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IN THE OXNARD, CALIFORNIA CASE OF LAWRENCE KING

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THE BODY BRANDED:

LGBT HATE MURDER, LEGAL PERSONHOOD, AND SOCIAL RESPONSES

IN THE OXNARD, CALIFORNIA CASE OF LAWRENCE KING

A Dissertation submitted in partial fulfillment of the
requirements for the degree of Doctor of Philosophy

in Sociology

by

Rolando René Longoria, II

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September 2014

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September 2014

The Body Branded:
LGBT Hate Murder, Legal Personhood, and Social Responses
in the Oxnard, California Case of Lawrence King

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By

Rolando René Longoria II

*For Larry, Sakia, Gwen, Lucy
and the forgotten*

Rest in Power

ACKNOWLEDGEMENTS

Roughly twelve years before I came to this project, I found myself waiting in line for dinner at a small ramen shop in Tokyo. Being a young twenty-three, I was barely able to control my impatience and the embarrassment of a ravenous, grumbly stomach that seemed to alert everyone near me that I was nothing more than a hungry, impatient tourist. Hiro, a former foreign-exchange student to California, was one of forty foreign exchange students who had coordinated a visit to Tokyo for the camp counselors that had hosted them six months earlier. Out of the original eight counselors, Nate and I were staying with Hiro for the evening. After parting from our friends in Shibuya, we caught a series of trains to another neighborhood, walked over three residential hillsides that seemed to me to be inclined at a steep seventy-five degree grade, continued underneath a monorail, through a crosswalk, and into the dinner line, all while towing a suitcase we had over-packed with gifts, rolls of film, and souvenirs. Seeing my discomfort as we stood in line, Hiro started recounting the three types of ramen to Nate and I – pork bone, beef bone, and chicken broth. After watching me listening intently, Hiro realized that this only made me hungrier, and handed me a cigarette, which I smoked gingerly. “*Ichi-go, ichi-e,*” Hiro said, smiling, as Nate’s eyes opened wide for a moment. Nate, who had studied Japanese for two years, laughed and said only one word: “Totally.”

Still hungry and anxious, I repeated the phrase while trying to ignore the empty feeling gnawing at my stomach, trying my best to inflect it in familiar Spanish sounds: “*Ichi-go, ichi-e.*” Hiro and Nate both nodded their heads. I asked what it meant. Nate quickly turned to Hiro, who blew cigarette smoke from the corner of his mouth, sighing, as if he had been answering such questions his entire life. “It means....” Hiro trailed off in thought for a

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moment, trying to find the appropriate words to express the meaning. “It means... we may not see each other after today.”

Hiro and Nate continued to smile, while thoughts of impending doom raced through my mind. “Hopefully I get to eat before then!” I joked.

“Not like that,” Nate urged Hiro. “Not about death.”

“No, not really.” Hiro took another pull of his cigarette, held the smoke, turned his head skyward, and exhaled a thin, white, translucent veil that quickly disintegrated into the cooling evening air. “The universe. It has brought many things together to put us here, right now.”

“Just right now?” We were much closer to the restaurant door now, but I was too enrapt in Hiro’s description of the saying to notice that we were next in line to enter the ramen diner. I remember wondering if he was describing a sensation, emotion, or perhaps a prayer.

“Not just right now.” Hiro bent over to the pavement, tapping out his cigarette in preparation for our entrance into the restaurant. “All moments. All moments are many things coming together.”

“Like for the first time.” Nate added. I was intent. “We don’t know if all of those circumstances will happen again, if they will be better or not. *Ichi-go, ichi-e* means once-in-a-lifetime moment, but for every moment and all its variables.”

The next bowl of ramen that I would eat – the first “authentic” bowl of Japanese pork-bone ramen – would be the first experience of moment-to-moment consciousness in my life. It would be the first of many meditations on the myriad disparate factors coming together to create a single, unique, treasured experience.

ACKNOWLEDGEMENTS

Although extremely different from my short week in Japan, the process of identifying, working through, and completing this project has marked the coming together of many disparate circumstances that, although innocuous before, can only be seen as a string of blessings. Because their influence has been integral in sustaining me throughout this project, I offer up this section in thanks for their influence, however temporally or geographically distant they may seem.

I begin by offering gratitude to the system of spirituality that I entered during my college years, which has sustained and healed me for so long. To Shakyamuni Buddha, I offer my deepest thanks in expounding a cosmic system greater than the darkest corners of my imagination, one whose bright possibilities illuminate the darkest nights. To the Tibetan Saint and female Bodhisattva Machig Labdron, the Lamp of the Dharma, I thank you for locating a path to the great Mother Tara, Mother of all Buddhas and Bodhisattvas, and respondent to those in need. Tulku Orgyen Ph'unstok, I thank you for your kind generosity in letting me enter the Sangha so long ago, for your patience with my trepidation, and for your guidance in my personal turmoil. To Kathleen Pratt, thank you for honoring the path of the Dharma, for being a mirror of its intent in this technological world. Lama Tsultrim Allione, my gratitude to you is deeply karmic, as I can never express the effect that your meditation instruction has had on me. It has been so powerful in helping me overcome inner challenges that previously seemed like impossible riddles. Dr. Ines Monguió and Genie, I was so lucky to find you as teachers and healers who helped me actualize Buddhist teachings from a wish to a moment-to-moment life process. Molly and Dana, thank you for encouraging me on this process; I can't wait to explore the adventure of Dharma Punx with you!

ACKNOWLEDGEMENTS

Perhaps the greatest riddle Buddhism poses comes through a meditation in which a layperson attempts to logically trace the coincidences that gave rise to them as a human being on a spiritual path. To the invisible chain of karma and its mysteries of rebirth, I thank you for placing me within my family and circle of friends. To my mother and sister, thank you for all of your support from as far as Texas and Louisiana, for all of your phone calls, letters, and text messages. Thank you for pitching in to buy tickets for visits, for always being open, and for seeing me through my own process of healing. Thank you for sharing recipes, asking for recipes, and laughing on the phone when I needed it. The art of the hour-long phone conversation as a method of healing is kept within both of you! To my father, I extend the same thanks – for all of the phone calls, text messages, hugs, and encouragement in sticking out the project and proving the naysayers wrong. Thank you for the help with rent when funds got too thin, for the stories about overcoming your own obstacles in education, and for not giving up. Thank you for the plane tickets, also for the train tickets when my anxiety for flying got out of control, and for the visits.

To my boyfriend and partner, Juan Gallardo, thank you for being next to me for so long, without question. For your patience and honesty, I hold you in the highest esteem. It was because of your presence that I was able to complete this project; without you, my lows would have been so much lower and my return to the world of happiness would have come much later in life. Thank you, for being my best team member. Thank you, too, for your gentle energy.

Much love goes out to my doggy babies, who sustained me with magical kisses, dances, and cuddles throughout the three years we have been together. Saffy, Smokey,

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Emma, and Lulu Bean, thank you for your pure little hearts, and for opening mine after such a dark study.

Without the presence of so many countless friends, I never could have sustained myself through this process. To Jimmy Renteria, rock on, and thank you for embodying the meaning of “queering family” by letting me adopt you as my little brother. To Antonio Mora, thanks for the laughs, reality checks, and hangouts. I miss you lots. Arlene Towle, thank you for pointing out that this project is a “labor of love,” and for helping me take those necessary breaks. I hope to teach with you one day! Fe’Liz V. Trujillo, thank you for challenging me to live within the realm of my own scholarship, for your humor, for your visits, and for extending your heart to me when I was in need. For the individual Yoga hours, my spine is very grateful.

To my colleagues and friends, Mirium Haleh Davis, Kimberly Feig, Marium Griffin, Laurica Brown, and Shannon Weber, thank you so much for all of the conversations, coffee, pizza, comparison of class notes, and chats. We have not had enough time together, and I hope on one strange day, we find out that we are all teaching in the same general area. To Yasmine Dominguez Whitehead, Diana Almaraz, and Zen Perez, thanks for taking care of me during my first years at the university. I wouldn’t have survived my first foray into academia without you! Doctor Claudia Yaghoobi, thank you so much for our visits in Glendale, for helping me gain confidence in my writing, and for all of your encouragement. You have had a lasting impression on me, and I hope that we stay in touch for a long, long time. I remain in awe of your professionalism, success, and generosity. Professor Guisela LaTorre, thank you for taking me under your wing during my early years at the university, and for instructing me on the best ways to move through an academic project. Professor

ACKNOWLEDGEMENTS

Horacio Roque Ramirez, thank you for your faith in me, and I hope that I am able to talk to you about our experiences one day. Never doubt your importance, dear, dear mentor.

Of the many countless circumstances joining together, I am most grateful for the committee that has agreed to work with me, a non-traditional scholar working on an equally non-traditional project. To Professor Simonetta Falasca-Zamponi, I extend deep gratitude for taking me through the world of theory early in the program of study. Your wisdom, acumen in investigating theoretical paradigms, and investment in clear, readable theory remains inspiring to me. As a mentor, you have been welcoming, patient, and encouraging. Thank you for all of your guidance throughout these years. To Professor Miller-Young, I extend my gratitude for your professional guidance, for your humor, and for encouraging me to press on the boundaries of my own scholarly endeavors. Thank you for encouraging me to be fearless in terms of researching sex, sexuality, and violence, and to never give up on an idea that seemed “too radical.” For watching the strangest of films with me, and for your honesty regarding the scholarship that emerged, I remain grateful.

For taking a chance on me as a Teaching Assistant and scholar, I am extremely thankful to Professor Lalaie Ameeriar, as well as for her knowledge of Cultural and Social Anthropology. Teaching with you has illuminated the ways in which cultural citizenship is related to sociology of gender and sexuality, and has reignited my own passion for the topic as well. Your merging of Anthropology, Sociology, and Ethnic Studies is very inspiring and invigorating. I look forward to many years of scholarly interaction.

Professor Kum-Kum Bhavnani, there are absolutely no words that capture my gratitude for your presence in this project and in my life. As you know, without your guidance I would have left the university long ago. Working with you has made me strive to

ACKNOWLEDGEMENTS

be a better scholar, teacher, researcher, and citizen. Your drive and passion for the production of knowledge that liberates communities is inspiring and necessary in our world today. Thank you for teaching me how to be a teacher, how to ask hard questions, and how to push past (what I thought were) my own limitations. I am in awe of your guidance, kindness, knowledge, and tact.

As with all moments of thanks, there is never enough space to encompass the whole web of influences that have led to a single moment. I extend my deepest gratitude to anyone I may not have been able to mention, to my study participants, and to the universe. Your influence did not go unnoticed and is not forgotten.

To Lawrence King, thank you for being yourself on this tiny world, so closed off to the wisdom contained in difference. Although I never met you in life, I will always miss you, and I will always wonder what it would have been like to be your friend five, ten, or twenty years from now when you might wonder this state as an adult. Lawrence, I am sorry that this world could not completely welcome you in your short life. For as long as I teach, I will work to change that. Thank you, Larry, for helping to dissolve my fear and replace it with intent. You are remembered.

Ichi-go, ichi-e.

April 17, 2014

Santa Paula, California

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ABSTRACT

The Body Branded:

LGBT Hate Murder, Legal Personhood, And Social Responses

In The Oxnard, California Case Of Lawrence King

by

Rolando René Longoria, II

The Ventura County Superior Court declared a mistrial in June, 2011, after three years of litigation against Brandon McInerney for the murder of Lawrence King resulted in a hung jury. This study explores if current legal systems can process cases of hate-motivated murder in which the victim's identity straddles multiple minority statuses simultaneously, such as race, ethnicity, sexual orientation, gender identity, abuse survivor, and citizenship status. Due to the non-normative gender and sexuality experienced by Lawrence King, the social and legal dynamics of this case require knowledge of how citizenship and legal classification are negotiated at the level of the body. In order to achieve a nuanced understanding of the interplay between legal codes of citizenship and social dynamics of inclusion, the doctorate interrogates theories of "the imaginary body" and "civil personhood and social death" to better comprehend how the law classifies human bodies. This research contextualizes litigation and jurisprudence through a quasi-ethnographic study of Ventura County and by conducting interviews in Oxnard. Courtroom ethnography, media analysis, and archival research revealed histories of structural violence, resistance to racial supremacy,

ABSTRACT

and the life story of a sexual invert expelled from Oxnard in 1945. This study indicates that hate-motivated murder may occur across multiple identity factors simultaneously, although the current legal system can adjudicate hate crimes in relation to a single identity characteristic. Due to legacies of personhood and jurisprudence that inculcate heterosexism and other prejudices into the structure of litigation, hate crime law is conducive to legal arguments claiming the assailant experienced temporary psychosis based on the victim's sexual or gender identity. In addition to tracing the origin and function of homosexual panic defenses, this study investigates the ways in which explicit and implicit panic affected the jury during the trial of Brandon McInerney and the historical case of Lucy Hicks.

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INTRODUCTION

Bodies, Personhood, and LGBT Hate Murder

“[His] face swings before me like an unexpected lantern on a dark, dark night. His eyes – his eyes, they glow like a tiger’s eyes, they stare straight ... the hair of his flesh stands up. I cannot read what is in his eyes: if it is terror, then I have never seen terror, if it is anguish, then anguish has never laid hands on me.”

— James Baldwin, (2000/1956) *Giovanni’s Room*, p. 167

Introduction: The case of *The People v. Brandon McInerney*

On July 5, 2011, the County of Ventura opened proceedings against Brandon McInerney in a Chatsworth, California courtroom, roughly forty-four miles away from the case’s city of origin. After three years of preliminary proceedings and one failed attempt at moving the case to Santa Barbara County, proceedings against the now seventeen-year-old defendant began east of the Ventura County line. Comprising one-and-a-half days of testimony, the prosecution’s opening statements detailed a complex argument claiming that fourteen-year-old Brandon McInerney, influenced by White supremacist ideology, planned and carried out the murder of fifteen-year-old classmate, Lawrence King, during the school’s first period classes.

The motivation for this violence, according to Deputy District Attorney Maeve Fox, involved a complex relationship between the way supremacist ideology perceives homosexual individuals and the ways in which Lawrence King chose to express his gender identity. Although prosecutors could not be sure of the adolescent’s sexual orientation, evidence indicates that the effeminate King enjoyed wearing female fashion accessories, makeup, and nail polish. While the majority of witnesses, experts, and commentators would suggest that King was either homosexual or transgender, the prosecution opted to refrain from labeling Lawrence, arguing:

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Lawrence King, five foot four, 111 pounds at the time of his death He will be described by teachers as severely unfocused, needy, shy, and very effeminate. [T]here will be no evidence in this case as to what Larry King's sexual orientation was. The evidence you will hear in this case will address how Larry King appeared, because the former, obviously, will never be answered. (Trial Transcript, People v. Brandon McInerney; Author's Field Notes, August 2011)

King's appearance, his mode of dress, use of feminine accessories and makeup, and ballooning flamboyance were important factors leading to the activation of McInerney's homophobic prejudices, according to the prosecution. Equally important, noted the state litigator, was the history of bullying and tension between Brandon McInerney and Lawrence King, a history that illustrated McInerney's internalized hate-based ideology as rooted in dehumanizing, homophobic interactions.

Although the Ventura County Deputy District Attorney presented detailed evidence regarding the ties between the gender identity, hate crimes, and White supremacy, I will argue that the Defense team attempted to discredit these arguments via tactics of dehumanizing Lawrence King and questioning the historical validity of the prosecution's claims. Brandon McInerney's defense team asked pressing questions throughout the trial, including whether it was appropriate to level adult charges against a fourteen-year-old child. Was it possible for Brandon McInerney to be influenced by White supremacy, the lawyers inquired, or was McInerney influenced by his severely dysfunctional, violent, and addicted family? Why should we not blame Lawrence King for Brandon McInerney's reaction? After all, the team argued, wasn't Lawrence King able to pursue his deviant femininity because sexual minorities have special rights compared to heterosexuals? These lines of contention emerged within trial testimony, echoing a subset of debates that surfaced within the Oxnard-Ventura media and populace during the years between 2008 and 2011. While those who

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followed proceedings closely hoped a sentence would offer some explanation for the homicide, the presiding judge declared a mistrial on September 1, 2011. After roughly a week of deliberations, the jury was unevenly split between those who wished to assert adult murder charges against Brandon McInerney, those who felt manslaughter was a more appropriate charge, and tension regarding the opinion that carrying out adult proceedings against a child was a miscarriage of justice (Barlow, Z, Harris, M., Hernandez, M., Hernandez, R., 2011; Field Notes, September 1, 2011).¹

Although the case of *The People V. Brandon McInerney* represents a single instance of mistrial concerning attacks against gender non-normative individuals, this litigation occurred during an important historical moment. While retraction of federal measures such as “Don’t Ask Don’t Tell,” the “Defense of Marriage Act,” and increasing acceptance of gay marriage appear to be critical steps within a contemporary wave of lesbian, gay, bisexual, transgender, transsexual, and queer (LGBTQ) civil rights, research conducted by the National Coalition of Anti-Violence Programs notes that hate crimes against these communities have steadily increased within the last two decades. More importantly, although the U.S. President established measures to support law enforcement in investigating possible cases of hate crime as recently as 2009, interaction with local law enforcement indicates that they are

¹ By the time testimony ended in late August of 2011, the judge had concluded that the following charges were up for consideration by the jury:

- Murder I: the willful, deliberate, and premeditated murder of another individual (with emphasis being placed on the conscious process of planning and conducting the crime)
- Murder II: The intent to kill without premeditation

Although the defense requested that the judge put manslaughter charges up for consideration, the judge declared that the charge was inappropriate and did not offer Voluntary Manslaughter for jury deliberations. The charge of Voluntary Manslaughter is applied in cases when provocation leads to a level of mental breakdown legally termed “heat of passion,” an important phrase that ties acts of violence to what is commonly termed “temporary insanity.” By disregarding the judge’s order stating that Voluntary Manslaughter was not to be considered, jury members essentially foregrounded their discomfort with adult charges against children ahead of justice for the murdered child, Lawrence King.

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either unaware of the Matthew Shepard-James Byrd Hate Crimes Prevention Act, or lack instruction on how to access and apply the resources offered by the statute. Similarly, although the state of California passed the Gwen Araujo Justice for Victims act in 2006, barring legal arguments aimed at dehumanizing sexual others in cases of hate-motivated violence, many litigators remain unaware of the measure and its application in court.²

Of equal concern are the questions that arise from the distortion of boundaries demarcating the categories of child and adult. Many community leaders, organizations, and medical experts called for leniency in charging Brandon McInerney as a juvenile rather than an adult, citing elements such as brain maturation, the legal age of consent, and familial abuse as important factors to consider during sentencing. Individuals who advocated for Lawrence King pointed to his childlike qualities – his precociousness, love of insects and art, and small stature – as elements that heightened the brutality of the attack. Circulating within all of these discussions, however, was the opinion that cross-gender presentation and same-sex desire were adult topics not to be broached by children, topics that should be discussed at home with one’s family rather than among one’s peers or with teachers. For many faculty and staff at E. O. Green Junior High School, engaging in cross-gender expression was viewed as disruptive, sexually aggressive behavior mandating disciplinary action, regardless of the fact that state law protects children exhibiting cross-gender tendencies.

At the current historical juncture, an important tension between citizenship and negative personhood exists at the site where ethnicity, gender identity, sexuality, and hate-based violence intersect. This study engages critical questions regarding this tension, specifically, how power, prejudice, and oppression affect individuals as they move through

² For more information on the cases of Matthew Shepard and Gwen Araujo, please refer to Appendix A.

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judicial spheres. Examples of the questions explored in this work include: how do LGBT identity and non-normative gender presentation affect the litigation of hate-based murder? Does the legal system negotiate the civil rights of a deceased hate violence victim? Do courts and litigators attempt to reconstruct the complex identities of LGBT plaintiffs, or does the intersection of race, sexuality, and gender identity confound the application of hate crime laws advocating for LGBT victims and survivors? What effect do age and personal history have on litigation of hate crimes? What are the structural, social, and historical foundations for arguments that blame LGBT victims as the source of the violence they have suffered, and why do these arguments employ tactics of dehumanization? What are the factors that lead defendants to claim “temporary insanity” pleas, why do these arguments so often link mental distortion to nonviolent homosexual advances, and are there any historical examples of panic arguments? What forms of privilege are deployed within panic-based arguments?

Earlier sociological studies of hate crime law and litigation in the previous two decades have approached these queries from the standpoint of civil rights and social change theory. Federal hate crime law, these scholars argue, is best understood as an offshoot of civil rights law that has taken sex, sexuality, and gender as the locus of struggles concerning justice, inequality, and access to legal technologies (Jenness and Broad, 1994; Jenness, 1995; Jenness, 1999b; Jenness, and Grattet, 2004; McVeigh, Welch, Bjarnason, 2003; Soule and Earle, 2011). In addition to the courtroom, interactions between citizens, suspects, and law enforcement officers at the local level become important sites of investigation concerning the way hate crimes are described, recognized, categorized, and charged (Grattet, R., Jenness, V., and Curry, T., 1998; Grattet, R., and Jenness, V., 2005). Other scholars have centered their arguments within the realm of human rights, arguing that the right to live a life unafraid

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of violence due to differences in sexuality and gender identity is an unalienable universal right extending beyond national borders (Swigonski, Mama, Ward, 2001).

Within the realm of legal studies, interrelated research centers upon the origin and use of specific laws linked to the litigation of hate crimes as well as on the important legal mechanics involved in defense arguments that claim mental instability as the cause for hate-based violence. Tracking sex-based panic defenses back to the early twentieth century, legal studies focused on the ways in which archaic medical discourse is linked to the legal classifications of “temporary insanity” arguments that are often relied upon in cases of hate-based LGBT murder (Cain, 1993; Lee, 2008; Perkiss, 2013; Tilleman, 2010). The historical legacy of psychological and medical diagnoses that have phrased sexual minorities as psychopathic have been utilized since the 1960’s in justifying self defense as the motivating factor behind hate-based murder (Eaklor, 2008; Fausto-Sterling, 2000; Feinberg, 1996; Lee, 2008; Perkiss, 2013; Tilleman, 2010).

These studies show how the interplay between structural and social forces is important in generating an understanding of how hate crime law operates. Yet they neglect an analysis of how the formation and erosion of social and legal forms of citizenship based on tactics of dehumanization and otherness are involved in the litigation of hate-motivated violence. At the same time that hate crime law recognizes injury to the LGBT citizen, it engages in a process of Othering both the plaintiff and defendant, initiating the process of reclassifying complex identities into distinct units capable of being recognized and parsed by the legal sphere. In recognizing the plaintiff as an injured LGBT citizen, the process of litigation legitimizes the social and cultural prejudices involved in classifying lesbian, gay, bisexual, transgender, transsexual, and queer identity as non-normative. Similarly, by

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framing the defendant as potentially criminal and by curtailing their civil rights, the law marks the perpetrator as capable of being ejected from the circle of citizenry, eradicating any claim to civil rights. Revoking citizenship and branding the body as Other in order to ensure justice are important functions of the U.S. legal system.

Questions regarding the historical foundations of structural prejudice and privilege salient to non-normative gender and sexual identity linger, as do queries regarding how such legacies continue to operate in the twenty-first century. Scholars focusing on the history of sexuality agree that the nation's economic dependence on slavery was a driving force in delineating scientific racism, racial classification, and the differentiation of civilized (white) and uncivilized (nonwhite) sexualities (Abdur-Rahman, 2006; Bakare-Yusef, 1997; Bauer, 2009; Blanchard, 1996; Brown, 1995; Chase-Riboud, 2004; Cesaire, 2000; Dayan, 1998; Ferguson, 2004; Krishnadas, 2006; Martin, 1993; Sommerville, 1994; Stone, 2009). These pseudo-scientific disciplines eventually merged during the early twentieth century into the race-based study of eugenics, whose research categorized cross-gender presentation and homosexual desire as simultaneously rooted in non-white identity, "degenerate" whiteness, and failed attempts at heterosexuality (Esterberg, 1990; Ferguson, 2004; Kipnis, 1996; Lee, 2008; Martin, 1992; Miller, 2000; Neff, 2002; Pencak, 2007; Perkiss, 2013; Reis, 1996; Segal, 1996; Sommerville, 1994; Terry, 1990; Tilleman, 2010; Vicinus, 1992). The subjectivities associated with same-sex desire and non-normative gender presentation shifted yet again during the 1910's to the 1950's, associating same-sex desire and gender non-normativity with psychopathy, deviance, and a threat to the nation's wartime security (Chauncey, 1985; Eaklor, 2008; Estes, 2005; Goldstein, 1997; Grant, 2004; Loftin, 2007; Meeker, 2001; Ramirez, 2009; Wake, 2007).

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Without a doubt, themes of power, citizenship, and the state emerge within the context of the law's historical and present ability to reclassify citizens. The state's exaltation of characteristics linked to normative heterosexuality and nuclear families must itself be considered a site of contention, for it is the use of physical and social characteristics as a measure of normativity that societies engage in when considering the mechanics of inclusion, exclusion, and pejorative differentiation (Bishop, 1983; Bourdieu, 2001; De Beauvoir, 2011). Likewise, the state's ability to bestow, curtail, or revoke citizenship is an act of power that sends clear messages to communities regarding social inclusion, criminality, deviance, and adherence to the status quo (Dayan, 1998; Du Bois, 1994; Federici, 2004; Foucault, 1995; Foucault, 2003). Those citizens who live under the constant threat of being criminalized due to specific aspects of their identity live in a state of constant terror, where the possibility of multiple axes of oppression intersect within a single individual (Anzaldúa, 1999; Gordon, 2008; Tausig, 1991). In this context, is the law capable of parsing the particularities of hate-based violence against individuals who exhibit intersectional identities, or is it invested in maintaining the archaic foundations of jurisprudence that lend themselves to reclassifying citizens? To answer these questions, a study of hate crimes from the standpoint of embodiment and corporeality is required.

Imagining Bodies, Imagining Citizens: LGBT hate murder as a study of embodiment

My research concerning the case of *The People v. Brandon McInerney* confronts the absence of scholarship central to the intersection of sexuality, gender identity, and citizenship in cases of hate motivated murder. While earlier studies have foregrounded structural analyses as the most salient factor in understanding cases of hate-based LGBT murder, my investigations have centered on the interplay between local histories, community activism,

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media sources, and litigation in the process of bestowing or revoking social and legal citizenship. Because the act of reclassifying individuals as non-citizens involves multiple claims to knowledge and power, it is vital that inquiries into hate-based violence confront the effect that these manipulations have on the subjectivities involved in litigation. Failure to track the transformation of the citizen into the criminal, victim, sexually aggressive deviant, or the hyper-violent child, for example, is to ignore the deployment of specific arguments aimed at obfuscating the social, legal, and cultural prejudices involved in cases of hate-based LGBT murder.

Degrees of social inclusion, the negation of civil rights, and the removal of civilian status and its associated privileges are common themes in histories of embodiment associated with LGBT identity. Likewise, the struggle to prove one's full citizenship in order to access civil rights emerges in the context of litigating hate-motivated violence as well as the revocation of civilian status and its associated privileges. Civil personhood, its maintenance, and the erosion of social inclusion, it seems, precede the bestowal or nullification of civil rights. Civil personhood and social citizenship, in short, function as an interlocking unit that grants or revokes personhood; within this system, adherence or divergence from normative sexual and gender identities mark the axes that measure social inclusion and access to civil rights. While sexual and gender normativity writ broad (namely, heterosexuality and its sex-associated gender identities) suggest a "baseline" regarding sexual desire, gender identity, and sexuality, divergence from social norms results in an erosion of social inclusion, legal representation, and personhood. We can determine an individual's social inclusion based on their distance from the imaginary baseline of normativity, with proximity indicating a high

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level of inclusion and a greater distance from the baseline indicating a rising level of social ostracism.

While “civil personhood” can be understood as the law’s acceptance of an individual into the circle of citizenry, “social citizenship” acts as its corresponding measure within the non-legal sphere of societies and communities. While citizens may be accepted by the law, they may be simultaneously marginalized or shunned by their civilian counterparts, suggesting that the law grants only structural guidelines of citizenship while society itself determines levels of social inclusion. Furthermore, a continuum of inclusion exists, with “social citizenship” marking high levels of inclusion in the non-legal, civilian sphere and “social death” marking the complete removal of an individual from a given society or community. One need not experience civil death – the complete revocation of citizenship at the legal level – in order to experience social death. Rather, removal of an individual from a specific community qualifies as social death, with the individual marked Other experiencing a high degree of disenfranchisement in terms of human connections, property, and varying types of social privileges.

In helping readers understand these dynamics, I present a short introduction to the theories of the “imaginary body” and “civil personhood.” These two theoretical paradigms are capable of tracking intersecting forms of difference across the body, both in terms of interaction at the level of communities and individuals, and within legal proceedings. The first theory, that of the “imaginary body,” serves as a tool to critically question paradigms of embodiment as they occur across multiple cultural discourses. Refusing to take cultural notions of normativity as an overarching social truth is an important analytical stance due to the fact that such an act not only forces us to chart the nuances involved in creating sexual

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and gender normativity, but it also requires attention towards the cultural privileges associated with such normativity. Likewise, tracking sexual and gendered otherness is an exercise in deconstructing codes of normativity via the breakdown of cultural privileges resulting from social ostracism. The second theory, “civil personhood,” tracks the ways in which the legal sphere objectifies the body in creating citizenship and either welcoming individuals into society, or ejecting them from civilian networks and nullifying civil rights.

Within the heart of its approach, the theory of the “imaginary body” deconstructs the ways in which the human body is sexed and gendered via social processes that attempt to present “normal” bodies. At its outset, this text defies claims that bodies can be easily classified via sexual, gender, or biological quantification; rather, Gatens asserts that the taxonomy of bodily characteristics (sex, gender, biology) is an epistemological practice that orders society, the way societies conceive of physique and identity as interrelated, and the way morality, ethics, and the law are applied to specific bodies (Gatens, 1996, vii). These effects can be measured materially in the way societies control categorized individuals via legal statutes and popular customs, especially women, individuals exhibiting non-normative gender identities, and non-heterosexual individuals (Gatens, 1996, vii).

Although western culture has attempted to create representations of neutral bodies, attempts at conveying any “normal” body rely on pejorative descriptions rooted in otherness, descriptions that assert maleness, heterosexuality, and binary gender as a universal norm (Gatens, 1996, vii-viii).³ The human body, argues Gatens, “is unrepresentable” (Gatens,

³ In referring to “western culture,” I am referring to those cultures and societies that often draw themselves together under the labels of “first world,” or “European-influenced,” and are situated within histories of colonial control. While this study deals specifically with U.S. jurisprudence and hate crime law, it is important to note that the nation’s judicial history stems from colonial frameworks of law, personhood, procreation, citizenship, slavery, and criminality. Most significant are legacies of British, Spanish, and French regimes of power, which

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1996, vii). Instead, what is advanced by various sciences, political systems, and social schema is what Gatens terms an *imaginary body*:

An imaginary body is not simply a product of subjective imagination, fantasy or folklore. The term “imaginary” [refers to] those images, symbols, metaphors, and representations which help construct various forms of subjectivities ... those ready-made images and symbols through which we make sense of social bodies and which determine, in part, their value, their status, and what will be deemed appropriate treatment. (Gatens, 1996, p. viii)

As defined by Gatens, the *imaginary body* is an epistemological and cognitive reference point: 1) against which the normativity of bodies and their activities are measured; 2) from which complex systems of sex, gender, and corporeality emerge. In this sense, the term “imaginary” does not refer to a mythical re-casting of the human body based outside of reality. Instead, the term “imaginary” refers to a complex cognitive system that involves the aggregation of information from historical, legal, scientific, linguistic, symbolic, and experiential circumstances. Rather than suggesting a fictional construction of the physical body, the concept of the “imaginary body” relates to how the aforementioned spheres generate *social fictions of corporeality* that frame a society’s understanding of various bodies, identities, social locations, cultural privileges, and social interactions.

Based within psychological theories of the phantom limb, the *imaginary body* can be traced within multiple social levels and discourses. Defining aspects of this theoretical tool include the fact that:

The imaginary body is socially and historically specific in that it is constructed by: a shared language; the shared physical significance and privileging of various zones of the body[;] and common institutional practices and discourses (for example, medical, juridical, and educational) which act on and through the body. (Gatens, 1996, p. 12)

would eventually be conglomerated into a nineteenth-century platform for what we currently consider the roots of U.S. law. Certainly, the legal apparatuses of other colonial nations have developed distinctly, yet they also possess legacies of European colonial thought that may be similar to those found in the U.S.

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Within this framework, those characteristics deemed salient by a given society are actually “manifestations of and reactions to the (conscious and unconscious) ideas which we share about our biology” (Gatens, 1996, p. 13). Schema such as heterosexuality, masculinity, and femininity as well as their associated privileges, are not universal, metaphysical constants existing across all societies. Rather, ideas about sex, sexuality, gender, and “sex-appropriate behaviors are manifestations of a historically based, culturally shared phantasy about male and female biologies” (Gatens, 1996, p. 13).

Western-derived schematics of sex, gender, sexuality, and anatomy – such as the male/female, masculine/feminine, or heterosexual/homosexual binaries – are not universal constants present in all societies and cultures. Rather,

We *are* historically and culturally situated in a society that is divided and organized in terms of sex. ... Theorists of sexual difference do not take as their object of study the physical body, the anatomical body ... but the body as lived, the animated – the situated body. (Gatens, 1996, p. 11)

Even as biological, physical creatures, we exist within a context defined by socially- and culturally-constructed forms of being. Inevitably, these paradigms exist in relation to important historical circumstances and discourses. Although much debate has occurred concerning the relationships between sex and gender, Gatens notes that there is an important difference between the two categories. While both remain historically situated, the history of “sex” is a history of the physical body, materiality, while the history of “sex and gender” is an often immaterial, social and cultural history of the *imaginary body*. As Gatens (1996) notes, “If one wants to understand sex and gender, or put another way, a person’s biology and the social and cultural significance of that body as lived, then one needs an analysis of the imaginary body” (p. 11).

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Questions regarding how one can engage such an imaginary are easily evoked. Where can material evidence of this body be located? How can we trace an ideological variable that does not remain constant through space-time?

Although such information may seem elusive, Gatens (1996) notes that there are three specific arenas in which evidence of historically-situated individuals can be culled. As historically situated beings, our “language, stock of images, and social practices constitute an unconscious dimension of our cultural heritage” (Gatens, 1996, p. xi). Within the realm of language, the analysis of important records, legal officiation of rulings regarding non-normative identity, and socio-economic discourses surrounding cases of non-heterosexual identity serve as important sources. Likewise, idealized or aberrant images and their associated descriptions, normative ideas related to citizenship and corporeality, and the values associated with these depictions of sexual and gender identity serve as important primary sources for this study. Customs and cultural practices related to the act of honoring, officiating, or dehumanizing a given sexual or gender identity comprise important elements related to the sphere of practices mentioned by Gatens. Together, these sources encompass a subset of the important elements utilized in analyzing the imaginary body within a given social situation.

In contrast to the overarching scale presented by the theory of the *imaginary body*, the theory of civil personhood marks a crucial type of corporeal imaginary geared towards analyzing the legal aspects of citizenship, difference, and social inclusion. In a groundbreaking study, Colin Dayan investigates the law and the ways in which legal conventions transform people into objects for the purpose of legal classification. The law’s process of defining and enacting citizenship within a society can be recognized as a

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technology of social reclassification; this process is neither straightforward nor instantaneous (Dayan, 2011). Instead such a practice involves a vast historical context rooted in the demarcation of normativity and otherness. “The law kills and the law resurrects,” argues Dayan, allowing the judicial imposition of “symbolic control and the inscription of that control on real bodies” (2011, p. 42). The “natural person” who lives as an active, animated body is not recognized as citizen before the law within western societies. Both the embodied identity and its biological person must be rationalized before the law within a process that requests the individual submit to the *legal concept* of civil order.

In essence, the law requires legal recognition of the (un)natural in order to subvert it and impose juridical renderings of civil order via the status of “civil personhood” (Dayan, 2011, pp. 41-42). By recognizing the natural person before the law, the legal machinery never completely suppresses the individual’s humanity:

The old nature first takes on the skin of the civil, then compacts itself to fit into that skin. ... The natural person who existed before the social contract, though reduced to a spirit in civil skin, nonetheless haunts the margins of the formal community. (p. 44)

What results from this process is a legal construct whose framing of personhood is inherently subservient to the law in that it can be transformed at will via legal practices. “[L]egal persons have no fixed definition,” argues Dayan, “but instead take on changing capacities variously granted by the state” (2011, p. 25). These “capacities” may be of cultural importance, but their qualifications, presentation, and spheres of influence are socio-legally enforced via a “juridical rationality” referred to by the law as “jurisprudence” (Dayan, 2011, pp. 25-26). Within this rendering of legal technologies, the power of litigation to elocute an individual’s personality in pursuit of justice marks “the absoluteness of the law’s power” in

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defining, assigning, and revoking various forms of personhood. “In its manipulation of categories,” argues Dayan, “the law perpetuates its claims to mastery and comprehension, all the while investing the individual order with the power to redefine persons” (Dayan, 2011, p. 40). The axes upon which various forms of personhood are phrased rely on the jurisprudence of a centuries old “legal culture [that] has carved up human differences into hierarchies capacious enough to accommodate [various forms of] subordination” (Dayan, 2011, p. 40). Rather than taking these hierarchies at face value, this study engages the law as a technology capable of reformulating embodiment regardless of the will of the individual inhabiting the body in question.

A Mixed Methods Study

In confronting themes of sexuality, citizenship, and social inclusion, I initiated ethnographic fieldwork in the summer of 2009, after moving to the Silver Strand neighborhood of Oxnard, California, where Brandon McInerney was raised. (For a map indicating the general layout of the Oxnard/Port Hueneme area, see Figure i.1.) Envisioning the study as a straightforward ethnography of both the Ventura County community and the courtroom trial, I followed the case’s pretrial proceedings closely, attending routine hearings at the Ventura County Courthouse, located nine miles away from the Silver Strand. Although many criminal trials move through local court systems within one year, the trial of *The People v. Brandon McInerney* was riddled with delays that included mistrial hearings, multiple requests for the judge to recuse himself, and the involvement of the Deputy Attorney General of the State of California in legally defending the evidentiary provenance upon which the local District Attorney’s case relied. After one failed attempt at relocating

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the trial to Santa Barbara county, the trial was ordered to begin in July of 2011 – over three years after the initial attack – in Chatsworth, California.

While it may seem that the timing of court proceedings lent themselves to interaction with local citizens in the Ventura County area, I found that the prolonged uncertainty concerning the ongoing trial was a significant factor in whether individuals chose to

Figure i.1, City of Oxnard, Map of Neighborhoods, courtesy Fremont North Neighborhood Council. Note that the tip of the black arrow, located in the bottom half of the image, marks area comprising the Silver Strand Neighborhood.



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participate in study interviews. Although potential participants were vocal about their understanding of the murder within casual conversation, many individuals noted that they were uncomfortable participating in a study aimed at deeply engaging ongoing litigation. Explanations for these reservations included discomfort with the topic of violent murder between children, not wishing to speak ill of a deceased child or an incarcerated child, discomfort with adult charges being brought against a 14-year old, and themes of homosexuality, bisexuality, and transgender identity among pre-adolescents. Many individuals who declined participation noted that they were concerned with the possibility of slandering either Lawrence King or Brandon McInerney, as had occurred among local community news outlets. Other citizens noted a deep disdain with the fact that the District Attorney linked motivation for the crime to White supremacist ideology, noting that they did not want to add to what they considered a vicious campaign against the Silver Strand, Oxnard, and Ventura County communities. White supremacy groups, some individuals reasoned, were not present in the county and were not responsible for the violence that killed Lawrence King.

Rather than delaying the study based on these circumstances, I sought to broaden my understanding of the case, local communities, and important local discourses by expanding my methodology. In addition to community and courtroom ethnography, important historical data was obtained via archival research related to the city's founding, the presence of supremacist groups, and the life of a deeply controversial "sexual invert" who lived on the Oxnard plain during the World War Era. Media analysis concerning the trial was also conducted over a period of four years, focusing on local print news media and editorial letters

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published by the Ventura County Star. Each method is described in greater detail in the following subsections.

A Two-Pronged Ethnography

Although the study was conceived of as a straightforward ethnography consisting of fieldwork and interviews, I quickly determined that the city of Oxnard and the Ventura County Superior Court should be treated as two distinct sites of data collection. Originally, I considered the superior court and the city of Oxnard to be of one, extended field site that could be moved across at will, with the court affecting the lives of citizens and vice versa. However, based on the inordinate power structure between citizenry and county courts, the two locations must be considered separate sites of inquiry. Given the fact that court systems may summon citizens in varying capacities while reserving the ability to reformulate citizenship status, that citizens themselves may not affect the court in a similar manner, and that varying degrees of certification are required to motivate any court into judicial action, it is necessary to approach these sites as distinct yet interrelated areas of data collection.

While the question of how much the law impinges on daily activities and relationships is debatable, it is unquestionable that an imbalance of power exists between citizenry and judicial bodies. While citizens of Ventura County certainly discussed their opinions of specific laws and statutes, the ability to create changes in the corpus of law requires specific formulations of language, circumstance, and legal representation. As such, each site should be approached from the standpoint of advancing and working within a unique form of separate yet interrelated knowledge, with the court maintaining the ability to scrutinize civilian codes of knowledge for the judicial purpose of applying legal statutes to a given set of circumstances. In essence, the courtroom is a place where human activity is

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dissected in order to obtain a legal understanding of an individual's motivation for a specific action, with judicial actors thereafter correlating specific portions of the law to human action.

With these points in mind, the Superior Court of Ventura County became one ethnographic prong in this study, while the city of Oxnard became another prong. Approaching each field of knowledge, therefore, required me to change my ethnographic methods based on setting. In describing how ethnographic and interview data was pursued in each setting, I shall begin my description of this study's ethnographic methods with the area of the city of Oxnard.

i. Ethnography and interviews in the city of Oxnard, California

Located on California's coastline, the city of Oxnard contains a rich mix of industry, agricultural production, community activism, and military personnel within twenty-six square miles of land and thirteen miles of waterways. Originally founded during the close of the nineteenth century as an agricultural experiment in beet sugar production, Oxnard has served as a nexus of immigration and agriculture for over a century, with important communities being established among immigrants and citizens of Mexican, Chinese, Japanese, African American, Filipino, Indigenous American, and White European descent. The cultivation of flowers, fruit, vegetables, squash, fungus, and legumes is spread throughout the city, and multicolor fields of gladiolas, marigolds, lilies, tulips, and seasonal wildflowers are easily accessible from the local freeway. The city is especially known for its production of berries, leafy greens, Brussels sprouts, artichokes, seasonal pumpkins, and a local mushroom farm. In recent years, the downtown area of Oxnard has experienced a revival, establishing multiple monthly festivals, open-air markets, and parades that celebrate the presence of multiple communities throughout the city.

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The presence of lesbian, gay, bisexual, transgender, and transsexual individuals within the city of Oxnard is strong, although community organization has experienced important periods of growth and decline. Funding for an LGBT community center was garnered from multiple state and county sources in the early 2000's, and programs for HIV education, treatment, and prevention were initiated immediately. As the center grew, it began expanding its services, including support groups for LGBT adults, teenagers, and pre-adolescents, and housing pro-bono legal and psychological counseling services. Among the many challenges that the resource center faced was homophobic vandalism and harassment of its patrons, prompting several moves to different locations throughout the city every two to three years. Although the Oxnard community houses a strong, multicultural LGBT presence, local activism in the city slowly dwindled after the shooting death of Lawrence King, with the local LGBT resource center losing its lease in 2010. Although attempts were made to continue private gatherings organized via websites and e-mail, the center eventually lost its funding and ceased all operations in 2011.

In pursuing ethnographic data within the city of Oxnard, I spent roughly a month becoming familiar with the city, its neighborhoods, communities, and historical sites. Speaking with residents about local history, industry, and important landmarks was a crucial aspect of this study as it pointed me to the reality that local racial, labor, and LGBT histories were important in establishing the circumstances affecting the way litigators, community members, and activists approached the case. Field notes were gathered and casual conversations conducted throughout important gathering points in the city, including the downtown area, a local strip mall near the naval base, and the Silver Strand beach area. While the majority of residents were happy to discuss the history of the city, many

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individuals voiced their anger, frustration, and sadness concerning the murder of Lawrence King in ways that eluded analysis beyond superficial emotions, perhaps because of the taboo nature of both hate crimes and child murder.

In addition to speaking with residents of the city, daily walks throughout the Silver Strand community were conducted with the intent of meeting local residents interested in the trial. Although I lived in the neighborhood for two and a half years, most residents of the Silver Strand area were suspicious of those they considered outsiders, which included those who moved into the area from outside of Oxnard. While the majority of residents were happy to meet me, most voiced a level of wariness concerning my role as a university researcher interested in the case. This was due, in part, to an increased police presence shortly after the murder of Lawrence King, which residents perceived as an attempt to initiate gang injunction proceedings based on allegations of White supremacist activity in the area; these allegations originated from the case's prosecution team. For these reasons, I was able to garner the participation of a handful of residents with the help of neighbors who closely followed the case and spoke with me on a daily or weekly basis. Additionally, a colleague who grew up in the area introduced me to local community members that were able to put me in contact with individuals who had worked with the local LGBT resource center during its prosperous years from 2000 to 2010.

As the pre-trial hearings progressed over the next three years, I focused on initiating interview samples within the Ventura and Oxnard communities, an endeavor that proved challenging given the themes arising from the case. Over the course of three years, I conducted in-depth interviews ranging from one to three hours with twenty-four participants gathered from three snowball samples focusing on different communities within the local

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area. Situated within local LGBT activist communities, the first sample was initiated in the Fall of 2009 and included seven individuals living in Oxnard, Ventura, Santa Paula, Los Angeles, and Seattle. The second sample was initiated within the Silver Strand community and consisted of twelve individuals throughout Ventura County who followed the case closely between 2009 and 2012; six of these individuals were concerned parents, public school faculty members, and education administrators, while the remainder were citizens who had varying interests in court proceedings. A final sample was initiated in August 2011 and consisted of five individuals who worked in the fields of law enforcement, litigation, and criminal investigation within Ventura County. One interview was conducted and subsequently discarded due to confidentiality concerns, and a second interview was conducted and subsequently discarded after a participant noted on their human subjects forms that they were uncomfortable participating in the study. All interview participants were recruited via word-of-mouth and were interviewed individually or in pairs, based on their individual requests. Interviews were conducted in an agreed upon location that was most comfortable for the participant; these locations included public businesses (such as restaurants or cafes), private residences, and professional offices. Two interviews were conducted by telephone at the request of participants. Interviews were digitally recorded for later transcription, and consent was obtained both in writing and orally.

