process is time-consumptive and tedious, which makes the viewer hyper aware of the onerous nature of being presentable enough to not be denied services at an upscale restaurant. One cannot simply throw together any outfit in the way that Curly Sue and Bill are clearly used to do, pairing items that clash and contrast. Stylizing the body to be desirable takes time and work; stylization is a practice. This process does not simply end at the store with a pile of neat,

ribboned white boxes and an unknown purchase price. It continues at home, embodied through the practice of deep cleaning.

Grey and her assistant stand on either side of the large white tube placed in the center of the bathroom, which is equally decorated in various shades of white and cream. Curly Sue's face appears stained pizza sauce, and her tangled hair sits atop her head like a mop. She plunges her nose, and is dunked backward into the water, almost like a baptism. Meanwhile, Bill is seen in the shower, face lathered with soap, peculiarly looking at the bath brush, trying to figure out how to work it. The need for a tool with bristles is telling, as it demonstrates the insufficiency of a washcloth to remove the years of grit and grime accumulated on the streets. Bill's aloofness suggests that either he has not had a shower in such a long time that he is unfamiliar with shower accessories or that he has never had the privilege of showering with such accessories. Either way, he knows he needs to use them for the task at hand.

Unlike Bill, Grey seems to be duly aware of the level of work that has to go into preparing the body for public presentation. The tense, intent expression on her face—clenched teeth and darting eyes—couples the rigor with which she uses a wooden nail brush to clean Curly Sue's hands. The discomfort on Curly Sue's face lingers in the background, as the scrubbing of her hands is the focal point of the frame. The excessive scrubbing and patting is only interjected by the application of excess soap. Both Bill and Curly Sue have so much shampoo applied that their hair is able to hold in place. The montage lasts for almost 45 seconds from start to finish before a well-manicured Curly Sue emerges looking "pretty, very, very prett--" Grey's words are cut off as she does a full scan of the ensemble: black jacket, white

blouse, red flannel skirt, white tights, and… old, dirty mix-matched tennis shoes. Grey looks disgusted, "Where are the shoes I gave you?" When Curly Sue turns to retrieve them, dirty sneakers squeaking against the clean white floor, we see her skirt is hiked up in the back having been accidentally tucked into her tights. Not only does she not know how to put on the clothing but also they give her discomfort. She complains of the tights itching, writhing on the floor in her new clothes attempting to scratch all over her body. Her lack of concern about her clothes getting dirty and her decision to wear her old dirty sneakers is intentional. Curly Sue is not concerned about her appearance; she is concerned about her comfort, signifying that acts of gendered bodily comportment can, in fact, cause discomfort.

Contrasting Curly Sue, whose discomfort comes from the fit and fabric of her clothing, Bill "feel[s] like a Goddamn fool" because he does not know what it is like to wear such nice attire. Bill is faced with his back to the camera, and Grey, when he proclaims his discomfort. She stands in the doorway wearing a red, tight fitting velvet dress, prepared to get the same response as she got from Curly Sue. However, when Bill turns around, she is literally breathless and speechless. She struggles to make out words, but her face says it all. She is impressed. Bill smiles with uncertainty, but accepts the compliment, fixing his tie and caressing the material of his jacket. The tag is still dangling from his jacket sleeve, a simple but notable mistake that marks the newness of this all—the newness of the suit and the newness of being desired by a pretty woman.

The couple's return to the restaurant, the site where Bill and Curly Sue's aesthetic is first introduced as a problem, is circuitous. We arrive where we started,

only this time the exchange between the (same) host and Bill is much different. The host approaches the three and cordially welcomes them, kissing Grey's hand and cheeks as a display of familiarity and formality. "These are my friends, William Dancer, and his daughter Susan," she introduces them. The host immediately notices Curly Sue, a distinct difference from when last he did not even acknowledge her presence; his face lights up. He asks if he can, too, kiss her cheek. "In a pig's eye," she responds incredulously. The host finds her response to be childlike and humorous despite Curly Sue's temperament suggesting she is offended by the notion that a grown man kiss her cheek. The host turns his attention to Bill, whom he is convinced he knows. "Bill Dancer! Chairman of the Board for Illinois State Bank, very powerful man," he states enthusiastically. Bill corrects him. "No, City Ordinance Title 2 Chapter 160, Section 010, ring a bell…take my coat." The host attempts to apologize for his previous behavior, but he is met with a series of punches to the face in between apologies, a throwback to the initial assault Bill received the first time. Only this time, Bill is throwing the punches. This change in power dynamics is only made possible through the possibilities afforded to Bill through his aesthetic transformation.