Due to the fact that even the most concerned individual can experience discomfort when speaking about hate crimes, murder, and child incarceration, I opted to utilize an interview method that allowed participants a great deal of freedom and control in confronting the themes most important to them. Described as “conversations with a purpose” (Burgess 1984), Kum-Kum Bhavnani (1991) builds upon this interview method and argues it permits

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“a researcher to develop some insight into the dynamics of ... ways in which [important] issues are being considered, and negotiated by the interviewee”; this is accomplished via a semi-structured, open-ended interview method that allows participants to draw connections between agreed upon themes and local forms of knowledge (pp. 75-76). While a pre-defined questionnaire presents the risk of limiting interaction to the researcher’s ultimate agenda, conducting a “conversation with a purpose” allows participants to work through a particular theme as they see fit, raising questions, points, and related topics of import to their unique social location and worldview. In addition, this method allows the researcher to witness the process of reasoning through a particular query, pointing to areas of interest that the analyst may have overlooked. The participant maintains the ability to peruse the researcher’s motivations for a given theme and, if necessary, re-define the topic presented in a manner that feels more appropriate. Rather than maintaining complete control over communication, such a conversation allows both researcher and participant to meet each other at equal positions, with the researcher honoring the ideas presented by the participant as a form of situated knowledge and the participant maintaining the ability to redirect the conversation at will.

Rather than approaching participants with a pre-defined questionnaire, interviews followed a structured conversation, with participants highlighting important topics and themes as the interview progressed. Upon opening the interview, initiating the digital recorder, and obtaining oral consent, I would mention up to five general themes that arose in court proceedings and media reports of the case. Examples of preliminary themes included “Larry and Brandon,” “The E. O. Green School shooting,” “hate crimes,” “queer survival and homophobia,” and “the trial.” Participants were then asked if they would like to add any

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important topics to the conversation, with the reminder that they could note important themes as they arose. Interviewees were then asked to speak about each topic in the order they felt was most appropriate, with the request that all topics should be addressed. As participants spoke, I took notes on a form organized by theme, recording important keywords, topics, anecdotes, or emotional and physical reactions that arose during conversation. If appropriate, I asked subjects to expand upon important themes that arose during these conversations, as well as whether there were any connections between themes introduced by participants and those I suggested at the start of the interview. This method resulted in conversations ranging between one to three hours that covered a wide breadth of topics connected to the King/McInerney case. While participants were free to interpret the major topics involved, the preliminary themes served as points of thought that could spur conversation, or points of contention that could be rejected outright.

After interviewing each individual, I returned home to review handwritten notes alongside audio recordings. Important moments were noted on the form mentioned above by indicating a time span within the corresponding recording. I then transcribed all the interviews, with important details from handwritten notes being included in the transcript. After transcription, all audio recordings were destroyed in accordance with human subjects protocol.

In accordance with human subjects protocol pertinent to the University of California, all names, locations, and identity characteristics of participants have been altered throughout this study to ensure a high degree of anonymity. Participation in this study was voluntary, with the option to withdraw consent throughout the four years comprising the research, fieldwork, and the writing phases. Based on guidelines from the university, those present

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during the commission of the crime and trial witnesses could not be interviewed for this study due to concerns arising from ongoing litigation, the legal rights of prisoners, and the risk of re-traumatizing individuals overcoming the psychological effects of being present during the attack. In addition, children were not able to participate in this study. At the time of publication, all audio recordings pertinent to the study have been destroyed.

ii. Courtroom ethnography

Unlike participant interviews, courtroom ethnography consisted of intense note taking, observation, and listening; there was very little conversation, if any. Located in the center of the city of Ventura, the Ventura County Superior Court sits within an imposing complex of buildings that house judicial, civic, and prison centers for the entire county. Surrounded by manicured lawns and medians that house wildflowers and trees, the tan sandstone of the county capitol rises suddenly on the top of a hill situated between the US-101 and Highway 126 freeways, flanked on either side by residential apartment complexes and local businesses. Walking towards the complex from the parking lot, one can see the courthouse's floor-to-ceiling windows reflecting the hues of the sky. Outside the entrance to the courthouse sits a wide, circular fountain around which court staff, citizens, and other capitol employees relax, eat lunch, and smoke cigarettes. Entering the courthouse, the outer halls buzz with the activity of metal detectors, x-ray scanners, and the hurried conversations of those seeking legal services. Courtrooms, on the other hand, consisted of an official, often cold decorum made all the more palpable by dark wooden paneling, platforms, and railings, and soft, pink, fading upholstery in the gallery.

Similar to the Ventura County Superior Court, the Chatsworth Courthouse's entrance consists of what looks like a glass tower, with windows extending from the floor to the

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structure's ceiling. A daunting, white edifice from the outside, the courthouse's outer halls are decorated in white and green marble tile illuminated by soft light filtering through a series of frosted glass ceiling panes four stories above. Commissioned by the County of Los Angeles as a location for sculptural art, the Chatsworth Courthouse greets those who enter with the word "we" emblazoned in copper alloy on the wall directly opposite the entrance doors. After moving through security, visitors encounter three large, square benches in the central atrium. Built out of black and white marble, the benches spell out the word "the," most noticeable from the upper balconies that overlook the atrium. Mounted on the walls near the benches are two large, gold frames, each featuring the pictures of one hundred individuals who either work in or have visited the courthouse. Mounted over these pictures is the shape of a balance scale's pan sculpted in copper-colored alloy. Together, these pieces of artwork comprise the phrase "We the People" in a space with subdued colors and incandescent lighting, creating a formal atmosphere and signaling the upcoming need for courtroom decorum. Ironically, although comprising more space and containing a wooden jury box with rotating office seats, the Chatsworth Courthouse courtrooms were strikingly similar in color and texture to those in the Ventura County Superior Court – well-lit areas with dark wooden paneling, platforms, and fixtures, and a gallery upholstered in a dark, faded, plum colored fabric.

Although the bulk of trial proceedings took place in Chatsworth, California, courtroom ethnography between the Ventura County Superior Court and the Chatsworth Courthouse of the Los Angeles Superior Court followed similar procedures. After passing through security, entering the appropriate courtroom, and choosing a seat, I quickly retrieved a number of pens, highlighters, a notebook, and a pocket watch from my bag. After

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recording the date, time, and current proceedings, I counted the number of individuals attending the trial in the gallery, as well as the number of lawyers present in the courtroom's well – the open area between counsel podiums, the jury box, the witness stand, and the judge's bench.

Both the Ventura County Superior Court and the Chatsworth Courthouse contained holding cells connected to the courtroom, sealed by a large metal door with one small window at eye level, which was covered by a small cloth curtain. Only the courtroom bailiff was allowed to approach the cell's door, and upon doing so, the bailiff would lift the small curtain, quickly peer through, and lower the small square of fabric. If the incarcerated individual in the cell was ready to enter the courtroom, the bailiff would insert a large, archaic-looking, complexly cut key into the door's keyhole, turn the key, and pull the door open with a large, stationary door handle. Every time the holding cell was opened to retrieve or house Brandon McInerney, I marked the time in my notebook. Incarcerated individuals, lawyers, bailiffs, and courtroom staff were required to be present before the entrance of the judge; when the judge, jury, or witnesses entered or left the courtroom, I also recorded the time in my notebook. In addition, during the jury trial of Brandon McInerney, I drew a small diagram of the courtroom, the judge's bench, witness stand, jury box, and the railing demarcating the separation between the courtroom gallery and well. The diagram of the jury box also contained a map noting the number associated with each juror or alternate, as well as a few basic physical characteristics of each juror (for example, "juror 1 — long red hair with gold bracelet and high heels," or "alternate 4 — lady with short curly blonde hair and lime green bag," or "juror 10 — man with curly black hair, small hoop earring, blue wrist tattoo").

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During both pretrial and court proceedings, detailed notes were taken regarding lines of questioning, introduction and presentation of evidence, and the demeanor of courtroom staff, litigators, jurors, and civilian attendees. In addition to noting the time associated with the entrance of each witness, the hour was marked when counsel ended one line of questioning and allowed opposing counsel access to the witness. Objections were noted as they occurred along with the reason for objection and the judge's rulings. Although I was unable to hear what counsel and lawyers discussed during sidebar sessions, I closely tracked the time and duration of these occurrences, as well as the demeanor of the judge, prosecuting lawyer, defense team, and jury during these instances. During short recesses, I often stayed in the courtroom gallery to re-read my notes and to attempt conversation with bailiffs and court staff, although the ability of these staff members to converse with civilians is highly constrained. During longer recesses, I left the courtroom with my belongings and attempted to chat with individuals attending trial proceedings. Although I attempted to utilize suspensions in testimony to establish contact with potential interviewees, only two individuals who attended the trial expressed interest in being interviewed. The majority of trial attendees declining participation expressed concern with trial proceedings as well as their discomfort with themes arising from testimony. While many trial attendees voiced respect for my research, they noted that the heavy tone of the trial was something they hoped to leave behind on exiting the courthouse, or upon the close of the trial as a whole. In total, courtroom ethnography provided seven handwritten volumes of notes detailing pretrial and jury trial proceedings.

Media Analysis

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In addition to community and courtroom ethnography, this study incorporates knowledge of the specific themes emerging from media discourse via a prolonged engagement in analysis of news media surrounding the murder and ensuing trial. During the planning phase of the study, media analysis was conceived of as a tool for tracking important topics emerging from communities within the United States that closely followed the case. As the study progressed, however, local news media sources became vital in creating comprehensive timelines of pretrial litigation and the themes emerging in local communities. Engagement with these articles was conducted in two specific phases, with the first phase focusing on creating a national context pertinent to responses concerning Lawrence King's murder, and the second phase focused on local area responses to the murder of Lawrence King and the trial of Brandon McInerney.

In the first phase of research, I collected news articles detailing four high-profile cases of LGBT murder and their associated trials in addition to the King/McInerney case; these sources were retrieved from an academic news database that houses digital editions of newspapers from across the U.S. This step was crucial in conceiving of the King/McInerney case in a national context during a historical moment of expanding LGBT civil rights. Preparation for research included the compilation and summary of 209 news sources concerned with the hate-motivated murders of Matthew Shepard (1998, Casper, Wyoming), Fred "F.C." Martinez (2001, Cortez, Colorado), Gwen Araujo (2002, Newark, California), and Sakia Gunn (2003, Newark, New Jersey). With the exception of Matthew Shepard, each case entails the murder of an LGBT youth of color from a lower-middle class or lower class socioeconomic background. For more information on these cases, see Appendix A.

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Each of the aforementioned crimes consisted of litigation in which the defendant claimed that the sexual and/or gender identity of the deceased plaintiff sparked a break in rational thought, leading to violent interactions resulting in murder. Without exception, each case consisted of pejorative, dehumanizing speech against the victim at the hands of litigators, defendants, family members of the defendants, politicians, and media outlets. This pejorative language coincided with claims of temporary insanity and what has been termed the “gay panic defense” by legal scholars.⁴ Homophobic and transphobic hate speech, it seems, tend to be staple defense tactics throughout the nation when communities attempt to level charges against those who have murdered low-income LGBT persons of color. For the reader’s reference, this compilation of cases has been included in the study as “Appendix A,” which also incorporates some of the first media reports throughout the nation detailing the murder of Lawrence King.

In addition to closely following news reports, important themes from articles were cross-referenced by publication in order to determine what news media advanced as some of the more crucial details of each case. While news reports pertinent to the King/McInerney case persisted at a national level for a number of months, the concentration of articles linked to the case began dwindling roughly one month after Lawrence King’s murder. By May of 2008, the majority of sources reporting on the case existed within the state of California. By November of 2008, the publications that maintained steady reporting on trial developments and community responses were centered in Ventura, Los Angeles, and Santa Barbara

⁴ For more information on the origin, structure, and function of “gay panic,” see chapters 2 and 6.

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counties.⁵

In the second phase of research, I collected news articles published at the local level between January 2009 and August 2011, concentrating on those presented by the local newspaper publication, the Ventura County Star. During this period, I collected 430 news articles, editorials, and letters to the editor focusing on the case in both print and digital format. While my original intent was to use these articles as a tool to help build a timeline of important events, study participants constantly mentioned the publication in ethnographic interviews and casual conversation. Feature articles, front-page editorials, and letters to the editor from community members were mentioned by over two-thirds of study participants, indicating that the newspaper served as an important source of information and dialogue surrounding the case. Themes that arose in interviews concerning the publication included trial coverage, the lives of Brandon McInerney and Lawrence King, the taboo nature of childhood (homo)sexuality, child abuse and neglect, LGBT rights, themes of White supremacy, and homophobia. The relationship between local community members and news articles from The Ventura County Star extends beyond its use as a tool to gain information about the case, however.

While the majority of articles published by the newspaper and its associated website consisted of traditional news articles, roughly one quarter of the materials published

⁵ An important exception to this observation concerns prolonged coverage of the case by bloggers focusing on LGBT civil rights, identity, and news. Websites such as “The Bilerico Project” and “Towleroad,” which focus exclusively on LGBT civil rights news, followed the case over three years, with varying degrees publication frequency centered mostly within pretrial and jury trial hearings. (For more information, visit: <http://www.bilerico.com>, and <http://www.towleroad.com>.) These two digital publications represent two ends of a spectrum within a complex internet phenomenon; while “The Bilerico Project” is composed of a national network of reporters, “Towleroad” consists of a small group of reporters with the Las Vegas, Nevada area. Because study participants did not indicate that they gathered news, editorials, and analyses from LGBT-specific blogs, however, the study was confined to articles appearing in The Ventura County Star.

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consisted of featured editorials and shorter letters to the editor, suggesting that the newspaper itself became an important battleground concerning the themes, topics, and forms of analysis that emerged at the local level with regard to the case. This can be readily seen in the publication's weekly column, "Your Letters," which features a collection of local editorial epistles focusing on interrelated themes pertinent to Ventura County. Within this column, community members throughout the county not only questioned coverage of the trial, but also engaged one another in weekly debates concerning a great number of topics linked to themes of litigation, justice, gender, sexuality, and hate crimes. Themes that emerged within this column included: ethical news coverage, portrayal of Lawrence King and Brandon McInerney, questions of legal culpability concerning firearms and minors, questions of adult culpability pertinent to school staff, analyses of LGBT influences in the case, the rights of LGBT and gender variant children in public schools, debates concerning the brain maturation of both Brandon McInerney and Lawrence King, the District Attorney's handling of the case, charging adolescents as adults, the specifics of local gang injunctions and their tie to the case, the California Youth Crime Initiative of 2000 (also called Proposition 21), and events within the lives of the McInerney family. Other important themes concerned adoption of LGBT children, LGBT children as wards of the state, abuse and neglect of non-normative or aggressive children, and speculation about the circumstances under which King became a ward of the state.

Archival Research

One aspect of research that both interviews and media analysis pointed to was the need for historical research into relevant themes arising from these two methods. Of the themes that emerged in interviews and media analysis, questions regarding the founding of

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the city, settlement by multiple immigrant communities, and whether the county experienced the presence of White supremacist groups were topics that could only be answered by archival research. In an effort to gain some insight into these questions, I began visiting the Ventura County Historical Archives in the Fall of 2011, shortly after the close of the jury trial. With the help of research museum staff, I was able to locate photographs and newspaper articles concerning the founding of the city of Oxnard, labor strikes in the early years of sugar beet farming, and an increasing Ku Klux Klan (KKK) presence between 1900 and 1940. Interestingly, Ventura County was the site of a massive outcry against the group in the early 1930's, after an attack by the KKK in the city of Los Angeles prompted multiple municipalities throughout California to denounce the Klan as an "un-American" organization. Although the group was publicly denounced in the early 1930's, the cities of Oxnard, Ventura, and Santa Paula continued to experience random acts of violence reminiscent of KKK tactics through the 2000's. The city of Oxnard also experienced an important riot against the KKK, who attempted a screening of the film "Birth of a Nation" in July of 1978.

In addition, two separate news articles and one interviewee mentioned the case of Lucy Hicks, a prominent citizen in the Oxnard Community in the World War era. A self-proclaimed "sexual invert," Lucy created a reputation as the town's most accomplished chef, maid, nanny, and brothel owner. Although she lived in the area as a woman for more than two decades, it was eventually discovered that Lucy Hicks was a biological man, a story that – in addition to riveting the local community – made the headlines of TIME Magazine in the 1945 article, "Sin and Soufflé." Hicks was eventually charged with unlawfully claiming her

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status as “female” on a marriage certificate; in addition, she was also charged with fraud for receiving military compensation allocated to the wives of soldiers.

The case of Lucy Hicks is particularly compelling in the context of the overall study, given the fact that it establishes local histories and methodologies of dealing with individuals considered sexual and gender Others by the broader Ventura County society. The trial of Lucy Hicks lasted roughly a year, with heavy coverage from local news sources that questioned her sex, gender identity, sexuality, and citizenship status. Similar to the case of Lawrence King, Lucy Hicks was pejoratively portrayed during trial proceedings and within local media. Descriptions of courtroom testimony, lines of questioning, and descriptions of Lucy Hicks’ feminine appearance served to dehumanize the previously reputable citizen within local media, further distancing Hicks from the life she had built for herself in Oxnard, California. In addition to prosecuting Hicks as a man, the city initiated legal measures to ensure that Lucy Hicks would be barred from the city of Oxnard for the remainder of her life, effectively disenfranchising her of the capital, property, reputation, and human connections she had built. While Hicks’ case is distinct from that of Lawrence King, this study engages Lucy Hicks’ life, prosecution, and civil death as complicit within a historical trajectory that seeks to erase the presence of sexual and gendered Others both from the broader citizenry, and from the historical record.

Up to this point, this chapter has discussed the questions, theories, and methods central to the study. In addition, I have presented the reader with the most basic information concerning the case of *The People v. Brandon McInerney*. Central to this study, however, is the crime itself as well as the social, judicial, and media responses arising from the case throughout Ventura County. With this in mind, the next three sections will present

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background information concerning the case, including the murder, social and media responses, and judicial actions. After providing details for the reader concerning the King/McInerney case, this chapter will conclude with an outline of the study, paying special attention to the themes investigated in each chapter as well as the ordering of chapters throughout the study.

The People v. Brandon McInerney: The E. O. Green School shooting

On Tuesday, February 12, 2008, during first period class, Brandon McInerney retrieved a small pistol from his bag and placed it inside his sweatshirt, sat behind Lawrence King in a chair against the wall of a computer lab, and waited (Author's Field Notes, July 5, 2011). As teacher Dawn Boldrin worked with some of her twenty students, a classmate of Lawrence King asked at roughly 8:25 AM if it was true that King wished to change his name to "Leticia" (Author's Field Notes, July 5, 2011). In response two of Lawrence King's classmates began to laugh; shortly after King rebuked them, Brandon McInerney stood up from his chair, lifted the pistol, and fired two shots into the back of Lawrence King's head, severing his brainstem (Author's Field Notes, July 5, 2011). As McInerney exited the room in full view of his teacher and classmates, instructor Dawn Boldrin funneled her remaining students into an adjoined staff office, which she locked herself and her students into while waiting for help (Author's Field Notes, July 5, 2011). At the time of the shooting, Brandon McInerney was fourteen years of age and Lawrence King fifteen (Creston News-Advertiser, 2008; Foxman and Scheibe, 2008; Saillant and Covarrubias, 2008; Ventura County Star, 2008a).

After school staff realized a shooting had taken place, a flurry of activity erupted within Port Hueneme's E. O. Green Middle School. According to official detective

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testimony, the school began lockdown procedures just after McInerney exited the middle school campus, as emergency services were attempting to treat a struggling Lawrence King, who would later be transported to St. John's hospital (Author's Field Notes, July 5-7, 2011; Foxman and Scheibe, 2008). Traumatized students used cell phones to text-message and call their parents, prompting many adults to gather outside the sealed school, waiting nervously for their children to be released (Foxman and Scheibe, 2008). As a worried crowd of parents gathered outside of the quarantined school, McInerney was apprehended a few blocks away by police officers, who arrested him as he spoke to his father on a cell phone (Author's Field Notes, July-August 2011; Foxman and Scheibe, 2008; Ventura County Star, 2008a). Crime scene processing would require strict oversight at the school, and students were not released until roughly five hours after the shooting occurred (Author's Field Notes, July-August 2011; Foxman and Scheibe, 2008; Ventura County Star, 2008a).

Over a period of four days, Lawrence King's health declined steadily, requiring aggressive measures that included a medically induced coma and life support systems. On the evening of February 12, King was described by media sources as being "alert and well," and improving in the hospital's intensive care unit (Fox and Scheibe, 2008; Ventura County Star, 2008a). Later, Mr. Greg King, Larry's father, would state:

Contrary to previous reports that [Lawrence] talked with hospital staff and was improving after the shooting, the boy never emerged from a coma induced by doctors shortly after he arrived [at the hospital]. When [Larry] arrived at the hospital, he was making some sounds and gestures, but they were not intelligible. (Foxman, 2008b)

Doctors later noted that Lawrence had survived six hours after the attack – a critical window for treatment – during which he was induced into a coma; while his neurosurgeon remained "guardedly optimistic," King remained stable throughout the night (Foxman, 2008b).

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In the morning hours of February 13, King suffered a massive stroke while still in a comatose state, “causing his brain to swell and die” (Foxman, 2008b). On Wednesday, February 13, Lawrence King was reported as being brain dead after being examined by two neurosurgeons, expiring at roughly 2:00 PM from cerebral injuries caused by the shooting (Chronicle Herald, 2008; Creston News-Advertiser, 2008). King’s adoptive family and medical officials decided to keep the child on a ventilator in order to proceed with organ donation, with King’s adoptive father stating, “I think that’s what he would have wanted” (Creston News-Advertiser, 2008; Record-Journal, 2008). Larry King remained on life support until February 16; after his organs were collected for donation, his body was transported to the county coroner’s office for autopsy (The Argus, 2008).

Between Media and Middle School: A narrative of social anxieties

On February 14, Valentine’s Day, 2008, one day after the shooting, school officials continued daily operations, while roughly one-quarter of the student body opted not to attend school (Carlson, 2008a). Students and staff created a makeshift memorial shrine for Lawrence on campus, leaving stuffed animals, candy, balloons, and a large poster board inscribed with the lyrics to John Lennon’s song “Imagine” (Hernandez, 2008a). According to the Ventura County Star, school officials “were struggling Wednesday, wondering if they had missed a warning sign before the shooting. [Brandon McInerney] apparently had an argument with King on Monday,” which school officials alluded to without providing specific information (Carlson, 2008a). Students commented that the McInerney and King “were involved in an ongoing dispute and had an argument on Monday[, February 11]” with one student telling police that McInerney commented King was “having his last day” (Foxman and Scheibe, 2008). School district officials said it was the first middle school

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shooting faculty and staff could remember in the city's history (Foxman and Scheibe, 2008).⁶ A team of counselors was on hand to meet with students who felt they needed help with the situation, and to visit classes in order to "help supervise and look for students who might need some help" (Carlson, 2008a). Port Hueneme Public School District Superintendent Jerry Dannenberg commented, "Virtually every public agency ... and school district in the county contacted [E.O. Green High School] to offer help.... There's been a tremendous response," (Carlson, 2008a).

While school officials attempted to conduct regular school business and lawyers prepared for arraignment hearings, the press began crafting a story of the murder that focused on King's gender differences as central to the shooting. Media sources speculated that because King "had recently started to wear makeup and jewelry and had proclaimed himself gay," he had been bullied by a group of school boys who "had a confrontation concerning King's sexual orientation a day before the killing" (Saillant and Covarrubias, 2008). Friends noted that King had been dressing in a feminine manner for only about two weeks at the time of his murder (Saillant and Covarrubias, 2008). Later reports would add that King wore "high heels and other feminine attire"; one media report quoted a student as confessing that King's efforts to express his own gender identity "was freaking the guys [male students] out" (San Francisco Gate, 2008). For individuals following the case, Lawrence King's identity was a complex, confounding factor that resisted traditional description. Although Lawrence had fluctuated on how he self-identified, the term "gay" as well as its connotations of

⁶ Senior Deputy District Attorney Maeve Fox corroborated the claim that no previous school shootings had occurred in the county's history, stating, "In Ventura County, we've never had a school shooting like this. It is very tragic" (Hernandez, 2008a). However, she did note that McInerney was not "the only young murder suspect in the county's history," noting a case of 14-year-old Rocky Mattley, sentenced to seven years in the California Youth Authority after being convicted of killing a homeless man in 2002 (Hernandez, 2008a).

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femininity and homosexuality seemed to function as a stand-in for King's undefined identity.⁷

Two days after Lawrence King was removed from life support, on February 18, California Assemblyman Mike Eng announced plans to propose legislation aimed at quelling school violence and promoting tolerance among students, teachers, parents, and school staff. Assemblyman Eng noted that after introducing the legislation in 2007, Governor Schwarzenegger vetoed the bill (San Gabriel, 2008). In response, the politician is reported as saying, "I was shocked when I heard about the tragic death of Larry King. ... I thought that if our legislation had been enacted, perhaps there would have been a different result" (San Gabriel, 2008). While advocates of the measure said that it would teach school leaders to identify signs and "symptoms of hate" by implementing a curriculum based on tolerance, opponents of the measure touted it as providing "nothing more than 'flowery language'" (McLain, 2008). On February 19, the Ventura County Star ran a piece that detailed violence in educational institutions ranging from elementary school to universities, noting that "At least six school shootings occurred from Feb. 4 [2008,] to Feb. 14" (Scheibe, 2008).⁸

⁷ In illustrating this sentiment, I refer to the comments of Cesar Perales, a resident of Thousand Oaks, who participated in the ethnographic portion of the study. When asked how he referred to Lawrence King's identity, Perales stated, "I did refer to Larry as 'a gay tranny kid' because I had heard that he was dressing up like a girl to go to school. ... he's gay, and he's also a kid who likes to dress up like a girl" (Personal Interview, 2011, Transcript p. 2). Perales' description of King's identity cannot be discounted due to the fact that it serves as an example of trying to rationalize feminine gender presentation as distinct from homosexual identity. By stipulating "gay" as one descriptor in the phrase "gay tranny kid," Perales points to the fact that gender performance and sexual identity intersect within Lawrence King's (undefined) identity, pointing to the fact that "tranny" functions as a co-descriptor. "Gay tranny," as used by Cesar Perales, then, acknowledges multiple iterations of gender within homosexual identity.

⁸ Among the cases of school shootings that occurred during the time of King's murder were the following: A high-school sophomore shot a classmate in Memphis, Tennessee "during an argument over rap lyrics in an algebra class" on February 4; on February 7, an Ohio elementary-school teacher's husband stabbed and shot her to death in front of her fifth-grade students; on February 10, a 23-year-old man shot two female classmates

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On February 19, three days after King's death, over one thousand individuals gathered at a march organized in Lawrence King's memory (Wilson, 2008a). Coordinated by classmates on the day of the shooting, the rally stretched for over a mile through the public streets of Oxnard, with participants holding signs bearing King's name, photographs of Lawrence, and t-shirts with his image (Wilson, 2008a). Comprised of students, parents, teachers, elected officials, and members of the group Parents of Murdered Children, the march proceeded through the center of the city, ending at the town's central plaza where the crowd chanted King's name and held a moment of silence (Wilson, 2008a). A second memorial was planned for Friday, February 25 in honor of King, and a website was established for grieving individuals to post photographs, supportive messages, and memories of Lawrence (Hoops, 2008).

Roughly eight days after the shooting, California experienced a wave of vigils in support of King, where community leaders and members spoke out against homophobic violence, speech, and bullying. On Tuesday, February 20, vigils were held at the Ukiah County Courthouse, Willits, San Francisco, Sacramento, Fresno, and Los Angeles/West Hollywood areas within the state (Brown, 2008x). In Ukiah, vigil participants were largely silent, holding picket signs with slogans such as "support kids who are different" (Brown, 2008). In West Hollywood, CEO of the LA Gay and Lesbian center Lorri Jean was quoted as stating, "We live in a society where discrimination against gay, lesbian, bisexual and transgender people is promoted and encouraged That leads to violence and that violence has to stop" (Lyons, 2008). West Hollywood Mayor Pro Tempore Jeffrey Prang was quoted

to death in Baton Rouge Louisiana Technical College before killing himself; on February 11, a student in Memphis, Tennessee was shot twice during gym class (Schiebe, 2008). On February 15, a student at Northern Illinois University committed suicide after shooting five classmates to death and wounding sixteen others (Scheibe, 2008).

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as stating, “Despite the many advances that have been achieved to protect gays and lesbians against discrimination and the changing attitude of Americans about the LGBT community, we are reminded in the wake of this terrible tragedy that there is still profound hatred in our country” (Lyons, 2008x). Lisa Hurwitz, a teenage member of the statewide Gay, Straight Alliance was quoted as stating, “Today feels like we are re-living Matthew Shepard all over again” (Lyons, 2008).

For those parents and community members who did not attend vigils, school safety and questions about King’s identity were on the forefront of their minds. On the same day as vigils were held throughout California, February 20, leaders and administrators of Port Hueneme School District held a public hearing for community members concerning school safety; over five-hundred parents and community members crowded the E.O. Green School auditorium, where police assured them that due to quick emergency lock-down procedure, every child in the facility remained safe throughout the ordeal (Carlson, 2008b). While parents asked about the possibility of metal detectors being installed in school entrances, police officers and the district superintendent assured them that the school was safe and that counselors on campus were ready to help students deal with the recent outbreak of violence (Carlson, 2008b).

As community members grappled with the motivation of the shooting, using homosexuality as shorthand identifier for Lawrence King’s identity, local debates about the appropriateness of the tactic continued to surface. On February 22, a close friend of the King family was quoted in local media as stating:

I want Larry remembered for who he was as a person, and not just this phase of his life.... I’d rather not have him known as that gay kid. I’d rather have him known as Larry, a good kid who tried his best. ... A lot, if not too much, if being made of his

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sexuality, if indeed it was his sexuality. At 15, how can anybody know what his sexuality is? (Foxman, 2008d)

The executive director of the Ventura County Rainbow Alliance responded to these statements by stating, “I’m sensitive to how the family feels, but this is a global issue. . . . Every child in school is different, and every one of those differences should be acknowledged and nurtured” (Foxman, 2008d). The tension between how Lawrence King identified himself, how his close caretakers rationalized his identity, and what communities culled from news reports continued to deepen throughout the duration of the three years preceding the 2011 trial.

Community Critiques: The burden of tolerance

Shortly after the incident, community leaders and openly gay politicians began speaking out against homophobia in the Ventura County society and school system. The director of the Ventura County Rainbow Alliance, Jay Smith, noted that the organization had provided support group for youth between the ages of thirteen and twenty-three who were struggling with their sexual or gender identities (Saillant and Covarrubias, 2008). Smith challenged the school’s statements regarding efforts to intervene between King and McInerney, commenting that educational institutions must move beyond diversity and tolerance, committing to

more than just education, [because] it’s about acceptance, not just tolerance. . . . The big question I have is: Was the school equipped to have a student like Larry in attendance? . . . Was everyone in the district on the same page? Did they have the same diversity training? Were they supportive? (Saillant and Covarrubias, 2008)

Regarding the ongoing investigation, Smith stated, “It’s an equality issue, and we want to make sure the district attorney looks at this from all facets and all sides. . . . We are here to support others who are living in this country that may deal with the same issues,” noting that

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it was unclear whether the hate motivated in the attack was geared towards gay or transgender identity (Hernandez, 2008a).

Openly lesbian California State Senator Sheila Kuehl released a statement reading,

I recently learned that this shooting will be prosecuted as a murder and a hate crime, which I believe to be appropriate. ... We know that Lawrence King ... had already endured a number of incidents of serious harassment based on his stated sexual orientation and because others thought that his dress and demeanor didn't fit conventional gender stereotypes. (Hernandez, 2008a)

In addition, state senator Kuehl urged all schools to take action against homophobia, discrimination, and "bigotry" (Hernandez, 2008a). In response to Kuehl's statement, the Ventura County Superintendent of Schools noted that although district curriculum emphasized tolerance and acceptance of difference via modules on the World Wars, greater efforts and more plentiful resources were needed (Bakalis and Carlson, 2008a). According to the superintendent, the current curriculum could be improved by integrating class modules highlighting techniques for processing difficult and negative emotions, which could be further bolstered by expanding an already swamped counseling and mentoring staff (Bakalis and Carlson, 2008a).

In response to the county administration's recommendations, the Port Hueneme superintendent of schools responded that the burden for teaching tolerance should not be placed solely on institutions of learning but on the whole of society (Bakalis and Carlson, 2008a). At the time of these comments, a county study of public schools conducted by a nonprofit research group noted that "10 percent of Ventura County seventh-grader, 9 percent of ninth-graders, and 7 percent of 11th-graders reported harassment based on actual or perceived sexual orientation" (Bakalis and Carlson, 2008a). Within the nexus created by a chain of blame shifting, community members looked towards the approaching proposals of

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politicians Mike Eng and Sheila Kuehl to garner legal standards for school safety and accountability. Responding to the school district's claim that they had attempted to intervene in bullying between King and McInerney, Eng stated,

When you are in a school system you can't just offer assistance, you have to act. I want to find a way to create some accountability. School officials should have a system for reporting bullying to law enforcement officials. ... The anecdotal evidence in the King case says that if law enforcement had known about the bullying, they wouldn't have had to intervene in riot gear. (Lyons, 2008)

Criminal Charges: The technicalities of an injunction

Shortly after Lawrence King's death was announced on February 16, 2008, the Ventura County District Attorney's Office began preparations to arraign and charge Brandon McInerney. On February 17, 2008, the Ventura County Deputy District Attorney charged McInerney with the adult charge of Murder in the First Degree, saying the attack "inside an Oxnard classroom was a premeditated hate crime," although declining to comment on the possible motive (Foxman, 2008b; Saillant and Covarrubias, 2008).⁹ Because McInerney was still a minor, he was housed in Juvenile Hall and transported to court regularly; his bail was set at \$770,000, and he faced twenty five years for murder, twenty five years for discharging a firearm in the commission of an attack, and an extra one to three years if found guilty of a hate crime (Daily Breeze, 2008; Saillant and Covarrubias, 2001). Although preliminary hearings began in February of 2008, the arraignment trial would not begin until March 21 (Daily Breeze, 2008). From the time McInerney was sequestered in juvenile hall to the time

⁹ The official list of charges appeared on the Ventura County Superior Court Docket as follows, in line with the California Penal Code:

187(a) – Willfull, deliberate, premeditated murder

12022.53(d) – (Enhancement) Personal and deliberate discharge of a firearm

422.75(a) – (Enhancement) Hate Crime

190.2(a)(15) – (Enhancements) Murder while lying in wait

602(b)(1) – (Enhancement) Fourteen years or older when crime committed

707(d)(2)(B) – (Enhancement) Minor using a firearm during the commission of a felony

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his arraignment hearing was scheduled, Brandon remained on suicide watch (Hernandez, 2008a).

Two days after the district attorney announced plans to prosecute McNerney as an adult, the Ventura County Star began running stories and opinion pieces countering the decision. According to a piece printed on February 17, 2008, “the number of juvenile offenders tried as adults [had] nearly tripled from 10 in 2006 to 27 in 2007 ... a nearly 170 percent increase”; between 2002 and 2005, only five cases were recorded in Ventura County with juveniles being tried as adults (Hernandez, 2008b). According to the publication, the legal ability to prosecute adults was transferred from judges to lawyers in 2000, when then Proposition 21 allowed prosecutors “sole discretion on whether juveniles 14 and older who commit serious crimes [would] be tried in adult courts”; before the proposition passed, judges would conduct private hearings to determine if the juvenile was fit to be tried as an adult (Hernandez, 2008b).¹⁰ In a separate article attributed to the publication as a whole, the Ventura County Star made its opposition to the ruling clear by stating,

The question is not whether the district attorney can try the case in adult court, but whether he should. We believe there is a strong reason for a juvenile-justice system and that justice is served in that system. The Star believes, in this case, it is the only way justice can be truly served. ... A boy 19 days into his 14th year is absolutely not a candidate for adult court. (Ventura County Star, 2008b)

The entry mentioned Lawrence King’s name only once, and did not mention McNerney’s name but referred to his age at least eight times, suggesting the weight of attention on the

¹⁰ Proposition 21 was passed on a state ballot, and was largely described as a measure that would allow prosecutors to provide tougher sentences for gang members (Hernandez, 2008b). This is an interesting phenomenon when considered in conjunction with attitudes surrounding McNerney’s trial. While other, possibly ethnic individuals were tried as adults while still legally minors, only the possibility of trying a white minor as an adult garnered backlash against the measure from Ventura County residents. According to the Ventura County Star, “Supporters of Proposition 21 say prosecutors must have more power in dealing with gang members. Supporters also say they are tired of ‘slap on the wrist’ justice meted out by judges, which, they say, has made a mockery of the juvenile justice system” (Hernandez, 2008b).

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case was placed on characteristics lending to or detracting from the defendant's privileges as a white minor, including moral statements pertinent to characteristics such as race, age, and possibly gender identity and performativity.¹¹

What the article failed to mention was that the scene of the crime was located within the protected zone of an area associated with a gang injunction, automatically mandating harsher penalties for all firearm-related crimes committed in the sanction's jurisdiction. (See Figure i.2 at the end of this chapter for a map of the injunction zone.) Regardless of the District Attorney's professional analysis of the case, laws tied to Proposition 21 essentially meted out specific judgments required for legal processing; failing to meet these requirements could result in the federal government assuming control of litigation, as well as the risk of calling into question application of gang injunction components throughout the county since its inception.¹² Proposition 21, "increases the circumstances under which a juvenile offender can be sent directly to the adult court system ... [and] would *require* that youths aged 14 and older be tried in adult court for specified violent crimes" (California Budget Project, 2000; emphasis in original). Among the crimes subsumed under Proposition 21, discharging a firearm in the commission of a crime along with the crime of homicide constitute two of the specific circumstances deemed necessary to charge juveniles as adults. As such, the charges had been partially decided by voters in the 2000 California ballot, on which the law was introduced. Regardless of explanations advanced by the Deputy District

¹¹ In contrast to these statements that paint McInerney in a neutral light, other articles written by Hernandez of the Ventura County Star engage in a practice of Othering King via his gender presentation and mode of self-expression, while maintaining descriptions of McInerney as an unwitting juvenile who did not know the legal, physical, or mortal consequences of his actions.

¹² Failing to charge McInerney under gang injunction laws aimed at the use of firearms would have resulted in federal investigation of the statute's application due to a single, legal reason: unequal application of criminal laws. For the Ventura County District Attorney to refuse charging McInerney under these laws would have been an illegal act, illustrating unequal application of justice at a structural level.

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Attorney and the local newspaper, residents and community organizations continued to assert that adult charges and the application of statutes related to Proposition 21 indicated a deep miscarriage of justice within Ventura County.

Eight months after the county announced that the defendant would be charged as an adult, prosecutors made a public statement indicating that a large amount of White supremacy-related material was located within a room that Brandon McInerney shared with his father (Hernandez, 2008f). Hardcopies of literature from White supremacist websites, hand-copied images of Nazi symbols, and original artwork integrating White supremacist cyphers with historically accurate Nazi emblems were among the items discovered in McInerney's room, backpack, and school notebooks (Hernandez, 2008f; Author's field notes, July 2011). According to statements released by the Deputy District Attorney:

These materials [were] “not the type of things that are typically associated with the study of World War II ... [but instead] depict racist skinhead philosophy of the variety espoused by Tom Metzger, David Lane, and others. They included hand drawn sketches of swastikas, references to the 14 Words and the number 88 ... commonly used by skinheads to represent the words Heil Hitler and Hitler's SS.” (Hernandez, 2008f)

Other materials confiscated by investigators included contemporary reproductions of World War II Nazi medals and patches, a copy of Adolf Hitler's autobiography, shoes hand-decorated with original interpretations of White supremacist iconography, and an instructional video entitled “Tactical Readiness: Shooting in Realistic Environments – Personal Firearm Defense” (Author's field notes, July 2011). According to the Deputy District Attorney, in conjunction with the fact that the shooting took place within a gang injunction zone, the cache of materials represented a significant factor in determining whether to charge Brandon McInerney as a juvenile or an adult (Hernandez, 2008f).

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Rather than exploring the possibility that racial supremacy played a role in a hate crime where race was not the primary motivating factor, the Ventura County community continued arguing that the application of charges related to the use of a firearm in a gang injunction zone was a misapplication of the law. “Using a law developed to fight gangs against a kid who came from a horrific family background” notes one writer, “overlooks [the] most important factors. Brandon McInerney is being expected to have shown an adult perspective in a situation where the average adult heterosexual male would have felt overwhelmed” (Ventura County Star, 2009c). Other community members and LGBT advocacy respondents from across the state echoed these views, adding that other factors – such as no prior criminal history, the fact that McInerney was not even one month past his fourteenth birthday at the time of the shooting, and neglect at home and at school – warranted that “the case should have been dismissed” (Mehas, 2009; Ventura County Star, 2008g).

The process of discrediting any tie between the sexuality-based motivation for Lawrence King’s murder and White supremacy ideology was also a common practice among study participants. Twenty percent of study participants voiced their doubt that any link existed between the motivation to murder Lawrence King and the possibility of McInerney’s involvement with White supremacist ideology. The sensation of competing discourses is illustrated by an interview conducted with Chad Triumph, a study participant who elaborated on the question of whether Brandon McInerney was motivated by ideas central to racial supremacy:

I find it highly unlikely that someone that old... is so phenomenally indoctrinated into the ways of White supremacy that he knows... that much about White supremacy. I mean... at least he would know that White supremacy is about hatred, and you know, white power, and all that shit. ... I think he was beginning to explore White supremacy. ... I guess the gang stuff and the White supremacy stuff ... wasn’t what

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was the confusing part of Brandon for me. ... I guess, it's more about his childhood and his background that are the confusing part. ... I think, the harder part is ... why did he have such shitty coping skills? Why did... this [murder] seem like the right thing to do? ... How bad was his father really? You know? [These] kids were raised in awful environments.... The whole confusing part, for me, was [Brandon McInerney's] whole background. (Chad Triumph, Personal Interview, 2011, Transcript pp. 9-10, 17)

While prosecutors asserted that ideologies of race and racism were central to McInerney's motivation to engage in the attack, Ventura County citizens found such claims unbelievable, focusing instead on Brandon McInerney's abusive and unstable childhood as the most salient motivating factor.

From my standpoint as a researcher, calls for leniency as well as deflections of racial supremacy as a mitigating factor in the attack require the enactment of very specific social and cultural privileges. Arguments countering the district attorney's charges based on childhood abuse, age, and mental state flew in the face of local social conventions.

Proposition 21, enacted in 2000 by California voters, looked towards the law to quickly sentence gang-affiliated youth and gang-suspected juveniles engaged in crimes involving firearms with the maximum punishment, regardless of difficult life circumstances, abuse, or neglect (California Budget Project, 2000; State of California, 2000). While McInerney's actions surpassed all criteria for an adult-level charge based on the enforcement of gang injunction rules, editorials in local media sources continued to claim that Proposition 21 was misapplied with respect to the attack on King.

Similarly, claims asserting the inconceivability of racist ideologies as a mitigating factor in Lawrence King's murder involved specific forms of color, gender, and sexual privilege. Specifically, the ability to discredit the threat of racist violence in cases of hate crime is an act that remains more common for white individuals as well as individuals who

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can easily establish claims of whiteness based on skin tone and appearance. For those individuals and communities that have experienced race-based hate speech, hate violence motivated by race and ethnicity occupies the space of terror and horror, rather than believability. Similarly, the act of discrediting sexual identity, sexuality, or gender presentation as a salient factor in the King/McInerney case involves the assertion of privileges associated with heterosexuality and normative gender identity presentation. From the standpoint of a field researcher, the Ventura County population seemed to be analyzing the case from within the viewpoint of ethnic, sexual, and gender normativity.

The Body Branded: LGBT hate murder, embodiment, and personhood

As stated earlier, this study investigates the murder of Lawrence King via an analysis of the ways in which intersectionality, privilege, and power confound hate crime law, or stated more succinctly, an analysis of hate crime litigation foregrounding embodiment. It is worth noting, however, that although a contemporary case of LGBT hate crime stands at the center of this inquiry, a substantial engagement with multiple national and local histories is required to fully understand queer embodiment within an anti-LGBT atmosphere. We cannot claim to fully understand the structural, social, or cultural elements involved in any case of LGBT hate murder without a process of investigating the history of jurisprudence pertinent to hate crime law, or the history of social and cultural Othering associated with non-normative gender and sexuality.

Yet the process of tying history to current cases of LGBT murder is not as straightforward as one might assume, given the fact that histories of queer oppression are often linked to centers of power capable of redefining LGBT persons as Other. Prison records, sanitariums and mental institutions, and federal courts aimed at maintaining the

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security of the nation are not necessarily interested in recording the nature of sexuality and gender as it applies to criminality, although they may readily bestow such status at will.

“The history of Western representation,” notes Heather Love (2007), “is littered with the corpses of gender and sexual deviants” (Chapter 1, Paragraph 2). To assume that such a history is readily available is an analytical fallacy invested in the claim that important historical accounts follow linear models, easily parsed timelines, and grand narratives that are globally applicable for all peoples, communities, and historical legacies.

Rather, LGBT histories are drawn together piecemeal, bit by bit, from what the typical historian might consider material scraps that push against the current of the historical record’s grand narratives. As Love (2007) notes, the production of queer histories is a process of “feeling backward” while standing firmly within regimes of power that define relevant aspects of the present moment. Rather than a single, linear engagement with the past, such an analysis involves a constant revisiting of history in an effort to foreground specific, perhaps seemingly disparate legacies that converge into the current crisis concerning LGBT personhood and citizenship. One may not surmise, for example, that slave sexualities, eugenic studies of the body, early twentieth century studies on the psychology of homosexuality, or important political actions during the height of the Cold War are all involved in the creation of an anti-LGBT bias within current jurisprudence. Yet research within multiple fields indicates that these seemingly disparate legacies are all involved in structural homophobia and the creation of what has been termed the “gay panic defense” (Abdur-Rahman, 2006; Bakare-Yusef, 1997; Berube and D’Emilio, 1984; *Bower v. Hardwick*, 1986; Brown, 1981; *Chauncy*, 1982/1983; *Chauncy*, 1985; Eaklor, 2008; Estes, 2005; Ferguson, 2004; Frank, Camp, Boucher, 2010; Heidenreich, 2006; Lee, 2008; Meeker,

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2001; Miller, 1948; Perkiss, 2013; Senate Report No. 81-241, 1950; Tilleman, 2010; Wake, 2007). An analysis capable of tying together such distinct legacies involves more than simple forays into history that seek data within the historical record. Instead, what is required is a process of investigating the present moment's regimes of power, privilege, and oppression while constantly turning backward to seek out the origins of such oppressions at social and structural levels. Such an analysis is capable of pointing out the nuances of power, prejudice, and equality that extend between history and the present moment in a very radical way; this is accomplished by centering one's awareness within current forms of citizenship and negative personhood while turning a critical eye towards the origins of technologies and politics of oppression.

This study, while foregrounding the case of Lawrence King and Brandon McInerney, is organized in a way that is constantly "feeling backward" in an effort to make sense of the structural and popular discourses surrounding the case. While traditional studies of LGBT hate crimes engage in a linear analysis of history, the chapters within this study are organized in a way where current research is correlated to historical legacies of Othering. This organization of data points out that historical linearity is capable of overwriting critical nuances central to cases of power, privilege, civil personhood, social citizenship, and civil death. Non-linear history, on the other hand, holds the power to highlight important legal, civil, social, and cultural practices that strengthen regimes invested in bestowing pejorative difference. One tool used to point out these dynamics can be seen in the epigraphs associated with each chapter, which are drawn heavily from James Baldwin's (2000) novel Giovanni's Room. Originally published over sixty years ago, the novel holds knowledge, sentiments, and examples of personal and cultural struggles that are comparable to those existing in

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today's iteration of LGBT sexuality, liberation, and oppression. Placed alongside other works, these epigraphs point out relevant tensions between the current historical moment and LGBT citizenship as represented by an African American, homosexual novelist writing in the 1950's Harlem Renaissance.

While this introduction has sought to orient the reader to this study's questions, methods, and the overall timeline of the case of *The People v. Brandon McInerney*, upcoming chapters create resonance between the current historical moment and legacies of LGBT oppression. One way to approach this work is to conceive of chapters as working in pairs; while one half of the pair presents data and conclusions regarding the current case of LGBT hate murder, the second half of the pair engages in historical analysis aimed at tracking the structural origins of legal and cultural responses to LGBT hate murder. Taken individually, each chapter represents a case study on a particular theme that emerged during fieldwork. However, when these chapters are approached as interlocking units, constant movement between history and the present illustrates important nuances regarding historical legacies of jurisprudence, violence, and social ideology concerning citizenship, personhood, Otherness, and social death.

One of the first discourses that emerged within this study concerned how to posthumously classify Lawrence King, given his non-normative gender presentation. Should he be termed "trans," "gay," "LGBT," or should an identity be assigned to him at all? Chapter one confronts these questions, noting the ways in which local civilian and activist communities referred to King's identity via sexuality markers such as "gay" and "homosexual." In presenting these discourses, I advocate for use of the more unstable, politically non-neutral term of "queer," given that we can never know Lawrence King's

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sexual or gender identity. Assigning an identity to King, I argue, is an act of power intended to transform the case into an easily litigated instance of hate violence, an act that allows us to comfort ourselves in the face of difficult questions erupting from hate-motivated child murder. Queering King, however, is not a safe or neutral act within itself. Rather, it is an act that seeks to divest analyses of the case from normative trajectories of personhood, whether they are normatively heterosexual, homosexual, transgender, or undefined.

In addition to discussing the ethics of assigning gender and sexuality identities to King, chapter one presents the reader with relevant details concerning Lawrence King's childhood circumstances, elements that would come into play within popular discourse, pretrial proceedings, and instances of argumentation between counsel and judge. Central to the discourses that arose in the three years preceding the jury trial was a deep questioning of adult culpability in Lawrence King's actions, namely, whether his birth mother's prenatal drug addiction and post delivery neglect of King resulted in stunted brain maturation, sexually aggressive tendencies, and a child that was difficult to control for his adoptive family, school faculty, and state caregivers. Although a compelling rationale for King's behavior, I argue that such discourses are intentionally applied to children of color more frequently than white children, suggesting that at the core of the Ventura County community's debate was an acceptance of socially structured hardships for non-white, low socioeconomically classed children. Ultimately, I argue, the discourses surrounding King's personhood grappled with his sexual and gender indefinability, relying on ideas central to connecting non-heterosexual identity to undefined forms of mental illness.

Directly related to the conclusions posed in chapter one is a history of structurally disenfranchising non-heterosexual individuals via regimes of medical, political, and legal

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discourse advancing homosexuality as a mental illness. Chapter two investigates these themes by “turning backward” toward the work of early twentieth-century psychologist Edward Kempf, whose research and publications linked acute mental illness to homosexuality. By investigating the origin and mechanics of Kempf’s trademark diagnosis, “acute pernicious homosexual panic,” I illustrate that psychological dictums branding homosexuality-as-illness rely on a discursive distancing of society from the individual labeled abnormal. By distancing society as a whole from homosexuality, and by phrasing homosexuality as a persuasion that inherently harms society, the realms of medicine and psychology were able to justify the removal of sexually non-normative individuals from the broader citizenry, resulting in a specific form of social death.

In addition to tracking Kempf’s diagnoses as an historical origin of the theory that homosexuality indicates illness, chapter two investigates the effects of Kempf’s scholarship in related areas of U.S. society and culture. To be specific, chapter two tracks the ways in which the diagnosis of “acute pernicious homosexual panic” was incorporated into federal statutes demanding the removal of all homosexuals from military duty, federal employment, and the role of civilian teachers during the height of the Cold War’s McCarthy era. By investigating the federal document, Senate Report Number 81-241, published in 1950, I illustrate how the adoption of Kempf’s diagnosis at a national level resulted in the structural disenfranchisement of emerging LGBT communities. By framing lesbian, gay, and bisexual individuals during the 1950’s as “sex perverts,” the U.S. government created the conditions for the widespread removal of these individuals from positions of power, as well the ability to criminalize and incarcerate sexual others at will in the name of national security. In essence, Kempf’s diagnosis of “acute pernicious homosexual panic” was adopted by the

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United States government as a tool to disenfranchise sexual others on the basis of mental instability, resulting in a second specific form of social death for LGBT individuals.

In returning to the present case, chapter three engages the discourses that emerged concerning Brandon McInerney. Specifically, chapter three untangles the many forms of privilege deployed in media accounts, popular discourse, interviews, and court testimony that attempt to justify the murder of Lawrence King as self defense, or as I conclude, the violent defense of heterosexual masculinity. Chapter three investigates the way the narrative of this hate-motivated murder shifted and changed over four years, incorporating arguments concerning brain maturation, the misapplication of gang injunction law, and deflections against ties between White supremacist ideologies, homophobia, and the hate-motivated murder of Lawrence King. Interestingly, these discourses recycled ideas pertinent to Lawrence King's early life, arguing that multiple forms of domestic violence, child abuse, parental drug addiction, paternal interest in White supremacy, and child neglect were to blame for Brandon McInerney's actions due to the fact that his brain matured differently from those of his peers. Other commentators noted that because Brandon McInerney had no gang affiliations, his murder of King within a gang injunction zone should not be processed as an adult crime, regardless of local laws. Illustrating a deep misunderstanding of the law, these discourses sought to distance McInerney from very specific legal language concerning the use of a firearm by a minor within a gang injunction zone via rhetoric that relied on pointing out his differences in ethnicity and appearance from the "typical" gang member. Regardless of the individual's ethnic, political, socioeconomic, or gang affiliation, the injunction mandates that all minors committing crimes with a firearm in the gang injunction zone must be prosecuted as adults. In stark contrast to arguments used to dehumanize

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Lawrence King as an aggressive, mentally unstable, drug-influenced child, the abuse faced by Brandon McInerney is used as a tool to deflect culpability for murder based on abnormal neurological development. In addition, those arguing for leniency noted that any interest McInerney might have had in racial supremacy was a mischaracterization of the child arising from his unintentional proximity to local areas and individuals associated with White supremacy ideology. Such discourses point to the reality that childhood suffering is more socially accepted for certain groups yet intolerable for others, that culpability for hate-motivated murder is a point of contention and negotiation concerning life circumstances, and that ultimately, the social citizenship and civil personhood of an assailant can be reinstated via dehumanization of the victim.

A significant aspect of the debates arising from the murder and trial concerns allegations that McInerney was influenced by White supremacy ideology, charges that were countered by litigators, local community members, and the media. A major thread of contention within assertions against the influence of White supremacy are claims that such organizations never existed in Ventura County. Chapter four confronts these claims by turning back to local, archival histories in search the presence of White supremacy and the structural disenfranchisement of non-white communities within the Oxnard plain. Contrary to assertions against the existence of such groups in Ventura County, the historical record illustrates that the cities of Ventura, Santa Paula, and Santa Barbara operated in concert with regard to establishing the presence of the Ku Klux Klan in local politics, business, and culture. The opening of chapter four brings to light several archival materials, historical newspaper reports, and scholarly articles that track the erosion of the KKK within Ventura County in the late 1930's. By beginning at a point where the Klan fell out of favor, I point to

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the fact that not only did such groups exist in the county, but they also experienced various waves of strong enrollment and diminishing membership within the early twentieth century. In addition, these groups exerted crucial influence in shaping both the layout of the county and popular attitudes towards non-white individuals via public actions that targeted landowners and agricultural businesses that employed and housed non-white farm workers.

Illustrating the presence of the Klan is only the first step in reaching back into history in an effort to link legacies of structural disenfranchisement to the current moment, however. In addition to discussing foundations of racial supremacy in the Ventura County area, chapter four links the foundation of the Oxnard sugar beet refinery to structural forms of disenfranchisement that denied equal housing, pay, and education to non-white populations in the area. Although Chinese, Japanese, Mexican, and Filipino communities existed in the area since the gold rush era, agricultural work growing, tending to, and harvesting the delicate sugar beet was reserved for non-white workers. In addition, sugar beet refinery owners enacted various regulations that associated the value of a given plot's crop with their sugar content, which could be manipulated at will based on factors such as length crops were left in the soil, the season in which they were harvested, or the length of time a given crop was left to sit before processing. In essence, non-white communities experienced the brunt of structural inequality with the advent of the Oxnard sugar beet factory, being barred from working in the factory itself, making meager wages that were constantly being re-scaled to the advantage of sugar magnates, and occupying areas of the county deemed unsuitable for White families. By reaching farther back into local history, chapter four investigates a specific, historical iteration of the *imaginary body* within Ventura County, pointing to the

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fact that non-White individuals experienced liminal states of citizenship in the late nineteenth and early twentieth century.

While the first four chapters of this study have followed a specific trajectory of grounding the reader within the case at hand and looking back towards historical legacies, chapters five and six flip the established order, beginning with local history and moving into the contemporary moment. This structuring is crucial for several reasons, the first of which is an investment in illustrating how historical legacies of dehumanization are tied to current cases in which victims of LGBT hate murder are blamed for their own demise. Although chapter five does not entail murder, it does entail the enactment of social and civil death at the hands of media, courts, and local communities with regard to a gender non-normative individual. Similarly, chapter six traces a network of tactics involved in posthumously dehumanizing Lawrence King during the trial meant to deliver some form of justice for his murder.

In presenting local history as an important element related to the King/McInerney trial, chapter five presents a biography of Lucy Hicks drawn together from multiple archival, historical newspaper, and oral history sources housed in the Ventura County Museum archives. Because this chapter entails a close study of social interaction, criminal charges, and litigation, chapter five opens with important notes concerning the concepts of the *imaginary body* and *civil personhood*. After discussing these concepts, I present Lucy's biography and self-concept, as advanced by her own courtroom testimony and archival material that illustrate her belief that she was, without a doubt, a woman. Regardless of her birth as a male, Lucy Hicks identified as a female since her toddler days, and was encouraged by her mother and doctor to pursue this identity throughout her life. Far from being a

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degenerate, Lucy Hicks' appearance in Oxnard marked the start of a great success on multiple fronts, including thriving in business as a private and restaurant chef, involvement in coming of age ceremonies for the daughters of prominent families, and the establishment of a successful series of local brothels. In caring for her community throughout the World War era, Lucy Hicks made special efforts to support the families of soldiers at war, the families of deceased soldiers, and "sending off" celebrations for young men and women eager to engage in global military duties. In an effort to support the nation during these wars, Lucy was capable of boasting that she purchased substantial value of war bonds, illustrating that she supported her community not only at the local level, but also within the formula presented by the federal war board.

Regardless of these successes, Lucy Hicks' status as a biological man was discovered in 1945, when a soldier who had contracted venereal disease noted one of Hicks' brothels as the source. Although Lucy was no prostitute, local law enforcement demanded all women associated with the establishment undergo a medical examination, during which the doctor declared that Lucy was a biological male. Shortly thereafter, Hicks was arrested for fraud, perjury, and the possibility of draft dodging. Although she had previously enjoyed the support of prominent local politicians, bankers, and civilians, Lucy Hicks experienced dehumanization within the courtroom, its associated media reports, and eventually the broader community. Focusing on dismantling her claims to womanhood, local media outlets published multiple articles that pejoratively referred to Lucy, refusing to address her as the woman she knew herself to be, and berating her for wearing what had previously been considered a fashionable wardrobe, women's shoes, and women's hair ornaments. After being convicted of one count of fraud, Lucy Hicks was legally barred from entering the city

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of Oxnard, living the remainder of her life in Los Angeles, with little connection to her family in the Southern United States and the friendships she had built in Ventura County. In essence, the County of Ventura enacted a form of civil death on Lucy Hicks, diminishing her quality of life by structurally and socially berating her personhood, and by separating her from the sources of prosperity she had worked a lifetime to build.

While the fifth chapter turns back to history in order to investigate a specific case of judicially enacted civil death, chapter six brings readers back to the case at hand in an effort to illustrate how the “gay panic defense” has become a structurally-enacted measure leading to the posthumous social and civil death of those who have been lost to LGBT hate murder. Chapter six opens by recounting a critical moment of courtroom testimony in which the personal belongings of Lawrence King were systematically unsealed from evidence bags and displayed to the courtroom in an effort to highlight King’s non-normative gender identity. In opting to conduct such an action, however, the defense team initiated a “gay panic” defense, using multiple courtroom tactics to ignite homophobia, transphobia, and other biases in the minds of jurors, witnesses, and trial observers. According to legal scholars, activation of internal biases against gender non-normative individuals and sexual minorities is a tactic at the core of all panic-based defenses; this legal tactic is most often aimed at homosexual, bisexual, transgender, or transsexual individuals.

Outlining the gay panic defense is the first step in a deeper analysis, however, as chapter six moves to track the *imaginary body* of homophobia within LGBT hate crime litigation. Couched within panic arguments is an important shift in the ideology of “acute pernicious homosexual panic,” as advanced by Kempf. Namely, rather than confining a state of mental incapacity within the body of the homosexual individual, the LGBT subject of hate

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violence becomes a catalyst that ignites temporary breaks in cognition within heterosexual assailants. Rather than an internal crisis, the legal transformation of the term “homosexual panic” indicates an external threat to the heterosexual individual experiencing temporary psychosis. In addition to elucidating the juridical technologies that connect claims of psychosis to “gay panic,” chapter six presents the reader with information regarding multiple rumors advanced during defense testimony that added to an atmosphere of homophobia in the school, the city of Oxnard, and the courtroom trial. After working through specific details of the courtroom trial that served to dehumanize Lawrence King, chapter six closes with conclusions concerning litigation of LGBT hate murder and what I term the “specter of heteronormativity” within courtroom trials. In short, the legal technologies posed to juries ask trial observers to decide on a verdict based on the actions of an imaginary “reasonable man.” Chapter six asks how this imaginary figure is sexed and gendered, and whether such a legal tool is a viable technology for delivering verdicts linked to allegations of hate-motivated murder. Rather than delineating a technology aimed at delivering viable verdicts, I conclude that “the reasonable person test” is one element within hate crime litigation that allows jurors to discuss whether the defendant’s actions were reasonably justified by homophobia.

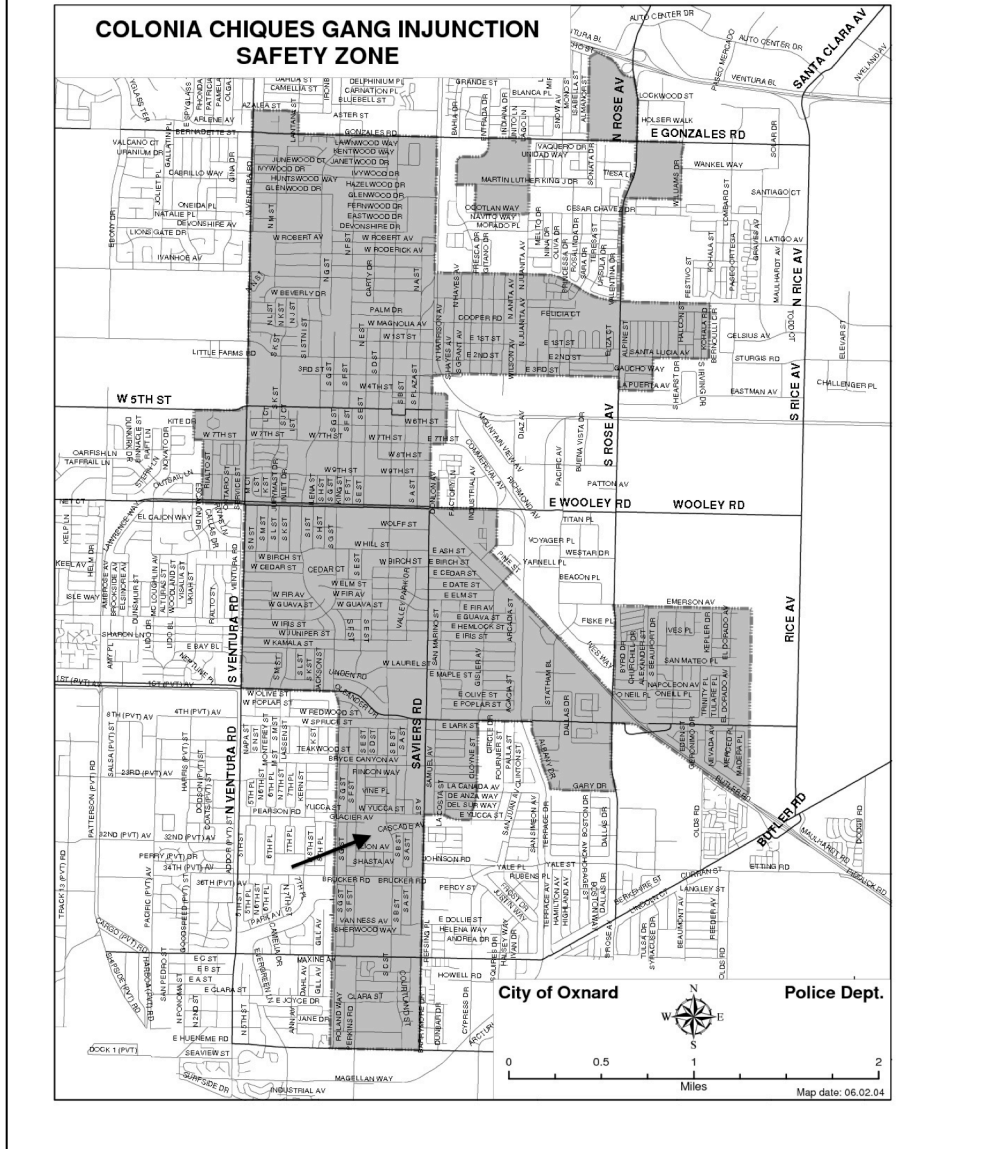
Ultimately, this study points out important dynamics within the litigation of LGBT hate-motivated murder specific to victims whose intersectionality coalesces within multiple minority statuses. Non-white race, non-normative gender identity, the absence of a firm sexual identity, and the status of being a minor all act in concert to confound traditional legal responses to hate-based violence. The U.S. legal system at federal, state, and local levels is unable to process hate crimes that occur across multiple identity variables, choosing to

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fracture complex identities for easy movement through trial proceedings rather than approaching them holistically, with the understanding that one person represents the intersection of multiple identities and social circumstances. Furthermore, the structure of legal systems, their attendant forms of litigation, and the jurisprudence upon which hate crime law operates inflects local histories of violence, prejudice, and segregation based on race, sex, sexuality, socioeconomic class, and gender non-normativity. Rather than serving as a force that ameliorates social divisions based on cultural prejudice, the structure of hate crime law incorporates discriminations pertinent to sexual and gender Others into the process of litigation. The litigation of hate-based LGBT murder, therefore, is less aimed at delivering “blind justice” than the average U.S. citizen might assume. Rather, jurisprudence linked to LGBT hate crime law and its accompanying juridical technologies are positioned towards refiguring the personhood of both victim and assailant in a pejorative manner. In redefining the assailant as criminal and the victim as Other, such judicial practices serves to enact social and civil death on both perpetrator and the deceased victim of hate-motivated LGBT murder, with four out of every five hate-based murders resulting in mistrial.

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Figure i.2: City of Oxnard Police Department, map of the Ventura County gang injunction zone, circa 2000. Note that the tip of the black arrow, located in the bottom half of the image, marks the location of E.O. Green, Junior High School.



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Lawrence King and the Queering of Childhood

“I was beginning, perhaps, to find his phantom a bit unnerving but the sound of his laughter in that airless tunnel was the most incredible sound. ... And it walked, really, like someone who might be sleepwalking or like those figures in slow motion that one sometimes sees on the screen.”

—James Baldwin, *Giovanni's Room*, (2000/1956), pp. 38-39

“I think [Larry] was just a lost kid looking [for] something. ... I don't think he knew exactly who he was. I think [he] liked a bit of attention because maybe he never got it – he was shuffled from home to home. ... I don't think he ever found himself.”

—Jake Uppman, Personal Interview, 2011

Introduction: Centering the Unanswered as Subject

Wrapped in cold fog and the pallid yellow hue of midday winter, Chad Triumph, a screenwriter from the Los Angeles area, allowed me to ask him about his experiences attending the King/McInerney case.¹³ When I had asked him why he felt the case resulted in a mistrial, he responded:

[T]his was a complicated case. Brandon was a complicated person. Larry was a complicated person. ... They were little boys when this happened... [It had] huge amounts of tentacles ... [that were all] part of this huge, very complicated, disturbing, bizzare ... and troublesome case. ... There are no heroes or villains in this case, they're all victims. ... [If] you want that narrative – that sexy narrative of beginning, middle, and end, you know... hero, villain... wrapped up in a neat bow. You don't get that here. (Personal Interview, Chad Triumph, 2012, Transcript p. 20)

Although I wanted to resist Triumph's reading, I began to agree with this phrasing of the case as I moved deeper into a critical analysis of Lawrence King's interaction with the law.

Unlike other cases of hate-motivated murder, the case of Lawrence King and Brandon

¹³ The names, biographical information, and characteristics of study participants have been altered in order to protect confidentiality per UC Santa Barbara Human Subjects Committee Protocol, as outlined by the UC Santa Barbara Office of Research. No participant was harmed in the process of conducting this research, and the only risks posed to study participants involved the possibility of feeling negative emotions during or after interviews. All participants were able to halt, discontinue, truncate, edit, or voluntarily withdraw their interviews from the study at will. For more information, visit: <http://www.research.ucsb.edu/compliance/human-subjects/>

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McInerney has no clear-cut narrative, no well-defined fiction of personhood for either King or McInerney. King's biography does not benefit from a well-defined life story that moves distinctly between citizenship and judicial non-personhood. Although culpability for King's death ultimately lies with McInerney, the judicial system was unable to convince the jury that the crime was pre-meditated or hate-motivated. A mistrial resulted when the jury was split, five to seven, while weighing the sentences of Murder I as opposed to Manslaughter (Author's Field Notes, July-August, 2011).

In advancing a critical inquiry of how Lawrence King's embodiment was phrased by society and the state, I refer to the idea of the "queer child," as advanced by Kathryn Bond Stockton (2009). As we shall see, "queering" childhood is not simply about understanding gender or sexuality; the act of "queering" childhood is a tool aimed at tracking how power subtly and efficiently enacts itself in social fictions of child-oriented personhood, families, and the legal classification of non-adults. Childhood itself is a fiction of personhood centered in the enactment of difference in that "The child is precisely who we [adults] are not and ... never were. It is the act of adults looking back ... a ghostly, unreachable fancy.... And then there are bodies (of children) that must live inside [this figurative] child" (Bond Stockton, 2005, p. 5). Within this reading, the figure of the child is juxtaposed against the figure of the adult, and exists on a trajectory in which adulthood is a socially measured characteristic that children "grow into."¹⁴ The process of maturing in a non-normative

¹⁴ While Kathryn Bond Stockton's (2009) analysis of childhood as a fiction is interesting, it is also based on the art of rhetoric, and Stockton's use of historical analysis is slim and selective. Rather than presenting a social history of how childhood has been formed, she confines her historical evidence on three historical scholars and how their scholarship can be applied to historical and current works of art, film, and narrative. While her text is not sociological, her ideas regarding childhood and the queerness wrapped within childhood are important to consider, given that the narrative of childhood itself can fall apart when confronted with the non-normative.

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fashion, notes Stockton, “spotlights the drama of children’s darkness: the motion of their bodies around troubled words...[of] going astray” (Bond Stockton, 2005, p. 6).

This section takes on a critical investigation of the ways that Lawrence King’s civil personhood – his social citizenship – suffered due to a lack of a cohesive, normative fiction of childhood. Rather than creating a picture of the “complicated person” that Lawrence was, the court system and media relied on a description of King’s physical appearance based on photographs and eyewitness statements. This incomplete, temporal snapshot of King’s life acted as a stand-in for the characteristics necessary to qualify the murder as hate-motivated, which, in this case, involves motivation based on actual or perceived gender or sexuality, but not race or ethnicity.¹⁵

What this chapter will ultimately illustrate, via the investigation of officialized language, is how Larry’s lived experiences resisted the application of any normative, linear, continuous fiction of personhood. In essence, neither our legal system nor our culturally based lexicon is adequate enough to critically reflect Lawrence’s person, whether concerning his gender, sexuality, ethnicity, or any other factor commonly associated with hate crime litigation. Lawrence King’s sexual, gender, and ethnic identity resisted traditional categorization, creating a situation in which the corpus of hate crime law was unable to succinctly outline Brandon McInerney’s motivation for murder. This idea that King’s person resisted classification is critical to application of the *imaginary body* paradigm, and is eloquently voiced by Moira Gatens (1996): “Our political vocabulary is so limited that it is

¹⁵ There are a number of concretely recorded reasons concerning why the court system would not allow Lawrence King’s ethnic identity into trial proceedings. For this chapter, however, I would like readers to take into account that the obfuscation of King’s ethnicity and/or racial identity was an act aimed at maintaining a sense of posthumous privacy, given that his birth conditions were largely controversial. In this chapter, I point to the idea that the legal disruption of King’s ethnic identity resulted in a gradual erosion of his civil personhood, lending itself to a mistrial rather than a judicial resolution.

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not possible, within its parameters, to raise the kinds of questions that would allow the articulation of bodily difference: [the system of domination] will not tolerate an embodied speech” (p. 26). Rather, the law must effectively define and enliven the body with its own lexicon. If the process of corporeal definition does not create a complete understanding of a person, or if the fiction of personhood advanced by litigation does not easily adhere to the body of the subject in question, then statutes cannot be accurately applied. Restated succinctly: complex bodies that are deemed “unreadable” by the judicial system do not benefit from the auspices of specialized legal codes, in this case, hate crime law.

Before detailing the ways in which Lawrence King was phrased as non-normative, however, I would like to turn towards the subject of “queerness.” A contentious term, “queer” and the associated act of “queering” a subject deserve adequate exposition. As a form of scholarly analysis, the term may indicate an investigative stance that takes gender and sexual identity as crucial factors in understanding the situation presented. While it is not necessary to assert gender or sexual identity in order to create a “queer analysis,” such works have been highly celebrated for pointing out how privilege functions at the social level. Part of this analysis involves deploying the term at a political level, with concrete political visions and consequences. As such, my use of the term “queer” is equally political, aimed at deducing privilege within hate-crime litigation, and ultimately aimed at disrupting normative notions of personhood.

“Queer(ing)” as a Politically Invasive Act

Readers may feel uncomfortable with my use of the term “queer” throughout this section, as well as throughout this research project. The term itself, at a purely historical level, refers loathingly to non-normativity of any kind. Likewise, it has been questioned as a

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term centered with first-world sexual and gender identities, most specifically: homosexuality, bisexuality, transgender, transsexual, questioning (sexual or gender identity), or intersex (LGBTQI) identities. Throughout the 1980's and 1990's, this became an umbrella term for all non-normative sexual and gender identities, commonly associated with liberation, education, and empowerment movements organized around a plethora of social issues, often associated with HIV/AIDS awareness.

My use of this term relies minimally on the LGBTQI notions of sexuality, however, because of the adult-associated status that the term “LGBTQI” denotes. These identities note, to some degree, a very deep awareness of one's sexual and/or gender identity in a social context, indicating knowledge of how one is situated in the context of social norms and sexual desires. Here, I am in no way intending to communicate that children do not possess complex sexuality or gender. Rather, I am emphasizing that the discomfort associated with the term “queer” is intentionally deployed. In the case of many children, non-normative sexual and gender identity do not necessarily correspond to LGBTQI identities, but to complex experiences and questions of identity that occur across a spectrum of social situations ranging from self-exploration and realization to socially-obfuscated forms of physical, mental, or sexual violence. Because identity occurs in such a complex reality, the act of asserting a sexual or gender identity for an individual who has not declared one themselves – for whatever reason – is an act of power that solidifies narratives of non-normativity into readable, easily decoded scripts of personhood. Rather than accepting difference as it occurs for the sake of critical analysis and deeper social understanding, such moves seek to create “easy narratives” of personhood, maligning the complexities of a given subject's self-generated knowledge along the way.

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For those individuals who may comment that assigning Lawrence King a sexuality is necessary for understanding him and analyzing his life, I contend that such an analytical move has the effect of obscuring those powers and privileges that seek to assert a narrative of being, a fiction of personhood. Refusing to fill in the gap created by not assigning King an identity forces us to take a more critical look not only at who he was or how he was identified, but what powers are at play in the process of identification. I assert that this critical stance of presence-through-absence – that act of refusing to let anyone speak for who Larry is, or *what his potential as a person was or could have been* – this stance gives the deceased more of a voice than the act of assigning identities. The signifier “queer” and the discomfort associated with its historical and present use forces us to resign ourselves to the fact that our language cannot adequately relay King’s unrealized potential as a person or child.

Used in this study, the word “queer” is, quite literally, a reflection of the uncomfortable privileges (or lack thereof) associated with normativity and the ability to name the non-normative at will, for such a power requires a specific social and historical location and knowledge. This fact is eloquently voiced by a study participant, Jake Uppman, who stated:

We can’t speak for ... Larry. And the Court System barely spoke for him. ... [H]e’s not here to say who he was, without a doubt. And... for me... unless you know for 100% sure who he was... and what he was about, then say something. But, if you’re not sure... there is doubt... you need to put it as such. (Jake Uppman, Personal Interview, 2011, Interview Transcript, p. 25)

By invoking Uppman’s reading of King’s undefined identity, I am not only noting how specific activists within Ventura County’s LGBTQI community feel about Lawrence. I am also laying down an ethical standard voiced by the community that I have lived and worked

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with, a standard that resists the privilege of creating an easy narrative for Lawrence King, a standard that calls for analytical work that does justice to the complex circumstances of his life.

Part of this ethical charge is a move to understand and actively phrase Lawrence King's personhood as a complex subjectivity was never completely outlined, neither in court proceedings or media accounts. The term "complex personhood" is meant to signify a form of personhood that has not been distilled or normalized by social forces or state processes. Rather than referring to a flat caricature, "complex personhood" indicates that "those who live in the most dire circumstances possess a complex and oftentimes contradictory humanity and subjectivity that is never adequately glimpsed by viewing them as victims or ... as superhuman agents" (Gordon, 2008, p. 4). Rather than referring to the easiest iteration of personhood assigned to Lawrence, we must "conf[er] the respect on others that comes from presuming that life and people's lives are simultaneously straightforward and full of enormously subtle meaning" (Gordon, 2008, p. 5). In short, my use of the term "queer" is meant to invoke Larry's personhood as extremely complex at multiple levels, and simultaneously charged with sexual and gendered meanings. In this context, "queer" denotes a presence-through-absence regarding Larry's sexual, gendered, ethnic, and legal personhood – namely that in feeling Larry's absence, we are left with unanswerable questions about his person, experience, and identity that were never our right to resolve in the first place.

My use of the term "queer" is also meant to illustrate how non-normative notions of multiple identity characteristics sometimes coalesce to formulate a non-person, an individual whose quality of non-citizenship is tied specifically to their indefinability. Stockton (2009) describes three ways in which the child can be "queered" in social narratives, specifically, by

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presence-through-absence, by ethnicity and abuse, and by sexual aggression (pp. 17-38).

This section will take on each of these themes in the context of the King/McInerney case in order to better understand how non-normativity affected King's social citizenship. As we will see, both cultural outlets and state entities acted in concert to create an image of a child that disrupted the most basic tenets of personhood-via-childhood.

To quickly review the argument that this subsection has set forth, in creating a critical inquiry of Lawrence King's civil personhood, this chapter is not necessarily interested in asserting King's sexual orientation. Rather, it is interested in tracing how King's life resisted a normative, linear narrative, of which the development of a sexual consciousness is only one element. Other elements include the conditions under which Lawrence King was born and raised, his own (limited) self-descriptions, and the perceptions of individuals interested in commenting on the case throughout my fieldwork in Ventura County, California. In beginning this analysis, I will turn to Stockton's ideas about how childhood as a fiction can be queered by non-normativity.

The Child as Queered by Interpersonal and Structural Violence

The first type of queerness that I shall tie to the King/McInerney case is the child affected by interpersonal and structural violence, as outlined by Stockton (2009).¹⁶

¹⁶ The term "interpersonal violence" refers to the many forms of abuse that some children face in their journey to adulthood. This may include physical, mental, sexual, or spiritual abuse in many different forms and locations. Stockton (2009) simply refers to this violence as "abuse," yet I choose to phrase it as "interpersonal violence" due to the fact that this phrase reflects the social scale at which abuse most often takes place. In addition, the term "abuse" often elicits an air of intrigue and mystery, conjuring up the possibility of many forms of violence under a mask of secrecy. The term "interpersonal violence" may also elicit intrigue and mystery, yet it calls out such interactions for what they are – interpersonal forms of physical harm and torture. In addition, I choose to use the term "structural violence" rather than "race and ethnicity" to point at the ways that certain forms of violence are structured against specific segments of the population. While Stockton favors "race and ethnicity," I feel that the term is too universally broad, as different segments of ethnic communities have faced distinctly different, historically nuanced forms of violence that the term "race and ethnicity" obfuscates. Rather than sanitizing the issue, my phrasing points out that there are many forms of socially-

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According to her study of the ways in which childhood is defined as a foil to adulthood, the normative image of adults (white, middle-class) is inflected in the normative image of the “child” (pp. 30-31).¹⁷ As opposed to the experienced life of the adult, the normative, “ideal” child possesses an “appealing yet unsettling innocence” that normative adulthood seeks to protect (p. 30). In terms of the civil body and social citizenship, Stockton’s analysis relates to a body whose qualities include the easily readable characteristics of whiteness, middle-class status, social integration, and general health and well-being as socio-legally defined

structured violence. Additionally, the act of linking violence to “race and ethnicity” is an uncritical method of criminalizing specific communities, for it fails to trace the ways in which violence is inflected and responded to in a given community. The term “structural violence” captures some forms of violence traditionally linked to race and ethnicity, while pointing out that it is not necessarily the culture in question that is violent, but that the social structures interacting with such communities may make them more susceptible to violence.

¹⁷ Stockton’s (2009) analysis of race and ethnicity as queering forces in children’s lives is both sharp and problematic. Originating with the concept of innocence, Stockton states, “What do children queered by innocence share? They all share estrangement from what they approach: the adulthood against which they must be defined. This is why ‘innocent’ children are so strange. They are seen as normative but also not like [adults], at the same time” (p. 31). Utilizing a poem by William Blake entitled “The Little Black Boy,” Stockton illustrates how the imaginary of normative childhood presents “children [who], as an *idea*, are likely to be both white and middle-class. It is a privilege to need to be protected – and to be sheltered – and thus to have a childhood” (p. 31). In Stockton’s reading of the poem, ethnic identity creates “experience” that is not commensurate with “innocence,” creating children that Stockton describes as “paragon[s] of strength and experience,” physically and emotionally “stronger and thus less privileged,” (p. 31). Additionally, Stockton places ethnic children in the service of upholding white, middle-class childhood innocence, noting that (at least in Blake’s poetry) the strength of ethnic children eventually serves as a bridge towards higher purpose, or adulthood: “The ... black boy serves and protects ... the white boy... so that the white boy can bend toward the father and bear God’s love” (p. 32).

Within this system of analysis, ethnic and socio-economic class characteristics serve to code normativity and difference. Succinctly, children with darker skin pigmentation are seen as “ethnic” and therefore “less innocent” than the normative image of a white, middle-class child. Likewise, children from lower socioeconomic situations are also seen as possessing more experience than the imaginary ideal child.

While we may have reservations about the ways in which ethnic childhood upholds white, middle-class childhood in a service of brandishing the normative, Stockton (2009) makes one important point that solidifies the racial qualities of her argument. Taking on the construct she has introduced, Stockton notes that the real world complicates her argument because it is not easily separated on the lines of poor, ethnic families and wealthy white families. Instead, childhood becomes muddled, with many incarnations of ethnicity, social class, experience, and innocence in one social setting; ethnic individuals are not necessarily poor and white individuals are not necessarily middle-class, making the paradigm she has created difficult to apply.

In resolving this issue, Stockton notes that society often confers childhood innocence by “endowing the child with abuse” (p. 33). Addressing the earlier notion that not all white, middle-class children adhere to the ideal innocence of the imaginary child, Stockton argues: “One solution to this problem (of children lacking the privilege of both weakness and innocence) is to endow these children with abuse. As odd as it may seem, suffering certain kinds of abuse from which they need protection and to which they don’t consent ... [non-normative children] may come to seem more innocent” (p. 33).

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standards. Although this may not be the primary demographic of a given geographic locale, this would still be considered the normative standard by which a plethora of subjectivities are measured in important centers of social interaction, such as law, medicine, or psychology.¹⁸

With regard to the normative child, the idea of the queer, non-normative child is inflected in two very important ways. First, because the socio-political imaginary of the normative child is specifically delineated as white and middle class, any visible diversion from this norm begins to signal non-normativity. Stockton (2009) notes that any visible sign of ethnic or working-class identity ascribed to a given child is perceived as denoting “street-smart experience” (p. 32). Stockton goes on to note that “Experience is ... hard to square with innocence, making depictions of streetwise children, who are often neither white or middle-class, hard to square with ‘children’” (p. 32). In short, non-white, non-middle-class children confront circumstances that make non-normative forms of survival necessary, giving them life experience that is inappropriate for the “average” child.

Readers may argue that the schema set forth by Stockton (2009) engages in the dangerous act of essentialism with regard to ethnic and class identity. I would also note that Stockton’s analysis does not take into account the complex, often contradictory nature of intersectionality as it applies to notions such as color-privilege, masculine-centered gender privilege, the experiences of multi-ethnic individuals, or the process of gender transitioning.

¹⁸ What I am attempting to assert here is that even though the predominant phenotype of a population may not resemble the idealized child advanced by Stockton (2009), such a caricature will always serve as a baseline for any social measurement. For example, although Oxnard is heavily populated by Latino, Pilipino, and Black individuals, the normative standard for meting out judicial, medical, legislative, and even civil standards is based against the imaginary of a white, middle-class, well-attended child. Any situation that does not adhere to this standard is seen as dangerous or deleterious to a child’s health, although that may not necessarily be the case. For example, in a household that contains a single parent, a grandparent, and multiple children, the imaginary advanced by Stockton would, at the very least, track such a family as non-normative and in need of social assistance. At the most egregious, such a family unit might be touted as a form of child abuse due to neglect, initiating child endangerment hearings at the level of the state (for example, if the parent and grandparent worked extended hours and left the older children in charge of the younger children).

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Yet, if we take a moment to open up Stockton's inquiry, we will see that any complication of the normative standard she sets forth serves to further "queer" the subject of analysis.

For example, we might assert that a non-white child from a multi-ethnic family could experience the same degree of innocence as the white, middle-class child. We all may wish that a visibly ethnic child can walk down the street with her visibly white family without having any degree of difference pointed out to her. This assumption clearly fell apart in February, 2012 when a Texas man was detained, released, and subsequently arrested by an entourage of police officers for kidnapping an African-American child; the child was his granddaughter, whom he was walking home from a roller-skating rink. According to the Huffington Post, Scott Henson of Austin Texas:

was stopped by a female deputy. The officer told him there were reports of a white man kidnapping a black girl, and he was ordered to step away [from his granddaughter]. ... After a few minutes of questioning, Henson and [his granddaughter] were allowed to walk home. They were just two blocks away when they were stopped by five flashing police cars and a crowd of police officers ...

who separated the duo in order to sequester them from each other, question the child, and contact her parents (Moyer, 2012). Eventually, her parents arrived to confirm that the gentleman was the girl's grandfather (Moyer, 2012).

While it would be dangerous to globalize these anecdotes as general rules of social conduct, we can say that *identity characteristics that deviate from descriptions of bodies (or families) that are deemed "normal" affect social citizenship*. While I am not interested in the political, privileged act of debating how "innocent" a child is or is not in order to be considered normative, I am interested in critically opening the *social circumstances* of a given subject's life in a manner that brings *officiated recordings of (in)visible physical,*

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gestural, or lived difference into cultural and legal discourse.¹⁹ To reiterate, I am interested in understanding how society attempts to describe what it deems as not-normal in a manner that is inclusive of racial/ethnic, gender/sexual, citizenship, and (dis)ability within a single experience or interaction. I am interested in understanding how descriptions of the body reflect social circumstances, and how those descriptions function to queer children via difference.

Adult Protection and Childhood in *People v. McInerney*

The impetus to protect children in the King/McInerney case was illustrated multiple times in the Ventura County Star's "Letters" section, where responses to articles and other letters are published. This section is important to consider in that it is both editorial, giving respondents the opportunity to advance their own readings of a given theme, and interactive. Interactivity can happen in reference to a given writer or article, or across multiple publications between respondents.

¹⁹ I use the term "(in)visible" here to emphasize how certain legal or socio-culturally salient identity characteristics can become visible or invisible based on socio-cultural circumstances. These characteristics are usually identified by a clearly outlined schema or set of descriptions held as common knowledge. A useful example of this is race and/or ethnicity, which is used as a standard identifying characteristic on employment forms, drivers' licenses, and school admissions applications. Race and/or ethnicity contain their own logic with regard to physical appearance, yet this logic often breaks down in the lived world. For example, as a Mexican-American/Chicano male with a Spanish-originating first, middle, and last name, I have had multiple experiences relating to how people *expect* me to look. This usually relates to skin pigmentation and hair color, and as a light-skinned Latino, I am often mistaken for an Anglo male in daily social interactions. To assume that lighter skin color equals a higher set of privilege is a mistake, as privilege is mediated by not only my physical appearance in the Eurocentric everyday world, but also my culture of origin, my sexuality, my geographic location, and how I *am read* by individuals within a specific set of circumstances. At some points, my Latino identity may not be recognized, as I have been mistaken for an Anglo man. At other points, my pigmentation may be seen as not ethnic enough, either in the context of determining how color privilege might affect "how Mexican or Chicano" I am based on lived oppressions, or in another context, how exotic or sexual I am based on gay men's expectation of how Latino males should look and act sexually. Other factors may include: lingual abilities; class status; sexuality or gender -- for example, if individuals calling me on the phone expect me to be a female based on the pitch of my voice, or on the assumption of some individuals that I am a heterofeminine male (heterosexual, yet feminine) rather than a homofeminine male (homosexual and feminine) or a homomale (homosexual and masculine).

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In one interesting example of the impetus to guard children, a high-school student at a local private school writes to the Ventura County Star with an interesting analysis of the situation. After noting that neither King nor McInerney enjoyed their full civil liberties due to their status as children, she writes: “As a society, we need to begin to recognize youth as people, not innocent and malleable animals that can be trained to do anything we want. The desire to protect children is understandable, and in theory, restraining their rights should do the trick...” (Brody, 2008). Brody’s analysis of *child personhood* is interesting in that it notes the juxtaposition of legal definitions of childhood as lacking civil rights in protection of the *anticipated adult* civil person. This is a particularly critical analytical position, as it notes narratives of childhood often function as a fiction of adult personhood. In functioning as an anticipation of a future subjectivity, legal manipulations of childhood *remove civil rights from the child* in order to ensure its rights are adequately meted out by both the state and the society charged with overseeing the minor's needs. This complex reality is outlined by Stockton (2009) as follows: “The child is even defined as a kind of legal strangeness. It is a body said to need protections more than freedoms. And it is a creature that cannot consent to sexual pleasure, or divorce its parents, or design its education – at least not by law” (p. 16).