The film continues with Bill and Grey growing more and more fond of each other. Grey eventually decides to end things with her fiancé, whom she finds despicable after he called Child Protective Services on Bill for Curly Sue not having a stable home. She also asks her partner at the law firm to buy her out so that she can make more time for a family—but not before she makes sure she helps her client, Mrs. Arnold, fix her marriage by personally threatening to release photos of Mr. Arnold engaging in sexually impropriate conduct. The film closes with Grey picking

up Curly Sue from the Helen Carter Matthews Child Welfare Center, where we find Curly Sue back in her dirty sneakers; her hair has also been cut by the center's staff, an attempt to make her more kempt. The two embrace, and Grey later tells Curly Sue she will start the process to adopt her. In the final scene, Grey and Bill are dropping Curly Sue off at her new, and first ever, school. It is located in the suburbs. Grey has turned in her Mercedes coupe for a four door Jeep Cherokee, a more family-friendly vehicle, which Bill is driving. Curly Sue walks toward the front door as her parents see her off. The film's end depicts a complete aesthetic and social transformation only made possible through the practice of deep cleansing.

What the narratives of Valentine and Bill demonstrate is that the popular representation of homeless sexuality is one that relies upon an idea of rehabilitation that is made possible through aesthetic transformation. What this presumes is that, through grotesqueness and violence, homeless sexuality is inherently in need of rehabilitation, much like the discursive framing of homelessness through "sick talk" and the discursive framing of beggars through "ugly laws." As hoboes, Valentine and Bill inhabit both of these discourses, and yet the outcomes for both of them are predicated on a racialized logic about how such transformations happen. Through popular film, these representations help shape how we understand the sexual lives and subjectivity of the homeless. They also help make sense of why Fred and Charles had such a preoccupation with their aesthetics and how they came to understand what "homeless looking" meant.

My ending on these films is not to suggest that aesthetic transformation is a productive model for combating the material conditions of *carceral sexuality*, despite

Fred and Charles using cleanliness as a mode of navigating life under hypersurveillance; my contention is that these models miss the larger point. Fred and Charles do not get to escape their sex offender status and create wholly new identities from themselves by changing their aesthetics in the way afforded to Bill and Valentine no more than disabled bodies could produce themselves as no longer unsightly in the way that Schweik contends. Rather, I want to suggest that these representations of homeless sexuality actually erase the larger markers of stigma, shame, and institutionalized inequality that produce *carceral sexuality* in the first place.

Chapter 6: Conclusion

On any given night in the state of Maryland, there are approximately 200 registered sex offenders who are listed as *street homeless*.[332] These men and women have been convicted of one or more of the forty-four different sexual crimes that require someone to register as a sex offender. These sexual crimes span three different tiers of severity. Each tier corresponds with a different length of time in which someone must register as a sex offender as well as a set of regulations regarding how often they must present themselves to a designated police station to "check-in" and update their information. Of those registered sex offenders who are listed as homeless, roughly 80 percent of them have been convicted of a crime that requires them to register for life, which also means they are not eligible to receive a housing subsidy from the Department of Housing and Urban Development and are often most likely to remain unemployed, be denied future housing, and be susceptible to further encounters with the law.

In light of these numbers, in 2010 the Maryland General Assembly amended state sex offender laws following a series of concerns around alleged "loopholes" in the registration process. As it stood, individuals convicted of a sexual crime were only required to register as a sex offender irrespective of their housing status. According to critics, individuals who were homeless or transient could not provide an address and therefore could not be pinned to a specific location. Despite this,

[332] There are four different categories of homelessness: literally homeless, imminent risk of homelessness, homeless under other federal statutes, and fleeing/attempting to flee domestic violence. Individuals who are street homeless fall into the first category; they are individuals who are literally homeless because they have been sleeping outside; in a place not meant for human habitation such as a car, storage unit, or condemned building; *or* do not have a place to stay each night that they can call their own and/or claim residency.

homeless sex offenders were only required to report to local authorities according to their tier not according to the frequency with which they moved around a given jurisdiction. In other words, someone convicted of first-degree rape could be sleeping on a park bench on one end of the county one night and behind a grocery store on the other end the next, and the local authorities would know none the wiser, because the registry would reflect the address as simply "homeless".

At the heart of these concerns was the always-potential threat of violence represented by the unrooted sex offender. That is, the figure of the lurking, untraceable sex offender began to produce a sex panic rhetoric that drew on commonsense understandings of safety and vulnerability, organized around the image of the innocent child and defenseless woman, that necessarily required the state legislature to act. Because there are no residency restrictions in Maryland regarding where sex offenders can and cannot live, sleep, or work, public figures began to express concern that sex offenders would register as homeless or transient while secretly being housed. This would allow them to potentially recommit sexual crimes against unsuspecting, defenseless women by bringing them to their undocumented homes, constructed as sites of future sexual violence, without fear of being caught because authorities would not know where to begin to find them. Furthermore, it would delimit the proactive surveillance capacities of the registry. Individuals would not be able to preemptively secure their personal safety by checking for their neighbors on the registry nor would they know to look for suspicious activity because the neighboring address would not be linked to an offender.

My project analyzes the relationship between homelessness and sexuality to think critically about the ways in which people's relationship to housing is often contingent upon their ability to be understood as proper sexual subjects. Conversely, it examines how the very construction and constitution of *home* is bound up in processes of sexual regulation and management that produce certain people as homeless by virtue of their proximity to sexual impropriety and deviance. That is, some people are made to be and/or kept homeless as a result of their sexual practices, particularly when those practices are in direct conflict with dominant discourses and legalistic determinations of acceptable sexual behavior. Here, I have not intended to minimize the severity of many of these crimes; they are often violent sex offenders. Rather, I took centrally the issue of the overrepresentation of black men who are homeless sex offenders in Montgomery, County, Maryland. These are all people who have been convicted of a crime, almost always have served time in a correctional facility, and must spend additional time on the registry, sometimes for the rest of their lives. In this context, then, ending one's homelessness requires individuals to assume a sexual subjectivity that is predicated on racialized ways of being.

The literature on homelessness has largely failed to address the role sexuality plays in both creating the conditions for homelessness and in structuring the lives of homeless individuals and the services they are provided. The exception to this is the growing literature that specifically addresses gay, lesbian, bisexual, and transgender homelessness and literature that discusses domestic violence. While such scholarship has been integral to framing this project, I was interested in broadening the scope of these literatures to think about structures, systems and ideologies that are not

inherently identity-based and involve different forms of violence. Because homeless individuals are primarily understood as sexually grotesque and sexually violent, as I elucidated in chapter one and throughout chapters three and four, my work enters discussions of homelessness by framing sexuality as a central category of analysis that illuminates how access to housing and belonging to home are predicated on a process of (moral) sexual subject making. This happens through sites such as the law, shelter policies, and technologies of governance that are used as mechanisms for producing good sexual subjects by policing the presumed violent sexuality of homeless individuals.