However, the impetus to “protect” children has the potential to manifest itself in various ways, as it did in the King/McInerney case. One impetus that occurred among the Ventura County society was to find ways to protect children from violence and childhood aggression in public schools. This often occurred in press-related editorials related to gun violence and bullying. Another impetus, however, was to protect children from the non-normative child – the queer child, the sexually different child who may have developed into a

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transgender or transsexual individual. One community member responded with the following analysis just over two weeks after the murder:

Larry was abused and manipulated by lesbian, gay, bisexual, lesbian, and transgender activists and their message of gender confusion, identity confusion and sexual confusion. Let's unmask the GLBT agenda for what it is: tolerance and celebration for sexual-identity confusion. ... Larry's sexual confusion manifested itself with flamboyant cross-dressing, which freaks out junior-high children. This invites ridicule and merciless teasing, a typical junior-high response. We live in a fallen world with a surrounding culture that is degenerating right before our eyes. Violence and sexual impropriety are now the norm. Values and virtues have been turned upside down. (Ventura County Star, 2008d)

In this individual's fiction of personhood, non-normativity is leading to social and cultural erosion. Such statements endow non-normativity not only with social and civil death, but also the paranormal ability to enact the fungal erosion of culture, society, and civil personhood on such a large scale as to revolutionize life as we know it. Non-normativity, in this sense, is simultaneously infectious, vitriolic, and caustic.

In a different reading, participant Taylor Luzon notes that our own fictions of childhood may allow children to engage in questionable behavior, simply because the fiction itself advocates for prolonged childhood innocence. When asked about why he felt that no one noticed any potential warning signs towards violence, Luzon stumbled over his words:

I believe we're so.... "[Kids] aren't like that! Oh my God, they're not thinking about sex!" I lost my virginity when I was 13. ... [In my opinion, we're] so behind – there's a Filipino word. It's called 'Baliktad.' We're so backwards! ... And, basically what it is, is that... in the Asian communities it's very.... Like, in Japan, kids are competing to go to high school. You know, here it's like ... they're competing to get into college. ... [G]oing back to Asia – I mean ... it's all about education in Asia. ... Even the TV shows! It's about everyone in schools. ... Look at the TV shows here – they're in school, but it's mostly out of school in that they're partying. They're not in class.... Like Hannah Montana! [A famous tween television show.] She wasn't ever in fucking school! She was, like, in the hallways in school, not in the classroom.... But it's just one of those things about America.... It's very backwards and it's very slow. (Talor Luzon, Personal Interview, 2011, Transcript pp. 16-18)

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Luzon's points are important in that they draw the listener away from a strictly US-based reading of child personhood and into other cultures. Although not specific, Luzon's examples point to the fact that any construction of childhood and appropriate childhood interactions are largely defined by the culture in question. For example, while education is a staple of US childhood and growth, it is experienced as the first of many competitive interactions in other countries, interactions that will structure the remainder of an individual's life. Most importantly, Luzon points out that it is not necessarily one particular person within the King/McInerney situation who transgressed normative boundaries of child personhood. Instead, Luzon points out that perhaps these normative boundaries to childhood are not at an adequate standard to achieve constructive citizenship via childhood development, at least in the US. In Luzon's reading of the US's blind spots with regard to children, not enough time is taken to emphasize education, resulting in an erosion of the value and desire for higher forms of knowledge at the broader social level.

A final example regarding the maintenance of childhood innocence by adults shows a different way of thinking about childhood fictions, namely, that they are deployed in the interest of maintaining social order among adults. In a more recent article featured in The Advocate magazine, Tracie Stratton (2012) discusses the reactions she and her family had to her toddler-aged daughter's insistence that she was a boy from the age of three years old onward. She notes that in her daughter's journey to realize her own transgender male identity, she sought the help of doctors, hormone specialists, counselors, psychiatrists, parental coaches, and educators, most of whom were unsupportive of her daughter Isabel's wish to become Izzy — Stratton's son. After one medical doctor, confused and frustrated with the child, told Stratton to "just let [Izzy] be a lesbian," Stratton realized that there was

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far too little knowledge about childhood transgender identity for an easy answer (paragraphs 1-2). Eventually, at six years old, Izzy became suicidal, asking why God hated him, and if he was an abomination – a word he had heard at church (paragraphs. 2-9). After his older sister found Izzy walking into oncoming traffic near their home, Tracie Stratton decided to drastically change her approach, advocate for Izzy, and attempt to let him live his life as a biological male by changing his clothes and using masculine gender pronouns (paragraphs 9-20). Ultimately, Izzy went from a depressed, suicidal female child who was regularly ostracized by peers to a well-adjusted, happy, masculine child whose family acted as his strongest advocates.

Izzy's account is only one of many concerning gender non-conforming children that have surfaced in the past decade. What such testimonies elucidate in relation to fictions of child-oriented personhood are two important things. First, the fiction of childhood writ large asserts that children must be separated into appropriate gender roles in order to be well-adjusted and healthy; these gender roles should be determined by corporeal sex. Within this fiction, the unstated assumption runs amok that the socially-sexed body unfolds naturally, with men being masculine, women being feminine, and the two sexes attracted to their opposite. There is no room in the normative fiction of childhood for homosexual feelings or tendencies, and certainly not for the possibility of transgender experience, much less identity.

Secondly, adults are charged with maintaining “innocence” by mediating proper gender and sexual roles for children throughout childhood. To deviate from this sexed and gendered “innocence” is to risk contaminating a child with “experience” – the natural opposite of “innocence.” This can be clearly seen in Stratton's article, when she notes that at a party hosted for a now-masculine, male-presenting Izzy, “Many of the kids' parents who

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attended did not have a clue about Izzy's gender, and some people were upset by this. Was Izzy a boy or a girl?" (paragraph 13). The fact that both medical professionals and parents attempted to present Stratton with regularity regarding the application of labels and subjectivities indicates a social trend far deeper than simply "adhering" to gender. Instead, this activity notes a deeply entrenched system of "policing gender" where adults initiate and maintain appropriate gender and sexual boundaries for children; any deviation is labeled as such and correction is attempted at both the level of the child and the level of the parent. In such a system, gender and sexuality are not just policed among children, but among peer groups, parental groups, and the social groups in charge of caring for children (such as school systems). In such a system, gender is not "grown into," "done in social contexts," or "performed." Instead, gender and sexuality become complex coercive social interactions that are constantly mediated socially and interpersonally in reference to normativity. In short, as much as we would like to believe that we are passively "taught" to actively "perform" gender, the system that is deployed is far more coercive, using boundaries of normativity and stigmas of non-normativity to reinforce the social order at the childhood, parental, adult, and citizen levels.

Fetal Abuse, Neglect, and the "Cycle of Deprivation"

One form of conduct that seems to have lasting effects on an individual's social citizenship involves a mother's behaviors that negatively impact the fetus or neonatal infant, a discourse traceable throughout US medical history. Viewed as a form of child abuse enacted upon the infant by the mother, the intentional or unintentional use of drugs, nicotine, and/or alcohol during pregnancy is strongly associated with a social stigma on both mother and child, as outlined within popularized medical discourse. At its most radical point,

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discourse against neonatal exposure to drugs, alcohol, and nicotine has been phrased as a form of neonatal child abuse.

While it may seem commonplace to make the argument that the use of hard drugs, alcohol, and nicotine while pregnant enacts social stigmas on both the mother and child, it is important to outline social complicity in enacting such stigmas. As Laury Oaks (2000) states, “The ‘don’t smoke when you’re pregnant’ message must be read within a cultural-political context in which the threat of so-called maternal-fetal conflict is public concern” (p. 74). While studies of nicotine on birth weight had been published as early as 1957, the issue of smoking during pregnancy did not garner large-scale social attention until the late 1970’s and early 1980’s, when government and public health organizations, “such as the American Cancer Association, the American Lung Association, and the American Heart Association ... initiated nationwide health and smoking cessation campaigns focusing on the fetal health risks of smoking during pregnancy” (Oaks, 2000, p. 68). During the mid 1980’s, Congress mandated anti-smoking warnings on cigarette packaging and advertisements, while the medical industry began to create the “fetal patient” via new technologies in the field of obstetrics (Oaks, 2000, p. 68). In addition, exposing a fetus to first-hand nicotine use was considered worse than insufflation of cocaine by some medical researchers, firmly solidifying tobacco use after conception as a near-criminal activity in the estimation of the medical sphere (Oaks, 2000, p. 68). By the mid 1980’s, medical professionals began arguing that smoking during pregnancy was a form of child abuse (Oaks, 2000, p. 65).

Gradually, as the medical, legal, and legislative spheres coalesced in their discourse regarding neonatal exposure to nicotine, specific characteristics began to emerge as risk factors associated with a widespread social problem. These risk factors had sociological

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inflections with respect to age, ethnicity, educational attainment, and socioeconomic status.

As Oaks (2000) notes:

Increasingly, smoking ... during pregnancy and near young children ... serves as a marker of lower socioeconomic status, and public health professionals identify the problem of smoking as existing mainly in “low-income communities” and among youths. Statistical analyses ... show that when women’s cigarette use peaked in the 1960’s, those with a high school education or less had a higher rates than those with more education; however the gap has widened greatly, primarily because of a steeper decline in smoking by the latter groups. (Oaks, 2000, p. 69)

Epidemiological observations noted that smoking was highest among Anglo women between the ages of 15 and 20, and African American women 30 and over; Chicana/Latina women had low incidences of smoking in both categories (Oaks, 2000, p. 70). These discourses centering on addiction, socioeconomic status, and educational attainment coalesced into an argument centering on the “cycle of deprivation.” Within this concept, pregnant smokers initiated a multi-generation cycle in which nicotine produced “delayed physical and social development, repeated childhood illness, low self-esteem, poor school performance, dropping out of school, teen smoking, and teenage pregnancy,” effectively extending the issue past the personal and into the realm of “healthy societies” (Oaks, 2000, p. 70). Studies from 1990 onward indicated that *in utero* nicotine exposure had the potential to manifest itself via perinatal phenomena such as miscarriage and stillborn births to far-ranging effects later in life, such as pediatric cancer, cognitive delays, and severe hyperactivity (Oaks, 2000, p. 68).

However, in addition to creating an understanding of the effects that nicotine, alcohol, and drugs have on the fetus, scientific research produced a clear set of social stigmas that affected both mother and child. On the one hand, tobacco-smoking mothers were charged as uneducated addicts who ignorantly adhered to archaic beliefs about the health of mother and

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children; on the other hand, smoking mothers were portrayed as individuals uninterested in the health of their children, unloving, and pathologically spontaneous (Oaks, 2000, pp. 71-80). These notions of smoking mothers place women in a double bind, for they “do not leave room for women’s conscious, reasoned resistance to antismoking messages,” or to the complex relationship between the individual, the child, the addiction, and the desire to quit (Oaks, 2000, p. 72). Regardless of the scientific foundation of such phenomena, the presentation of the data as a social intervention into the “cycle of deprivation” stigmatizes women who exist around nicotine, alcohol, or drugs as either victims of an unrelenting cycle of addiction, or uncaring mothers who promulgate the creation of degenerate citizens, incapable of productive citizenship.

This analytical entry point is extremely important in the case of Lawrence King, as the circumstances surrounding his neonatal and infant life carry the potential for multiple social readings, inscriptions, and stigmas. According to a column that Newsweek Magazine ran, titled “Young, Gay, and Murdered,” King’s mother was a drug addict before Larry’s conception and throughout her pregnancy (Setoodeh, 2008). The article noted that Lawrence was affected by his biological mother’s drug use and alluded to the fact that he was physically and nutritionally neglected for the first two years of his life (Setoodeh, 2008). This left him in a condition where his physical and neurological development were delayed; doctors would later diagnose him with Attention Deficit Disorder, the possibility of autism, and a unique condition called “Reactive Attachment Disorder,” in which young children fail to adequately bond with their primary caregivers, and/or fail to function according to normal

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social boundaries regarding authority and social interaction (Setoodeh, 2008).²⁰ Eventually, Lawrence King would be taken into the county foster system and adopted by residents of Ventura County, roughly at the age of three.

Surely, Lawrence King's birth circumstances placed a stigma on both him and his biological mother, however subtle the details. This was clearly illustrated when a participant speculated on some possible characteristics of King's birth and how they affected his childhood:

[His mother] was basically just a prostitute who had a bad cocaine addiction. I think ... I'm purely speculating on this, but I'm thinking [Lawrence] was born drug-dependent. He was underweight until he was ... it took him a long time to catch up. [At] six, seven years old, he was still just a teeny, tiny little thing. [He] had the emotional development of an eight-year-old [at the age of fifteen]. He was delayed... and I think a lot of it was due to his unfortunate birth circumstances. (Fox, Personal Interview, 2012, Transcript p. 21)

In this reading of King's fetal, birth, and childhood circumstances, his biological mother's social location and addictions affected King's person. His health, physical stature, and psychological development were all stunted, resulting in a child who was temporally fifteen years of age at the time of his death, but who appeared and acted like a child around the age of eight years old. King is phrased as always behind, always "catching up," with all of these circumstances due to the addiction, actions, and uncaring attitude evoked by the image of his drug-influenced birth mother.²¹

²⁰ Reactive Attachment Disorder can best be understood by the basic description provided by Setoodeh (2008): "a rare condition in which children never fully bond with their parents or caregivers." Although much more complex in terms of clinical descriptions, onset, severity, and psycho-social effects, reactive attachment disorder is a disorder often associated with the inability to establish appropriate social boundaries regarding authority, most specifically regarding the ability to discern the difference between nurturing activity or violent, threatening, and neglectful activity. Anger and rage are sometimes associated with this disorder.

²¹ Information about King's mother remains scant, and most commentators bear little interest in her person. In itself, this position is also a form of enacting stigma.

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The narrative of maternal abuse affecting the neonatal body is clearly referred to in an editorial published by the Ventura County Star 20 days after the murder. Titled “Hurt children become hurtful children,” the writer asserts how violence and substance abuse affect fetal development based on her interpretation of the book Murder is No Accident: Preventing Youth Violence in America:

... our toxic environment “perpetuates the cycle of violence, fear, isolation, meanness, and ultimately more violence, more fear, more isolation, and even greater meanness. Everything from malnutrition to witnessing violence can have a structural impact on the brain that can lower the threshold for violence.” Even a fetus, [the authors] say, is affected by its environment. When the mother is upset by anger, fear or violence, chemical reactions occur in the mother’s body that affect the developing baby’s brain. (Ventura County Star, 2008e).

While we cannot advance an understanding of what King’s biological mother lived through, we can assert that addiction and malnutrition are certainly possibilities that King and/or his birth mother faced during pregnancy. To declare, however, that this is a certainty, and that this behavior occurs in all such situations is to use a single circumstance that moves backward in time in order to (re)construct a stigma associated with violence, addiction, and malnutrition. Proponents of such a stance assert a subtle yet important temporal trick within such arguments, formulating narratives of personhood that occur retrospectively, situating the catalyst initiating non-normativity temporally before the infant is born or develops into a child. By endowing the unborn child and/or infant with multiple forms of abuse, the subject is queered in a fashion that anticipates future instances of addiction, neglect, violence, and abuse, thus completing the criteria for a given “cycle of deprivation” that might be applicable to the situation.

At first glance, Lawrence King’s case seems to defy any application of any extended “deprivation cycle” in that the state intervened in his life at age two. After two years of

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neglect and malnourishment, Ventura County Child Protective Services would take custody of King and place him in foster care with a family that would eventually adopt him. We might anticipate that this would end any “cycle of deprivation” that King may have experienced. In the Fall of 2007, however, Child Protective Services suggested that King be removed from his adoptive family and placed in a group facility for abused and neglected children (Barlow et al, 2008a; Foxman, 2008b; Setoodeh, 2008). Shortly after this exchange, King’s adoptive family would deliver Lawrence King to the facility on the outskirts of Camarillo, California, where he lived until his death in February 2008 (Setoodeh, 2008).

Details regarding the reasons for King’s removal from his adoptive family and early life are scant due to the State of California’s interest in keeping King’s life confidential, as is customary in cases involving Wards of the State. Shortly after Newsweek ran its story on Lawrence King and the shooting, the Deputy District Attorney along with attorneys from the Casa Pacifica facility sought to exclude all of King’s medical and psychological history from proceedings, in addition to sealing the whole of his psychological, education, medical, and foster records from the public (Barlow et al, 2008a; Foxman, 2008a; Hernandez, 2008c; Hernandez, 2008e; Wilson, 2008b). After the presiding judge granted this request, talk of King’s infancy and childhood practically ceased, while discourse about Brandon McInerney’s violent childhood steadily increased.

This legally initiated information gap regarding King’s life did not deter media sources or citizens from speculating as to why he was removed from his adoptive family, and the theme of neglect took a large role in the theories delineated in editorials and by study participants. One military veteran, who had closely followed the case, speculated that Lawrence’s father was uncomfortable with his son’s femininity and dislike of sports:

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... it seemed like [the parents]... didn't like ... their son, who wasn't into baseball, that all of a sudden was becoming ... I think in their words... "more effeminate in his behavior." ... And... you know, I think he told some officers something about his parents not... treating him right. His younger brother was held in higher esteem by the parents... and the family was visited by Child Protective Services for possible neglect by the parents. ... I think... it was in November before the shooting... around Thanksgiving or a little after. (Gilbert Kwan-Hernandez, Personal Interview, Transcript, p. 5)

While the reasons for Lawrence King's move to Casa Pacifica may never be divulged, we must note that an important aspect of the narrative surrounding this relocation involves some form of neglect in which King's femininity is in tension with ideas of appropriate childhood masculinity. While contained within the act of speculation, the scenario described above illustrates an anxiety raised by the presence of normative male childhood masculinity (via sports) alongside non-normative male childhood femininity (via "effeminacy"). This tension was also echoed in early articles regarding King's attack, highlighting activities and hobbies that did not easily cohere to competitive childhood masculinity:

[Mr. King] said his son was headstrong, artistic and sweet. Larry King loved to sing songs by folk rock trio Crosby, Stills, and Nash, and was studying "The Star Spangled Banner" in hopes of singing it at his younger brother's baseball games.... [Larry] had an affinity for animals, loved butterflies, and built a special connection with a stray dog he named Jasmine.... He also enjoyed using licorice sticks to catch crawdads at Bubbling Springs Park in Port Hueneme, where his family would go for his younger brother's baseball games. (Foxman, 2008b, "Pray for Larry," paragraphs 6-12)

While cherished for his talents, the author's depiction of Lawrence King seems to be one that exists in the margins of the little league baseball game – singing the National Anthem to begin the game, hunting crustaceans in nearby ditches during the baseball innings, experiencing and cultivating wildlife away from the sportsmanship of the baseball diamond that his family so deeply valued. Within this description, we see a restricted portrait of a child who exists on the outskirts of the competitive masculine space presented by repeated

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images of little league baseball. While these behaviors are not necessarily associated with femininity, they are phrased as distinctly outside the realm of expected normative childhood masculinity, neither competitive nor engaged in the feats of physical strength or endurance typical of childhood sports.

To some degree, the media's decision to highlight such behavior had the effect of endowing King with an air of innocence that foreshadows later neglect. In an article detailing a church vigil on February 23, 2008, descriptions of Lawrence King seem to bestow a unique air of innocence, caring, and concern for the well-being of animals, bugs, and unknown others:

King, 15 ... had dreamed of becoming an entomologist.... Over the past several years [he] had helped his mother crochet hundreds of scarves for soldiers in Afghanistan because he had wanted to make sure that if they never saw another Christmas, they wouldn't die without receiving gifts from someone they were protecting.... ... A fan of insects, King would happily catch potato bugs that became trapped in his family's home and release them outside unharmed.... [One individual from Casa Pacifica] fondly remembered teaching King to roller skate at a rink in Ventura and recalled [Larry] saying he couldn't understand why people teased him for being different. (Foxman, 2008e)

Shortly after King is endowed with an incredible sense of naïveté based on his compassion for soldiers and wild animals, we are reminded that Lawrence King's family was ordered to deliver him to a facility for abused and neglected children. In the same breath that we are reminded of his removal from his adoptive family, we hear a secondhand account of Lawrence King voicing his frustration with judgments labeling him as different, non-normative, or strange. Even in the midst of his relocation, even after his family has parceled him to a new location, Lawrence King is aware enough to sense his marginalization.

For those who closely followed the case, a 2009 ruling pertinent to the King family's rights as legal guardians of Lawrence solidified their actions as neglectful in the eyes of some

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citizens. In August of 2008, the King family filed a lawsuit against multiple individuals in Ventura County citing the death of Lawrence King; on May 11, 2009, a Ventura County Judge ruled that the King family could sue multiple civil entities in conjunction with Brandon McInerney under the allegation of Wrongful Death (Ventura County Star, 2008n; Ventura County Star, 2009b; Wilson, 2008c; Wilson, 2009a). Among the entities named in the suit were staff at Casa Pacifica, the Port Hueneme School District, and the Ventura County Rainbow Alliance, a resource for LGBT individuals that Larry had visited shortly before his death (Wilson, 2009b).

For some individuals, King's relocation to Casa Pacifica coupled with his family's lawsuit signaled the possibility that Lawrence was being neglected throughout his life, and his family was pursuing predatory litigation for financial gain. After some coaxing, one participant described her impression of Lawrence King's home situation:

I'm not saying that Larry ... is in any way to blame for what happened to him. But... no one was watching out for him. You know, his parents throw him away to Casa Pacifica, and they're so outraged and they're trying to get money from everybody. It's humiliating. You know, some people say that their son [Lawrence King] was a cash cow. (Jove Samantha Westerman, 2011, Personal Interview, Transcript p. 3)

For this participant, the fact that Lawrence King was relocated to Casa Pacifica is a sign of neglect on the part of his adoptive parents. Associating King with terms such as "throw away" and "cash cow" associates King's adoptive parents with a different kind of abuse than that previously delineated by the "cycle of deprivation." Extending King's fetal and neonatal abuse in the form of childhood neglect, Westerman's reading of King's adoptive parents presents them as interested in monetary gain by taking advantage of the federal foster system and by advancing frivolous lawsuits. For Westerman, King's extended abuse comes

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to a close when he becomes a tool of questionable financial gain via a lawsuit initiated by his adoptive parents.

These sentiments were echoed by other participants who speculated as to how King's adoptive parents might have behaved if they "really loved and cared" for Lawrence King.

Josh Orozco, who was vocally angry about the act of disowning King, stated:

My interest fell because of the [adoptive] parents. ... If those parents really cared for their child, they would have been out there advocating the correct way, instead of looking at it through dollar signs. That's how I always felt when I would read my Advocate magazine, and it would be like, "Yeah, the parents are suing the Ventura County Rainbow Alliance." ... And that was just a turnoff. And maybe that's why it didn't get as much coverage. Because Matthew Shepard's mom — God — was advocating out there, using the sympathy card. Which, I hate to say, "using the sympathy card," but, you know.... (Josh Orozco, Personal Interview, 2011, Transcript p. 25)

Orozco begins his analysis by mentioning King's adoptive parents, who he felt neglected and disowned their child. This is an important dynamic to consider for the simple fact that neglect is phrased as a type of abuse extended from King's infant years until his placement in a county facility. While we cannot ever fully claim to understand the reasons that Lawrence's parents chose to utilize the services of such a childcare facility, such a move was read as abandonment by both the media and participants of this study. By phrasing King's family as preferring financial compensation over advocacy, the type of analysis that Orozco and others advance regarding the King/McInerney case extends the neglect that Lawrence faced past his moment of death and into his posthumous absence.

The narrative of neglect relevant to the latter part of King's life is important in that it raises questions of abuse stemming from homophobia within King's familial experience. By juxtaposing a "correct way" of advocating for a queer child, an unstated implication is deployed in which King's family did not support their child's exploration of non-

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heterosexual identity, based specifically on the fact that they placed him in a county children's facility before his death and subsequently sued that facility after his death. The unstated assumption in this delicate, unreliable web of implications centers around the theme of *neglect due to queerness*, specifically, Lawrence's neglect by his adoptive parents due to his apparent feminine nature and his perceived non-heterosexuality.

This idea of neglect or mistreatment due to homophobia was echoed by Chad Triumph, who also referred to the murder of Matthew Shepard in reasoning through the King/McInerney case. During our interview, he stated, "Matthew Shepard's parents really embraced him, and him being gay, and championing gay rights and everything. Here... you know... Larry's parents didn't" (Personal Interview, 2012, Transcript p. 6). Although Triumph does not expand his analysis of King's parents and what their difference from Matthew Shepard's parents indicates, his referral to the different responses between the two families as an important factor between the cases mirrors the comments of Orozco.²²

The use of the Matthew Shepard case as a reference point for understanding the King/McInerney situation is of critical analytical value for a number of reasons, and it is a theme that we shall return to at the end of this chapter. For now, however, readers should understand that participant comparisons to the Shepard case serve as a touchstone for understanding how hate crime litigation functions – an attempt to invoke a normative script of familial, social, and state involvement in cases of hate-motivated murder. In reference to

²² In an interesting twist, one editorial writer noted how the King family's legal action against "Casa Pacifica, the home for troubled youths where Larry was living ... the Hueneme School District and Ventura Child Protective Services" seemed socially irresponsible (Ventura County Star, 2009g). Rather than bringing some sort of closure to the problem that inflects social responsibility, notes the author, "money will go to legal bills that could be spent on guiding and educating children" (Ventura County Star, 2009g). Later in the same article, the author relays how "gender issues now come up as early as ... elementary school," noting how one researcher from a local university described the lack of discussion regarding childhood sexuality as "a conspiracy of silence about the sexuality of young children" (Ventura County Star, 2009g).

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the aforementioned theme of neglect, the absence of family-initiated advocacy for Lawrence King remained a salient factor for understanding the case's context and response. The lack of advocacy by King's family is phrased as a form of posthumous neglect towards Lawrence King, thus extending the "cycle of deprivation" from King's conception, through his life, and ultimately, far beyond his untimely passing.

To quickly review, this section has introduced the idea that parents who abuse children and children who are abused are stigmatized in multiple ways. In the case of Lawrence King, this took the form of maternal abuse due to addiction and neglect, thus initiating a fiction of childhood queered by a "cycle of deprivation" that persisted throughout King's short life. While this was initiated by his biological mother, his adoptive parents eventually perpetuated this cycle by marginalizing him due to his femininity, and eventually, by relocating him to the care of Casa Pacifica. According to participants and respondents, King's placement in Casa Pacifica before his death coupled with his family's legal action against the facility after King's death was a form of predatory litigation aimed at financial gain. Having outlined how King was queered via these forms of abuse, I will now turn to the ways in which race and ethnicity also disrupted notions of civil personhood and normative childhood within King's life.

Ethnicity/Race as an Indication of Socially Structured Hardship

Readers may recall that the opening of this chapter delineated an argument by author Kathryn Bond Stockton (2009) regarding how race and ethnicity either contribute to or disrupt normative fictions of childhood. Because the imaginary of normative childhood revolves around white, middle-class innocence as the baseline of child personhood, ethnic identity identifies children as "less innocent," "streetwise," and "stronger and thus less

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privileged” than their white counterparts (pp. 30-32). In short, Stockton’s argument advances the social assumption that non-white children often confront more turbulent circumstances than their counterparts, making them seem far less “innocent” and more “streetwise” than the normative image of child personhood to which we are accustomed.

Some readers may note that Stockton’s (2009) analysis verges on the dangerous act of essentializing race, ethnicity, and class within the experience of childhood. While this is true, I would like to diverge from debates regarding essentialized race and ethnicity to note a few important foundational assumptions within this theoretical system. As we shall see, while Stockton’s paradigm of childhood is useful for understanding the King/McInerney case, we must also be aware of how the case defies Stockton’s schematic.

To begin, Stockton’s (2009) construction of childhood as a raced and classed fiction relies on a given individual’s ability to easily “read” the ethnic identity and socio-economic location of a given child, her family, or her social circumstances. The ability to assert an ethnic identity, specifically the act of knowing one’s own biological, social, and cultural origins, may seem commonplace, yet it is an act that engages the most basic privileges of a socially-centered personhood. The act of asserting an ethnic identity carries with it an awareness that precedes the individual’s body, mind, and lived circumstances in that knowledge of the family’s identities, social circumstances, geographic movements, and personal histories is required in order to assert the most basic claim to such identity notions.

To a very large degree, even though ethnicity is partly defined by socio-legal definitions, the solidification of ethnicity requires knowledge of a narrative that extends beyond the subject’s own geographic and temporal consciousness, a narrative that frames the

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birth and life circumstances of a given subject within the confines of a given nation-state.²³

To assert an ethnic identity is to claim a space in a nation's socio-historical trajectory; whether existing within a hegemony or within a marginalized context, claiming an ethnic identity informs individuals, peer groups, and social citizenry of the privileges or disadvantages that a given minority may face. Ethnicity informs citizens of the historical, legal, scientific, and social contexts that lend a given identity credence as socially salient.

The absence of an easily relatable ethnic identity, then, possesses distinct consequences for a given individual, resulting in unique forms of social marginalization based on the quality of being *socio-culturally unreadable*. To be unaware of one's own ethnic identity indicates a deeply unusual social situation in which an individual is ignorant of their family's extended history. In today's information-centered era, to be ignorant of one's extended history indicates a disruption of citizenship, and more notably, a disruption of traditional family structures. Because individuals in our society rely on a combination of family knowledge and social history to frame basic understandings of ethnicity, a disruption of ethnic identity is associated with a disruption in family knowledge, family history, and ultimately, the (nuclear) family itself.

In the case of Lawrence King, the inability to track ethnic identity arose at both the interpersonal and structural level. At the individual level, King's ethnic identity remains unstated and unexplored based on the addiction and neglect he faced during his early life with his birth mother. While King's biological mother certainly had notions of her own

²³ It is important to note that the social setting required in solidifying any ethnic identity is framed, to a very large degree, by the ways that a given nation-state defines its populations. Ethnicity and/or race, minority status, socio-economic status, and other salient social circumstances are all illuminated by the policies of a given nation-state. To remove the power of the state from such an equation would be to remove one of the forces that remains instrumental in establishing and negotiating multiple forms of social inequality within a given population.

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identity, her neglect of Lawrence coupled with his removal from her care signals a severing of any potential identity knowledge via addiction, neglect, and a disruption of normative family ties. At the structural level, the state acted to obfuscate any officiated record of King's ethnic identity shortly after his death, in comportment with privacy laws pertinent to children who are Wards of the State. In concealing King's early history and ethnic identity, however, the state created a situation in which King would be read as "non-white, yet ethnically undefined," a status that would have unique consequences in the courtroom trial.

Although it is conceivable that hate-motivated violence could be initiated by a combination of ethnicity and sex, sexuality, or gender, the court barred the District Attorney from referring to Lawrence King's ethnic background during preliminary hearings leading up to the jury trial. This severely restricted the District Attorney's case, who fully expected to address King's ethnic background, sexual orientation, and gender identity during trial (Barlow, 2011a). As prosecutors discussed how to apply hate crime law requirements to the King/McInerney case in early June of 2011, the District Attorney is recorded as stating, "Race is going to come up, clearly," while Defense Attorneys noted that "the issue of race had never come up" in the three years since the shooting occurred (Barlow, 2011a).²⁴ When the Ventura County Superior Court Judge, now relocated to Chatsworth for pretrial and Jury trial proceedings, ruled that race was inarguable in the context of King's death, District

²⁴ This legal maneuver by McInerney's defense team had specific ramifications aimed at blurring the racially motivated possibilities McInerney's crime carried. As will be discussed in the next chapter, the District Attorney advanced the hate crime theory on the basis of McInerney's association with known White supremacists. It is possible that the District Attorney's intent was to argue that the crime was hate-motivated based on both Lawrence King's non-white ethnicity and gender non-normativity. By barring the argument that McInerney's actions were partly based on ethnicity, the state was burdened with proving that the crime was motivated in whole by violent homophobic tendencies disassociated from race or ethnicity. Effectively, the move precluded any ideologies of racial superiority, racial purity, or violent racism that McInerney may have encountered during his childhood, and which may have influenced his actions against King.

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Attorney Maeve Fox was noted as saying, “I’m not going to use [race] as a theory, but I shouldn’t be barred from saying who [Lawrence King] was” (Barlow, 2011b).

During the same proceedings where Defense Attorney Scott Wippert argued that race should not be a factor in the Jury trial, he also divulged the fact that one of King’s parents was African American, confirming King’s non-white status before the commencement of the Jury trial through an act of openly violating county child privacy rulings (Barlow, 2011b). The result was a situation in which King’s ethnic identity was only partly defined, having been done so in a backhanded and unscrupulous manner for the benefit of the Defense. Rather than solidifying King’s identity as Black, this act solidified his ethnic identity as “non-white yet ethnically undefined” in that even if the Defense’s assertions were true, they remained only a partial foundation for King’s ethnicity, the other part(s) being shrouded under a legal gag order.

The fact that Lawrence King’s ethnic identity remained undefined at both the cultural and legal levels signified a high degree of non-normativity for participants of this study, who sometimes found themselves recounting the possibility of multiple ethnicities within King’s history. Josh Orozco commented:

With Larry I just thought that he came from immigrant parents. That was my first thought. I didn't know that he was mixed with part Black. I did know that he was part Latino, right? Black and Latino. ... [S]omeone told me that he was part Black. ... But, I just saw a Hispanic kid... just like a Hispanic kid. I just thought ... my interest was, where is this kid Brandon [McInerney] from? He looks like he comes from a middle-class family. It just had to do with the picture for me, just like with the Matthew Shepard, when I saw him, I was like, “Oh! ... He looks like a regular Joe Schmo.” (Josh Orozco, Personal Interview, 2011, Transcript pp. 24-25)

In reasoning through King’s identity, Orozco begins by noting that in his experience, King could be read as either Black or Latino. Rather than expanding on how King could have

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been read as either of these ethnicities, Orozco poses these traits as distinctly different from middle-class Whiteness via the bodies of Brandon McInerney and Matthew Shepard. At the same time that he upholds the normative vision of White, middle class childhood as advanced by Stockton (2009), he juxtaposes this against Lawrence King's visible ethnic difference, for in this analysis, only King cannot be considered "a regular Joe Schmoe."

Although reluctant to discuss the issue, some participants expanded on their thoughts, noting how ethnicity was a confounding factor within media discourse pertinent to LGBT hate-related murders. Josh Orozco expanded upon his previous reading of Lawrence King by pointing to the different ways in which King, McInerney, and Shepard were represented by the media:

[With] Matthew Shepard ... even my coworkers [said] "This kid is getting more coverage [than] these other murders!" ... I don't want to sound mean. But Larry was not an attractive kid. You know? He was dark-skinned, he had a big nose. Brandon, on the other hand, the way they sketched him... a white, good-looking kid. I was like... that intrigued me. Matthew Shepard was just a very attractive ... people would date him. Would people date ... Larry King? Probably not. (Josh Orozco, Personal Interview, 2011, Transcript p. 23)

Placing our reservations about reading social value into physical attractiveness aside for a moment, we can see that there is a definite difference in the way these three individuals were portrayed by media outlets. In placing two important figures next to Orozco's analysis, I hope to point out that even at his most normative presentation, King was othered by his visible ethnic difference. This is pointed out on one level by use of school yearbook photos, which were regularly printed and referred to in media articles, internet blogs, and newscasts focusing on the case (See Figure 1.1). Although visibly different from McInerney, King's ethnicity could never be defined by media outlets, legal bodies and officials, or individuals

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who were acquainted with him. Instead, Lawrence King became a racial foil to Brandon McInerney, different in a plethora of ways, most visibly his ethnic indefinability.

Figure 1.1: Yearbook Photograph of Brandon McInerney (Left) and Lawrence King (Right), circa 2008.



Some readers may argue that while the images above may note a visible difference in ethnicity between King and McInerney, they do nothing to manipulate the degree of physical attractiveness of either child. Instead, physical attractiveness is read as a factor that is independently

weighed by the viewer, and so the problem would lie with whether the viewer possesses prejudices about race, ethnicity, class, or physicality with respect to either photo. In addition, some might argue that judging the attractiveness of a child in a case of murder is highly unethical. Yet if we continue to investigate this argument for just a moment, we can see that even if the issue is an individual one, it definitely has sociological consequences at levels of racial, ethnic, and gender identity biases.

During the first days of the Jury trial, the Ventura County Star ran a series of courtroom drawings detailing moments from jury questioning and opening statements. Rendered in pastel, charcoal, and watercolors, the artwork of Mona Schaffer efficiently frames the major players in the case within a few colorful panels.²⁵ Figure 1.2 details one particular frame featuring the major players in the case: Deputy District Attorney Fox (for the County), Lawrence King, Brandon McInerney, and McInerney's defense team. The point of

²⁵ For more examples of courtroom illustrations published by the Ventura County Star, please visit the following website: <http://www.vcstar.com/photos/galleries/2011/jul/06/mcinerney-trial-courtroom-illustrations/>

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focus, as determined by the gaze of the drawing's characters, is either on the jury or on the slide bearing King's image. The jury sits just beyond the pane of the drawing, just beyond the Deputy District Attorney's gesturing hand, beyond the projected image of Lawrence King, its edges fading and blurring into the blank spaces of the white presentation screen. The image of Lawrence King peers eerily out from the page, seeming to glance at the viewer in a sidelong manner. Only the deceased-yet-present King is aware of the viewer. All of the artwork's other characters are wrapped up in the courtroom proceedings, suspended in time – Brandon McInerney, staring at an invisible point on the floor, is presided over by a grave-looking Judge, whose gaze is intensely focused on the Deputy District Attorney. The defense Attorney and the County Special Investigator take on postures of intense interest that mirror one another, their hands gripping the tips of their chins in a mime of deep concentration.

Figure 1.2: Courtroom drawing of the Brandon McInerney Trial, Opening Statements. Brandon McInerney is seated in a striped shirt (Right). Lawrence King's picture is being projected onto a courtroom screen (Left upper corner.) Seated next to McInerney is one of his defense lawyers, Scott Wippert. In the center of the painting, Deputy District Attorney Fox stands, addressing the jury. The face in the Lower Right corner is a County Special Investigator. Drawn by Mona Schaefer Edwards, courtesy Ventura County Star website.



This strange construction gives the drawing an otherworldly quality at the same time that it constructs King as distinctly different. Although placed in the corner of the frame,

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Lawrence King is juxtaposed against the image's other characters in two important ways. First, Lawrence King's image is placed in such a way that the gaze of the trial's viewers creates diagonal planes that move through both McInerney and the District Attorney. Within this construction, the courtroom is informed of King's identity via the actions and/or speech of both McInerney and the District Attorney. This placement of King, as being (mis)read points out the fact that Lawrence King will never speak for himself. He is an empty vessel to be filled with meaning, for at the same time his likeness is present in court proceedings, any self-knowledge that he may have asserted has been sealed away by both the finality of his death and the product of lawful interest in maintaining child privacy.

Secondly, the drawing constructs Lawrence King as an ethnic "Other" in several ways, the least of which involves the painting's pigmentation. At first glance, the viewer can clearly see that King's skin tone is starkly different from that of everyone else in the courtroom. In addition, King's difference is highlighted by the fact that his facial features are highly rounded and elongated, as opposed to the sharp, narrow features of everyone else in the courtroom. Lawrence King's chin and forehead become broader, his nose rounder, and his eyes smaller than those posed in earlier photographs of King (see Figure 1.2). In comparison, every other character in the drawing possesses narrower, more angular features – triangular noses, sharp chins, slat-like rosy smudges indicating cheekbone structures and pigmentation reminiscent of Anglo-European ancestry.

Rather than being rendered racially "neutral," this artistic construction depicts the way in which King's ethnic identity was phrased as distinctly "non-white" and simultaneously undefined by both the media and judicial spheres. Although the judicial system was invested in protecting the privacy of King and his family, the move to strip him

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of his ethnic identity created a situation in which the possibility of many races inhabited a flat caricature of King – save whiteness. In essence, even before the start of the jury trial, the vicissitudes of Lawrence King’s ethnic identity had been carved out by the state as nonessential, creating a cipher that was both void of a specific ethnic history, yet silently and succinctly raced as “non-white.”

Like many individuals interested in the King/McInerney case, Cesar Perales grappled with how the absence of a readable ethnic or racial identity could disrupt an easy reading of hate-motivation within the case.²⁶ While a number of other individuals had difficulty conceiving of King as both non-heterosexual and non-white, Perales’ thoughts on the matter are important to this project, as he himself has experienced both racism and violent, homophobic hate speech during his time in Southern California. Perales tied his experiences with racism into my questions about whether the crime could have been motivated by

²⁶ While a few individuals noted how King’s ethnic identity was a confounding factor for them, I refer to Cesar Perales for the very specific reason that he has experienced racism on a number of occasions and in a number of forms. In his self-description, Perales, notes that he is Latino. However, he notes that individuals in Oxnard have asked if he is mixed-race, specifically, Black and Vietnamese, Mexican and Black, or simply Filipino (Cesar Perales, Personal Interview, Transcript p. 23). Of the forms of ethnicity-motivated intimidation that Perales faced, the least worrisome happened at the spa in which he worked. At the time, an elderly Anglo woman entered the spa and asked for service: “And [my coworker] said, ‘Yeah! The gentleman right there can take you in.’ And she was pointing towards me, and the lady said, ‘Oh! Like, the Black guy? ... Oh! The Mexican. ... Nevermind, I’ll just come later’” (Transcript, p. 23).

In a separate incident, Perales notes that he experienced hate-speech at the level of perceived sexuality while on a trip to Los Angeles. During this trip, Perales and his friends were at a gas station when: ...this big, big... redneck guy just yelled out.... And I don’t know if he noticed that we were gay or something. And he jsut yelled out, “Fucking faggots!” ... I had never heard anything like that towards any of us. ... It made me feel bad ... it made me feel sad, it made me feel angry. ... I didn’t want a confrontation with a big man [who] I knew could just pick me up. So I chose to stay quiet. (Transcript, p. 6).

While this second interaction may seem motivated on a purely sexual level, we cannot safely assume that this interaction was not initiated on assumptions regarding both Perales’ sexual orientation and ethnic identity. For us to assume that any sexually aggressive action is not based on an amalgam of ethnicity, sexual identity, and gender identity is a dangerously privileged position to take, for it assumes that intersectionality can never occur in one instance of hate-motivated speech, violence, or action. Instead, I assert that a critical view of this second interaction would take into account the ways in which ethnicity and sexual orientation inflect social citizenship, making some individuals easier targets for violence, especially those who experience high degrees of actual (or assumed) intersectionality via individual, social, or cultural characteristics.

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ethnicity, expanding his analysis past the question of King's ethnicity and into the logical fallacies of color- and culture-based prejudice:

...how could you just not like a person because of their skin color? ... You know, there's more about their personality, how they treat other people, and how they communicate with other people... stuff like [skin] color doesn't have anything to do with it. ... [Also,] if [Brandon] was a racist, I don't understand... what was he racist towards? Like... if Larry didn't know what [ethnicity] he was...? (Cesar Perales, 2011, Personal Interview, Transcript p. 24)

For Perales, as with many individuals who followed the case, Larry King's lack of a defined ethnic identity confounded the traditional reasoning of hate-motivated violence, where hate is aroused in an attacker via a specific, visibly recognized or assumed racial, ethnic, national, sexual, gender, or religious identity. Rather than viewing a "non-white yet undetermined ethnic" status as an impetus towards hate-motivated violence, *such logic requires the subject of violence to claim a legally prescribed difference before the law*, either in the presence of the jury or posthumously, via evidence and eyewitness accounts of such claims. Such logic occludes the possibility that bodies can be raced in multiple ways without their consent or knowledge while also denying the possibility that ethnicity, sexuality, and gender can co-occur as motivating reasons for violence.

In short, King's lack of a readable identity confounded contemporary logic regarding hate crimes due to the fact that his unique "non-white yet undetermined ethnic" status disrupted easily traceable intersections of race/ethnicity and other important characteristics pertinent to hate-motivated crimes. Because Lawrence King's ethnic identity was never disclosed to the jury, and because King's visible appearance was undeniably perceived as "non-white," the extended system of racial logic used to reason out the most basic touchstone to identity in US society writ large – race and/or ethnicity – was deeply disrupted.

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At this analytical juncture, it is tempting to claim that the system of racial reasoning present within the law collapsed under King's racial and ethnic indefinability. Such a claim is a dangerous one that attempts to quickly wrap up the subject of race without "tying up loose ends." Rather than making such a claim, I will point out two important conclusions my research has led me to before moving on to the subject of how sexual aggression queers children. To quickly review, Stockton (2009) notes that "non-middle-class, ethnic" identity is associated with surviving through social challenges, endowing the child with a type of experience incommensurate with "childhood innocence" (pp. 30-32). In the case of Lawrence King, this is achieved by endowing King with a non-white, "ethnically undefined" status. To a very large degree, this indefinability was mandated by pretrial hearings, with judicial rulings requiring the prosecution to choose between gender identity, sexuality, and race when advancing a motivation for hate murder. In the worldview of the court, these three factors could not intersect to create a single, multi-dimensional motivation for hate murder.

The Child Queered by Sexual Aggression

Up to this point, we have explored two important ways that the fiction of childhood can be disrupted. We have discussed how children can be queered by circumstances out of their control, such as fetal, infant, and child abuse and neglect. In addition, we have seen how non-white ethnicity endows children with structured forms of abuse via social inequality. Thus far, we have seen how multiple forms of abuse combined with a lack of readable ethnic identity has resulted in a queering of the normative childhood narrative for Lawrence King.

In creating a critical analysis of Lawrence King, however, it is necessary to consider how his case might change if he were endowed with agency rather than phrased as a victim

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of his own circumstances. While I am not arguing for an analytical stance that engages in victim-blaming, I am conceding to the fact that my previous analysis removes agency from King's person by placing him in deleterious circumstances beyond his control. The nature of his birth circumstances, adoption, and presentation during trial were in no way under King's jurisdiction given that he was both a child and a Ward of the State at the time of his death.

What, then, would it mean to endow Lawrence King with agency? Is it possible to resist the trajectory of victimization that has taken place throughout King's life circumstances and within his murder? What would it mean to assert that Lawrence King, while not fully aware of his own sexuality or gender identity as a young teenager, still asserted the space and privilege to explore his developing identit(ies)?

In exploring these questions, this section will introduce evidence illustrating that King was portrayed by media outlets, citizens, and participants as sexually aggressive, often arguing that King was a "homosexual aggressor" towards McInerney. While problematic in that they verge on blaming him for his own murder, these arguments are important in that they deploy heterosexual privileges and anxieties associated with specific legal defenses, most notably, those scenarios advancing violence as occurring "in the heat of passion."