My aim has been to challenge dominant, commonsense representations of the sex offender as a violent predator by unpacking the very category of "sex offender" to provide more cultural and historical specificity to the term, particularly as it relates to shifts in how we think about morality. I do so to think about how home and homelessness are intimated and constituted through forms of sexual regulation that hinge upon questions of morality. I map tensions in queer and feminist scholarship that, on one hand, interrogate how power and stigma are used to marginalize communities and, on the other hand, provide tools to analyze gendered sexual violence, even sometimes at the expense of reproducing the very conditions under which sex offenders become homeless and homeless individuals are constructed as sex offenders. In this way, I tackle the moral imperatives endemic to queer and feminist scholarship that have not taken up the figure of the sex offender in generative, nonpathologizing and stigmatizing ways. These shortcomings, I contend, add to the very system and structures that make some people homeless others housed

along the basis of sexual difference and deviance. My project hopes to bridge scholarship in homeless studies, queer studies, and feminist studies to think critically about how sexuality is used to manage, regulate, and stigmatize certain populations.

Though I am examining structures and systems, my work is deeply committed to understanding how homeless men and women navigate the social, economic, and political challenges they face while homeless. For example, in chapters two and three, I consider the ways in which being on the sex offender registry impacts the everyday lives of homeless sex offenders in terms of stigma, economic precarity, and the extent to which they can receive services necessary to end their homelessness. I also center the various approaches homeless individuals use, sometimes with the assistance of their service providers, to circumnavigate those polices and architectures that are sexually regulatory in nature, what I frame as acts of *dark sousveillance*.

In chapter one, I argued that sex offenders are constituted as inhabiting a *carceral sexuality*. I did so by tracing the development of legal and extralegal technologies used to govern offenders and to constitute their sexual subjectivity as always already violent and in need of incarceration. The technologies included civil commitment statutes, rules of evidence regarding sexual propensity, sex offender registries, and offender notification systems. I then went on to explore the ways in which Maryland sex offender laws have produced hyperpunitive conditions used to surveil homeless sex offenders, which has led to many offenders being reincarcerated or falling in violation of the law. I also chart the ways that homeless black male sex offenders in Montgomery County, Maryland negotiate and resist these forms of

surveillance by challenging the law, refusing to enter shelters, remaining transient, and self-fashioning their own identity outside of the law.

My attention has not only been to the law; rather, I have looked at the ways in which non-legal discourses actually produce homeless people as sex offenders, despite not committing sex crimes. In particular, I considered how trans men and women were, differently, interpellated as either potential sex offenders or potential victims of sexual offenses by virtue of their proximity to public and private spaces. These discourses, much like the history of sex offender laws, which were rooted in rape and age of consent laws, took on racialized meanings. Equally, they raised questions about who could access shelters and, ultimately, home, and on what conditions. In thinking about these latter two issues, my last chapter looked at the ways that popular representations of homeless sexuality actually rely upon the figure of the sex offender, irrespective of the violation of sex crime laws or not. By looking at popular film, I considered how homeless sexuality was presented on the screen to frame the ways that the black male sex offenders I interviewed were forced to self-fashion their sexual identity against both their criminal sexual history and commonsense representations of homelessness that presumed a carceral sexuality without regard to the law.

By attending to the ways in which homelessness and homeless services are organized by and managed through sexuality, my project aims to expand the possibilities for how services are delivered. Further, it intends to intervene on what Teresa Gowan calls *system talk*, those larger discursive framings that seek to address homelessness as a systemic issue. Limited attention has been given to the role of

sexuality in creating homelessness or in solving homelessness. In fact, recent efforts to solve homelessness have instead reverted back to symptomatic framings, or sick talk. Such reversions are evidenced by national pushes to end chronic homelessness and homelessness amongst the most vulnerable through the adoption of the popularized Vulnerability Index Service Prioritization Decision Assistance Tool (VISPDAT). Developed through a partnership between the not-for-profit organization Community Solutions and private consulting firm Orgcode Consulting, Inc., the VISPDAT has been adopted across the country as an exemplary mechanism to prioritize the needs of people seeking homeless services.[333]

The proliferation of the VISPDAT came on the heels of a Department of Housing and Urban Development (HUD) rule requiring that all Continuums-of-Care (CoCs)—that is, those networks of homeless service providers, governmental agencies, and individuals in any given community attempting to meet the specific needs of homeless individuals and families—develop a way to prioritize who gets what resources and in what order. As it were, individual providers would meet with homeless people, determine their needs, and refer them to housing on a case-by-case basis. The type of housing and the timing of the referral were at the discretion of each provider.