As with Stockton's (2009) schema of child personhood, a child who advances knowledge of sexual identity, activity, or pleasure is a child who transgresses the normative boundaries of childhood innocence. This child, "is a type of dangerous child who, 'if all goes well,' will be straight ... though this child could never be 'heterosexual' as a child" (Stockton, 2009, p. 27). Because of their unnerving sexual knowledge, a minor who asserts a high degree of sexuality is experienced as a "not-yet-straight-child ... with aggressive wishes ... remarkably, threateningly precocious: sexual and aggressive" (Stockton, 2009, p. 27.)

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Such a child presents an unnerving legal situation in that they threaten “adult legal innocence” with a “quasi-pathological” aggression, presenting sexual knowledge that seems to provoke or preemptively imagine adult sexual circumstances and situations widely accepted as existing outside the realm of normative childhood experiences (Stockton, 2009, p. 29). More often than not, homosexual or bisexual sexual circumstances and interactions tend to emerge in narratives of sexually aggressive children (Stockton, 2009, pp. 27-30).

In reference to the King/McInerney case, the possibility that Lawrence King exhibited some form of sexual aggression emerged roughly one year after the murder took place when the Ventura County Star published an article that hinted at previous behavioral problems. In May of 2009, the newspaper published an article that detailed a court ruling allowing King’s surviving family the ability to sue multiple individuals and social entities (Wilson, 2009a). Within this article, the newspaper reported that a county judge “found the suit had alleged matters sufficient to establish a ‘special relationship’ between the boy and Casa Pacifica ... [and] that they had known of problems between King and the classmate accused of shooting him, and King’s ‘sexually-oriented behavior’” as one among several significant factors leading up to the shooting (Wilson, 2009a).

Aside from presenting King’s actions as tentatively aggressive, this article marked a notable shift in the ways that Lawrence King’s behavior was framed by the newspaper in question. Before the May 2009 article, descriptions of King’s behavior had focused on a cycle of mutual teasing and retaliation that had developed between King, multiple peers, and McInerney (Barlow et al, 2008a; Wilson, 2008a; Wilson, 2008b; Ventura County Star, 2008l). Early after the shooting, Lawrence King’s reactions and demeanor were described in neutral terms typical of children at his age (Barlow et al, 2008a; Wilson, 2008a; Wilson,

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2008b; Ventura County Star, 2008l). An early article that focused on the murder described interactions between King and McInerney in this way: “[S]ome at the ... school had seen Larry ... teased by students in the weeks before the shooting.... Some witnessed confrontations between Larry and Brandon, with Larry teasing Brandon and saying he liked him” (Barlow et al, 2008a, paragraph 5). In addition to “teasing,” other words used to describe King’s behavior shortly after the shooting included “proud,” “upset,” “feminine,” “vulnerable,” “susceptible to abuse,” and “at risk” (Barlow et al, 2008a; Wilson, 2008a; Wilson, 2008b; Ventura County Star, 2008l).

In a 2008 newspaper report citing the King family as initiating a lawsuit against multiple social entities that had been in contact with their son, language regarding Lawrence King’s behavior began to shift, taking on a more medically-charged tone. In particular, Lawrence King was described as being “at particular risk,” having “unique vulnerabilities” that left him “susceptible to abuse” at the hands of his peers and educators (Ventura County Star, 2008l). On one hand, King’s family claimed that Lawrence had been neglected by school staff, Casa Pacifica personnel and the county Behavioral Health Department, who “failed to properly diagnose and treat the boy” (Wilson, 2008c). On the other hand, “King’s parents ... claim[ed] that personnel at Casa Pacifica were negligent in counseling the youth to express his sexuality, which included wearing makeup and high-heeled boots[, saying] that this action placed the boy in danger” (Wilson, 2009). What results from these competing claims is the unstated possibility that Lawrence King was in need of specialized, individualized medical and psychological care, deploying the assumption that King exhibited abnormal, possibly pathological child behaviors. Regardless of whether such claims were medically founded, the King family’s description of their son and his unique challenges

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opened up the possibility that King's behavior was more than simply non-normative, that it contained pathological tinges of childhood sexual aggression.²⁷

Shortly after the Ventura County Star's 2008 article, the tone of editorials and letters submitted by readers also began to shift with respect to the case and Lawrence King himself. Seventeen days after the shooting occurred, the newspaper published a series of six letters under the heading "Your Letters: Tragedy of a Teen's Killing" (Ventura County Star, 2008d). Within this group of letters, one respondent notes that after following the reporting, editorials, and earlier community letters, they had recognized several behaviors considered problematic for Lawrence:

A student stated in the Feb. 24 [article], "If kids didn't want to have contact with a gay person, Larry would chase after them." In the same story, another student said he saw Larry looking at Brandon the day before the shooting and saying he liked him. Later at lunch, Larry asked to sit with Brandon, who then left the table. Of course, this does not justify killing anybody, ever. But this sounds like Larry may have been harassing Brandon. (Ventura County Star, 2008d, "Unanswered Questions," paragraph 2).

Although this secondhand reading of King's actions may seem innocuous at first glance, we can see that the writer had specific expectations of the situation; these expectations are

²⁷ At the close of the King Family's civil trial, they noted that they felt Lawrence's behavior was enacted in a manner that was interested in garnering attention. Describing a mix of gender-bending behavior leading up to aggression, the Ventura County Star quoted the family as explaining:

They also said Larry King would try to draw attention to himself and that if he was wearing lipstick one day and nobody commented on it, he would up the ante by wearing something that drew even more attention the next day. "It was very, very prominent that he was pushing the boundaries," [King's father] said in a deposition about Larry King's behavior leading up to the shooting. "And when people learned to accept that or didn't give him the chaotic excitement that he was looking for, then he would push the boundary further and further and that if it was not stopped, that he was going to get hurt." (Barlow, 2011p)

While presenting the possibility of an apt analysis of Lawrence's behavior, these claims by King's father are somewhat suspect due to the fact that King was never reported as engaging in gender-bending conduct while with his adoptive family. Instead, these claims seem to be (re)interpretations of Lawrence's behavior and identity, sanitized and re-hashed to benefit the claims of a grieving family engaged in litigation over a lost child. Childhood acts of transgression are not at all uncommon, and have been presented by participants of this study as a natural aspect of childhood. In fact, as will be discussed further in this section, King's adoptive parents were touted as intensely strict, disallowing childhood transgression and boundary-pushing that children often use to test and learn about their limits.

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elicited by the letter's closing, which states: "To finish up, why would Larry persist to get near someone who did not like him? We will never understand the decisions these immature teens make" (Ventura County Star, 2008d, "Unanswered Questions," paragraph 5). In this closing phrase, we witness the respondent's expectation that the revulsion of King on the part of his peers should have been enough of a signal for Lawrence King to curtail his behavior.

This line of thought was echoed by participant Taylor Luzon, who was noticeably frustrated by the prospect that King aggressively pursued Brandon McInerney in a romantic or sexual manner. When discussing childhood sexuality, Taylor began his response by noting that a gay man's attraction to a straight man was a problematic situation, saying, "Why would I like someone that wouldn't like me back?" (Taylor Luzon, 2011, Personal Interview, Transcript p. 9). Subsequently, Luzon noted that his answer might be different if Lawrence King had engaged in "innocent flirting," yet his frustration came into play when he attempted to discern what might make childhood sexuality "not innocent":

If Lawrence ... was straight up saying, "I want to sleep with you" ... [Or] "I want to kiss you, make out with you, hold my hand." ... [H]olding my hand is still innocent. But... it's still one of those things that ... as of right now it's not socially acceptable (Taylor Luzon, 2011, Personal Interview, Transcript pp. 9-10)

Deployed within these succinct phrases is a fiction of (homo)sexual personhood as processed within the context of heterosexual privilege. The ways in which Luzon's questioning of King's attraction and flirting are voiced deploy a (silent) web of (male) heterosexual privilege that normalizes homosexual attraction as both irrational and sexually aggressive in nature. By asking why he himself would continue to pursue the subject of attraction who does not "like him back," Luzon refers to a specific social script in social interactions where the object of affection voices a revulsion or aversion towards the admirer. Within this script,

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the appropriate response of the rejected admirer is to completely abandon interaction with the subject of affection or else risk the consequence of further rejection. The socially acceptable response of abandoning the object of (heterosexual) affection exists in polarity with the socially irrational response of aggressive, persistent, unwanted contact as enacted by the aggressively homosexual admirer.

In outlining how such statements can silently deploy heterosexual privilege, it is important to place Luzon's analysis alongside that of the aforementioned letter. Both the letter and Luzon's statement present a trajectory of adolescent male behaviors considered non-normative; these trajectories move from the most egregious actions to less innocuous conduct. As outlined by each piece of data, the trajectory of deleterious adolescent male (homo)sexual aggression exists in the following trajectory, beginning with those behaviors considered most pernicious: physical encroachment towards adolescent males ("chasing after them"), voicing sexual desires ("I want to sleep with you," or "I want to kiss you"), voicing homosexual attraction ("saying he liked him"), requesting to hold hands, asking to socialize with heterosexual adolescent males, staring ("looking at") an adolescent male.

It is no coincidence that both the newspaper's contributor and Luzon begin with specific actions seen as the most socially deleterious within this trajectory, where even the apparently innocuous act of staring can be considered sexually aggressive. By beginning with the act of physically pursuing an individual and moving through a trajectory of other actions, we see that homosexual attraction, curiosity, and identity are linked as naturally threatening male heterosexuality, with the underlying impetus of sexually foisting themselves upon the subject of attraction. Sexual curiosity cannot exist separately from homosexual identity or attraction in this equation; the process of branding one child as abnormal is the same

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privilege-laden judgment that anticipates these characteristics as rationally resulting in (homo)sexual aggression towards heterosexual maleness. Restated from within the standpoint of heterosexual privilege: homophobic anxieties are not simply experienced as internal processes and fears, but as *threats originating within the body and presence of the non-heterosexual individual in question*, thus labeling the actual *or perceived* homosexual individual as hazardous to (hetero)sexual safety, rather than a catalyst that activates uncomfortable internal prejudices.

These conclusions regarding heterosexual privilege as threatened by actual or perceived homosexual identity and/or attraction are echoed in a second letter published in the Ventura County Star (Ventura County Star, 2008d). Appearing in the same grouping as the previously mentioned response, this letter advances an argument that actively phrases homosexuality as irrational, threatening, and degenerate:

Larry was abused and manipulated by gay, bisexual, lesbian, and transgender activists and their message of gender confusion, identity confusion and sexual confusion. Let's unmask the GLBT agenda for what it is: tolerance and celebration for identity confusion. Larry's sexual confusion manifested itself with flamboyant cross-dressing, which freaks out junior-high children. This invites ridicule and merciless teasing, a typical junior high response. We live in a fallen world with a surrounding culture that is degenerating right before our eyes. Violence and sexual impropriety are now the norm. Values and virtues have been turned upside down. So what part of the above scenario does not make sense? (Ventura County Star, 2008d, "Confusion Reigns," paragraphs 2, 6-8.)

Such logic solidifies the idea that homosexuality is a hazard by phrasing it as a form of child abuse akin to brainwashing. While apt in noting that King may not have been gay, the writer condemns those individuals who provided non-heterocentric guidance to King as manipulating a naturally occurring heterosexual identity, thereby endowing King with some sort of sexually tinged abuse. In addition to phrasing (adult) homosexuality as predatory

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towards sexually ambiguous children, the writer solidifies my earlier analysis of *potential or perceived non-heterosexuality* as dangerous within developing children and adolescents.

Within the above argument, Larry's unconfirmed abuse at the hands of GLBT adults "manifested itself with flamboyant cross-dressing," initiating an aversive response among King's peers. Rather than being a sign of potential homophobia among his peers, the fictive response of "ridicule and merciless teasing" is commonplace and routine for the respondent; such heterosexist activity is to be expected by schoolchildren of that age within such logic. Perhaps most importantly, the respondent advances an argument that actual or perceived non-heterosexuality among children and adolescents has led to global cultural degeneration. To be clear, it is not the (potentially violent) response initiated by homophobia that is improper within this analysis, but the subject of aversion that initiates such a response within the (homophobic) viewer, namely, a broader social understanding of GLBT issues and identities.

The argument that these behaviors are inherently aggressive towards heterosexuality is represented by the final letter that I will refer to, published in a separate issue of the local newspaper (Ventura County Star, 2008i). Written four months after the shooting, the writer asserts that King's homosexual advances towards McInerney were unquestionably a form of homosexual bullying towards a heterosexual individual. The writer states:

King is dead not because he was a poor sexually confused boy, misunderstood and hated by his peers. He is dead because he did not understand that to stop means to stop and no means no. King was the aggressor, continually badgering [his] classmate. ... This is not a gay issue. It is a harassment issue. (Ventura County Star, 2008i, "Real issue is bullying," paragraphs 3-5).

From this standpoint, King's unchecked aggressive sexuality warrants his being labeled as an "aggressor," superseding the fact that McInerney discharged a firearm into the back of King's cranium. Rather than being an issue of gun safety, mutual bullying, or unchecked

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adolescent aggression turned violent, the mere *presence or possibility* of homosexuality signals the imminent enervation of heterosexual maleness. Within this system of thought, such a threat is serious enough to warrant violence against those who are or may be homosexual, as their sexual identity is unquestionably predatory in nature.

At this analytical juncture, it is important to reassert that although neither the State's District Attorney nor King's family portrayed Lawrence King as homosexual, the majority of individuals who responded to the case chose to read him as either a fully gay child, or a child who was developing a gay identity. Whether advocating for King or McInerney, a majority of both respondents and participants portrayed Lawrence King as a homosexual. This is aptly echoed by a brief epistle published in the local newspaper, in August of 2008:

Where is the outrage over the murder of a boy simply because he is gay? When Matthew Shepard was murdered, there was a nationwide outcry for his killers' blood. ... Who cares as much for Lawrence King? I'm not seeing it" (Ventura County Star, 2008j, "Adult crime, adult trial," paragraph 3).

Within the analyses arising from community members, homosexual identity becomes shorthand for Lawrence King's non-normative behaviors – wearing feminine clothing, painting his fingernails, flirting with boys, wearing high heels, applying eyeshadow and lipstick to his face.

A more liberal, humanistic view of Lawrence King is advanced by participant Jake Uppman, who phrased Lawrence as a precocious child who pushed social boundaries. Speaking from his own experience of transitioning between genders, Uppman states,

I think [Larry] was just a lost kid looking [for] something. ... I don't think he knew exactly who he was. ... Wearing dresses, doesn't mean you're trans[gender]. And it doesn't mean you're gay, and vice versa. ... I think [he] liked a bit of attention because maybe he never got it – he was shuffled from home to home. ... I don't think he ever found himself. ... Unless [he was] vehemently acknowledging "This is who I am!" at 11 years old, 14 years old, that's one thing. But we shouldn't be forcing a

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label on somebody who died and dressed and looked a certain way. (Jake Uppman, 2011, Personal Interview, Transcript p. 24)

Within this critical view, gender presentation during childhood and/or adolescence does not dictate sexual identity. Rather, childhood deviation from socially accepted scripts of gender and/or sexuality indicate deeper childhood concerns relating back to parenting, proper childcare, and the potential for neglect.

Up to this point, we have investigated three specific ways in which Larry King has been queered. Abuse and neglect, indefinable ethnicity, and now, sexual aggression via actual or perceived homosexuality have been reviewed in the previous two sections as elements that have disrupted the narrative of King's life as highly non-normative. The previous section illustrated two theories that remove agency from King, while this section has discussed how a sexually maleficent agency was linked to King in community responses published by a local media outlet. In the final section of this chapter, I shall discuss how these portrayals of King coalesced, creating an indefinable quality that ultimately disassociated Lawrence King's murder as applicable to an established corpus of hate crime legislation.

Legal indefinability, queerness, and the phantasmic child

At the opening of this chapter, I noted that civil personhood requires a relationship between the individual and the law in which the individual's body could be easily read via the legal system and its specialized corpus of knowledge. Bodies that resist easy definition, I contended, do not enjoy the auspices of the law's unique legal codes, such as hate crime law.

Throughout this chapter, I have illustrated three specific ways in which Lawrence King's short life story defied the normative fiction of childhood. By incorporating editorials

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by local residents alongside the analyses of study participants, I have illustrated that King's life story has been viewed through the lenses of child abuse, child neglect, and childhood sexual aggression. In addition, this analysis has pointed to the ways in which King's legal and media presentation resulted in a type of unique indefinability with respect to both his sexual identity and his gender identity.

Yet how do these competing narratives relate to our overarching analytical theme of civil personhood? How do non-normative fictions of childhood impact social citizenship when multiple aspects of identity and social circumstance become obfuscated? Once Lawrence King's person had been systematically hollowed out of his legal caricature as Ward of the State, what effect did these competing narratives have on his civil personhood, and more importantly, how did his civil personhood (or lack thereof) evoke shortcomings within anti-LGBT violence laws?

In answering these questions, I turn back to the work of legal scholar Colin Dayan (2011), who posits the law as a kind of ceremonial magic that moves the person between extremes of personhood and non-personhood (pp. 53-58). In creating and applying notions of citizens and non-persons onto the bodies of human beings, notes Dayan, the law creates an "artificial person ... a servile body [that] can be perpetually reinvented [and] sacrificed to the civil order" (Dayan, 2011, p. 55).²⁸ In addition to the ability to gain or lose personhood, what is at stake is the power of the law to define personhood, for the law can enact a

²⁸ Within Dayan's (2011) logic, "civil bodies" correspond to citizens, who experience various forms of social citizenship, while "legal slaves" correspond to either literal slaves, or criminals involved in the justice system, penal institutions, or both (pp. 53-58). While Dayan is concerned with the ways in which race via blood kinship has framed citizenship and non-citizenship in the law, I am interested in the ways in which a citizen may experience various forms of social death via gender and sexual non-normativity. As such, my analyses of Lawrence King's "civil personhood" corresponds to the ways in which both his physical presentation and childhood fiction(s) did or did not adhere to normative notions of childhood behavior, sexuality, or gender presentation.

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“transformation of categories – the double movement and complex relations between the extremes of flesh and mind, external and internal, and what can be removed and what must remain[, giving] the juridical order *the power to redefine persons*” both in the present and retroactively, in a posthumous manner (Dayan, 2011, p. 53; emphasis mine). The law, argues Dayan, has a metaphysical prowess, enacting the “supernatural ... spectral ... magical” and occult act of transforming human beings into citizens, and subsequently into non-persons (p. 53).

In the King/McInerney case, the law’s attempt to ensure privacy and justice for Lawrence King resulted in his presentation to the local population and jury as a non-citizen undergoing a complex dissolution of social citizenship shortly before his death. In obeying child privacy laws, the fine details regarding King’s conception, birth, adoption, and eventual relocation to Casa Pacifica were obfuscated. This resulted in a double bind that produced a retroactively incomplete “non-citizen” occupying the status of “Ward of the State” on one hand, yet being subject to the speculations and characterizations of the populace and media on the other hand. Instead, both the local populace and the eventual jury found themselves fumbling with incomplete snippets of information that prompted rumor and conjecture. Put succinctly, *King’s full person was never disclosed to the public, nor to his family* throughout the whole of trial proceedings. Quite simply, the majority of Lawrence King’s child-oriented personhood lies shrouded in legally-mandated silence, conferring a spectral quality on his person, his short life story, his unexplored potentials.

In her study on the ways in which children are queered in literature, Kathryn Bond Stockton (2009) notes that one of the most common forms of disrupting childhood narratives involves the “spectral,” ghostly child. Associated with the process of coming out, the

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“ghostly child” appears in narratives of *who a child could have been* if they were not non-normative, if they adhered unquestioningly and without challenge to heterosexuality (Bond Stockton, 2009, pp. 17-22). Such a child, notes Stockton, “is retrospective (he is hidden in time); he is occulted (he appears as a ghost); he is linked with death” (Bond Stockton, 2009, p. 22).

As applied to the King/McInerney case, Lawrence King is not simply a spectral child in that he is constantly posthumously referred to throughout this study, as he was throughout the whole of the trial. On the contrary, the image of Lawrence King marks a double deployment of the phantasmic quality afforded to both the law and the spectral queer child. In the first instance, the image of Lawrence King marks the law’s ability to transform individuals into non-citizen non-persons, either as a punishment for transgressing the law or in an effort to maintain legal standards of safety. In the case of Lawrence King, the law obfuscated his life narrative, creating a vacuum of information that was filled by media and citizen speculations. In the second instance, Lawrence King stands as a marker for *who a child could have been* – who they could have become – if the crime in question was somehow anticipated and avoided. In this case, the deployment of a post-incident potential elicits responses on behalf of both King and McInerney, pointing to a potential for judicial malfunction in that both parties involved will ultimately experience social death. As we shall see in the next chapter, however, the framework for dispossessing queer persons of citizenship has existed since roughly 1920.

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Panic, Homosexuality, and Civil Death in Twentieth-Century U.S. Policy and Medicine

“The small schoolchildren had taken off their capes and their knees were no longer scarlet with the cold. There seemed to be more chatter — in that curiously vehement language, which sometimes reminds me ... of the underside and aftermath of passion.”

—James Baldwin, *Giovanni's Room*, (2000/1956), p. 77

Introduction: Acute Pernicious Homosexual Panic

“No one can study this collection of abnormal behavior and sexual (biological) maladjustment,” wrote Edward Kempf in the 1920 printing of his book *Psychopathology*,

without realizing more than ever that civilization is indeed a delicate structure that must be protected and fostered with eternal vigilance and sound wisdom, in order that its growth shall be full, progressive, and healthy. Never has it been so evident that social taboos and communistic sublimations must be thoroughly protected from the influence of ignorance, fanaticism, superstition, vulgarity, laziness, envy, lust, prudishness, autoeroticism, homosexuality, and perverse heterosexuality. (p. 3)

Dr. Kempf was not alone in his characterization of U.S. society, given that the field of psychology saw an unprecedented expansion throughout World War I and its aftermath. By the time the conflict had ended, military leaders noted that the war had produced a population of men exhibiting psychiatric disability, eliciting the need for both treatment after wartime service and pre-enlistment identification of individuals prone to psychiatric breakdown during military duty (Wake, 2007, p. 467-469). In the effort to identify service members deemed mentally unfit for duty, the military in cooperation with the medical establishment devised a screening process that would aid in the removal of individuals deemed at risk, thus raising its competitive edge by reducing the prevalence of “psychiatric contagions” within its

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own ranks (Wake, 2007, p. 469).²⁹ Important clinical tests deducing homosexuality included basic talk therapy regarding sexual preference and history, ink blot tests, and the “Draw a Man” test; the goal of these tests was to deduce whether the subject under study exhibited “effeminate” fantasies or identity via ink blot analysis, feminine self-representation, or behavior and mannerisms deemed effeminate (Dong, 2004).³⁰

Without a doubt, the psychological views espoused by Kempf and his colleagues were informed by earlier waves of eugenic science that, in combination with sexology and medicine, sought to define the human condition from a position situated within social-Darwinist thought. “Man is by no means a perfect species of the ape family,” Kempf (1920) reminded his readers, “he is undoubtedly in one of his most critical periods of development and refinement, indicated by the growing vision of an international social system to prevent war and subjugation, and promote free social development” (p. 5). Darwinian logic, argued Kempf, was “freeing humanity from countless confusing dogmas and fancies as to the origin and destiny of Man ... enabl[ing] the student of human behavior to begin to approach his problem as a biologist” (p. 5). This evolutionary ideal not only applied to society at large,

²⁹ The military screening process was first conceived of after internal investigations linked servicemen to communities of sexual inverts in Newport, Rhode Island during the year of 1919. Known as the Newport Military Scandal, the investigation involved entrapment in homosexual encounters of servicemen by undercover agents, usually younger recruits (Arsenault, 2009; Chauncy, 1985; Eaklor, 2008). The inadvertent ensnaring of a community minister in naval judicial proceedings eventually prompted the local Ministerial Union of Newport to launch their own investigation of events, causing military judiciary officials to drop the plan and its resulting investigations completely (Arsenault, 2009; Chauncy, 1985). While fascinating, the Newport Military Scandal points to the reality that specific localities under military purview utilized socially salient stigmatizing projects to divest those deemed “unfit” from military duty via labels such as “homosexual,” “sexual invert,” “pervert,” mentally unstable, sociopathic, or pejorative references to male femininity.

³⁰ In the documentary “Coming Out Under Fire,” World War II Naval Psychiatrist Herbert Greenspan talks candidly about his credentials to conduct the military screening process, and what the screening process was like for him:

For the most part it was pseudo-psychiatry – we were not bona-fide psychiatrists at all. ... It was a very difficult thing for me to decide who was a homosexual regardless of how his behavior [was]. ... [T]here were many people who were not effeminate, by contrast, who were dying to get out of the service than there were persons with these effeminate gestures. (Dong, 2004)

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but also presented itself via the negative products of social evolution, through the multiple psychoses he encountered in a clinical environment. Psychological function, argued Kempf, related to the health and structures of the body, nervous system, brain, and the individual's connection to its environment (“Introduction;” p. 6).

The scientific context under which Kempf would have begun his studies and career — a post-Civil War society influenced by racial thinking — most certainly influenced the eugenic direction of his analyses. Born in 1885, only eight years after what is considered the end of U.S. Reconstruction, prevailing views of sex, sexuality, gender, and human anatomy were comprised of a logic that conceived of genetic superiority within raced and gendered axes, exalting white heterosexuality as the norm (Abdur-Rahman, 2006; Blanchard, 1996; Diggs, 1995; Ferguson, 2004; Martin, 2003; Mumford, 1996; Sommerville, 1994; Stone, 2009; Terry, 1990). This was achieved by associating non-white identity with various forms of racial and genetic inferiority through a process of pseudo-scientific anatomical comparison, which Sioban Sommerville (1994) describes as a “tradition of comparative anatomy [that] located the boundaries of race through the sexual and reproductive anatomy of the African female body” (p. 250). This anatomical folk science established schemas of personhood and property that “became powerful instrument[s] for those seeking to justify the economic and political disenfranchisement of various racial groups within systems of slavery and colonialism” (Sommerville, 1994, p. 252). Additionally, same-sex desire was pejoratively framed against heterosexuality via the theory of sexual inversion, whereby sexual science framed homosexuals as having failed at all attempts to live a heterosexual lifestyle, and therefore choosing to occupy the role and appearance of the opposite gender (Diggs, 1995; Mumford, 1994). The diagnosis of such individuals, went the logic, could be

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easily recognized in the ways the bodies of non-heterosexuals betrayed their internal identities — overly masculine features in women, feminine features in men, as well as changes in expected levels of social assertiveness and submissiveness (Blanchard, 1996; Diggs, 1995; Martin, 1993; Mumford, 1996; Sommerville, 1994; Terry, 1990).

This chapter engages the ways in which non-heterosexual desire, identity, and sexuality have been linked to psychiatric illness via Edward Kempf's formulation of the "acute pernicious homosexual panic" diagnosis, as well as the multiple forms of civil death associated with the condition. By investigating the ways in which Kempf has represented homosexual identity and desire as tied to psychiatric disorders, I will identify the prominent imaginary body tied to homosexuality within early twentieth-century medicine. A fundamental aspect of this investigation into the way non-heterosexual tendencies were imagined from the 1920's onward engages the ways in which Kempf's unusual diagnosis was taken up by the federal government and military administration. By investigating multiple processes of revoking employment and military service based on charges of homosexuality, I illustrate that the government and military's adoption of the "homosexual panic" paradigm was not simply prescriptive; instead, both bodies outlined an ideology and praxis for the removal of suspected homosexuals from important civil service opportunities, resulting in a unique positioning of civil death between the years of 1920 and 1960.

The following chapter has been divided into two sections. The remainder of this section expands upon the historical foundations of the theory of "homosexual panic," as elucidated by Edward J. Kempf in 1920 (Garmon, 2011; Goss, 2009; Kempf, 1920; Lee, 2008; Perkiss, 2013; Tilleman, 2010). After reviewing Kempf's theory, the chapter then turns to the policies and methods utilized by the military, medical, and legal spheres to eject

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suspected homosexuals from their ranks. As well, the second section discusses how these federal and military actions legitimated Kempf's diagnosis via similar yet unintentionally simultaneous interest in sexology and psychology during the World War era.

Recall that in earlier chapters of this study, I have asserted the idea of the *imaginary body* as a theoretical tool used to understand social and structural processes of gendering and sexing that uphold a binary, heterosexual schema of “normal bodies.” This *imaginary body* can be located within our “language, stock of images, and social practices [that] constitute an unconscious dimension of cultural” and historical legacy (Gatens, 1996, p. xi). Scientific, medical, and psychiatric texts play a significant role in (re)imagining bodies, behaviors, and their associated social inflections. To say that medical and psychiatric sciences have influenced legal classifications of persons and their resulting treatment would be an understatement. Still, we are interested in the *imaginary body as a history of embodiment*, a history of the lived experience specific to sex, gender, and civil personhood.³¹ An analysis of this body — the biological body living within the social and cultural milieu and its social standards of normativity — is indispensable when considering theories of sexual and gender deviance. This is because scientific diagnoses and the medicalization of sex and gender often obscure the socio-cultural schemas by which they assert order and truth, phrasing them as naturally occurring, unquestionable, timeless phenomena.

Readers may question why an inquiry into the *imaginary body* of “acute homosexual panic” might be necessary at this analytical juncture. In a study concerned with untangling

³¹ Regarding the *imaginary body* as a history of embodiment, Gatens (1996) states, “Theorists of sexual difference do not take as their object of study the physical body, the anatomical body, the neutral, dead body, but the body as lived, the animate body — the *situated* body. . . . If one wants to understand sex and gender or, put another way, a person's biology and the social and personal significance of that biology as lived, then one needs an analysis of the imaginary body” (p. 11).

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quandaries of embodiment and socio-cultural citizenship, why is it important to challenge the *imaginary body* presented within a specific psychiatric theory? Why would investigating the *imaginary body* proposed in Kempf's (1920) publication Psychopathology prove so salient?

To question this schematization of sex and its subtle associations with normativity and deviance is to re-insert the imaginary body into any theory of sexuality, sexual identity, and gender presentation as a lived experience. Insisting on the inclusion of lived experiences and the nuanced dissection of how theoretical models of personhood obscure such occurrences is to disrupt the finality of scientificized diagnoses, to question medicine's emphasis on the naming of deviance via the body and social location of the afflicted, and toward an understanding of the prejudices framing the act of classification. The *imaginary body*, as this analysis will show, is just as much about the actions and realities asserted by a given society on a particular body as it is about that particular person's experience of embodiment. Phrased from a different perspective, breaking open the *imaginary body* encapsulated in any medical or psychiatric theory involves analysis regarding how societies themselves sense and experience bodies as well as how these societies assign conclusions related to personhood, social inclusion, and social exclusion onto the individuals associated with such bodies.

Kempf's field of psychology consisted of the clinical observation, treatment, and diagnosis of confined patients. "Most of the case material [for Psychopathology] has been taken from cases admitted to St. Elizabeth's Hospital" in Washington D.C., noted Kempf (1920), although the psychiatrist did include a handful of cases from his time at the Phipps Psychiatric Clinic in Baltimore, Maryland (p. vii). The study classified 94 patients within nine possible categories of diagnoses (Kempf, 1920, pp. xx-xxiii, "List of Cases"). Of these

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94 cases, 32 involved homosexuality at some level, including findings such as “homosexual compulsions,” “irrepressible homosexual cravings,” “homosexual regression,” and “homosexual crucifixial compulsions” (“List of Cases,” pp. xx-xiii). Three of the 32 homosexual cases involved women, and 29 involved men. Most importantly for this study, 21 of the 32 cases involved the presence of “dissociation” or “panic,” including the diagnoses of “acute homosexual panic” and “pernicious dissociation” (“List of Cases,” pp. xx-xiii).³² Although a small sample size, Kempf’s data indicates that he recognized and formally diagnosed psychoses related to homosexual compulsions within 22.3% of the patients engaged in his study — almost one-fourth of his chosen cases throughout a career spanning two mental institutions.

The diagnosis of “acute pernicious dissociation neurosis,” under which the phenomenon of acute homosexual panic operated, was comprised of both internal, psychological symptomatology as well as specific traits regarding the patient’s social status (Kempf, 1920, Chapter X). With regard to psychiatric symptoms, “acute homosexual panic” was characterized by “panic due to the pressure of uncontrollable perverse sexual cravings,” where non-heterosexual attraction was considered abnormal (Kempf, 1920, p. 477). Misfortune or disconnection with “a love-object,” coercive homosexual advances by more socially influential males, or encounters with “erotic companions” of the same sex often triggered preliminary psycho-somatic symptoms that included “fatigue, debilitating fevers ... [or] homesickness” (Kempf, 1920, p. 477). As the patient’s condition became more grave,

³² Regarding the diagnosis and classification of cases, only one woman was classified as experiencing “pernicious dissociation” involving homosexuality, case PD-36, where “PD” stands for “paranoid dissociation,” a specific classification of diagnoses (p. xxii). Equally interesting, two cases, PD-16 and PD-18, involved diagnoses of both “acute panic upon homosexual regression” resulting in “pernicious dissociation” (p. xxi). No diagnoses of panic involved women within Kempf’s text (pp. xx-xxiii).

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the indications of the condition would transform into irritability, eccentricity, a feeling of inferiority, and attempts to compensate for what was perceived as a morally-lacking character by the patient, based on non-normative sexual desires and compulsions associated with homosexuality (Kempf, 1920, pp. 477-478). At its peak, the condition caused “delusions about, and hallucinations of, situations, objects, and people which tend[ed] to gratify the craving,” eventually resulting in physical discomfort, fear, a chronic sense of anxiety, and the possibility of various catatonic states (Kempf, 1920, pp. 478-479).

Regarding its most severe incarnation, Kempf described the resulting panic and catatonia in both pathological and objectifying terms as follows:

When compensatory striving to retaliate or escape increases the liability to punishment, a tendency to lowering of blood-pressure, irregularity of pulse, difficulty in respiration and a tendency to assume the catatonic attitude seems to follow; *as in young monkeys, puppies, terrified soldiers, and catatonic patients.* (p. 479; emphasis mine)

The resulting psychological state was described as maladjusted, negative, “progressively eccentric,” and “rooted in hatred” (Kempf, 1920, p. 477). Symptoms of panic could last from a few hours up to a matter of months, accompanied by disturbances in metabolic function due to the physiological effects of fear and chronic stress on the body (Kempf, 1920, p. 478)

An important aspect of this internal symptomatology concerned how social ostracism reflected the patient’s descent into a state of homosexual panic accompanied by negative, misanthropic emotions. The presence of the surrounding milieu is constantly outlined within Kempf’s delineation of acute homosexual panic, from the danger of its onset through its progression. Interestingly, Kempf (1920) argued that studying the syndrome was “of the utmost importance ... because of the frequency of its occurrence wherever men or women

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must be grouped alone for prolonged periods, as in army camps, aboard ships, on exploring expeditions, in prisons, monasteries, schools, and asylums” (p. 477). At the community’s recognition of difference regarding sexual attraction, the patient at risk for homosexual panic “is teased and goaded by his associates,” a social reaction, which, the psychiatrist argues, “is the reflex reaction of the herd to get the individual into line with the needs of the herd. The herd cannot afford to be biologically misled” (Kempf, 1920, p. 477). When compensation for these socially ascribed shortcomings do not ameliorate the situation, “The vicious affective circle” of social exclusion, feelings of inadequacy, and attempts to regain lost social status “gradually becomes a persecution [of] the erotic individual” (Kempf, 1920, p. 478). The internal pressure resulting from the dissonance between social expectations of conformity and the individual’s recognition of homosexual desires as incompatible with these social expectations, according to Kempf, causes exacerbation of these non-normative desires, resulting in a “panic-stricken” state (p. 478). At its most extreme level, consecutive episodes in hospitals, asylums, and a general decline in health due to chronic anxiety “reduce the compensatory capacities of the dissociated personality,” significantly diminishing the patient’s chances “to regain self control, social esteem, reassurance and biological fitness” (Kempf, 1920, p. 479).

In examining Kempf’s (1920) rendition of “acute homosexual panic,” we can clearly identify the imaginary body of the “non-heterosexual” in this diagnosis. According to the primary psychiatric presentation of the condition, the afflicted individual experiences homosexual desires, thoughts, attraction, and fantasies within their own mind and body. In essence, the origin of homosexual fascination within Kempf’s original conception of “acute

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homosexual panic” exists internally to the sufferer, within processes of cognition, physiological responses, and sexual attraction.

Most importantly, however, homosexual panic as elucidated by Psychopathology (Kempf, 1920) advances ideas concerning sexual identity and non-normativity from a position located internal to the rhetoric of homophobia. That Kempf’s symptomatology exists within social interaction between community and patient is crucial to consider; we cannot be sure if the patient would exhibit degenerative physiological symptoms if the peoples, cultural institutions, and structural establishments of a given society chose not to communicate the individual’s non-normativity to them. In order for “acute homosexual panic” to function as Kempf has outlined it, the community in which the individual is immersed must be active in exhibiting a high degree of homophobia towards sexual and gender non-conforming individuals. Alternatively, the social situation in which the patient is immersed may exhibit new social anxieties regarding (homo)sexual attraction within homosocial environments, such as military or medical housing segregated on the basis of sex. To be succinct, “acute homosexual panic” can only function under Kempf’s rubric when a culture of denigrating homosexual desire, attraction, and identification is cultivated within both the patient and the society in which they are located.

If “acute pernicious dissociation” catalyzed by “acute homosexual panic” involves the process of being informed regarding non-normative identity and behavior as a patient, does this psychiatric theory hold any important messages regarding the notions of social citizenship and civil death? If the diagnosis of the syndrome in question reflects the prejudices of the social milieu in which the patient is situated, can we draw conclusions about the enforcement of normativity versus the deduction of non-normativity? More importantly,

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is the process of diagnosing this early twentieth-century malady a form of social or cultural dispossession, and if so, how would deprivation of civil personhood occur in the United States circa 1920?

Social citizenship and civil death, as outlined in previous chapters, comprise what Joan Dayan (2011) advances are technologies of social reclassification (Preface, Chapter 1, Chapter 2). As Dayan notes, the natural, biological person is not considered a citizen by the law but must submit to socio-legal rationalization in order to be recognized as human, sentient, subject (pp. 41-43). This process of submitting to a higher, civil order involves reducing “The natural person who existed before the social contract [into] a repressed spirit in civil skin,” a subtle renunciation of the human organism’s spiritual, biological, and animal tendencies in an effort to exist in the uplifted status of “citizen” within a given society (p. 41). This reclassification is a crucial transformation that society and its attendant laws require of all subjects in the process of gaining access to civil rights.

Alongside the ability to reclassify bodies as citizens, however, exists a socio-legal counterpart capable of stripping citizenship from bodies. Unspoken within society’s reverence of citizenship is a system that simultaneously encompasses its collective ability to enact civil death, a state of being in which “a person, though possessing *natural life* has lost all *civil rights*” (Dayan, 2011, p. 44). Civil death as punishment for transgressing social and legal norms “entails a logic of alienation [whose] oscillations between tangible and

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intangible, life and death,” allow the crafting of “political control” (Dayan, 2011, p. 44).³³

According to Dayan (2011), this process:

can be described as a passage from possession to deprivation, from plentitude to emptiness. ... To be civilly dead is to be granted a natural life, while encased in unnatural death. ... The body is there, but restrained.... The external physical conditions are clear. The internal spiritual state is not. The physical person (solely body and appetite) has no personhood (the social and civic components of personal identity). (pp. 56-57)

Material dispossession, the negation of social status, and incarcerating individuals while simultaneously purging them from civil society remain the most salient forms of deprivation for Dayan (Introduction, Chapter 1, Chapter 2, Chapter 3).

Material dispossession, incarceration, and revoking social status are not the only methods of enacting civil death, however. Perhaps one of the most direct forms of ejecting individuals from the system of civil personhood involves distancing them from those citizens and bodies deemed model, upstanding. “The negation of civil existence,” Dayan (2011) argues, “requires that a person be made ‘superfluous’ ... to be outside the pale of human empathy,” to become inconceivable to their fellows as person, civilian, or sentient human (p. 72). This can be achieved, in part, via “rituals of knowledge” that pejoratively reclassify individuals as “unfit, barbaric, subhuman,” and therefore unworthy of the liberties and rights afforded to the population among which they coexist (Dayan, 2011, p. 73). Having been reclassified and “stigmatized” as non-citizens, “they can be restrained in their liberty, deprived of rights, and ultimately undone as persons” (Dayan, 2011, p. 73).

Turning back to the study of “acute homosexual panic” at hand, I assert that Kempf’s

³³ It is important to note that the phrase “political control” inflects the legal sphere, but also reflects normative standards of personhood within the social sphere. Because of this, “political control” can mark both legal and social means of interaction and corporeal reclassification.

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(1920) theory incorporates heterosexist tactics of dispossession and civil death within its symptomatology. This is discernible if we turn back to Kempf's ideas of "the herd" and its biological fitness, a trope that works within the schema of social-Darwinist rhetoric. The herd, as we recall, "teases and goads" the individual who experiences non-heterosexual attractions, a response Kempf describes as the "reflex reaction of the herd" meant to re-orient the individual to those modes of conduct that are conducive to "the needs of the herd" (Kemp, 1920, p. 477). Vague at best, these allusions to animality do nothing to help us understand what, exactly, the needs of the herd are, nor what occurs during episodes of "teasing and goading." However, knowing that "acute homosexual panic" can only function in societies that openly communicate homophobic and heterosexist ideas of personhood, we can deduce that the process of "re-orienting" the individual to the "needs of society" entails reasserting normative sexual and gender hierarchies in an attempt to subvert non-normativity. Restated from a standpoint critical of homophobia, internal negativity, feelings of misanthrope, anxiety, and the "panic-stricken state" associated with homosexual panic are activated and exacerbated by the community's assertion that the individual must conform to heterosexuality or be ejected from the circle of citizenry. Effectively, the "goaded and teasing" outlined by Kempf is the first step in civil death, namely the community's attempt at eradicating sexual autonomy from the non-conformist individual — a warning of the community's ability to classify the target as subhuman, deviant, "superfluous."

This section has reviewed the theory of "acute homosexual panic" using two important theoretical lenses. By using the theory of the *imaginary body*, I have oriented the reader to the basics of Kempf's (1920) diagnosis, as well as the ways in which the theory itself represents the denigration of sexual otherness as a social norm. In addition, this section

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has briefly reviewed the theory of social citizenship and civil death as a tool for tracking how the deprecation of difference results in ejection from the circle of citizenship. Lest these assertions be disregarded as far too theoretical, I bring to the reader's attention a bit of U.S. history that upholds the assertion that "acute homosexual panic" is a diagnosis resulting in the dispossession of certain civil rights for accused homosexuals. Having outlined the ways in which civil death can be traced in Kempf's diagnosis, the next section turns to an account of the ways in which the military and federal government took up these ideas in an effort to purge homosexuals from the ranks of civil servants and military servicemembers.

"Sex Perverts" and the Government:

Structural homophobia, personhood, and civil death between 1920 and 1952

As pointed out in the opening of this chapter, the post-World War I years employed new psychiatric tests in order to prevent those deemed mentally unfit from pursuing military service (Dong, 2004). Although psychologists and medical professionals noted that the process of "recognizing a homosexual" was poorly understood, the military contended that homosexuality during military service was unacceptable, mandating a screening process to remove all suspected homosexuals and sexual inverts from its ranks (Dong, 2004; Wake, 2007). By 1941, twenty-one years after the publication of *Psychopathology* and the inception of tests deducing homosexuality by the military, the United States armed forces processed homosexuality as a psychological illness and included it in the official list of deviations requiring immediate dismissal by an advisory board (Wake, 2007, p. 467). By the late 1940's, "the military was discharging about a thousand men and women per year on charges of homosexuality" (Berube & D'Emilio, 1984, p. 759).

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The stigmatization of sexual others by the military was not confined to the examination of those entering its ranks, and often included attempts to identify and discharge those suspected of homosexuality by eliciting confessions, utilizing threats of legal action, and refusals to allow accused individuals access to their legal files. By the early 1950's, due to a widespread fear of communism initiated by Senator Joseph McCarthy, the military had invested in a program whose aim was to identify and eject lesbians from within the female branch of the navy (Berube & D'Emilio, 1984). Naval lectures were published detailing aspects of lesbianism popularly associated with deviance, psychosis, mental illness, drug addiction, theft, homicide, and criminal assault (Berube & D'Emilio, 1984, pp. 761-763). Female homosexuality was stigmatized as a personal erosion in morals and values, an inability to mature emotionally, and eventually resulting in pathological, homicidal behavior (Berube & D'Emilio, 1984, pp. 767-770). Women servicemembers experiencing same-sex desires or ideas were asked to report immediately to their commanding officers in order to discuss their situation in a safe environment; however, those who pursued this course of action were often served with a dishonorable discharge (Berube & D'Emilio, 1984, pp. 770-775). Those discharged in such a way could not access the charges against them, with requests to access evidence being overturned by the court system, often citing homosexuality as the reason for withholding evidence and case dismissal (Cain, 1993, pp. 1572-1573). Interestingly, this treatment of servicemembers suspected of homosexuality coincides with the appearance of "acute homosexual panic" as an official psychiatric diagnosis in the 1952 edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM), a foundational tool in diagnosing and charting the severity of recorded psychiatric conditions (Lee, 2008, p. 484).

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Likewise, US citizens suspected of homosexuality, lesbianism, or consensual “atypical sex practices” were also in danger of legal repercussions for their actions. Consensual, adult same-sex relations were punishable with penalties ranging between one to 60 years in prison for the majority of the union, although Georgia prescribed a particularly harsh sentence of life in prison with hard labor, a penalty which, ironically, was more severe than that prescribed for the crime of “bestiality” (Miller, 1948, “Maximum Punishments” chart).³⁴ Other forms of punishment for the crime of “sodomy” included fines ranging between \$100 to \$5000, or a combination of monetary penalties and incarceration (Miller, 1948, “Maximum Penalties” chart).³⁵ Only three state-level municipalities — Vermont, New Hampshire, and the District of Colombia — classified sodomy as an act not fitting of criminal penalties (Miller, 1948, “Maximum Penalties” chart).

Between 1947 and 1955, the weight of enacting the diverse laws against sodomy stood as a threat to the average US citizen under a legacy of anti-communist policy generated by the Truman and Eisenhower administrations. Beginning in 1947, President Truman’s administration began investigations into government employees exhibiting “anti-American” sentiments, often including individuals who turned a critical eye towards Cold War policies

³⁴ Most municipalities within the United States refrained from directly defining sex acts that comprised sodomy, referring to it “In some states ... as the ‘infamous crime against nature,’ in other as a practice ‘abominable and detestable,’ or ‘lascivious and unnatural’” (Miller, 1948). In addition, most renditions of the sodomy law tended to marry the concept of homosexuality with pedophilia, referring to those adult individuals who coerced sexual contact with minors as “homosexuals” guilty of the crime of “sodomy” (Miller, 1948). Georgia’s interesting sanctions against “atypical sex practices” provided different penalties for the crime of “sodomy” versus “bestiality,” with the latter carrying a sentence of five to twenty years in prison, while the crime of “sodomy” carried a sentence of life in prison with hard labor (Miller, 1948).

³⁵ In contrast to the penalties for sodomy, the crimes of fornication and seduction carried penalties that were comparably less severe. According to data published by Miller (1948), fornication carried various penalties including incarceration between 30 days and ten years, monetary fines up to \$2000, forced cohabitation, or a combination of these measures (“Maximum Penalties” chart). Seduction carried penalties of various degrees, including monetary fines between \$500 and \$5000, and incarceration between six months and ten years, or a combination of fines and jail sentencing (Miller, 1948, “Maximum Penalties” chart).

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under accusations of pro-communist sentiments and actions (Eaklor, 2008, p. 86).³⁶ By 1950, the government had fired roughly 91 federal employees of the State Department as homosexuals who posed a “security risk,” prompting Congressional investigations into the charges and the production of a congressionally sponsored special report (Eaklor, 2008, p. 87).

Entitled “Employment of Homosexuals and Other Perverts in Government,” (1950) the report is extremely important in understanding how homosexuality, lesbianism, and non-normative gender were conceived of by the government and, later, by the US court system. The report was the result of a congressional inquiry involving the testimony of medical doctors, psychological professionals, social scientists, “numerous medical and sociological studies,” and “Information ... sought and obtained from law-enforcement officers, prosecutors, and other persons dealing with the legal and sociological aspects of the problem in 10 of the larger cities in the country” (S. Rep. No. 81-241, 1950, pp. 1-2). Regardless of this knowledge base, “It was determined that even among the experts there existed considerable difference of opinion concerning the many facets of homosexuality and other forms of sex perversion. Even the terms ‘sex pervert’ and ‘homosexual’ are given different connotations by the medical and psychiatric experts,” noted the report’s introduction (S. Rep. No. 81-241, 1950, p. 2). In an effort to encapsulate the two identities for the purpose of

³⁶ Vicki Eaklor (2008) notes that “The Truman administration had instituted loyalty oaths for government employees, and the practice continued under Eisenhower. To criticize US policies or expose its faults was considered ‘un-American’ and civil rights workers, among others, were placed under FBI surveillance” (p. 86). While efforts to root out “security risks” began in 1947, they became a series of “witch hunts” that now define the infamous era of US McCarthyism between 1950 and 1955, during which individuals accused of a range of ideological persuasions were harassed by law enforcement, surveilled, refused from housing and employment, and at times, incarcerated (Eaklor, 2008, pp. 84-90). Eaklor notes that the “peak of the scare” occurred in 1950, when Julius and Ethel Rosenberg were executed for the crime of espionage, being found guilty of passing nuclear knowledge to the USSR (Eaklor, 2008, p. 86).

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regulation, however, the Congressional Subcommittee officiated two important definitions, defining “sex perverts as ‘those who engage in unnatural sexual acts’ and homosexuals are perverts who may be broadly defined as ‘persons of either sex who as adults engage in sexual activities with persons of the same sex’” (S. Rep. No. 81-241, 1950, p. 2).

It is important to note that the Senate Subcommittee of Investigations did not include any sense of latent homosexuality from its report, commenting: “In this inquiry the subcommittee is not concerned with so-called latent sex perverts, namely, those persons who knowingly or unknowingly have tendencies or inclinations toward homosexuality or other types of sex perversion, but who, by the exercise of self-restraint or for other reasons do not indulge in overt acts of perversion. This investigation is concerned only with those who engage in overt acts of homosexuality or other sex perversion” (S. Rep. No. 81-241, 1950, p. 2). This is particularly important when compared to the context of Kempf’s (1920) theory of “acute pernicious homosexual panic,” which was concerned with the materialization of psychiatric disorders in the patient struggling with homosexual tendencies (or, alternatively, latent homosexuality). For the congressional committee investigating homosexuality-as-psychopathy, the actual descent into psychiatric instability due to the perception of one’s own sexual difference in a hetero-privileged society was of no concern in 1952. In effect, those individuals who suffered mental hardship due to the sensation of Otherness arising from non-heterosexual desire and non-traditional gender presentation were the ideal citizen, the civilian framed by the investigative report as exercising willpower “or for other reasons” – perhaps akin to institutionalization or medical oversight – not engaging in homosexual activity. In essence, the Subcommittee on Investigations illustrated Kempf’s (1920) concept of measuring social fitness via the health of “the herd.” By agreeing that latent homosexuality

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and its associated psychological distress was of no consequence to their investigation due to the belief that delayed homosexuality indicated an effort to counter homosexual tendencies, the congressional body effectively deemed which citizens were problematic to “the herd” and which citizens must be brought back in line with “the wishes of the herd.”³⁷

According to the findings of the investigation, the psychologically immature homosexual posed a unique threat to a nation struggling with intensifying Cold War anxieties. According to the investigation’s findings, all “sex perverts” were susceptible prey to “foreign espionage agent[s]” due to a “lack of emotional stability ... and weakness of their moral fiber” (S. Rep. No. 81-241, 1950, p. 5). The tendency of non-heterosexual individuals to “congregate at the same restaurants, night clubs, and bars” was considered a danger to military and federal intelligence due to the possibility of homosexual seduction by foreign spies in such locales (S. Rep. No. 81-241, 1950, p. 5). Because blackmailers could easily target homosexuals for financial gain at the threat of disclosing their sexuality, the report reasons, infiltrators could use similar tactics to extract confidential information from government and military employees (S. Rep. No. 81-241, 1950, p. 5).³⁸ “It is an accepted

³⁷ The Subcommittee on Investigations’ interest in outlining homosexuality as contrary to the norm of social standards can be identified in the following passage:

Overt acts of sex perversion, including acts of homosexuality, constitute a crime under our Federal, State, and municipal statutes and persons who commit such acts are law violators. Aside from the criminality and immorality involved in sex perversion such behavior is so contrary to the normal accepted standards of social behavior that persons who engage in such activity are looked upon as outcasts by society generally. The social stigma attached to sex perversion is so great that many perverts go to great lengths to conceal their perverted tendencies. This situation is evidenced by the fact that perverts are frequently victimized by blackmailers who threaten to expose their sexual deviations. (S. Rep. No. 81-241, 1950, p. 3)

³⁸ Blackmail of suspected homosexual individuals seemed to be a fascination of the committee, who mention the possibility of coercing money or information out of homosexuals in at least three areas of the report (S. Rep. No. 81-241, 1950). Early in the report, the committee ties homosexuality, criminality, and social prejudices regarding homosexuals as security risks due to the fact that they can be easily blackmailed (S. Rep. No. 81-241, 1950, p. 3; see Footnote 37). Ironically, the committee does not recognize the extortion of non-heterosexual individuals as functioning within the influence of social prejudices linked to sex, sexuality, and difference. Rather, the committee weaves these nefarious activities into a broader definition of homosexuality via

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fact among intelligence agencies,” explains the committee, “that espionage organizations the world over consider sex perverts who are in possession or have access to confidential material to be prime targets where pressure can be exerted” (S. Rep. No. 81-241, 1950, p. 5).

At the time of its authoring, the report notes that 4,954 charges of homosexuality and sexual perversion had been recorded within military and civilian government employees since January 1, 1947 (S. Rep. No. 81-241, 1950, p. 7). Of these cases, eighty-eight percent (4,380) originated from the armed services and twelve percent (574) involved civilian employees in government positions (S. Rep. No. 81-241, 1950, p. 7). Between 1947 and 1949, however, only 192 cases of suspected homosexuality and sexual perversion were reported within civilian government employment, yet this number increased by almost two hundred percent (382 cases) in 1950 alone (S. Rep. No. 81-241, 1950, pp. 7-8). To the investigative committee, this signaled a failure within civilian branches of the government to root out homosexuality without congressional oversight (S. Rep. No. 81-241, 1950, p. 8).

Senate Report Number 81-241 resulted in several important government sanctions against non-heterosexual individuals between 1950 and 1953. Based on the committee’s findings that the FBI successfully used fingerprinting to avoid hiring suspected criminals, the government required all civilian applications for federal employment to be cross-referenced with national fingerprint and arrest records (S. Rep. No. 81-241, 1950, p. 10). In addition, new methods of tracking individuals dismissed from government employment were developed in order to prevent re-hiring of suspected homosexuals into other federal positions

moralistic judgments of non-heterosexual desire, judgments that legitimate the victimization of homosexuals by blaming them for the atmosphere of homophobia supporting illegal activities such as blackmail. In essence, the committee notes that while blackmail is also illegal, homosexuality is far more deplorable than other criminal activities and deserves to be victimized by non-heterosexuals, rather than ameliorating the safety of threatened populations.

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(S. Rep. No. 81-241, 1950, p. 10). Most importantly, the congressional committee suggested that an overhaul of criminal statutes and penalties be conducted within the municipality of Washington D. C., which downgraded legal prosecution of homosexuality to “disorderly conduct” from charges of sodomy, attempted sodomy, sexual solicitation, or indecent exposure (s. Rep. No. 81-241, 1950, p. 16). Three years after these measures were enacted, President Eisenhower signed Executive Order 10450, which categorized allegations of homosexuality as grounds for dismissal from federal employment, “further institutionaliz[ing] homophobia in American society, [utilizing it] as a basis for government hiring and firing until the 1970’s” (Eaklor, 2008, p. 87).

In addition to restructuring government employment practices, the representation of non-heterosexual desire and identity in Senate Report Number 81-241 influenced the way civilian society conceived of and portrayed homosexuals in popular media. A 1959 article in Pageant Magazine notes an important social tension between the way homosexuality “revolted” the average U.S. citizen to the point of “prevent[ing] them from arriving at much more than a wry or uneasy tolerance” and the common desire of all citizens “to live as nearly guilt-free lives as possible” (Walker, 1959, “Society and the Homosexual”). “Homosexuals are neither fully approved nor condemned outright by our culture,” explains the author, elaborating that “American public opinion and law, society’s twin agents for implementing its will, are divided and confused by the subject” (Walker, 1959, “Society and the Homosexual”). What was not muddled, however, was the negative regard central to hegemonic ideals concerning non-normative sexuality. Among the many heterosexist formulas rationalizing it as inferior, homosexuality was commonly portrayed as an aberrant stage in the development of mature heterosexuality, the neurotic result of failed attempts at

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heterosexual relationships, a temporary interest in homosexual sex sparked by coercion under homosocial living arrangements, or a “lack of anything better” (Walker, 1959, “Every Second Bachelor,” “The Different Types”). Although commentators of the mid-twentieth century may have been aware of their prejudices, “The lurking, half-submerged hostility we feel toward homosexuals,” explains Walker, “is the result of whispered echoes of old, possibly pre-historic taboos in our ears” (“Why we feel the way we do”).

The diagnosis of “acute pernicious homosexual panic” has affected the way the nation has processed non-heterosexuality within medical, psychiatric, military, government, and state-level law. While Dr. Edward Kempf’s theory of psychiatric ailments centers on the way non-normative sexuality functions through the body of suspected and latent homosexuals, this chapter has also illustrated that Kempf’s theory relies on eugenic modes of thought that fold homophobia into the prescription and diagnosis of the disorder. As we shall see in the next chapter, arguments aimed at reinstating social citizenship in the McInerney case engage in a similar form of dehumanization, in comparison to Kempf’s diagnosis.

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Brandon McInerney, Social Privilege, and the Reinstatement of Social Citizenship

“I stood up. My head was turning. Salt was in my mouth. The room seemed to rock, as it had the first time I had come here, so many lifetimes ago. ... Something had broken in me to make me so cold and so perfectly still and far away.”

– James Baldwin (2000/1956), *Giovanni’s Room*, p. 140

“[T]hese kids didn't know what it was to be loved. And love is a strong thing to have. And it's probably one of the best things to have. And they never felt it. And it's just sad to see that society is like that. ... [T]hat’s a perfect example of why the world is so cold.”

–Pally D, Personal Interview, 2012

Introduction: (Ir)Rationalizing Hate

Jove Westerman and I sat in a small conference room with gentle, sky-blue walls and a sturdy wooden table. A small row of seven glass panes at the top of the smallest wall allowed passage to a golden ribbon of sunlight that settled across the table’s grain. Over the next two hours, the ribbon of light seemed to slide down the length of the table and onto the surface of the walls, illuminating black and white landscapes, fused glass wall-sculptures, and small canvases layered in oils and pastels. On the wall opposite the small windows, the disembodied blue-velvet necks, wrists, and fingers of jewelry mannequins silently modeled adornments composed of sculpted wire and semiprecious gemstones.

Nestled within a small mountain cirque, this building was home to a collective of artists who had settled in Simi Valley, a small town overlooking Ventura County’s longest stretch of citrus, flower, and vegetable fields. “It’s a perfect place for inspiration,” said Westerman of the town’s vista, “until the different citrus and flower blights come. Then it becomes a very gray place. It happens every few years.” A portrait artist and college painting instructor by trade, Jove Westerman had attended several days of the

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King/McInerney trial at the request of a friend interested in producing a private collection of courtroom drawings in only black pencil and ink. Having worked on her own artistic endeavors before, Westerman sympathized with her young friend, offering him drawing pads, markers, and pencils from her own collection to use on the project, as well as driving him to trial proceedings in Chatsworth, California.

Although she had not attended the whole trial, Westerman had followed the case closely, collecting newspaper clippings and website addresses of important articles in a large photo album. During our conversation, Jove Westerman recounted how her feelings about the trial evolved from sympathy towards Lawrence King to empathy for Brandon McInerney:

I was living in Marin County when Larry was murdered. ... I wanted Brandon to die. I was personally just [like]... “He’s slime! He’s nothing!” ... But Brandon was completely abused and treated like crap, and yet he was aspiring in school, he was on the Honor Roll. ... And he couldn’t just stay on track. ... And, as liberal as we want to be in the way that we accept each other, we’re just not there yet. Especially for juveniles. ... I don’t think [Brandon] had a clue what he did. I don’t think he knew that he just sent shockwaves through this entire country. He wanted the irritation to go away.... And he was being taught by his parents [who] beat each other up for fun, and then the mom’s a meth-head. (Jove Samantha Westerman, Personal Interview, 2011 Transcript p. 2)

From the early reports Westerman had read, the case seemed to be a straightforward instance of hate-motivated murder emerging from a case of anti-gay bullying (Jove Samantha Westerman, Personal Interview, 2011 Transcript, pp 2-3). When reports expanded to include home and family circumstances, however, Westerman began to develop a sense of empathy towards Brandon McInerney. When I asked Westerman what her response was to individuals that disregarded those life circumstances, she stated, “Confused. It was easier [for them] to hate the hater. ... They hate the hater. They will only see the hater there” (Jove Samantha Westerman, Personal Interview, 2011 Transcript, p. 5).

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This chapter is about the ways narratives of hate-motivated LGBT murder shift and change over time, deploying discursive techniques aimed at minimizing culpability or punishment. In the case of Lawrence King and Brandon McInerney, these discourses intertwined to pose questions pertinent to culpability, juvenile rehabilitation, and Brandon McInerney's unrealized potential as a future citizen. Simultaneously, these discourses had the effect of diverting attention away from factors central to the categorization of hate-motivated murder, such as perceived sexuality, gender identity, or ethnicity. Essentially, media- and community-based narratives rationalizing Brandon McInerney's actions posed a social quandary rooted in the potential value of one boy's life over another boy's. While subtle in its assertion, this riddle was phrased by the Defense team as: "We've already lost one boy, let's not lose another" (Barlow, 2011o).³⁹ While the Defense Attorney's assertion

³⁹ In an impassioned closing argument, Defense Attorney Scott Wippert is reported as asserting the following argument:

"The law says you can't vote out of sympathy or passion but it doesn't say you have to leave your heart at the front door and your soul in the hall. ... We lost one boy, let's not lose another." ... [Wippert] stressed McInerney was a 14-year-old boy who was a good kid that made a very bad decision when he shot King twice in the back of the head. As he spoke, a photo of McInerney in the months before the shooting was displayed on the wall. Contrasting with the now more than 6-foot-tall, well-built 17-year-old, the boy in the photo is much smaller, smiling a young smile in a skateboarding T-shirt. "He has to live with taking Larry King's life for the rest of his life," Wippert said as he paced before the jurors. "The decision you make in this case you have to live with for the rest of your life." McInerney's mother and other lawyer cried as the end of the drama that has stretched out for more than 3 years neared the end. (Barlow, 2011o)

Within the opening of his argument, Wippert not only notes that the value of one boy's life over another is at stake ("We've already lost one boy...") but also inserts a psychological threat pertinent to the jury. By indicating that the jury must "live with their decision," the Defense attorney is asserting that following the letter of the law is the wrong answer in this case, resulting in cruel and unusual punishment for a juvenile. Unrepresented in this discourse is Lawrence King, who could never be present to argue for (or corporeally represent) his own interests and rights. Rather than represent both boys, Wippert's argument eschews King's rights under the law by asserting that saving one boy (McInerney) is a far more noble judgment than losing two young men. In addition, Wippert's plea requests that the jury place their emotions and personal morals above the law, an act which is expressly forbidden and which the legal system attempts to limit during the jury selection process. To allow jurors to rely on emotion, moral judgment, or discomfort with the charges at hand is to deny the deceased victim (King) their full rights under the law. To deny judgment based on personal and emotional reasoning is a form of actively "hating the hated" by sidestepping the question of justice and leniency in favor of mistrial, in favor of a breakdown in civil rights and due process for the deceased, in favor of indefinite life detention for the accused.

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does not directly imply any difference between the two boys, such statements rely on silent assumptions that are packed with meanings based on unstated comparisons between McInerney and King. This reality is made clear when we realize that such assertions are actually *modifications of earlier narratives* that silently fold prejudicial assumptions into their worldview and argument when requesting lenience for an accused individual. As one Ventura County citizen noted in a letter to the local newspaper, “McInerney will be tried as an adult because even the judicial system can’t cope with the problem of homosexuality. Sacrificing a second boy won’t help anything” (Ventura County Star, 2010a).

While this chapter investigates a specific instance of hate crime narratives that shift over time, it is also a call to investigate the effects that *perceived normativity* engages during the litigation of LGBT hate violence. An in-depth analysis of this case cannot afford to accept assertions about McInerney’s identity as pure fact just as drawing conclusions about King’s sexuality does not guarantee that we better understand how he defined himself. As I shall illustrate in this chapter, some of the privileges garnered by detailing violent narratives of abuse and neglect may seem counterintuitive at first glance. Yet understanding the ways these details re-formulate and re-cast narratives of anti-LGBT murder by humanizing the accused is essential to understanding why and how mistrials occur.⁴⁰ Ultimately, this chapter will make the case that assertions of sexual identity, gender orientation, ethnic identity, neurological, or psychological state must be approached as assumptions that garner specific forms of privilege and power for the accused; these attempts to assert power are especially important when we remember that they occur in the context of a citizen attempting to recover

⁴⁰ While these points are specific to the King/McInerney case, it should be noted that at least four other high-profile LGBT hate murders have resulted in trials that employed similar arguments. For more information, please see Appendix A, which details these four cases.

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forms of personhood that, due to legal sanctions against the individual, have already begun to erode.⁴¹

In expounding on the ways in which these narratives shift and produce various privileges within the context of criminal litigation, this chapter will illustrate how narratives of Brandon McInerney's life leading up to the murder centered on family abuse, neglect, sexual harassment, and White supremacist ideology. By incorporating theories of neonatal and childhood development advanced in the first chapter, this chapter will investigate how neglect, child abuse, and racial (mis)education manipulated narratives in a way that recast McInerney's culpability for the murder onto other targets. In accomplishing this analysis, this chapter will move through several sections highlighting important aspects of McInerney's defense narratives. After working with Westerman's concept of "hating the hater," the subsequent section will detail the charges brought against McInerney by the District Attorney's office and the resulting social outcry, intertwining multiple community voices in an effort to illustrate the arguments made in favor of McInerney throughout the case. The chapter then moves to an analysis of how abuse, neglect, and racist ideology were used to refigure Brandon McInerney's life narrative leading up to King's murder. The chapter concludes with a meditation on the way that privileges arising from normativity allowed McInerney to assert a specific kind of "body-identity" throughout the trial, while

⁴¹ The phrase "changing and eroding forms of personhood" is a direct reference to the ways that citizenship and civil rights are diminished for those incarcerated awaiting trial. Individuals who have been accused of a crime and await trial exist within a liminal legal space that classifies them as simultaneously citizen, possessing civil rights pertinent to adjudication of crimes, and non-citizen, bearing the penalties of individuals who await sentencing. In such a case, various forms of agency are diminished under the legal rubric that processes both accused individuals and criminals. As such, we cannot refer to McInerney's personhood after the crime as a *full citizenship* in the most conventional sense. Instead, I choose to present Brandon McInerney as existing between citizen and criminal, in a space where personhood based on the access to civil rights is directly challenged with the eminent threat of citizenship revocation.

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Lawrence King remained a disembodied figure fluctuating between corporeal and identity-based formulations. This closing rumination also serves to detail the socio-cultural privileges arising from *perceived normativity*, pointing out that any claim to a “normal” corporeality and identity is in fact a claim to power and privilege.

Having outlined the overall goals of this chapter, I turn to a brief inquiry into the concept of “hating the hater,” as quoted earlier. Although the prospect of empathizing with an individual charged with the commission of anti-LGBT murder may seem counterintuitive to some individuals, Jove Westerman’s experience was a common one among individuals who followed the case. As the local media revealed details about the case, a national commentary concerning the District Attorney’s handling of charges quickly emerged. The origins and central points of contention within this discourse are many, yet they all come to a shared finality calling for a more lenient approach to penalties brought against those accused of committing hate-motivated murder.

Central to the concept of “hating the hater” is a call to engage in a holistic investigation and representation of an accused individual when approaching cases of hate-motivated LGBT murder. Within this view, the process of drawing conclusions about such crimes is incomplete without a deeper, more nuanced investigation of the accused individual’s life circumstances. Failing to trace the effects of McInerney’s environment assumes a stance engaging violence, hate, and homophobia as inherent to the biological, physical, and cultural characteristics that congregate into the *person* of Brandon McInerney. A framework that accepts violence as inherent to the individual assumes that “the body and its passions, ... the family, and the individual are [best] conceived as timeless and unvarying in nature,” static and sustained throughout the tenure of one’s life (Gatens, p. 61). In

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Westerman's framework, to engage in this one-sided analysis is to accept Brandon McInerney as a fundamentally destructive individual rather than a citizen who, at some point in his life, was taught the subject(s), action(s), and lifestyle(s) specific to a particular code of hate.

To "hate the hater" is to acquiesce to formulaic narratives of violence, effectively criminalizing a suspect in a fashion that refuses to acknowledge the shared humanity of all citizens, whether accused of crimes or not. To "hate the hater" is an active stance that turns away from the reality that criminals, forms of hate, and violent encounters are not self-produced phenomena but are, instead, the product of shared socio-cultural circumstances from which commentator and suspect have both arisen. An analysis of hate violence that does not engage in a holistic process is problematic in that it firmly removes the accused from the realm of the citizen, obfuscating any sense of agency or moral struggle by preemptively assigning the monolithic subjectivity of the criminal onto the accused. Westerman's comments point to the need for an analysis of anti-LGBT hate murder that overcomes simplistic narratives of perpetrator and victim, criminal and citizen.

At first glance, the notion of a holistic process that engages the many life circumstances seems to be a noble endeavor, actively refuting the state's call to incarcerate criminals as inherently harmful not only to the human being, but also to the health of the society enacting such penalties. Certainly, there could be no harm in advocating for rehabilitation rather than incarceration. And with great reservation, I do concede that a holistic view of an accused individual's life is warranted in any case of violence, whether hate-oriented or not. To do justice to an individual means to understand their circumstances, a reality that our current judicial system does not reflect.

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Yet the argument against “hating the hater” became anything but productive in the context of the (non-hetero)sexually charged King/McInerney case. When allowed to progress, arguments in favor of such a comprehensive view of McInerney’s circumstances hinged on dehumanizing Lawrence King, posthumously chipping away at the tenuous rights he attempted to assert during his short life, approaching the threshold of blaming him for his own murder. One Ventura County local summed up the whole of the situation as a “case of over-tolerance” in an editorial nettled with homophobia, stating,

Larry King, the shooting victim, may have been spared this horrendous murder if the middle school’s administrative and teaching staff had done their jobs. ... King, an open homosexual, started wearing suede high-heel boots, tight girl’s jeans, and eye shadow to school. ... [F]rom the testimonies given by his teachers, they failed to exercise any discipline towards King. ... Since King was gay, was he given a pass? ... King was given a pass because his teachers were fearful of offending him or being labeled a homophobe. What other reason can be given for teachers who enforce dress code rules for heterosexuals, but not for a homosexual teen? It’s called discrimination against heterosexuals! (Lapides, 2011)⁴²

Rather than engaging in a holistic analysis of the factors that led up to King’s murder, such analyses dispose with subtle, nuanced understandings of how King and McInerney influenced one another, focusing instead on the act of humanizing McInerney. In this short

⁴² Interestingly, Lapides’s 2011 editorial illustrates a gross misunderstanding of the school’s role in the case. After multiple teachers sent King to the office for wearing clothes or make-up that they deemed as violating the dress code, the school began contacting legal advisers within the district for guidance with the situation. The district’s response was to ask school officials if King was engaging in behavior that any young woman could engage in without being reprimanded.

If this testimony is true, we can safely conclude that the subject of rights as advanced by the district does not concern *sexuality*, but rather concerns *gender expression*. As advanced during trial, if the issue concerned cross-dressing, sexuality was not in question unless Brandon McInerney *perceived* Lawrence King as homosexual specifically because he engaged in cross-dressing. In either case, California state law protects both sexual identity and gender expression in public schools, signaling that both the district and the school took adequate measures in allowing King to express his gender identity in a way that comported with the school dress code. To suggest that King’s choice of clothes and the way the school administration processed a *perceived* transgender identity were the sole mitigating factors in King’s murder is to suggest, rather poorly, that McInerney had no culpability due to the fact that he was unable to control his multiple queer phobias. It is also an argument that suggests no heterosexual individual need control their fear, disgust, or otherwise negative views of LGBT identity, suggesting that such views are a proper impetus to violence.

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excerpt, the author attempts to malign King by presenting his gender presentation as non-normative (a boy wearing girls' clothing), incompatible with the high school's dress code, and somehow leveraging homosexual influence over heterosexual students. The author unconsciously conflates gender presentation (styles of dress) with a readable, easily parsed sexuality (homosexual or "gay"), manipulating the complex intersection of gender expression, sexuality and sexual identity, children's safety, and legal statutes into an oversimplified equation of homosexual privilege subverting heterosexual rights. Folded into this rant is an assumption that heterosexual students should possess the right to dictate a given student's gender presentation should it infringe on their comfort zone rather than fully engaging state codes mandating non-discrimination for gender identity presentation.

In addition to actively maligning King, such arguments do a particular kind of disservice to deeper inquiries into hate crimes. By deploying multiple forms of homophobia, transphobia, and heterosexism in otherwise mainstream rationalizations of the crime, these attempts at a "holistic views" produce *irrational readings* of civil rights laws and local statutes that protect sexual minorities. Inculcated in such arguments is an attempt to assert the idea that these laws and statutes were created in order to infringe on the rights of a majority, who should possess the will to correct such imbalances via intimidation, violence, and terror.

In addition to briefly outlining the overall goals of the chapter, this section has noted that some attempts to rationalize violence are, themselves, irrational calls to eradicate protections for LGBT individuals. Couched within the rhetoric of presenting a comprehensive view of a given crime, these rationalizations of violence turn to dehumanization of the victim and deflection of culpability. But how do such claims

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transform narratives of hate crime with regard to the judicial process? What social aspects allow such claims to be labeled as more believable than the process of calling out hate within a given anti-LGBT attack? In setting up an analysis of these questions, I would like to present the reader with context regarding the development of McInerney's defense. The details of how McInerney's defense arguments developed are crucial to understanding how the narrative of the King murder was manipulated over time, ultimately resulting in a mistrial.

Accusations

While the issue of murder was not in question during the King/McInerney case, the issue of Brandon McInerney's prosecution became immediately salient on a local and state level. Two days after the shooting, the Ventura County District Attorney's office had charged Brandon McInerney with murder and a hate crime, choosing to process him in adult court due to the gravity of his actions (Foxman, 2008b; Hernandez, 2008a; Ventura County Star, 2008b). Of the six charges brought against McInerney, five were enhancement charges ranging from murder and lying in wait to official penalties for carrying and discharging a firearm during the commission of a felony (Author's Field Notes, July 19, 2010).⁴³ The

⁴³ According to the Ventura County Superior Courthouse docket, the following charges were filed under Case Number 20080035782:

1. Violation Number 187(a), Willful, Deliberate, Premeditated Murder
2. Violation Number 12022.53(d), Personal and Deliberate Discharge of a Firearm (Enhancement Charge)
3. Violation Number 422.75(a), Hate Crime (Enhancement Charge)
4. Violation Number 190.2(a)(15), Murder while Lying in Wait (Enhancement Charge)
5. Violation Number 602(6)(1), 14 Years Or Older When Committed (Enhancement Charge)
6. Violation Number 707(d)(2)(B), Minor Using a Firearm During Commission of Felony (Enhancement Charge) (Author's Field Notes, January 19, 2010).

The phrase "Enhancement Charge" indicates that the charge does not carry a penalty alone, but can be tacked onto another primary charge for "penalty enhancements," which significantly alter punishment in various ways including prolonging imprisonment, qualifying the accused for a specific level of prison security, or manipulating the possibility and qualifications for parole.

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compounded punishment of these six charges carried a potential maximum sentence of fifty-one years to life, or as the Deputy District Attorney explained, “The first-degree murder [charge] carries 25 (years) to life. The use of a firearm carries 25 to life, and the hate crime carries an enhancement of one to three years” (Hernandez, 2008a).

As investigations progressed, pressure mounted from community, media, and legal sources condemning the District Attorney for pursuing adult charges against McInerney. On February 17, two days after releasing charges against the Defendant, the Ventura County Star ran an article titled, “Juveniles tried as adults up 170%: DA cites gang prosecution” (Hernandez, 2008b). While the Ventura County District Attorney’s Office had prosecuted only five juveniles as adults in 2005, “the number of juvenile offenders tried as adults [had] nearly tripled from 10 in 2006 to 27 in 2007,” (Hernandez, 2008b).⁴⁴ Two months after releasing adult charges against McInerney, a coalition of national civil rights organizations “including Lambda Legal, the National Center for Lesbian Rights, and the Transgender Law Center” delivered a statement to the District Attorney requesting nullification of adult charges and the reinstatement of juvenile charges (Ventura County Star, 2008g).⁴⁵ The coalition’s statement was reported to have read, in part,

We are saddened and outraged by the murder of junior high school student Lawrence King. ... At the same time, we call on prosecutors not to compound this tragedy with

⁴⁴ The 2008 article notes that little data regarding the trend of trying juveniles as adults exists within the records preserved by the litigation system. The same article in which the Ventura County Senior Deputy District Attorney claimed 85% of cases that tried juveniles as adults were gang-related, the author notes, “Rafelson said most of the juvenile offenders who are tried in adult courts live in Oxnard because there are more gangs there. He said they don’t keep records of their ethnicity” (Hernandez, 2008b, “I think it’s a mistake”). This convention seems out of place within the context of our current criminal justice system, especially when the percentage of minorities is higher in Oxnard than any other city in Ventura County. As we shall see, however, the assertion of “high gang populations” conveys a racial characteristic on a certain community due to the fact that in popular parlance, the word “gang” itself is racialized.

⁴⁵ Other organizations that signed on to the 2008 request to charge McInerney as a juvenile included: The American Civil Liberties Union of Southern California, Equality California, Gay Straight Alliance Network, Los Angeles Gay and Lesbian Center, the National Gay and Lesbian Task Force (Ventura County Star, 2008g).

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another wrong. We call on them to treat the suspect as a juvenile, not as an adult [in being] held accountable for his actions. [W]e support the principles underlying our juvenile justice system that treat children differently than adults and provide greater hope and opportunity for rehabilitation. (Ventura County Star, 2008g)

Ten days after the District Attorney's office announced that it would seek adult charges against Brandon McInerney, the local newspaper ran a feature story on the Defendant with the title "Suspected school shooter's childhood marred by violence: But friends can't believe Brandon McInerney did it" (Barlow, Carlson, and Wilson, 2008). In the longest article about the case that would be published in four years, the Ventura County Star reported on McInerney's life environment ranging from his birth circumstances, his childhood, and the addictions that plagued his parents. According to the article, Brandon McInerney's parents experienced frequent bouts of domestic violence at the hands of his father, William McInerney, who often slapped, choked, and punched his wife, Kendra, in front of his sons, and once resorted to shooting her in the arm with a small pistol as the young mother tried to escape an altercation (Barlow, Carlson, and Wilson, 2008, "Childhood marred by violence"). After his parents separated and authorities discovered his mother suffering from a severe methamphetamine addiction, Brandon McInerney was ordered to live with his father (Barlow, Carlson, and Wilson, 2008, "An active kid"). Despite these circumstances, McInerney seemed to thrive in academics, martial arts, the Young Marines, surf camp, and other extracurricular activities in which his father demanded he participate (Barlow, Carlson, and Wilson, 2008, "An active kid"). The article advanced what would become some of the core arguments for leniency throughout the next three years — a pastiche of stories ranging from family abuse and addiction, to McInerney's ability to "stay on track" throughout his life until the months preceding the murder.

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Ultimately, the Ventura County District Attorney's office claimed that it was carrying out the wishes of citizens via Proposition 21, a law passed by voters in 2000 that contained provisions allowing prosecutors to present adult charges against juveniles under specific circumstances. Aimed at combating rising gang violence among juveniles, the statute allowed prosecutors the discretion of charging juveniles age 14 and older as adults if they have committed violent murder, sexual assault, kidnapping, torture, carjacking, or criminal street gang activity.⁴⁶ Although McInerney's Defense asserted that processing his case in

⁴⁶ California Proposition 21 was a voter-passed measure that amended a 1998 bill known formally as "The Gang Violence and Juvenile Crime Prevention Act of 1998." The original 1998 measure states the following within its opening lines:

While overall crime is declining, juvenile crime has become a larger and more ominous threat. The United States Department of Justice reported in 1996 that juvenile arrests for serious crimes grew by 46 percent from 1983 to 1992, while murders committed by juveniles more than doubled. According to the California Department of Justice, the rate at which juveniles were arrested for violent offenses rose 54 percent between 1986 and 1995. ... Criminal street gangs and gang-related violence pose a significant threat to public safety and the health of many of our communities. Criminal street gangs have become more violent, bolder, and better organized in recent years. ... The problem of youth and gang violence will, without active intervention, increase, because the juvenile population is projected to grow substantially by the next decade. ... A murderer is more likely to be 17 years old than any other age, at the time that the offense was committed. ... In 1995, California's adult arrest rate was 2,245 per 100,000 adults, while the juvenile arrest rate among 10 to 17-year-olds was 2,430 per 100,000 juveniles. ... The rehabilitative/treatment juvenile court philosophy was adopted at a time when most juvenile crime consisted of petty offenses. The juvenile justice system is not well-equipped to adequately protect the public from violent and repeat serious juvenile offenders. ... Juvenile court resources are spent disproportionately on violent offenders with little chance to be rehabilitated. If California is going to avoid the predicted wave of juvenile crime in the next decade, greater resources, attention, and accountability must be focused on less serious offenders.... ... Dramatic changes are needed in the way we treat juvenile criminals, criminal street gangs, and the confidentiality of the juvenile records of violent offenders if we are to avoid the predicted, unprecedented surge in juvenile and gang violence. Californians deserve to live without fear of violent crime and to enjoy safe neighborhoods, parks, and schools. This act addresses each of these issues with the goal of creating a safer California, for ourselves and our children, in the Twenty-First Century. (State of California, 2000)

Among other measures, Proposition 21 allowed juveniles aged 14 or older who committed violent crimes such as murder, murder while lying in wait, use of the firearm in the commission of a crime, kidnapping, torture, or forceful and violent sexual acts to be prosecuted as adults. As part of this measure, prosecutors were no longer required to have a hearing before a judge in asserting criminal charges against juveniles, gaining the ability to charge juveniles as adults without immediate judicial oversight. The official textual amendment citing this change in legal power is recorded in a change to section 602 of the California Welfare and Institutions Code, which now reads: "Any person who is alleged, when he or she was 14 years of age or older, to have committed one of the following offenses shall be prosecuted under the general law in a court of criminal jurisdiction: (1) Murder ...," while later including "murder while lying in wait" and the use of a firearm in the commission of a crime as elements that may be used to enhance criminal charges against juveniles (State of California, 2000).

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adult court was akin to “cruel and usual punishment,” the judge overseeing the motion to nullify adult charges disagreed, saying, “I cannot say that this is unconstitutional” (Hernandez, 2008d). In a separate comment to the media, the District Attorney noted that if the judge had granted juvenile charges, a “Lying in Wait special circumstance” could be added to the charges, which would mandate the trial returning back to adult court (Hernandez, 2008d).⁴⁷ Despite the outcry by community members and state organizations, the District Attorney’s motion to prosecute McInerney as an adult was granted full passage by a county judge on Friday, July 25, 2008, roughly five months after the classroom shooting took place (Hernandez, 2008f).

After three months of being questioned by the media and local community members regarding the charges brought against McInerney, the District Attorney would announce that a large cache of White supremacist memorabilia, literature, videos, regalia, and original artwork had led them to pursue a hate crimes enhancement in the case (Hernandez, 2008f). Referring to the finding as a “trove of White supremacy related items,” the Deputy District Attorney is quoted as stating, “[T]hese items depict [a] racist skinhead philosophy [and include] hand-drawn sketches of swastikas, references to the 14 Words, and the number 88, which is commonly used by skinheads to represent the words ‘Heil Hitler’ and ‘Hitler’s SS’”

⁴⁷ A 2008 news article reports the following in reference to the Defense’s motion for a trial in juvenile court: “The law does not allow you to murder anyone at any age,” [Deputy District Attorney] Fox told the judge. She said that while she might feel “sympathy” toward McInerney because of his age, there is no legal defense for not trying him in adult court, she said. *[sic]* ... Fox told the judge that state law mandates that if there are special circumstances in a murder case involving juvenile defendants, the district attorney is required to file in adult court. So, even if the judge sided with [Defense Attorney’s] legal arguments, Fox said she could, hypothetically, go back and file a “lying in wait” special circumstance against McInerney and by law, the case would have to be transferred back to adult court. (Hernandez, 2008d)

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(Hernandez, 2008f).⁴⁸ The Ventura County Public Defender, who began representing McInerney after the Defendant's original lawyer dismissed himself from the case, was noted as commenting, "It's a way for them [the District Attorney's Office] to justify prosecuting a 14-year-old in this manner without any evidence [that he] had racial animus.... It's just a stretch. It's just a large stretch" (Hernandez, 2008f). While both the Public Defender and the community struggled to parse the connections between White supremacy and anti-LGBT hate crimes, Brandon McInerney's family went through a process of firing the Public Defender and hiring a defense team from Los Angeles County (Hernandez, 2008f).⁴⁹

Three years later, as the Ventura County community continued debates concerning whether adult charges were appropriate to bring against McInerney, a psychologist associated with the Defense team would assert that Brandon McInerney killed Lawrence King while in a dissociative state. In the psychologist's estimation, "Years of abuse and neglect built up a pool of rage and anger in Brandon McInerney, and that anger was unleashed when Larry King began making unwanted sexual advances toward him in 2008" (Barlow, 2011g). After

⁴⁸ In her opening statement, Deputy District Attorney presented a slide noting the "14 Words," a set of words espoused by high-ranking White supremacist David Lane, during his 190-year prison sentence. Containing exactly fourteen words, the message reads, "We must secure the existence of our people and a future for white children" (Author's Field Notes, July 5, 2011). In addition to discussing this directive, District Attorney Fox noted the significance of the number 88 within White supremacist ideology. In addition to signifying the letters "HH" and the phrase "Heil Hitler," the number 88 represents a set of 88 "precepts" delineated by David Lane as an extended directive accompanying the "14 Words"; the 34th precept notes that homosexuality is a crime against nature arising from "filthy and useless" individuals who should be exterminated, regardless of race or ethnicity (Author's Field Notes, July 5, 2011).

⁴⁹ By October 14, 2008, Brandon McInerney had been represented by a total of three lawyers and a legal custodian of the court in a controversial process that had prosecutors and community members questioning the aim of so many legal maneuverings. After being appointed to Defense Attorney Brian Vogel, the Ventura County Star announced that the attorney had stepped down from the case and handed all materials over to the Ventura County Public Defender (Ventura County Star, 2008f). After working with the Public Defender for roughly five months, McInerney's family decided to fire the attorney in favor of a private defense team from Los Angeles (Hernandez, 2008f). In response, the Public Defender requested that the Court appoint a neutral counsel for McInerney to ensure that he understood the repercussions of his decision; after this neutral counsel worked with McInerney for one month and submitted a report to the Court, McInerney was allowed to work with Defense Attorneys Scott Wippert and Robyn Bramson, at the request of his family (Hernandez, 2008; Hernandez, 2008g).

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passing McInerney in the hall and saying, “What’s up, baby?” McInerney was reported to have erupted “into such a fit of rage that he could only think of harming King afterward [because he] had never been so disrespected or disgusted in his life” (Barlow, 2011h; Author’s Field Notes, August 15, 2011). As the professional’s testimony continued, the psychologist claimed that McInerney “was having second thoughts as he sat behind King the next morning, but when he heard King say he wanted to be called [Leticia,] it sent him over the edge” (Barlow, 2011g). Describing the comment as the factor that “popped the balloon,” the Defense’s expert noted, “Someone enters a state of dissociation after they can’t escape their normal life. They are so overwhelmed they turn inside mentally and are not completely aware of their actions” (Barlow, 2011g). During the District Attorney’s cross-examination of the Defense witness, the Defense’s psychologist confirmed that over 12 hours passed between Lawrence King’s remark and the murder, and that McInerney returned home to retrieve the firearm after forgetting it on the morning of the attack; after the witness conceded to these points, the District Attorney retorted “You said the defendant had to flee inward to escape? ... Luckily he happened to have a fully loaded gun in his pocket when he wanted to escape” (Barlow, 2011g; Barlow, 2011h; Author’s Field Notes, August 12-15, 2011). In response to the prosecutor’s questioning, the Defense psychologist reiterated that King’s addressing of Brandon McInerney as “baby” associated the defendant with homosexuality, angering him; upon questioning whether McInerney ever called Lawrence King “fag” or “queer,” the psychologist noted that such words amounted to name-calling while “King’s comments [were] accompanied [by] sexual harassment” (Barlow, 2011i).

In challenging the Defense’s psychologist, the District Attorney would advance the views of a criminal psychologist who directly refuted arguments about how McInerney’s

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childhood served as a factor in the murder. One week after the Defense's witness testified, criminal psychologist Chris Mohandie would describe three factors challenging the theory of dissociation, namely, planning the murder, locating and transporting a firearm, and enacting a pre-arranged strategy (Barlow, 2011). In response to the Defense's claim that McInerney's childhood abuse was a mitigating factor in the murder, the Ventura County Star noted that Mohandie, "did agree that McInerney was abused as a child, but said it is not the cause of his violent behavior, only something that put him at risk for such behavior. Many abused children go on to lead normal lives" (Barlow, 2011).

Two days after hearing from the prosecutor's psychologist, Judge Charles Campbell charged jurors with the duty of reviewing over 100 pieces of evidence and distinguishing between three potential verdicts and two enhancement charges. "You must decide what the facts are," began Campbell, "it is up to you and you alone to decide what happened" (Barlow, 2011m). Reminding the jury that the prosecution was required to prove its case beyond a reasonable doubt, he outlined the following possible verdicts that the jury could legally arrive at during judgment:

Although [the jury] can find McInerney guilty or not guilty of first- and second-degree murder, there is no option of finding him not guilty of voluntary manslaughter. ... [Judge Campbell] explained McInerney would be guilty of first-degree murder if it was proved he acted with premeditation or that he was lying in wait. Second-degree murder is the intent to kill without premeditation. The jury could find him guilty of voluntary manslaughter if a quarrel led to provocation, the killing happened in the heat of passion and McInerney reacted as any average person would have. (Barlow, 2011m)⁵⁰

⁵⁰ With regard to the final possible verdicts presented to the jury, the charges of Murder I and Murder II were originally presented to the jury at the opening of the trial while the possibility of Voluntary Manslaughter was admitted by the judge three days before the case was turned over for jury consideration (Barlow, 2011). The Deputy District Attorney fought vigorously throughout the trial to preclude the possibility of a Voluntary Manslaughter verdict, "arguing there was insufficient evidence to show King provoked McInerney or that McInerney acted in a heat of passion" by noting that no single witness could accurately verify an instance in which King provoked McInerney, but over 10 witnesses recounted the same description of an execution-style

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In addition, the jury would have to determine whether the charges of lying in wait, use of a firearm, or hate crime enhancements were applicable (Associated Press, 2011; Barlow, 2011m). On the final day of trial, directly before the case was passed to jurors, Deputy District Attorney Fox reminded the jurors that age could in no way factor into final deliberations (Barlow, 2011n).