HUD's new rule was an attempt to expedite the process of referring people to housing as well as implement a more equitable way to cost-efficiently redirect

[333] National Alliance to End Homelessness. "2015 Policy Snapshot." 13 July 2015. National Alliance to End Homelessness. 7 September 2016 <http://www.endhomelessness.org/page/-/les/Policy%20Snapshot_7.10_ nalversion.pdf>.

resources such that people who needed them the most got them the quickest.[334] The the driving motivation behind the new rule was cost—people sleeping on the streets cost more money, as they are more frequent "users" of hospitals, jails, shelters, and other emergency services. Put otherwise, their slow dying costs more.[335] The pressure from HUD, combined with the lack of additional funding for agencies to develop their own prioritization tool(s), has led many Continuums-of-Care to adopt the VISPDAT. As a brief survey, it covers four areas of daily life to generate an acuity score that is intended to reflect one's vulnerability level. Those areas include 1) one's history of housing and homelessness; 2) risks; 3) socialization and daily functions; and 4) wellness. Responses to the survey translate into an acuity score, which is used to rank individuals. Those at the top of the ranking are referred to housing first, as they are understood to be the most likely to die on the streets. They are the most vulnerable. Acuity scores are, thus, the accumulation of points produced through sick talk and symptomatic readings.

Symptomatic reading practices have been the basis of many shelter policies and practices, which have advertently attempted to manage queer ways of being.[336]

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[334] Department of Housing and Urban Development. "Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH): De ning 'Chronically Homeless' Final Rule." 4 December 2015. HUD Exchange. 26 July 2016 <https://www.hudexchange.info/resources/documents/De ning-Chronically- Homeless-Final-Rule.pdf>.

[335] Snyder, Kaitlyn. "Study Data Show that Housing Chronically Homeless People Saves Money, Lives." 30 June 2015. EndHomelessness.org. 7 September 2016 <http://www.endhomelessness.org/blog/entry/study-data-show-that-housing- chronically-homeless-people-saves-money-lives#.VeiKZ VhBe>.

[336] Louis Althusser describes a symptomatic reading as one that focuses on the underlying presuppositions of a text; texts possess meanings that are latent, veiled, and all but absent if not for their irrepressible and recurring symptoms; these meanings are just as integral and instructive to the text as what is readily legible (See: Althusser, Louis, Ã‰tienne Balibar, and Ben Brewster. Reading Capital. London: Verso, 2006.) This is what Paul de Man refers to as the "dialect of blindness and insight"[336] at work in texts, where some things are made to be visible and others invisible but both inextricably mattering (See: Man, Paul De., and Wlad Godzich. Blindness and Insight Essays in the Rhetoric of Contemporary Criticism. Minneapolis: U of Minnesota, 1983).

That is, clinicians read individual behaviors through a lens that understand that behavior as connected to something deeper, such as a mental health disorder, substance abuse, or a physical ailment. Doing so constitutes the very way in which people are assigned acuity scores to help articulate them as vulnerable. In fact, staff work working in the shelter system are trained to always be attentive to the behavior of individuals such that staff register when individuals are behaving in a way that is connected to a series of symptoms that become the evidentiary basis for a deeper problematic (often understood as somatic or psychic illness). Thus, we are constantly reading people through a lens that attempts to interpret them as symptoms of something else, something deeper. Moreover, in homeless services, symptomatic readings become the core of funding streams, as they make legible a larger problem, diagnostically, that can be treated through the implementation of, expansion of, funding of certain services provided by a particular agency, tailored to fit the needs of the newly produced clientele who meet the criteria for the newly diagnosed problematic.