Three years, six months, and fourteen days after Lawrence King was shot in the back of the head twice, the case was officially turned over to a jury in Chatsworth, California, roughly forty miles away from the city in which the execution occurred. In total, testimony spanned 39 days over one month and three weeks, from July 5 to August 26, 2011. After less than three days of deliberation, the jury noted that they could not reach a conclusion, and the judge declared a mistrial on Thursday, September 1, 2011 (Barlow, Harris, M. Hernandez, and R. Hernandez, 2011).⁵¹ According to a report released by the Ventura County Star, “Seven jurors thought he was guilty of manslaughter while five thought he was guilty of murder. The lone juror who spoke to the media ... said the fact that McInerney was 14 at the time of the shooting ... was a big point of contention as jurors deliberated his fate” (Barlow, Harris, M. Hernandez, and R. Hernandez, 2011).

In addition to orienting the reader towards the basic trajectory of this case, this section has introduced select dialogues concerning Brandon McInerney, his life

attack in the same classroom (Barlow, 2011). Sensing that any conviction arrived at by the jury may be placed in jeopardy by an appellate judge, the Court acquiesced to the Defense’s motions, ruling to include Voluntary Manslaughter within the list of possible verdicts presented to the jury; this was a preemptive move on the part of the judge to thwart future claims to mistrial based on extreme and unusual treatment of the accused, Brandon McInerney (Barlow, 2011).

⁵¹ In total, the jurors deliberated 16 hours or less over a period of four days. According to the Ventura County Star, after jurors deliberated for only two hours on the Monday following opening statements, “One of the jurors [was] a college student who [started] classes ... so Ventura County Superior Court Judge Charles Campbell is allowing the jury to work around [that juror’s] schedule. They will also deliberate for only two hours Wednesday if no verdict has been reached” (Ventura County Star, 2011a). This adds up to one 8-hour day of consideration, two 2-hour periods of consideration, and one 4-hour period of consideration.

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circumstances, and attempts to diminish culpability for the murder of Lawrence King. Central to these dialogues is an attempt by lawyers and citizens to humanize Brandon McInerney couched within language that expressly places Lawrence King in opposition, and thus dehumanizes Lawrence King by obscuring various forms of social privilege within both claims of sexual harassment and the motivation for murder. Within this framework, hate arising from heterosexism, homophobia, or racism is called into question as the driving force to commit murder. Instead, culpability is deflected onto other social circumstances, legal policies, or life challenges deemed inappropriate or unfair for the individual in question.

Because the stakes of this framework are so incredibly high in the context of social citizenship, it is not self-evident that age was the sole mitigating factor in the declaration of a mistrial in the King/McInerney case. Aside from the sheer amount of information presented to the jury and its seeming incongruity with the amount of time taken to declare a mistrial, the jury was reminded that age could not be a determining factor in the verdict at every possible juncture, including jury selection, trial opening, jury instruction, and closing arguments. This fact is underscored by the reality that five of the twelve jurors came to the conclusion that Murder I was the appropriate verdict, and refused vacillations between Murder I, Murder II, or Voluntary Manslaughter.

Questions abound. What other factors could have been deemed salient by this jury? What other circumstances were deemed important enough to disregard the instructions of the prosecutor and judge? Is it possible that “age as a mitigating factor” could have been a catch-all phrase for issues deemed salient by the jury, yet politically incorrect and problematic in public life and legal parlance? On the other hand, is it possible that certain forms of socio-cultural privilege could have played a role in the jury’s understanding of the

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central arguments within the trial? These are questions that I wrestle with in the next extended section of this chapter.

Reinstating Social Citizenship via Tactics of De/Humanization

While the last section introduced the reader to the basic timeline of the trial, it also highlighted some important arguments that were used to deflect Brandon McInerney's culpability for the murder of Lawrence King. Although both the Ventura County community and jurors noted that age was a mitigating factor in deciding Brandon McInerney's fate, the use of age in determining judgment or culpability was expressly forbidden at multiple junctures by prosecutors, legal statutes applicable to litigation of minors as adults, and the judge presiding over the trial. Rather than approaching age as the sole mitigating factor in the mistrial surrounding the King/McInerney case, this chapter has approached claims regarding age as folding other discourses and narratives into their logic.

This section will break open these compounded narratives that approach what I refer to as the practice of *de/humanization*. Described succinctly, the process of de/humanization is a process of re-figuring narratives of violence in which a given perpetrator is humanized by presenting arguments whose effectiveness hinge on dehumanizing victims of violence as a form of leverage. This process of dehumanizing victims may be overt, employing prejudicial or hateful ideologies that openly describe reasons for maligning those affected by violence. More often, however, these discourses subtly deploy prejudice, socio-cultural privilege, and hate ideologies in a subtle manner, advancing such arguments via a tightly knit, carefully coded logic of difference. Whatever the particular style of a given argument, the act of humanizing the accused individual is always shored up by the act of dehumanizing the victim of violence within this framework.

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Readers will note that throughout this chapter, I have referred to the ways that narratives have been “folded into” one another when constructing discourses that deflect culpability for hate-motivated murder. In helping the reader to understand what I mean by this phrase, I present a brief image for contemplation. Imagine that in your mundane, daily movements, you come across what seems to be a small mass of paper that has been bunched up and crumpled into a tight ball. At first, it seems like one large sheet of multicolored paper scrunched and wrenched into itself multiple times. You pick at it throughout the day, finding fissures and creases to pull at until the ball of paper begins to reluctantly unravel. The more you fuss over it, the more it comes apart. At some point, your fascination with what has now become a mangled lump of unraveling paper leads you to a conclusion: the original mass was made up of more than one sheet of paper, possibly several. Further attempts to unravel the mass yield more information – each piece of paper is a particular color and shape; different materials have been used to create distinct parcels; every fragment possesses its own unique texture.

Like the image of the tightly wound ball of paper fragments, discourses of de/humanization do not employ one single theme or argument, but incorporate many theories and topics that are twisted into an overall shape or trajectory. These discourses do not progress in a linear or orderly fashion; instead, many arguments are wrenched tightly together in a way where prejudices and assumptions are obscured by a logic that jumps quickly between topics and conclusions. When one topic is examined, it may seem to bleed into another. When one surface is grasped, it may seem like other subjects and discourses are naturally intertwined. In this way, the folding together of multiple discourses seems to create

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a reasonable analysis of a given situation as conclusions subtly roll off of unstated prejudicial assumptions or (mis)readings of the case's facts.

In whole, the act of thinking through whether previous life circumstances have influenced a given case of hate violence is to engage in analysis that places the accused individual in a space of socio-legally sanctioned non-normativity. To consider the subjectivity of a legally accused individual – an individual facing the social death of legally enacted criminality – is to embark upon unstable ground. Similar to the space of considering the “unstated subject” of the first chapter, the move to counter criminal allegations in cases of hate-motivated murder is a form of inquiry that engages socially- and legally-sanctioned states of non-normative citizenship. In many cases of violence, advocating for a Defendant's freedoms is an act that often seems to contradict social norms uncritical of the justice system. To consider the subjectivity of the accused criminal is to face the reality that something is amiss with a given society's judicial system, the way it formulates particular subjectivities, and the socio-legal standards it utilizes when revoking citizenship from certain bodies.

Certainly, the McInerney/King case is not the only case in which a Defendant asserted that prior life circumstances led them to accept violence as an acceptable reaction to troublesome situations.⁵² Yet the assertion that past circumstances remain salient for present cases of violence is not unproblematic. To a very large degree, the notion that criminal accusations are dependent upon a “nature versus nurture” debate hinges on rhetoric that

⁵² At least two cases in this study aside from the King/McInerney case consist of situations in which the Defendant asserted that early family circumstances were important in determining the impetus for hate-motivated violence. In the case of Matthew Shepard, the primary suspect advanced a gay-panic defense by utilizing the assertion that past instances of sexual harassment and/or molestation caused him to unnaturally lash out at Shepard, initiating a “heat of passion” plea (Shepard, 2009). In addition, Fred “F.C.” Martinez's murder and subsequent trial consisted of a court system who attempted to provide leniency for a developmentally delayed individual who had been “miseducated” regarding race, sexuality, gender, and violence.

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destabilizes legal formulas of culpability by manipulating a traditional sense of temporal linearity and legal causality. To utilize the words of Kathryn Bond Stockton (2009), the subjectivity of the accused is a type of queered subjectivity in that it deploys “a host of unexplored temporalities, theories ... shadows of growth ... anti-identity forms ... all of which are waiting to be investigated” (Bond Stockton, 2009, p. 14). The accused individual who challenges judicial formulas by advancing personal histories as salient to a current case of violence opens a narrative space “whereby events from the past acquire meaning only when read through their future consequences” (Bond Stockton, 2009, p. 14).

The notion that a given incidence of violence can be traced back to childhood circumstances of trauma and abuse deploys a specific narrative flow (re)positioning the Defendant as a child whose innocence depends on the circumstances in which they are situated. Within this framework, the child’s future actions are determined by the overall trajectory of care, neglect, or abuse to which they are subject. According to Bond Stockton (2009), this is the normative child, “the specter of who we were when there was nothing yet behind us ... [a] child made strange (though appealing) to us by its all-important innocence” (p. 30).

Within Bond Stockton’s (2009) construction of normative childhood as a specter of innocence is the recognition that approaching “childhood” analytically – *engaging “childhood” as subjectivity* – is an experience reserved for individuals who are not themselves children. The space of the Defendant recalling childhood circumstances leading up to a case of violence can never be coequal to that of a child recounting the circumstances in which their existence is steeped. Within the repositioned narrative space, conventional temporality is suspended: the subjectivity of “the child” is created from the narrative context

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relayed by the speaker's memory; the "innocence" of "the child" erupts from the speaker's adolescent or adult sentiments as a sense of naïveté that has been lost or transgressed, resulting in a state that is "more adult" than "the child." To posit the current adolescent as a child is to engage not only the life circumstances of the accused, but also the socio-culturally defined schema involved in remembering one's childhood. Inaccuracy and incomplete narratives within the space of recollection are accepted as inevitable due to the fact that the experience of childhood "is largely available *to adults* as memory" (p. 5; emphasis mine).

The act of an accused individual recounting salient childhood circumstances in a case of violence, then, is a case of an individual re-formulating a narrative; this recasting locates the origin of criminal activity not within the present individual's mind or thought process but in the accretion of subtle, disorienting psychic injuries. Within this claim, the accumulation of childhood harm results in an identity whose primary method of interacting with the world is rooted in violence.

With respect to the narrative advanced by McInerney's Defense team, however, the above formulation remains one step removed from Brandon McInerney himself. In a very surreal manner, Brandon McInerney appeared extremely silent throughout the litigation of his case; this may have been due to the fact that McInerney never testified about his childhood, his disassociation, or the murder. Instead, family members, psychologists, and teachers testified about a childhood and adolescence full of disappointment, neglect, and physical abuse. Friends testified that McInerney withdrew socially throughout the months leading up to the murder; classmates recounted the details of the shooting from multiple close-range perspectives, describing McInerney's appearance, demeanor, disposal of the

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pistol, and subsequent escape. In whole, McInerney's childhood circumstances, life before the shooting, and the murder itself were all relayed in voices other than his own.⁵³

This distortion of McInerney's elocution is not solely the result of the twisting of subjectivities within the process of narration; rather, the inhibition of the accused individual's speech is one aspect of litigation initiating the process of eroding civil personhood. As Colin Dayan (2011) notes, the process of revoking civil personhood and the creation of the prisoner:

... is a rite of conversion. The change can be described as a passage from possession to deprivation, from plentitude to emptiness. ... To be civilly dead is to be granted a natural life, while encased in unnatural death ... [to be] buried by the law. The body is there, but restrained.... (pp. 56-57)

In the case of Brandon McInerney, the erosion of civil personhood within litigation took the form of a biography stitched together from the testimony of individuals other than the Defendant himself. While McInerney was present for all proceedings, the details of his childhood abuse and resulting psychological state were addressed by a majority of witnesses without his own courtroom participation. In essence, McInerney's ability to speak freely regarding his own life had been revoked by the court and would not be reinstated throughout the entirety of trial proceedings.

What results from this legal construction is a set of interactions that locate various forms of non-normativity within the body of the accused. In speaking for McInerney and

⁵³ Of particular importance in this instance is the way in which the law gathers fragments of speech as evidence in order to identify and apply a judicially-appropriate legal subjectivity to a particular body for the purpose of litigation. Speech may be unavailable due to the individual's own choice, due to legally-imposed silence, or due to the unavailability of the individual to testify (as with Lawrence King). In any of these cases, the judicial system uses the speech and *impression* of other individuals as evidence within a process of *applying legal language onto* a particular body. The ultimate purpose of this evidence accumulation is to weigh the applicability of a given code or statute within litigation against the body-citizen in question in order to (re)classify them for the purposes of the judicial method.

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recasting various childhood experiences as abusive, lawyers, witnesses, and psychological experts initiate a narrative that locates various forms of abnormality within Brandon McInerney's history. The goal of asserting a compounded set of such circumstances does not lay solely in deflecting culpability for violence. Instead, these assertions have the collective effect of asserting a specific form of non-normativity rooted in violence, a form of abnormality so far removed from the baseline of normative citizenship as to mandate the exception of legal statutes at play in order to preserve the rights of the accused.

To be clear, assertions based within de/humanization are not always initiated with the express goal of maligning one individual, although they often result in antagonistic declarations. Rather than examining discourses for residues of power, our current society accepts socio-legal discourses of violence as a form of truth unaffected by patriarchal forms of power inculcated into the state structure. The dilemma involved in de/humanization tactics results from what seems to be a positive act – humanizing the accused by speaking on their behalf regarding previously unknown life circumstances. While the initial point of speaking on the Defendant's behalf can be seen as an altruistic activity, I am interested in the ways in which socio-legal privileges and prejudices influence the discourses with which one individual is advocated for at the expense of another individual's civil rights. While it may seem commonplace for dehumanizing discourses to erupt from controversial cases of violence, accepting such assertions without delving into questions of privilege, prejudice, or power allows multiple forms of oppression to continue unchecked. Instead, my goal in this section is to approach de/humanization as a tactic that is engaged at a social level, where communities, media, families, and the legal system coalesce within the process of crafting narratives necessary to understanding a given case of hate-motivated murder. In such a case,

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socio-cultural prejudices and privileges become inculcated in the narratives of violence produced by a given society.

Having outlined the basic dynamics of the de/humanization process, the remainder of this chapter will turn towards a discussion such arguments engaged during the King/McInerney case. Interestingly, some of the forms of abuse and neglect advanced in Lawrence King's life narrative area also present in Brandon McInerney's biography. As with the first chapter, the first category of de/humanization concerns interpersonal abuse, namely filial abuse and sexual harassment. As I shall illustrate, both of these forms of abuse fit into a rubric of de/humanization aimed at deflecting culpability for violence onto other circumstances or individuals. Ultimately, I shall illustrate that arguments concerning misapplication of the law are also intertwined with narratives of abuse, namely, narratives of the state-sanctioned structural abuse of minors.

Interpersonal Abuse as a Negation of Culpability

In the previous section, I asserted that "childhood" is a subjectivity that relies on the juxtaposition of "innocence" and adolescent or adult knowledge of the world. In addition, the act of asserting a "childhood" separate from the current self is a claim that distorts temporality, locating the accused individual as one possible outcome of a childhood steeped in toxic circumstances. Because adult and adolescent reinterpretations of childhood experiences engage the "child as subjectivity," we can deduce that narratives of childhood trauma are most readily available to individuals who are not themselves children, namely adolescents and adults who are aware of the socio-cultural proscriptions of abusive and/or coercive actions. The process of looking backward in time affords a non-child individual

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recounting a specific aspect of their childhood a broader, more socially complex awareness of the setting, actions, or experience that their narrative expounds.

In approaching how Brandon McInerney was portrayed before and during the trial, I begin by invoking a distinct connection between this chapter and previous chapters. I have argued that life narratives can be queered within a legal context by placing the reading of non-heterosexual sexuality or non-binary gender over the body of an individual who destabilizes traditional notions of gender and sexuality. In the case of Lawrence King, this takes the form of judicial powers mandating readings (and erasures) of sexuality, gender, (dis)ability, and race for an individual who can no longer speak regarding their own identity and experiences. For Lawrence King, this also assumed the rhetoric of a sexually deviant and aggressive child who pushed past socially accepted privileges regarding sex and gender expression, thereby inciting retaliatory violence.

Although Brandon McInerney and Lawrence King may seem to have emerged from wholly different circumstances, there are some basic similarities. Specifically, court testimony during the trial by Brandon McInerney's family indicated that he survived abusive circumstances including maternal substance abuse during pregnancy, child physical abuse, and possible molestation. In addition to these circumstances, Brandon McInerney faced an extremely high degree of neglect from both his mother and father, and from extended members of his family. As we shall see, one aspect of non-normativity etched into the person of McInerney during the trial includes his own realization that neither his brothers, cousins, aunts, uncles, girlfriend, nor his grandparents ever intervened in an effort to ameliorate the abuses he faced.

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Relevant to the claim that a widespread network of neglect impacted McInerney's development, the single most important difference between Lawrence King and Brandon McInerney concerns the act of removing a child from abusive or otherwise unhealthy life circumstances. While Lawrence King's biography includes his removal from biological family and relocation into a foster family, Brandon McInerney's life circumstances include neglect at the level of family and state structures aimed at protecting child welfare. While King benefitted from the involvement of Child Protective Services, McInerney was equally affected by a lack of oversight from the same agency. While King evoked the immediate responses of school officials and family members, McInerney was often left to "fend for himself" when faced with troublesome social and academic situations. Ultimately, Brandon McInerney's survival of extreme abuse and neglect is portrayed as compromising any sense of "childhood innocence" from a very early age.

It is important to note that the interplay between the naïveté of "childhood innocence" and the contrasting foil of an unnervingly mature child exists within a socio-cultural schema circumscribing the boundaries of what is considered a "normal" childhood. In addition to being impacted by culturally-salient ideas such as age and "innocence," the borders signaling "normative childhood experiences" are entwined with socio-cultural conventions concerning race and ethnicity, socio-economic class, substance use and addiction, or aggressive behaviors (Bond Stockton, 2009, Chapter 1). Inculcated within the concept of childhood-as-personhood exists not only a "strange innocence," but also the socio-culturally acceptable assumption that race and economic status presage the trajectory of different childhood experiences (Bond Stockton, 2009, pp. 30-31). As discussed in the first chapter, assumptions about race and socioeconomics often deploy expectations about childhood identity, family

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circumstances, and experiences. Rather than approaching childhood as an experience upon which each individual approaches the world on equal footing, Kathryn Bond Stockton notes that any assertion of a “normative childhood” is based on a culturally-accepted assertion that middle-class Whiteness stands as the baseline for a multiplicity of life experiences (pp. 30-35). In discussing important narratives of childhood and how the socio-cultural notion of “innocence” is raced and classed, Bond Stockton notes:

What do children queered by innocence share? They all share estrangement from what they approach: the adulthood against which they must be defined. That is why “innocent” children are strange. They are seen as normative but also not like [adults or adolescents] at the same time. The contours of this normative strangeness may explain why children, as an *idea*, are likely to be both white and middle-class. ... Experience is still hard to square with innocence, making depictions of streetwise children, who are often neither white nor middle-class, hard to square with “children.” (Bond Stockton, 2009, pp. 31-32)

While it is tempting to question the ethics of essentializing “normative childhood” as connected to Whiteness and socio-economic standing, Bond Stockton’s (2009) analysis of childhood as a cultural narrative advances an often overlooked truth. Childhood, when posed as a subjectivity whose hallmark is a deep and vulnerable innocence, is a concept whose logical conclusions advance the belief that the personal expansion of economic and cultural privileges leads to safety for an individual and their kin. “It is a privilege to need to be protected,” notes Bond Stockton, “and to be sheltered – and thus to have a childhood” (p. 31). To schematize the probability of innocence on race and socioeconomic standing sidesteps the reality that a majority of the country’s (and world’s) children survive in highly inhospitable circumstances foisted upon them by forces outside of their control, that many forms of child abuse are accompanied by coercive silencing, or that sexual and psychic abuse is not necessarily traceable along the body of a child. Or, perhaps, the hierarchization of

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these characteristics acquiesces to the reality of widespread childhood suffering by placing a value judgment on the quality of the child's life circumstances and how well they adhere to a culturally advanced measure of "innocence." Within either perspective, "childhood" as defined by a hierarchy of sustained innocence, operates within an unstated assertion that many children endure violent circumstances at the interpersonal, social, structural, or legal levels, and that exposure to this violence impacts the entire quality of an individual's upbringing.

While the prospect of critiquing assumptions about widespread childhood suffering is disquieting within itself, Bond Stockton's (2009) notion that the experience of childhood as a type of socio-cultural privilege is important in that it notes two distinct arguments often deployed in cases utilizing de/humanizing discourses. Firstly, while we may take Western discourses of childhood and innocence as socio-cultural corollaries, such treatises are dependent upon culturally established notions relating to the acceptable limits of child vulnerability and protection. In short, "normative childhood" is defined by a set of socio-legally defined limits within which children may comfortably exist; while children are expected to experiment with the boundaries of this rubric, the policing of these boundaries exists at interpersonal (ethical), social, and structural (legal and medical) levels.⁵⁴ Likewise,

⁵⁴ The definition of these boundaries and the implementation of their policing is, of course, socio-culturally defined. While legal, moral, and other socio-cultural values define the "playing field" through which children may experiment, and the boundaries which they may transgress, the role of cultural taboos is of the utmost importance in understanding how the concept of "safety" is attached to childhood. While this paper cannot go into the specifics of these concepts, it is important to think about why some actions are considered more transgressive than others, and the modalities in which these socially enacted judgments are carried out. Specifically, it is essential to think about the ways heterosexual, racial, and gender-normative privileges played out in the King/McInerney case. Such an analysis would consider problematic tensions, such as the socio-cultural taboos associated with cross-dressing and transgender identity, and the current lack of socio-cultural awareness concerning the presence and activity of White supremacy organizations throughout much of the urban United States. Although White supremacy is somewhat of a taboo, it is possible to question how the

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the limits at which vulnerability must be suppressed by adult protection, as well as the means by which adult protection is instituted are also socio-culturally defined and legally imposed.

This tension between child security and vulnerability is often deployed in cases of de/humanization alongside a second tactic that foregrounds the socio-legal effects of childhood violence. Rather than simply existing as narratives of overcoming challenges, child abuse testimony – when engaged in a socio-legal context – often functions as a narrative repertoire detailing the systematic breakdown of institutions charged with safeguarding minors. Rooted within narratives of social dysfunction and dissolution, these forms of relaying child abuse and neglect evoke the idea that families, neighborhoods, schools, and local governments have failed at the task of providing a system that surveys the living conditions of a specific child or group of children. Having failed as a system of “checks and balances” that preserves a healthy tension between childhood vulnerability and safety, social institutions are phrased as bearing some degree of culpability for hate-oriented violence within this argument. Such a view advances the conclusion that the creation of healthy individuals living in the midst of violence takes place at a purely social level, where social institutions separate from the family are the sole entities that enact discipline, healthy worldviews, and productive forms of interaction at an early age and in lieu of family involvement with the child. Parental abuse of children, within this system, is a function of social neglect or inadequacies within the structure and operation of the state’s child protection network.

In the case of Brandon McInerney, both of these arguments are present within early

severity of transgressing boundaries associated with racism varies from cases in which socio-cultural taboos of gender presentation, gender identity, and child sexual and gender identity are engaged and transgressed.

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reports arguing that an absence of stable parentage had deleterious effects on McInerney's person. In an editorial published three weeks after the murder, a school counselor posited the theory that the brains of individuals who had faced violence as children were more likely to engage the world from the standpoint of violence:

I was recently introduced to my friend's wife... [a retired] police detective for sex crimes against children. I was intrigued by her statement: "I can't help but believe that the perpetrators are compelled to do the awful things that they do. I don't believe they have a choice." ... From the time he was a newborn, Brandon lived with violence and chaos. (Ventura County Star, 2008e).

Quoting from a study of the neurological effects of violent environments on children, the author notes: "Everything from malnutrition to witnessing violence can have a structural impact on the brain that can lower the threshold for violence" (Ventura County Star, 2008e, "He didn't have a chance"). After ruminating on how the study influences the McInerney/King case, the author ends her editorial with an assertion concerning McInerney that would become a central argument within the trial: "'His story is one long, sad mess.' He didn't have a chance" (Ventura County Star, 2008e, "He didn't have a chance").

The assertion that Brandon McInerney "didn't have a chance" at justice (or at a normal childhood) is built upon several assertions folded together over the course of two articles published in the months directly following the murder. On February 24, 2008, roughly 12 days after the murder occurred, the Ventura County Star ran a feature-length article on the case titled, "Suspected School Shooter's Childhood Marred by Violence" (Barlow, Carlson, Wilson, 2008). The article contained a quotation from an individual who knew Brandon McInerney during his early childhood years, and who witnessed his early life. Having occupied the same neighborhood, the individual in question is quoted by the Star as follows:

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Conni Lawrence, who saw Brandon McInerney grow up, said the entire story is one long, sad mess. “This whole situation is extremely upsetting and sad,” she said of Larry’s death. “This poor kid [Lawrence King] didn’t have a chance, but it’s not like Brandon had a chance either.” (Barlow, Carlson, Wilson 2008)

The comparison of Lawrence King and Brandon McInerney deploys a complex set of inquiries and reactions to the case at hand, one that actively questions the role of social institutions in each boy’s life. To assert that “neither child had a chance” is to open a critique that moves past each boy’s family life and individual actions, and towards the role of social institutions that failed to intervene in a complex situation. In fact, the Ventura County Star’s February 24, 2008 article moves methodically through the involvement of multiple social institutions in each boy’s life, and their failure to provide adequate intervention into troubling behavior or family circumstances (Barlow, Carlson, Wilson, 2008).⁵⁵

In response to this attempt at balanced reporting, the author of the aforementioned March 24, 2008 editorial truncates Conni Lawrence’s statements in her own analysis of McInerney’s neurological development. In making the claim that McInerney’s traumatic childhood presaged the murder, the authors states,

What happens to turn a precious, trusting newborn into a 14-year-old who shoots his classmate in the head and kills him? Is what my [detective] friend said about sexual predators applicable to Brandon and other killers – they don’t have a choice? That’s essentially what Conni Lawrence, who watched Brandon grow up, said in The Star[’s February 24th] article. [Brandon’s] story is “one long, sad mess,” she said. He didn’t have a chance. (Ventura County Star, 2008e)

The narrative trajectory produced by these statements illustrates a rhetorical shift away from

⁵⁵ Although extended family, neighbors, and local community members noted violence between McInerney’s parents before Brandon’s birth, there exists only a single report of police intervention, and few claims of community intervention into the family’s dysfunction (Barlow, Carlson, Wilson, 2008; Authors Field Notes, August 4-5, 2011). Although public school faculty and staff showed concern for McInerney throughout his childhood, attempts to intervene were often short-lived; this was true for the multitude of extracurricular activities Brandon McInerney involved himself with, including the Young Marine Corps, the Junior Lifeguards, and competitive martial arts (Barlow, Carlson, Wilson, 2008).

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shared circumstances between King and McInerney, and towards amalgamated arguments that attempt to diminish culpability for violence via claims to childhood injury. Within the March 28th editorial is a claim that collapses the challenges faced by both King and McInerney into a single claim regarding the life of Brandon McInerney. Conni Lawrence's statements, as relayed by the Ventura County Star, addressed the situations of McInerney and King simultaneously, encapsulating the whole situation as a traumatic experience in which *neither child* "had a chance" due to the quality of both children's upbringing and the communities in which they aged. To remove King from Conni Lawrence's statements is not simply a manipulation of her words in the interest of McInerney. Removing vital words that relate the situation of one boy to another is a subtle rhetorical move that places one child's circumstances under erasure in an effort to create some sort of leverage for the accused child.

What is left after such processes of de/humanization is only one human being – the juvenile perpetrator of hate murder – whose life potential is framed as being placed in jeopardy by the toxic environment of incarceration. The victim of the crime and the posthumous value of the victim's life are effectively erased via an argument that stresses the value and recoverability of a living individual over the loss (and value) of a deceased individual, whose absence can never be adequately mitigated. Essentially, we are asked to pardon the death of one child in order to suspend the socio-legally sanctioned death of another child. We are asked, as a society, to place the value of justice for one child's murder over the budding potential of an individual who may grow and change in the future. Within this framework, justice for the murdered child and valuation of the accused individual's human potential cannot coexist; we must choose one or the other.

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Why are histories of childhood abuse and violence so important in a socio-legal context? How is it possible that narratives of abuse and neglect can assume the power of diluting culpability for hate-motivated murder? For Kathryn Bond Stockton (2009), narratives of child abuse, neglect, and incest do not simply exist in the realms of history, individual testimony, or collective identification. At the social level, accounts of violence against children have the effect of emphasizing “the child’s need for protection and [their] weakness” (Bond Stockton, 2009, p. 33). In addition to displaying the brutality of the adult offender, “suffering certain kinds of abuse to which they need protection and to which they don’t consent, [children] may come to seem more innocent” (Bond Stockton, 2009, p. 33). By transgressing socio-cultural taboos concerning child vulnerability and safety, the body and identity of the child in question are overlaid with forms of non-normativity that evoke a range of reactions and emotions.

This chapter has outlined the ways in which hate-motivated violence has been rationalized within the McInerney/King case. Specifically, this chapter has illuminated the ways in which claims to child abuse are used to diminish culpability for hate-based violence. By “endowing the child with violence,” as Kathryn Bond Stockton argues (2009), the child’s diminished capacity for resisting unwanted circumstances – the child’s naïveté – is emphasized. In the case of Brandon McInerney, this occurred via narratives of family violence coupled with assertions that the Ventura County society failed to deliver McInerney from his troublesome circumstances. In the next chapter, I turn to a history of Ventura County’s involvement with ideas of racial supremacy and the Ku Klux Klan in the early twentieth century.

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Up to this point, this study has investigated the connections between hate-motivated violence, gender and sexual non-normativity, and the role of forms of dehumanization pertinent to the case. The first chapter highlighted Lawrence King's gender identity, lack of a clearly proclaimed sexual identity, and lack of a clearly stated ethnicity. The confluence of these three characteristics in ways that disrupt legal classifications posed unique challenges for the jury, making claims of violence rooted within racial supremacy difficult to follow. The nature of U.S. jurisprudence and its relationship to the structural disenfranchisement of sexual and gendered minorities was discussed in the second chapter, which located the origin of the tie between homosexuality and psychosis in early twentieth-century psychiatry. Claims of dehumanization – many rooted in the links between homosexuality and psychosis – were used as one method to reinstate Brandon McInerney's social citizenship, as discussed in chapter three.

Chapter four turns to the process of investigating local history for exclusionary legal practices that inflect race, as well as the presence of White supremacy groups within the county. In addition to the prosecution's assertions that White supremacy ideology took a large role in the crime's motivation, claims by editorialists, participants, and lawyers that Ventura County and the city of Oxnard did not experience historical legacies of racial segregation and unrest demand scrutiny. This is due to the fact that such dynamics, whether existing within legal statutes or social practices, establish a foundation for current jurisprudence related to violence that inflects race, racism, or racial supremacy. In engaging legacies of structural and social disenfranchisement rooted in ethnic difference, chapter four begins with a discussion of the political climate in 1930's Ventura County, when important actions against the statewide chapters of the KKK also unfolded locally. Resistance to the

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Klan indicates important racial tensions in the local area, subtleties that tell a history of disenfranchisement at the structural level. In addition to tracing these nuances, chapter four reaches further back into history to investigate whether any structural measures of race-based segregation preceded or coincided with the presence of the KKK. As the chapter will illustrate, the process of establishing the city of Oxnard involved a prolonged history of racial segregation and disenfranchisement within the establishment of the U.S. sugar beet industry.

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Legacies of Violence, Segregation, and Supremacy on the Oxnard Plain

“And if you think of them as dirty, then they will be dirty ... because you will be giving them nothing, you will be despising your flesh and his.”

—James Baldwin, *Giovanni’s Room*, (2000, 1956), p. 57

“If modernization in the late nineteenth and early twentieth century aimed to move humanity forward, it did so in part by perfecting techniques for mapping and disciplining subjects considered to be lagging behind.”

—Heather Love, *Feeling Backward: Loss and the Politics of Queer History*, Introduction, “Modernization,” para. 3, 2007

Introduction: Racial Supremacy and Citizenship in Early Twentieth Century

California

On November 20, 1937, the Los Angeles Times ran an article detailing one Congressman’s reaction to a resurging of anti-immigrant activity throughout the nation. One day prior to the report, Representative Luther Patrick of Alabama read a poem to the Women’s National Democratic Club concerning Alabama Governor Bibb Graves and State Supreme Court Justice Hugo Black. As reported by the newspaper, the poem read, in part, as follows:

A fellow never knows when he takes his hat in hand
An’ starts into politics exactly where he’ll land.
In the state of Alabama away down yan,
Two politicians joined the Ku Klux Klan.
[...]
An’ one is now Governor and the other is a judge
Appointed by the President and he ain’ a-goin’ to budge.
[...]

A lot of folks think it’s a mighty bad sign
If a man ever marched in the bedsheet line.
I’ve never been a member, so I can’t tell
But these two brethren have done pretty well.
So fill ‘er up boys, a soady pop’ll do,
And drink a little toast to the kluck-a-doodle-doo.
We’ll drink a little, grin and wink sort o’ sly –
It may have been tricky but the boys got by. (Associated Press, 1937)

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By the time Representative Patrick had written these lines, the US public was aware that the Ku Klux Klan had been steadily expanding its membership for over a decade. The 1920's, an era of technological innovation and increasing waves of immigration in the United States, was a historical period in which the group sought to gain control of societies seen as negatively impacted by the entrance of immigrants (Bringhurst, 2000, p. 368). As Newell Bringhurst states, "the vast majority of these new Klansmen were non-violent, standing in contrast to their nineteenth-century counterparts. ... [T]he new klan sought primary influence through the political process" (Bringhurst, 2000, p. 368). In addition to political influence, the resurgence of the KKK exhibited a focus on manipulating "community business elites who stood in the way of popular social and political reforms" (Moore, 1990, p. 341).⁵⁶ While the US public was well aware of the KKK's violent influence before the 1930's, what the Congressman's verses allude to is an internal shift within the supremacist group in which members worked together to enter electoral politics and local positions of political influence at a nationwide level (McVeigh, 2001, pp. 1-2).

If we are studying a case of hate-motivated murder that occurred in 2008, why is it important to consider local historical circumstances pertinent to race, ethnicity, and socio-economic class? If the crime we are dissecting is said to motivated by sexuality and/or

⁵⁶ The term "popular social and political reforms" may seem out of context when referring to the activities of the Ku Klux Klan due to the fact that the group's history is undoubtedly odious. However, As Leonard Moore (1990) states, "the Klan served different purposes in different communities, but in general, it represented mainstream social and political concerns, not those of a disaffected fringe group" (p. 341). Referring to a number of previous studies focusing on the Klan in Orange County, CA, Moore notes that the studies "de-emphasized the role of ethnic conflict in the Klan movement" (p. 341). What such an analytical move resulted in did not disqualify racial tension and conflict, but uncovered evidence that the KKK focused much of its efforts on influencing local politicians and entrepreneurs who blocked reforms related to segregation, race, and miscegenation (p. 341). By using the term "popular and social reforms," Moore is pointing out that the issues of segregation, race, and miscegenation were not only common concerns for US society between 1920 and 1940, but that holding a position in favor of racial segregation or against racial miscegenation was, essentially, a mainstream value within the United States.

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gender, how can race, ethnicity, and socioeconomic class be related? Furthermore, even if race or ethnicity are involved in the crime in question, why would it be important to refer to a repressive history of White supremacist groups in the area? How do historical forms of racial oppression rooted in hate ideologies impact current cases of hate-motivated murder and the ways in which societies parse such violence?

Recall that in this study's introduction, I described the idea of the *imaginary body*, and how it is tied to the concepts of civil personhood, citizenship, and social inclusion. There is no "neutral" or "normal" body, specifically because a body's quality of *being normal* – of embodying normativity – is built upon processes that compare itself to other bodies preemptively deemed "not normal." Normativity is phrased from a cultural perspective that is self-referential wherein the "self" serves as its own guidepost, possessing both the quality of "normalness" being advanced and the unquestionable agency to articulate what qualities exist within the space of "aberration." All societies, in advancing the idea of corporeal normativity, inherently construct a schema of bodies – a corporeal imaginary – that serves as an epistemological and cognitive reference point. This body, notes Gatens (1996), is culturally specific, historically situated, and articulated via the interplay between social and structural forces.

This chapter is concerned with the claim that a given society's *imaginary body* is historically situated, present within the convergence of language, images, and practices central to human bodies. As I advanced in the study's introduction, Gatens' (1996) rendering of this theoretical tool indicates that it is simultaneously an *embodied history* and a *history of the policies and practices of embodiment*. On the one hand, we can trace the discourses surrounding the process of living within a particular body, yet this simultaneously gives rise

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to questions about the ways in which government, powerful institutions, and influential individuals and coalitions attempt to control, manipulate, or liberate specific bodies. The value of this paradigm exists within the fact that it can view both macro- and micro-social models of interaction advanced by social and cultural institutions, and experienced by individuals via a plethora of iterations of Otherness.

In many ways, the histories presented in this chapter are concerned with processes of dispossession. Whether material, economic, or concerned with the realm of civic and human rights, these histories of deprivation mark a period of restructuring within the state of California during which the nation-state supported capitalistic projects aimed at assimilating human and material resources from newly-acquired territory. While not unique to the Ventura County area, these projects of state expansion established dynamics regarding housing and labor rights along the axes of race and ethnicity that would affect the area well into twenty-first century. By investigating multiple historical media sources, I offer conclusions about the social and structural ways White and non-White bodies have been phrased in the Oxnard-Ventura area. This history, in turn, allows us to draw conclusions about the degree of ostracism or social inclusion certain populations experienced throughout Oxnard's history. As well, such a history allows us to advance some conclusions regarding the ways in which race, ethnicity, class, sex, and sexuality were phrased in the area surrounding the 2008 murder and trial of Lawrence King.

The remainder of this chapter has been divided into three sections that detail a history of embodiment specific to race and ethnicity within the Ventura-Oxnard area. While the remainder of this opening section traces the involvement of the KKK in southern California during the 1920's, the chapter's second section introduces the idea that knowledge itself

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becomes a commodity during an era of quickly industrializing agricultural industries. By reviewing Henry T. Oxnard's investment in beet sugar refineries and fields, I illustrate that laboring communities within the Ventura-Oxnard area were segregated in terms of race and ethnicity in addition to technological, industrial knowledge. By the opening of Oxnard's beet sugar refinery, ideas contributing to a definite hierarchy of bodies had emerged within Ventura County, resulting in a deeply segregated society that experienced different scales of pay, housing rights, and land ownership based on race and ethnicity. As the second section notes, while this hierarchy of bodies was deeply entrenched in city policy and layout, residents of the area began protesting this enforced inequality for the next three to five decades. The third and final section serves as a reflection on the legacies that these racial tensions established. This final section breaks open the paradigm of White supremacy to investigate the erotics of segregation, as well as the ways in which White supremacy ideology silently anticipates miscegenation and non-normative sexuality. Within the overall context of the study, these histories establish important local iterations of jurisprudence upon which hate crime law is examined and employed. Having outlined the chapter, I now turn back to an analysis of the Ku Klux Klan's influence in early twentieth century Ventura County.

Two years after the end of World War I, the KKK experienced a resurgence of interest throughout the nation, including California. During the period spanning 1920 through 1925, it is estimated that the Klan's ranks surged, gaining between three million to six million new members (McVeigh, 2001, p. 1). By the mid 1920's, membership in the group exceeded three million individuals nationwide (Bringhurst, 2000, p. 368). This expansion was due, in part, to the frustrations and racial anxieties produced by emancipation

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and new movement of African Americans throughout the nation, as well as the entrance of Latino, Chinese, Japanese, and South Asian immigrants into the county (Bringhurst, 2000, pp. 368-369).

During April of 1922, two brutal attacks initiated by members of multiple Klan chapters in Southern California exploded onto the national news scene, illustrating the extent to which the group's members had assumed positions of influence. On April 18, the Los Angeles Times reported that a private investigator had been viciously beaten by three Klansmen, leaving him with a broken leg and multiple blue-black contusions extending from his left calf, leg, back, and arm (1922a, "Marks Exhibited," p. 1).⁵⁷ Four days later on April 22, a young, off-duty police officer responded to a distress call from the neighbors of the Elduayen family, whose Inglewood ranch-house had been overtaken by a mob of 43 hooded men (Los Angeles Times, 1922k). Upon approaching the property, the officer was confronted by a member of the mob, resulting in a shootout; simultaneously, the male residents of the house were bound with rope while three women within the residence were forced to "dress in front of the masked Klansmen" (Los Angeles Times, 1922k, "Women Insulted").

After abducting Fidel and Mathias Elduayen, the mob pushed them into a car and drove them to the Inglewood jailhouse, demanding that officers arrest the men on violation of

⁵⁷ The private detective, a Mr. John Pyles, relays the story of his beating in a Los Angeles Times article titled, "Masked Band Flogs Captive: Bakersfield Detective is cruelly beaten." In the article, Pyles recounts how he and "a number of men" attempted to overtake a Klan meeting in Taft, California but were overtaken by a guard outside of the meeting's location (Los Angeles Times, 1922a, "Story of Victim," p. 1). After separating him from his comrades, the Detective was led into a small valley where the gathering was taking place; he was subsequently questioned while his hands were bound with wire (Los Angeles Times, 1922a, "Had Investigated" and "Recognized Band," p. 5). After accosting the bound man and forcing him into a car, the detective was driven to another location near the city of Maricopa where he was removed from the car and beaten with an extremely thick, heavy rope (p. 5). After his attackers left him for dead, Pyles then loosened his bindings and walked to a nearby road, where he was able to find aid from "a passing motorist" (p. 5).

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the prohibition era Volstead Act (Los Angeles Times, 1922k, “Prisoners Released”). After being denied in Inglewood, the mob drove the bound men to the Redondo jailhouse, where they were again denied incarceration (Los Angeles Times, 1922k, “Prisoners Released”). While the Elduayen brothers were eventually released by the mob, city investigators announced that the single casualty from the earlier shootout was none other than Inglewood’s own Constable, Mr. M. B. Mosher (Los Angeles Times, 1922k, “Get Real Story”). After establishing that the city’s constable was involved in the mobbing,

Deputies ... obtained a search warrant and raided the offices of the Klan... where a vast quantity of documents was taken by the officers. From these the names of Klan officials and members from California and other states were obtained, and the different investigations had their start. (Los Angeles Times, 1922j, “Prisoners Released”)

Investigations were subsequently launched in multiple cities throughout California and many states throughout the Southwest. In the County of Los Angeles, an immediate inquest by the local Grand Jury was ordered, resulting in the arrest of 43 men, including public servants, politicians, and police officers from the cities of Taft, Fellows, Bakersfield, and Visalia (Los Angeles Times, 1922d; Los Angeles Times, 1922k; New York Times, 1922).⁵⁸

⁵⁸ At the time of publication, this dissertation was being edited during important events unfolding in Ferguson, Missouri, where an officer shot African American teenager, Michael Brown, six times as he allegedly fled from the officer. While conflicting accounts of events exist, the nation watches heavily manipulated media clips of peaceful protests that have been shut down by local law enforcement, county law enforcement, and the National Guard. To date, the most reliable sources of information regarding the state of the city have come from social media sites, as law enforcement have arrested multiple news reporters, prominent politicians, and civilians who have attempted to document the crisis, either with professional media equipment or with cellphones. Although very little violence has been associated with protests, curfews have been imposed and law enforcement agencies have used military technology against protesters, including smoke bombs, flash bombs, body armor, batons, Humvee tanks, rubber bullets, live ammunition, and forceful physical submission tactics. Most importantly for this study, local chapters of White supremacist organizations near Ferguson have raised over \$300,000 in support of the officer accused of shooting Michael Brown; donors have contributed to a website which hosts a great deal of hate language concerning the Ferguson community and Michael Brown. For more information on the death of Michael Brown visit the following link:

- Timeline of events in Ferguson, Missouri:
<http://www.usatoday.com/story/news/nation/2014/08/14/michael-brown-ferguson-missouri-timeline/14051827/>

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The Ventura County Lowlands and Oxnard Plain were no strangers to Klan actions, exhibiting group involvement, recruitment, and growth in the early 1920's. Between 1921 and 1922, the group first appeared north of Ventura County in Santa Barbara via an extensive network of chapters within the Southern California region, including Los Angeles, Santa Monica, Huntington Park, San Diego, Long Beach, Anaheim, and Tulare (Bringhurst, 2000, p. 370). While no public record of members exists within Ventura County, national trends within the group suggest that a majority of Klan members were "geographically present" in the Oxnard Plains area, although officially registered in chapters that were active in other counties (Bringhurst, 2000, p. 371).

The extent of Ventura County's association with White supremacy became apparent in May of 1922, when 55 local members of the supremacist group resigned en-masse in response to what became known as "the Inglewood raid" (Los Angeles Times, 1922h). According to the report, these 55 men represented "more than one-third of the membership of the Ventura Klan," suggesting membership numbered above 165 individuals (Los Angeles Times, 1922h). The group featured "some of Ventura's most prominent citizens ... [including] [b]usinessmen and men prominently identified with the affairs of Ventura County" who unanimously passed a resolution advocating for "the dissolution of the Klan throughout the country" (Los Angeles Times, 1922h).⁵⁹ One day after the passage of the resolution, the realty company that owned the group's private office publicly announced that the lease would not be renewed, noting that Klan Grand Goblin and US Armed Forces

⁵⁹ Similar efforts to divest cities and townships of Klan interests occurred in Hollywood, CA and Los Angeles County (Los Angeles Times, 1922b; Los Angeles Times, 1922c.) Other actions included recording and publishing the names, professional positions, and home addresses of active members in Kern county (Los Angeles Times, 1922d). One motivating factor for this development was an increasing public sentiment that viewed racial violence as un-American at a time when the nation was attempting to harness unity and people-power during a time of increasing global war and unrest (McVeigh, 2001, p. 6).

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Captian William S. Coburn had misled the land owners, representing himself as a private practice lawyer when pursuing the property (Los Angeles Times, 1922j).