I want to end this dissertation by thinking about the alternative possibilities that might actually attend to, differently, sexual deviance and difference that do not require a focus on individual behavior but rather on structural and systemic issues that produces the conditions under which people become and are kept homeless. In doing so, I call to attention the mundane ways in which sexuality is managed even when not named as such so that we might conceive of the shelter space and street life in new ways. I end here intentionally. Throughout the dissertation, I have examined more explicit technologies of governance aimed at managing sexuality, particularly around

the figure of the sex offender; a turn to relatively mundane shelter policies elucidates how those who are not sex offenders are nevertheless still managed through modes of sexual regulation. I end here because I want to consider how individuals are made vulnerable through categories of difference such as sexuality and race not just symptoms of illness. Vulnerability is produced through sexual regulation.

Moving away from the figure of the sex offender in order to think about other ways in which sexuality functions to manage homelessness, I close my project with a turn to mundane examples that highlight the ingrained, systemic nature of such management. My hope is to compel us to move beyond current models of resolving homelessness, as they simply reproduce the same logics that produced modes of sexual management in the first place. I do this through an engagement with Susi Graf's 2010 documentary film *Lost in the Crowd*, a documentary I chose intentionally as it highlights the way that certain sexual identities are more vulnerable to becoming homeless and being violated on the streets as well as the way that sexuality is regulated such that it increases—and at times escalates—their vulnerability. This latter point is one that is currently missing in the shift to quantify human suffering and vulnerability through acuity scores.

Lost in the Crowd focuses on the experiences of gay, lesbian, bisexual, and transgender youth in New York City. The film centers the lives of eight, predominantly black and brown, homeless youth trying to navigate everyday life on the streets and the shelter. Viewers are given insight into the complicated decisions these youth have to make as they attempt to provide for themselves, create family, and deal with everyday acts of violence and discrimination that often impact their

lives, all the while trying to grow up. In 72 minutes, Graf follows the same narrative arc employed in shelter settings: we get introduced to the characters (intake), are provided an account of their homelessness (psychosocial summary), identify the problem (how they became homeless and why they are still homeless--assessment) and are ushered toward a resolution (service plan). However, because it is a documentary, Graf only gets to curate the product but does not get to narrate the lives of the queer youth featured. In many of their own accounts, the problem started at homophobia, heterosexism, and the surveillance of gender deviance: their parents kicked them out because they were gay, but they equally indict the delimiting shelter system for attempting to regulate their queer modes of surviving and belonging. Attempts at regulation, in contradiction to what the shelter staff believes, actually exacerbate their levels of vulnerability.

For instance, Adrian, a 21 year old black gay HIV-positive male recounts how he became homeless: "when I came out to my family...it was like homosexuality wasn't part of their life…it was shunned...it was like…you are not going to live here and be gay…you have to like girls." He was kicked out at the age of 18 and had been living on the streets for 3 years. Despite the anguish in his voice as he recounts his story, he maintains that he wants to go home, because "that's all the family he has." But, he does not stop at the place of a despondent nostalgia that often becomes the representation of his existence against the background of a miserable life on the streets. "I have to keep it real," he says, "some of my days living on the street were good...were nice…were fat…I liked it, because I made a lot of money or somebody

had some fun with me…but a lot of my days were not good at all [he says with an ironic chortle at the end]."

In this sense, Adrian makes visible the hidden pleasure that often goes unnoticed by the "not good at all" nature of life on the streets: the sex, the money, the fun coupled with the pain, the anguish, and the brutality. There is pleasure on the streets even as there is traumatic haunting. Adrian also found a family in the NYC gay ballroom scene, a common site of queer of color cultural formation. His house family provides him a sense of community, camaraderie, and protection on the streets. He competes with them, laughs with them, and processes the "bad times" with them.

Like many of the men I interviewed, Adrian decided not to enter shelter, because of the punitive practices shelters can employ that often infringe upon the freedom one can inhabit on the street. For Adrian, the curfews and other policies did not accommodate his lifestyle. He could not stay out late, which meant not participating in the ball scene, engaging in sex work on the stroll, and/or being able to bring back his house family members due to the lack of space and visitor restrictions. All of the black queer youth in the documentary brought up curfews as reason why shelters were not good places for them; missing curfew means losing their bed. Losing their bed meant going back to being street homeless. These are the same regulatory practices and outcomes of living at home, where their queerness was the grounds for being forced to leave. Here, then, the rubric of safety (curfews are, after all, put in place *to protect them*) actually reproduces the regulatory logics and

practices of sexual domestication and normative subjectivity that the heteronormative, heterosexist home did.

Curfews are designed to keep people inside and away from the violence that is often lurking in the night. They are also a way to deter those in shelter from participating in practices that get tied to the root or cause of their homelessness: substance and alcohol use, sex work (survival sex), and participation in (illegal) informal economies. These practices become signs of trauma, because they are understood as behaviors that are developed to cope with/escape from trauma rather than as normal behavior patterns of emotionally healthy youth. And thus, in order to reduce the chances of re-traumatization, clients in shelter are dissuaded from participating through shelter curfew policies and what constitutes legitimate curfew extension requests—if they are granted (usually work and school). In this way, [queer] homeless people in shelter often have to choose between the meaning-making practices they find on the streets, in the ball room, on the pier, in the club, and at those after hour spaces that often teach them how to belong, how to survive, and provide them a new sense of home and kinship and having shelter.

In thinking about *Lost in the Crowd*, I want to consider how going beyond symptomatic reading practices as a way to construct vulnerability might fundamentally alter how we shape and do shelter services. To go beyond the symptomatic allows us to shift away from reading homelessness as a symptom of trauma, a framework that engenders the policing and regulation of those deviant practices that get marked as trauma-inducing. Instead, a shift away will allow us to consider how the regulatory policies and procedures that attempt to reign in and

sanitize sexual deviance function themselves as producers of vulnerability. In this way, interventions that focus on structural inequality, anti-blackness, and anti-queerness become a more integrated part of the solution to homelessness. In a moment where service providers across the nation are using an acuity score instrument that *requires* symptomatic readings, this move might help us reframe our strategies for ending homelessness away from individuals and instead on the systems and structures that produce the conditions under which homelessness is constituted.

A shift away from reading individuals within a symptomatic frame is a generative project, particularly, again, when thinking about how assessment tools attempt to compute human suffering (vulnerability) into acuity scores. One of my chief concerns with these tools, such as the VI-SPDAT, is that it misses the ways in which categories of difference, such as sexuality, fundamentally organize one's experience of homelessness and consequently one's ability to escape homelessness. Take for instance Serenity. Serenity is a 19-year-old transgender woman who left her home because she was afraid of how her parents would react once they found out about her transition. Her mother "hasn't gotten over" the fact that she came out as gay, so she did not want to exacerbate the already poor relationship by telling her that she is transgender, too. Instead, she left home.

While on the streets, she reported being "gay bashed, raped by heterosexual…all kinds of things that they thought was going to go and change my lifestyle." Serenity's experience of sexual violence and physical violence as a homeless trans woman is unfortunately not unique, as I document in chapter three. What *is* unique, however, is the limited resources available to people like Serenity

given the knowledge we have about the precarious relationship to housing trans-identified people have and the more intimate relationship to violence they often experience. As such, literally being and living on the street makes Serenity vulnerable to death; however, no part of tools like the VISPDAT actually account for how structures of inequality produce certain people as vulnerable. In fact, Serenity's vulnerability would only be legible if she used drugs or alcohol to cope with the violence and trauma she endures *or* if she were to contract and life-threatening disease. Her vulnerability is only visible if it is produced by her queerness.

By ignoring the ways that queer people are made vulnerable while on the streets and instead only looking for indicators of deviance that can be managed, tools like the VI-SPDAT inadvertently reproduce the same normative logics that make people like Serenity vulnerable in the first place. Thus, it is necessary that scholars and practitioners be attentive to the systems and structures that make her queerness a target for gender and sexual violence and think more critically about the role of sexuality in managing homeless populations. Serenity became homeless because she is sexually deviant. Turns to these new tools and acuity scores organized around client-centered symptomatic readings means she might stay homeless unless she manages her deviance.

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