Although Ventura County leadership posed a challenge to the area's Klan chapter, evidence illustrates that the group persisted far beyond 1922, with members regularly engaging in threatening behavior.⁶⁰ By 1923, the Santa Barbara County and Ventura County chapters of the supremacist group inducted over 400 members, engaging in activities in areas surrounding the Oxnard Plain, with a number of large-scale inductions in the Ojai and Santa Paula areas (Menchaca and Valencia, 1990, pp. 236-237). One particularly stunning indication of the group's activity exists in the Ventura County Historical Archives (see figure 4.1). Dated 1924, the archival photograph depicts a nighttime gathering of roughly 128 hooded individuals, possibly in the hills surrounding Santa Paula. At first glance, the photograph depicts group members arranged in a triangular shape, some standing in the receding rows while others, at the front of the group, kneel. Upon closer inspection, the photograph proves to be a juxtaposition of the everyday mundane with elements of terror. In the center of the photograph, a US flag waves lazily in front of a large cross illuminated by electric light bulbs. Directly below this pair of emblems and resting on the ground is what appears to be a strange, twisted bough. Closer inspection reveals that the wooden item is actually a large crucifix, invoking the US's historical legacy of Klan terrorism via the placement of large burning crosses. Two small captions on either corner of the photograph read "Santa Paula, Cal. June 10, 1924" and "Brown's Photo." A search within the 1930 Oxnard phone directory lists a small group of photographers, including the name and address

⁶⁰ According to Menchaca and Valencia (1990), threatening actions included holding Klan meetings in public areas, pursuing advertisements announcing local meetings in newspapers, and holding public meetings in areas overlooking non-white neighborhoods, such as hilltops and mountainsides (pp. 236-237).

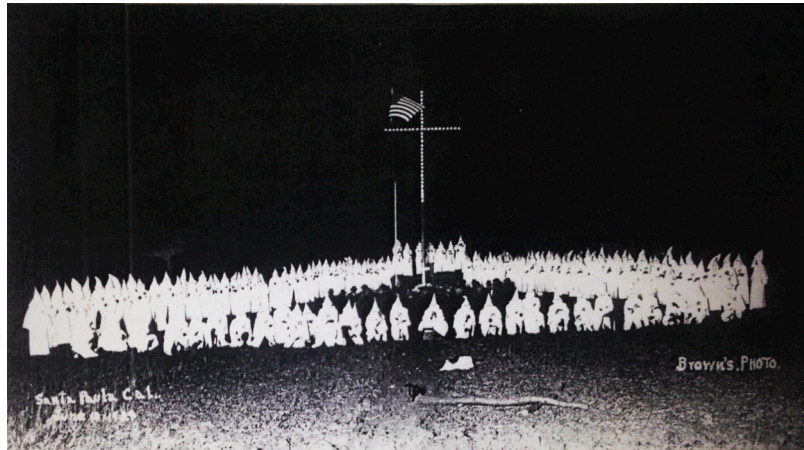
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of Brown's Photo as "Brown C S 427 California, Ventura" (Oxnard Home Telephone Company, 1930, "Photographers" p. 663).⁶¹ Such clues illustrate not only the presence of the Ku Klux Klan within the area, but also their anonymous integration into many facets of everyday society.

While US society during the World War years vocalized that they largely disfavored the group, the effects of discriminatory social practice established by the Klan persisted. As Menchaca and Valencia (1990) state, Klan favor waned throughout the US public during

wartime due to the fact that its threatening activities were touted as "un-American" within a time of global unrest and international austerity (p. 237). Regardless of these sentiments, social practices of segregation

Figure 4.1: Photo graph. Captions read (left to right) "Santa Paula, Cal. June 10, 1924" and "Brown's Photo." Courtesy Ventura County Historical Archives



remained strong in the areas of education, housing, labor, and employment throughout California, including Ventura County (Barajas, 1993; Bringhurst, 2000; Gonzalez, 1995; Lewthwaite, 2007; Menchaca and Valencia, 1990; Omatsu, 1995; Yosso and Garcia, 2013.) What resulted from this practice was a multi-ethnic area that was highly segregated at the intersections of ethnicity, labor, gender, and civil personhood. Coinciding with the nation's

⁶¹ Courtesy Ventura County Historical Archives, which houses available editions of historical documents, including phone directories.

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attempts to control South Asian, Mexican, Chinese, and Japanese waves of immigration, industrial and agricultural development between the 1890 and 1950 resulted in a need for low-wage workers. Multiple forms of segregation throughout these 60 years resulted in ethnically distinct communities organized via housing practices and zoning laws. In short, the practice of segregating communities in the Oxnard Plains area resulted in a city spatially organized by race and class. The effects of this historical jurisprudence can still be traced today, for example, in the establishment of gang injunction zones, which seem to correlate to low-income, nonwhite neighborhoods in the city.

Knowledge, Bodies, and Beets: From Chino to Oxnard

By the time Ventura County had officially seceded from Santa Barbara in 1873, the US Department of Agriculture had been attempting to intervene in a national sugar shortage that had lasted for at least one decade. As early as 1863, the US government reported that the Civil War had disrupted cane sugar production, prompting the USDA to look into cane sugar alternatives (Arrington, 1967, p. 3).⁶² By 1870, the Department of Agriculture began studying European methods of sugar beet agriculture and sugar refining, which had been perfected from over 120 years of use and research (Arrington, 1967, pp. 1-3).⁶³

⁶² Sugar beet farm-to-factory systems had been attempted in the eastern US as early as 1838, but the method was unpopular due to the fact that sugar beets were highly labor-intensive crops that responded poorly to industrial machinery (Arrington, 1967, pp. 2-3). In 1838, Northampton, Massachusetts began farming sugar beets (Arrington, 1967, p. 3). Other states attempted to farm sugar beets as well, although the crop failed to produce tubers with a reasonable amount of sugar for processing; this occurred in Utah, Maine, Delaware, New Jersey, Illinois, and Wisconsin between 1838 and 1855 (Arrington, 1967, pp. 2-3).

⁶³ Arrington (1967) notes that beet sugar was first crystallized by German apothecaries in 1747 (p. 1). In 1806, mainland Europe was isolated from trade with other countries due to the Napoleonic wars, and in 1811, a large portion of government lands were reserved specifically for the farming, refining, and scientific study of beet sugar via Napoleonic decree (pp. 1-2). Part of this process involved the creation of a “beet school,” which oversaw sugar production from beet farming to the production and management of an industrial refinery (p. 2). By 1812, France had produced 33,000,000 pounds of refined beet sugar, and methods of beet sugar production spread to Germany, Austria, and Russia, where research into different agricultural and refining methods

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The establishment of a national beet sugar industry was far from straightforward, however, and involved a great deal of research, planning, and even spying on the part of those who would come to be known as the country's "Sugar Barons." Entrance into the sugar industry required a great deal of preparation, and all beet sugar entrepreneurs "consciously devoted several years to the task of building up skilled personnel and successful operating techniques" with the average amount of research and investment for each individual business endeavor lasting roughly one decade (Arrington, 1967, pp. 8-9). In the 1870's, American cane sugar and railroad entrepreneur Claus Spreckels disguised himself as a laborer in order to learn German agricultural methods of sugar beet production and industrial sugar refinement (Arrington, 1967, pp. 4-7). In order to ensure a successful enterprise, Spreckels imported not only European seeds and machinery for his Watsonville factory, but he also introduced a large cohort of German immigrants to California, essentially importing the knowledge he required for efficient beet sugar production (Arrington, 1967, pp. 4-7). The importation of German knowledge and machinery was also pursued by Ebenezer Herrick Dyer, who organized the California Beet Sugar Company in 1869, in Alvarado, California with the backing of sugar refining companies in Wisconsin (Arrington, pp. 4-7).⁶⁴

Shortly after Spreckels and Dyer opened their sugar beet factories, the US Department of Agriculture extended its support by funding research and manipulating

produced higher yields of sugar (p. 2). By 1860, Austrian scientists had invented new methods of sugar extraction that involved boiling the tubers (p. 2).

⁶⁴ Although Dyer followed the model espoused by other sugar entrepreneurs, the Alvarado factory experienced difficulties in leadership that led to closures in 1874 and 1886; although the company re-opened under different names, the company was eventually sold to the Alameda Sugar Company, surviving as the Holly Sugar Company into the late 1960's. (pp. 5-7)

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import-related tariffs, affecting the price of Caribbean sugar and European agricultural materials. In 1881, the US developed a \$10,000 grant to fund a nation-wide study on the best growing environments in the country for beet harvests, and by 1887, the country had developed a “sugar beet map” developed by testing samples of annual produce within the nation’s capitol (Arrington, 1967, pp. 3-4). The 1887 “Hatch Act” also established a framework of federal and state “agricultural experiment stations” that supported this research initiative by mapping farms, collecting and testing samples of sugar beets, and sending results to the nation’s capitol (Arrington, 1967, p. 4). By 1887, California boasted two beet sugar refineries that struggled to gain a foothold in the national sugar market, which, by then, was experiencing a tariff war between mainland beet sugar and imported European and Caribbean cane sugar (pp. 4-7). This tariff was reduced in 1890 at the behest of sugar industry investors and the US Department of Agriculture, resulting in the government’s agreement to the free importation of beet seeds and sugar-refining materials from Europe (Arrington, 1967, p. 8).⁶⁵

During the decades when national policy supported new sugar beet endeavors, Henry T. Oxnard began pursuing French methods of beet sugar refining, and would eventually import European machinery, plant strains, and workers to the US. Oxnard was one of three brothers who immigrated to Louisiana from France, thereafter managing sugar cane refineries in Louisiana and New Jersey (Arrington, 1967, p. 7). As Barajas (2012) states, “Henry, a Harvard graduate and the business leader of the brothers, recognized a lucrative

⁶⁵ Tariffs were a large part of the post-Civil War reconstruction economy, stimulating local economies by making some goods manufactured abroad more costly. Arrington (1967) notes that the sugar tariff was roughly 2.5¢ per pound of sugar, representing one-half of all government revenue drawn from customs duties, and one-tenth of government revenue in 1890 (8).

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opportunity as he learned that the United States imported more than 100 million dollars' worth of sugar each year. He toured Austria, France, and Germany to study the methods of European sugar production," and would eventually import 90% of the industrial technology from Europe for use in his newer factories (p. 36). During this preparatory period, Henry Oxnard opted not to buy property as his competitors had, but to establish a beet-sugar refinery that could draw interest from processing sugar beets grown by local farmers and cooperatives (Arrington, 1967, p. 7).

In pursuance of this plan, Henry Oxnard went into business with a mine owner who, after selling his quarry, purchased the whole of the Chino, California ranchland in 1881 for a sum of roughly \$400,000.⁶⁶ By 1887, Richard Gird had subdivided the 40,000 acres into 200 smaller plots with the goal of farming sugar beets for transfer to San Francisco area sugar refineries (Los Angeles Herald, 1887). Two years after purchasing the ranch, Gird hosted Henry Oxnard on a tour of the property intended to deduce the quality of the soil for production of sugar beets, for which Oxnard employed the knowledge of a French national versed in farm-to-factory beet sugar production (Los Angeles Herald, 1889a).⁶⁷ As a result

⁶⁶ Richard Gird gained money during the Arizona mining era, establishing lucrative mines in the Tombstone area, which he eventually sold for a profit of roughly \$400,000 in 1879 (Los Angeles Herald, 1886). By January 1, 1881, news sources were reporting that Gird had purchased the entirety of the Chino, California ranch, well known for its agricultural potential and access to the Southern Pacific Railroad network (Los Angeles Herald, 1881). The property, previously a sheep ranch, consisted of 40,000 acres of highly fertile land originally proposed as cattle grazing pasture upon its purchase (Los Angeles Herald, 1881).

⁶⁷ According to a news article covering the story, Richard Gird traveled to San Francisco between September and October of 1889 in hopes of convincing Henry Oxnard to invest in his property (Los Angeles Herald, 1889a). In response, Oxnard traveled to Chino with a Mr. Desprez, a French entrepreneur whose family cultivated 3,000 acres of beets and owned a sugar refinery (Los Angeles Herald, 1889a). According to the article,

Mr. Desprez was raised up in the business, and is especially an expert in soils adapted to the culture of the beet. On his arrival in California, Mr. Desprez expressed a very decided opinion against the raising of the sugar beet on this Coast for the reason, as he claimed, that the beet could not be successfully produced in any country where vegetation grew the year round. On investigation, however, at Watsonville, Alvarado, and other places, and studying further the soils and conditions, his mind

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of the visit, Gird and Oxnard entered into a business arrangement, with Gird agreeing to convince farmers to raise sugar beets on the Chino ranchland, and Oxnard funding the importation of German workers knowledgeable of modern refining methods, as well as specially-crafted European industrial sugar refining machinery (Arrington, 1967, p. 8; Los Angeles Herald, 1889b; Los Angeles Times, 1891, p. 2; Los Angeles Times, 1896, p. 27, “Historical Facts”).⁶⁸

The Chino factory opened to much fanfare and journalistic interest in late 1891, with multiple newspapers describing the grounds, layout, and operation of the refinery. One Los Angeles Times (1891) article described a tour of the plant as follows:

The visitors first passed between great bins, where are dumped the wagonloads of white sugar beets as they are brought from the field and having a capacity of 1220 tons. At the further end of these sheds was seen the miniature canal, in which is floated a steady stream of beets to a tank within the large brick main building. ... [The visitors] saw, first, the beets being raised by means of a great Archimedean screw to a washing machine... [and then] into a slicer, where they are cut into tiny pieces and then passed on by an endless belt to the diffusion battery. ...there are twelve of these batteries, which appear to the viewer as only closed iron tanks, each having a capacity of 1500 gallons. Within these diffusers the sliced beets are

underwent a radical change on this subject, and he is now considerable of an enthusiast on the adaptability of this Coast to the successful culture of the beet. (Los Angeles Herald, 1889a)

During the first two years of his tenure on the ranchland, Gird capitalized on his investment by drilling water wells up to 150 feet deep, prompting the discovery of a series of aquifers that produced artesian flows, raising the value of the property well past his original investment (Los Angeles Herald, 1887). In addition, this self-releasing water supply would support the sugar beet agriculture that Gird and Oxnard desired, with the underground aquifers producing 2,000,000 gallons of water daily, and possessing the ability to increase output when needed (San Francisco Call, 1891, p. 13).

⁶⁸ Official bank records note that in November of 1899, Gird transferred a portion of the Chino ranchland to the San Francisco Savings Union, with a value of \$500,000 (Los Angeles Herald, 1889a).

The existence of Chino as a German immigrant town is highlighted in a Los Angeles Times article dated September 4, 1891, featuring a report of Los Angeles citizens enjoying the sights and tours of the Chino processing plant. The article features an interesting quip regarding interactions between sightseers and factory workers:

Employees of the works did their best to continue their duties while being crowded and jostled by the interested visitors and, as far as they were able, answered the questions propounded. Most of [the workers] found an advantage in not being able to understand any language but German and escaped the cross-questioning. (p. 2)

In addition to touring the grounds of the sugar refinery, tourists were given samples of the beet sugar to take home with them (p. 2).

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converted into a pulp, which by a succession of hoppers, belts and bucket elevators is taken to again to the third floor.... . . . the juice is sent through various intricate processes from measuring and heating to carbonation and subjection to manipulations with lime and carbonic acid gas. It is forced through a series of ponderous machines called filter presses whence it escapes sweet and clear and removed of its crudest impurities. More pumping and filtering and “doctoring” brings the juice to the evaporators, where it becomes a thick mass . . . [which] is run into large containers whence it is let as needed into the centrifugal machines, which whirling at a tremendous speed, throw out at the rim of the perforated cylinders the remaining liquor and accompanying impurities. . . . From the centrifugals [*sic*], [the visitors] watched the sugar progress to the large rotating cylinder within which it was quickly dried and formed into grains, to be turned out into sacks, pure, white granulated sugar. (p. 2)⁶⁹

With the exception of the centrifuges, all necessary machinery for beet processing was purchased from a German company known as Maschinenfabrik at the cost of roughly \$323,000 (San Francisco Call, 1891, p. 13). At peak performance, the factory processed up to 550 tons of beets per day, producing 46 tons of refined sugar in one day’s time (San Francisco Call, 1891, p. 13). With Congress supporting a tax on foreign-grown sugar, the new Chino refinery seemed to be creating an economic niche for itself in the beet sugar industry.

Although Gird set out to gain a foothold in the lucrative beet sugar industry, his original aims seem to have been driven less by a desire for economic gain and more for the wish to include his fellow citizens in increasing the quality of life on the California frontier.⁷⁰

The common belief among those following the factory’s construction was that the

⁶⁹ The Chino Sugar Refinery was described as an “imposing building” in one San Francisco Call article dated September 6, 1891, which further elaborated on the structure as follows:

The main building . . . is 232 feet long, with an average width of 59 feet. The walls are of brick laid in cement, two feet thick and forty-two feet high. The tower is 34 x 59 feet, and the ball on top of the flagstaff is 124 feet above ground. (San Francisco Call, 1891, p. 13)

⁷⁰ As the Los Angeles Times (1896) points out,

The ideas of Mr. Gird seem, from the start, to have been philanthropical [*sic*]. While he was ambitious to stand at the head of an immense enterprise, he was anxious that all those about him should share in the prosperity he hoped for, and so in casting about for an enterprise suited to his great ranch, he selected the beet-sugar industry.... (p. 27, “Historical Facts”)

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burgeoning industry would raise the level of prosperity for farmers, growers, and factory workers involved in beet growing and sugar refining (Los Angeles Times, 1896, “Statistics show”).⁷¹ Rather than equalizing the affluence of the population, however, the construction of the factory had the effect of confining growers and farmers into a state of poverty and eventually bankrupting Richard Gird (Los Angeles Times, 1896, p. 27). The financial agreement advanced to Richard Gird by the Oxnards paid for beets below market price; as Gird began to lose funds, he borrowed money on interest from the sugar factory itself, leaving the former millionaire in debt (Los Angeles Times, 1896, p. 27, “Historical Facts). “Thus it came about according to belief at Chino, that the Oxnards came to have the upper hand on Mr. Gird,” notes the Los Angeles Times, “and he came to abandon his philanthropic ideas and struggle to save his own fortune” (1896, p. 27, “Historical Facts). By 1894 – only three years after the celebrated opening of the Chino refinery – Gird sold the ranch, its associated facilities, and the factory to Claus Spreckles for a profit of \$1,500,000; the purchase was described as “the largest real estate transaction in the history of Southern California” and included “the townsite of Chino, the Chino Valley Railway, the water system, some livestock, and the contract with the Chino Valley Beet Sugar Company” (San Francisco Call, 1894, p. 10). As Richard Gird left the Chino enterprise in 1894, Henry and Robert Oxnard assumed leadership of the factory with little fanfare, and with popular media describing them as manipulative, underhanded businessmen who financially gouged the

⁷¹ Arrington (1967) also supports the claim that investing in factory construction and work was a community-wide affair that seemed to offer relief for the post-Civil War economic depression:

A factory would assure the district of more employment, higher wages, a better market for [a broad range of] manufacturing materials, and higher and more stable farm income. Communities which had risen out of the factories had risen out of the slough and had achieved a desirable level of prosperity. (p. 11)

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sugar industry at the cost of farmers, beet harvesters, and factory workers (Barajas, 2012, pp. 35-44; Los Angeles Times, 1906).

Soon after Gird left the Chino property, farmers and growers voiced their concerns that beet crops slowly became less than profitable due a system of pricing and harvesting set up by Oxnard and enforced by powerful local factory managers. After much prompting by the Los Angeles Times, the Chino beet growers “told a story of oppression probably never equaled on the Pacific Coast” (Los Angeles Times, 1896, p. 27). “The beets are paid for in proportion to the amount of sugar they contain,” noted the article, “and the maximum of sugar in the beets only remains for a short time. Left in the ground for a few days after ripening, a chemical change takes place, and the beets depreciate rapidly in value” (Los Angeles Times, 1896, p. 27). Oxnard’s system of pricing and harvesting forced growers to leave produce in the fields far past the ideal harvest time, thereby lowering the sugar content of sugar beets upon their collection by the factory (Los Angeles Times, 1896, p. 27, “Statistics Show”). It was agreed between the growers that those plots whose beets were left to decline in sugar content coincided with any discrepancy that angered factory managers, who sometimes allowed the beets to stay in the ground so long that their sugar content degraded past ten percent, at which point they were unable to be processed for sugar (Los Angeles Times, 1896, p. 27, “Statistics Show”). Five years after the factory officially produced its first batch of sugar, beet farmers and pickers noted that they received a yearly salary of only \$300, one-third of which was to be used on maintenance of equipment, housing, and the purchase of beet seed for the next year (Los Angeles Times, 1896, p. 27,

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“The Value of Beets”).⁷² The prospect of losing one year’s-worth of crop investment was so severe for Chino farmers that the threat of late harvests effectively subverted all attempts at creating labor unions calling for fairer labor practices.⁷³

While the Oxnards reaped large economic benefits from the California sugar beet boom, the US government supported the efforts of continental sugar entrepreneurs by taking special measures to suppress the price of domestic sugar. Suppression of wages and farmer autonomy within the sugar industry was supported by the US government who, after deploying a Special Agent to the Caribbean to investigate what factors inhibited the beet sugar industry from growing, noted that the Puerto Rican people’s lower standard of living and acceptance of extremely low wages was an important element within a subset of economic factors that contributed to the low cost of Caribbean cane sugar (Los Angeles Times, 1899b).⁷⁴ In addition to wage suppression, the rising sugar magnates were also rumored to have received government officials’ favor by practicing various forms of bribery and nepotism, including the employment of politicians’ family members at the Chino Factory

⁷² Accounting for inflation since 1896, a yearly salary of \$200 in 1896 would have been equivalent to \$5,555.56 in 2013. In contrast, the value Richard Gird sold the Chino Ranch for in 1894, \$1,500,000, would be equivalent to \$40,540,540.50 in 2013. Mr. Oxnard, the Los Angeles Times (1896) reported, paid himself a salary of \$25,000, (p. 17, “Is Sugar Making Profitable?”), which is roughly equal to \$694,444.44 in 2013.

⁷³ The Oxnard Brothers efforts to subvert calls for fairer wages and more regular processing of beets in Chino was so successful that one Los Angeles Times (1896) article described the following situation:

It is a common whispered assertion at Chino that the Oxnards singled out the men who were conspicuous in leading the farmers to stand for their rights [to fair payment] and froze them out of the beet business last year, putting a formidable boycott on them. Thus, this year ... a meeting of the union was called, but there were not to be found men who wanted to win the enmity of the sugar factory magnates.... (“The Beet Growers’ Union”)

The Los Angeles Times (1896) also noted that Henry Oxnard claimed the sugar beet industry could never be profitable for growers and factory workers, although high administrative salaries and the wasting of crops indicated otherwise (“Is Sugar Making Profitable?”)

⁷⁴ In an article entitled “Beet Sugar Industry: Special Agent’s Report,” the author notes that the US Special Agent deployed in the sugar investigations described the population of Puerto Rico as living on less than three cents a day (Los Angeles Times, 1899b). “If Puerto Rico is to be Americanized,” said Special Agent Saylor, “the wages of her [sugarcane] laborers will be increased and the standard of living raised ... the general effect [of which] will be to increase cost [of Puerto Rican cane sugar]” (Los Angeles Times, 1899b)

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(Los Angeles Times, 1896, “Senator Pepper’s Son”). Most importantly, however, the USDA was an advocate of national restructuring around beet sugar agriculture, “believ[ing] communities would benefit from the ripple effects of the production, refinement, and distribution of beet sugar” (Barajas, 2012, p. 36). According to the national agency’s research, the byproducts of beet processing could be used as animal feed, and unharvested roots could be plowed back into the soil in order to raise a field’s fertility (Barajas, 2012, p. 36). The burgeoning industry would not only offset the price of foreign sugar, but it would serve as “a means to modernize the agricultural economy ... [that could also] professionalize the workforce” (Barajas, 2012, p. 36).

While the US Department of Agriculture continued its investigation into foreign sugar industries, Henry Oxnard scouted locations for a new sugar refinery, eventually selecting Ventura County in 1897. In November of 1897, the San Francisco Chronicle proclaimed the news of an upcoming beet sugar refinery in Port Hueneme, stating, “work on the buildings has begun promptly in order to have them ready for the season of 1898” on a plot of 100 acres. Originally named the Colonia Sugar Beet Factory, the structure was built by 125 men divided into fifty teams, who performed site excavation, foundation laying, and the construction of the brick-walled factory and adobe worker residences (Barajas, 2012, Chapters 2 and 3; Los Angeles Times, 1897). The factory was anticipated to be capable of processing up to 2000 tons of beets per day at its peak, and would be associated with a 10,000 acre plot dedicated to beet farming (San Francisco Chronicle, 1897).⁷⁵ Construction and site management were overseen by the Colonia Improvement Company, a shell company

⁷⁵ The value of the land mortgaged for the project was \$750,000 in 1897, roughly equal to \$21 million in 2013 when controlled for inflation. By 1899, Oxnard had expanded the acreage dedicated to farming by 5000 acres when he purchased the Ventura County Patterson Ranch for another \$750,000, resulting in landholdings of roughly 15,000 acres in Ventura County alone (San Francisco Chronicle, 1899).

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erected by Henry Oxnard and his investors “to promote the integrated interests of the [American Beet Sugar Company] and provide the required infrastructural support” (Barajas, 2012, p. 36).⁷⁶

By January of 1898, Henry Oxnard and his business partners purchased three hundred acres of land on which they planned to build a new township that would support refinery workers and farmers. After moving the manager of the Chino sugar refinery to Ventura County, Oxnard and his business partners purchased land “adjacent to the refinery site to serve as the headquarters of the emerging company town” (Barajas, 2013, p. 46). Of the original acreage, 230 acres were set aside for beet production while 70 acres were reserved for businesses and residences (Los Angeles Times, 1898b).⁷⁷ A newsprint description of the town’s layout in March of 1898 noted that the lots were organized “around a plaza, 250 x 300 feet in size” with double rows of lots on each side ranging between 2,750 square feet to 56,000 square feet (Los Angeles Times, 1898b; Los Angeles Times, 1898c, “Town of Oxnard”). Advertisements featured in the Oxnard Courier quoted commercial lots of 110 by 140 feet as costing up to \$500, while residential lots measuring 50 by 140 feet ran between \$250 and \$350 (Barajas, 2012, p. 51).⁷⁸ By September of 1898, the Los Angeles Times (1898f) was touting the emerging city of Oxnard as a modern town full of parks, manicured lawns, sidewalks, and a plethora of undiscovered artesian wells.

The construction of the new sugar refinery and town initiated a second population

⁷⁶ According to Barajas (2012), the interest of the Colonia Improvement Company included “the construction of homes for a segmented labor force, roads, utilities, public services, and enterprises related to real estate. ... The CIC purchased three hundred acres adjacent to the refinery site to serve as the headquarters of this emerging company town” (p. 46).

⁷⁷ While the Colonia Improvement Company did construct worker residences, many employees chose to buy lots within the 70-acre township “with the intention of making permanent homes” (Los Angeles Times, 1898d).

⁷⁸ In 2013, \$250 would be equivalent to \$6,944, and \$500 would be equivalent to \$13,889.

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boom in Ventura County, causing a severe housing shortage. In support of the nascent local industry and in an effort to stave off this shortage, “structures were imported from other parts of the county atop wagons pulled by teams of horses,” and included three homes, a school, and a barn that would be converted into a three-story workers’ boardinghouse (Barajas, 2012, p. 51). Presbyterian and Methodist churches were also drawn in from other areas of the county, while a newly blossoming community of Baptists opted to hold services in a decommissioned railway car (Barajas, 2012, p. 51).

The process of growing, manicuring, and harvesting sugar beets was the most labor-intensive agricultural trade in the area, and created a niche market for laborers that leveraged their knowledge of farming for competitive wages. Producing a crop that yielded acceptable amounts of sugar involved a physically demanding three-phase process. The first and second phases involved bending down to plant seeds, spacing them apart to an acceptable level, and gently removing all weeds as the plants matured using only a manual, short-handled hoe (Barajas, 2012, p. 55). The final phase required laborers to harvest, clean, and cut the tubers:

Men, women, and children of the [beet harvest] stooped over and extricated by hand the enormous carrot-shaped sugar beets, cut ... the stemmed upper portion with a long bayonet-shaped knife, and struck the beets together repeatedly in order to remove as much soil as possible. The sugar beets were then loaded onto horse-drawn wagons for transport to the processing factory. (Barajas, 2012, p. 55)

While growers sought laborers who would work for the lowest possible pay, the physically intensive work of beet farming and harvesting demanded a unique mixture of efficiency, speed, care, and knowledge of what the crop itself could withstand.

As the need for agricultural labor expanded with the construction of the Oxnard refinery, the previously-established tensions between white and non-white laborers were taken up by farmers, growers, and administrators involved in the first beet fields.

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“[American Beet Sugar Company] officials, ranchers, and municipal leaders,” notes (Barajas, 2012), “understood the critical value of the stable presence of a more exploitable and less expensive non-white labor force to the city’s flourishing beet economy” (p. 51). While these entrepreneurial leaders drew workers from the Ventura County area, they also benefitted from the American Beet Sugar Company’s establishment of telegraph lines between Ventura County and El Paso, Texas, allowing farmers, ranchers, and growers to “instantaneously place orders for laborers between regions ... and have special trains filled with families within a couple of days” (Barajas, 2012, p. 59). Between 1898 and 1899, Japanese labor contractor and native San Franciscan, Hanzo Kurihara, transported over one thousand Japanese immigrants to the Oxnard area, the majority of who established a tent city separate from the town in an area to the southeast named “Pleasant Valley” (Barajas, 2012, p. 56).

Oxnard’s success in establishing new methods of sugar beet farming, harvesting, and sugar refining proved so lucrative that by the early 1900’s, this method of sugar manufacture – now called the “Oxnard school” – served as a model establishing an effective industrialized farm-to-factory system (Arrington, 1967, p. 7). According to this model, the knowledge of sugar refining, agriculture, and machine creation and maintenance was firmly established within sectors of the worker population by involving them in “training camps” intended to educate each individual about their particular role involved in the beet growing, harvesting, and sugar refining process (Arrington, 1967, p. 7). While some workers were imported to the area as cheap labor, other workers were relocated for their knowledge of the refining process, machine creation and maintenance, and beet-specific agricultural experience.

Without a doubt, an essential element of Henry Oxnard’s success in establishing both the Chino Ranch and Ventura County refineries relied on the commodification of multiple

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forms of knowledge. Whether intentional or not, Oxnard's importation of beet sugar specialists from Europe took on a markedly racial inflection in the United States, a nation still recovering from the effects of its own racially-motivated civil war. The Chino factory's reliance on French knowledge of soil analysis, as well as the fact that it drew its primary labor force from Germany, highlighted the sugar magnate's preference for European industrial science and labor. In a similar fashion to Chino, the founding of Ventura County's new sugar refinery and township corresponded with the relocation of Anglo factory workers from the landlocked Chino area to the coast, marking the solidification of administrative oversight into the "Oxnard School" farm-to-factory model.⁷⁹ Because this new agricultural method required close supervision, "growers, ... landowners and tenants, experienced a diminution in their managerial independence [as the American Sugar Beet Company] directed growers when to plant, instructed them how to cultivate the crop, and set the price for the sugar beet" (Barajas, 2012, p. 58). In short, those individuals who had acquired scientific knowledge of machine crafting and maintenance, sugar processing, and beet agriculture occupied the most vital positions within the new Oxnard refinery.

In contrast to entrepreneurial employment based on emerging forms of knowledge, laborers who worked with sugar beets performed work that was not only physically intensive, but carried the risk of fatal injury. Demanding physical labor in beet fields came to define the work of non-white workers, who were rarely employed in positions involving emerging

⁷⁹ In an article describing work on the Ventura County factory, two members of the Chino sugar refinery are mentioned as being relocated to the new town of Oxnard (Los Angeles times, 1897). The superintendent of the Oxnard factory, a Major J. A. Drifill, was relocated from Chino, California to Oxnard along with a Mr. L. Hache, who served as general field superintendent of the new agricultural plots (Los Angeles Times, 1897). The fact that these positions originated within Chino and were moved to Ventura County is significant, due to the fact that it was this emerging administrative group that would have a large hand in dictating how beets were grown, when they were harvested, and how they would be processed in the refinery.

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field technology – such as gas-powered tractors – that offered the possibility of working “under the shade” (Barajas, 2012, p. 55).⁸⁰ Non-white laborers were concentrated within positions that posed threats unique to the industry: “Sugar beet workers in the factory fell into hot vats of sugar beet and lost limbs to machinery. Others who worked outside the factory were run over by wagons fully loaded with sugar beets” (Barajas, p. 56). While work in the sugar refinery may have offered some respite from the heat of the sun, industrial accidents were common due to an increasing demand in speed and efficiency, which safety operators, engineers, and repair technicians could not keep up with (Barajas, 2012, p. 56).

Much like the Chino project, sugar beet farming became a lucrative trade for those in the upper echelons of the industry as wage manipulation by Henry Oxnard and his investors became a standard within the Ventura County area. In March of 1903, a crisis erupted when – in an attempt to “regulate independent agents and [labor] contractors” – the newly formed Western Agricultural Contracting Company drastically re-scaled wages from up to \$6.00 per acre worked to as low as \$2.50, representing a 58% reduction in pay (Barajas, 2012, p. 134; Barajas, 2004, p. 30).⁸¹ In response, Japanese and Mexican field workers organized a strike

⁸⁰ On the theme of race intersecting with a hierarchy of labor, Barajas (2012) states, Agricultural machinery nuanced the racial hierarchy involved in fieldwork. Oxnard resident Coletha Lehmann stated that anonymous crews operated horse-drawn threshers in the harvesting of lima beans. When the labor of non-whites was observed, reports identified African American, Chinese, Japanese, and Mexican subjects. In the case of threshers, however, no such indication was given. The mechanization of agriculture provided one signifier of a worker’s position in the organizational order. (p. 55)

⁸¹ In outlining this complex situation, Barajas (2012) notes: [A] clique of [Oxnard] city financiers and [American Beet Sugar Company] executives formed the Western Agricultural Contracting Company [WACC]... to relegate independent labor agents to subcontractors. ... Before 1903, farmers on the Oxnard Plain paid \$5.00 to \$6.00 for each acre thinned. The new WACC schedule ranged from \$4.25 to \$3.75 for each acre thinned and dipped as low as \$2.50. This, in turn, significantly reduced the commission that independent contractors deducted from the pay of betabeleros [beet workers]. Betabeleros were also required to pay a fee to the WACC as well as a commission to subcontractors dealing with the WACC. In addition to the cut in the wage scale, betabeleros opposed the WACC’s use of the scrip that compelled workers to buy from certain stores. The WACC then enjoyed a kickback. (p. 134)

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while simultaneously urging all workers to join the area's first inter-ethnic labor union, the Japanese Mexican Labor Association (Barajas, 2012, pp. 134-140; Barajas, 2004, pp. 30-35; Omatsu, 1995). When Japanese and Mexican laborers attempted to convince a wagonload of strikebreakers to abandon their fieldwork, the reaction to the strike became violent, with labor contractors inciting a shootout that left five men wounded and one man fatally injured (Barajas, 2012, p. 135-136; Los Angeles Times, 1903b; Los Angeles Times, 1903c).⁸²

Although the Western Agricultural Association initially maintained that it was “more determined than ever to establish its right to hire men, conduct its business in its own way, and keep faith with the farmers,” (Los Angeles Times, 1903b) multiple attempts at breaking the strike by importing labor from other cities were met with widespread community action attempting to sway strikebreakers (Barajas, 2012, pp. 137-139). Barajas (2012) notes one particularly interesting example occurring when Western Agricultural Contracting Company officials attempted to bring workers to Oxnard from San Francisco by train:

Japanese members of the JMLA attempted to seal off the importation of additional Japanese strikebreakers, recruited by the WACC in San Francisco, by meeting them at the Southern Pacific Railroad station in Montalvo. ...[One journalist] witnessed a “little squad” of Japanese picketers who wore buttons with JMLA letters above the symbol of the rising sun with two gripped hands as they attempted to convince the imported strikebreakers at the train station to support their cause. Once in Oxnard, [the journalist] found the city full of people who wore JMLA buttons in solidarity. [Beet workers] sported plain red buttons to demonstrate their union membership after the JMLA ran out of the original buttons. The JMLA also solicited and obtained the cooperation of the Japanese consul in San Francisco to prevent the entrance of other Japanese immigrants to work as scabs. (Barajas, 2012, pp. 137-138)

For the reader's reference, a wage of \$5 per acre would be equal to \$131.58 in 2013, while \$2.50 would be equivalent to \$65.79. One acre is equal to 43,560 square feet or $\frac{9}{10}$ the size of a standard US football field.

⁸² As the unionists unfurled a banner along the side of the wagon occupied by strikebreakers, a Mr. T. Cato approached them in protest with a shotgun; after being unarmed by bystanders, Cato “drew a pistol and fired upon the men putting on the banner” (Los Angeles Times, 1903b). As the riot erupted and gunfire was exchanged by Cato and the sheriff, five men were wounded, resulting in two hospitalizations and one death (Los Angeles Times, 1903b; Los Angeles Times, 1903c; Los Angeles Times, 1903d; Los Angeles Times, 1903f).

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Roughly two weeks after the first indication of a strike, the Western Agricultural Association formally cancelled all contracts in Ventura County not held with the American Sugar Beet Company; the Japanese Mexican Labor Association then began working with local growers to establish pre-strike wages for the remainder of the season (Barajas, 2012, p. 138; Barajas, 2004, p. 33-34).

Although the strikers of the first agricultural labors' union were successful in their efforts to secure fairer payment, attempts to leverage differences between ethnic communities, wage manipulation, and strikes would be a common occurrence for the first three decades of the twentieth century in Ventura County. Efforts at wage suppression and manipulation were successful, in large degree, due to the many business "associations" organized by landowners and sugar investors who worked together to manipulate the availability and wage of immigrant workers (Barajas, 2012, p. 63). Those involved in these associations, "did not operate as individual capitalists in competition with each other," notes Barajas (2012), "instead, they operated more like a cartel to surmount the challenge of acquiring a surplus supply of workers and setting an industry-wide wage rate to avoid free-market competition among employers that would work in the favor of workers" (p. 63). In addition to continuous tension during the early decades of the sugar beet industry, media reported agricultural strikes between the Oxnard, Piru, and Santa Paula areas during the years of 1933, 1937, 1941, and as late as 1960 within beet fields, citrus orchards, and celery plots (Los Angeles Times, 1933; Los Angeles Times 1937a; Los Angeles Times 1937b; Los Angeles Times 1937c; Los Angeles Times 1941a; Los Angeles Times 1941b; Los Angeles Times 1941c; Los Angeles Times 1941d; Los Angeles Times 1941e; Los Angeles Times

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1960). The practice of diminishing wages and revoking employment were common tactics throughout the early- to mid-twentieth century era, and area entrepreneurs utilized these measures in their attempts to subvert union actions linked to fair working conditions and pay.

While it is possible to trace these community divisions via labor and employment, important patterns begin to emerge when we turn to the topic of housing, city planning, and residential segregation. As the next section will illustrate, the social rifts entrenched by new forms of labor served as a type of blueprint for the segregation of the county's multiple ethnic communities. This section has discussed the rise of the sugar beet industry under the leadership of Henry Oxnard, tracing the ways in which capital, low-wage labor, and imported knowledge shaped both the Chino and Ventura County areas. By importing European knowledge, labor, and machinery into California as the foundation of a new farm-to-factory system, Henry Oxnard established a capitalist-based hierarchy of bodies valued, firstly, for their knowledge of production, and secondly, for enacting these processes via specific forms of physical labor. While administrative employment ranked above manual labor, government-sponsored researched and local association-sponsored attempts at wage manipulation established competitive divisions between ethnic communities. These dynamics created important discords among the emerging Oxnard community and growing Ventura County population, which I turn to in the next section. The foundation of the Oxnard sugar factory, much like the Chino factory, created racial wedges within the Oxnard community that laid the foundation for current concepts of racial, ethnic, and gender normativity.

Contextualized in reference to the broader study, the previous section has illustrated a schema of bodies correlated to various degrees of social inclusion, exclusion, and civil

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personhood, with specific populations being structurally disenfranchised at multiple levels. While some of these elements include legal measures, such as important taxes and statutes constraining available employment, others existed at the intersection of economics and society. The classification of bodies into a schematic of desirability correlated to industrial and agricultural labor was not a process of determining abilities, talents, or experience during the first decades of the city of Oxnard's establishment. Rather, distinguishing which bodies were capable of specific jobs was a practice that existed at the intersection of capitalist gain, citizenship status, class, and race. In short, ethnic minority individuals experienced multiple forms of social and legal exclusion, resulting in a sustained erosion of their civil personhood within Ventura County at the levels of legal citizenship and social interaction.

Space, Race, and the Erotics of Supremacist Ideology in Twentieth Century Oxnard: A meditation on the intersection of race and sexuality

Although Ventura County's foundations involve the labor of multiple non-white communities, Oxnard and other county townships were racially segregated in terms of legal status and municipal layout, much as the rest of the early twentieth-century United States. "Individuals and institutions restricted [non-White individuals] in all aspects of public life," note Yosso and Garcia (2013), "barring them from serving as jurists, patronizing stores and restaurants, utilizing public facilities ... and purchasing or occupying property designated for Whites only" (pp. 67-68). Japanese, Chinese, Mexican, and South Asian immigrants were faced with the threat of double taxation or the removal of land, livestock, or material property (Los Angeles Times, 1909a).⁸³ Racial and ethnic segregation within residential areas of

⁸³ In an article titled "Try to Make 'Em Pay Twice," the Los Angeles Times reports that Japanese citizens of Oxnard were charged poll taxes by both the city and the County of Ventura (Los Angeles Times, 1909a). "Both

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Ventura County was a common occurrence, often closely tied to the geography of towns themselves, with non-white neighborhoods placed in less desirable areas (Barajas, 2012, Chapter 2, Chapter 3; McBaine, 1995; Yosso and Garcia, 2013).

Residential segregation based on race was not a new phenomenon in Ventura County, as the first non-White immigrant enclave to develop in the area involved the creation of the county's first Chinese settlement in 1860 (Ainsworth, 1985, p. 23, "A flurry of activity"). By 1876, a small community of 200 Chinese immigrants lived "in a tight cluster of wood frame buildings on Figueroa Street, south of Main Street, and across from San Buenaventura Mission" (Ainsworth, 1985, p. 23, "A flurry of activity"). By 1905, as property values in the downtown area of Ventura rose, "Ventura's first Chinatown was leveled" and its residents were pushed towards the western border of the city (Ainsworth, 1985, p. 34, "Chinatown"). "The land they were forced on to was neither fertile nor protected from severe flooding," yet the community would flourish long enough to create two more settlements within the city (Ainsworth, 1985, p. 34, "Chinatown").

Most importantly, archaeologist Roberta Greenwood notes that segregation was often accompanied by structural measures intended to disenfranchise non-white communities both economically and in terms of living quality and sanitation (Ainsworth, 1985, p. 34, "Letters being translated"). Although structural forms of discrimination were present in other large California cities during the late twentieth century, "they seemed to pale in comparison to the

sides of the controversy admit that there is no contest about the state poll tax of \$2," notes the article, continuing, "All residents of an incorporated town, however, are exempt from the payment of the county poll tax of \$2. Marshall W. E. Kelley has collected the \$2 city tax and on top of this, the county deputy assessors have attempted to collect for the county" (Los Angeles Times, 1909a). The action resulted in many Japanese laborers quitting their jobs in area fields and relocating to friendlier communities throughout California, resulting in a labor shortage during the spring season of 1909 within Ventura County (Los Angeles Times, 1909a).

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full-scale efforts in Ventura,” which included, “legal attempts [to] tax Chinese businesses out of existence” or refusing to connect city facilities to non-white neighborhoods (Ainsworth, 1985, p. 34, “Letters being translated”). “The town’s sewers, for instance,” notes Greenwood in a 1985 interview, “did not connect with either the east side of Figueroa or the west side of Main Street, where the Chinese houses and businesses stood. An abundance of Chinese bathhouses was not an uncommon sight” (as quoted in Los Angeles Times, 1985, p. 34, “Letters being translated”).

In 1906, one year after the city of Ventura demolished its first Chinatown, the Limoneira Company of Santa Paula broke with established social tradition and built housing for its fruit workers. Hoping to leverage accommodations in exchange for worker loyalty, the Limoneira Company created one of the county’s first “worker villages,” with the intersection of race and marriage status determining where workers were housed as early as 1897 (McBaine, 1995, p. 73). While housing was denied to all Japanese, Chinese, and Mexicans, single white men were assigned to dormitory-style housing, while married men lived in small bungalows called “family houses” (McBain, 1995, p. 73). Eventually, during the years of 1906 and 1907, the company decided to broaden its housing base, building separate worker residences for non-white employee communities, and a new dorm capable of holding 96 single, male workers (McBaine, 1995, p. 73). Although housing for non-white workers was expanded again in 1916, it was common practice to relegate Japanese, Chinese, and Mexican workers to older accommodations, many of which were left disconnected from municipal water and electricity services as the city expanded (Mc Baine, 1995, p. 73).

Between 1917 and 1919, efforts to establish residences for workers of the Oxnard beet sugar factory began after the American Beet Sugar Company learned that providing

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housing did have a positive effect on worker retention. In 1917, factory manager Frederick Noble undertook the task of convincing area farmers and field owners to build adobe residences, noting that the secret to managing labor effectively lay within the offer of permanent housing to workers (Barajas, 2012, p. 62). “The ABSC understood that [beet workers], based on the Colorado example,” explains Barajas (2012), “returned to work the fields of growers that treated them amicably and provided them a ‘square deal’ for their labor” (p. 62). Encouraged by the success of their counterparts in Colorado and Santa Paula, the American Beet Sugar Company lobbied farmers to build worker residences and also agreed to build a neighborhood of adobe structures near the sugar refinery (Barajas, 2012, Chapter 2; Yosso and Garcia, 2013, pp. 70-71).

While the adobe neighborhoods constructed by the American Sugar Beet Company did provide stable residences for factory and field workers, these new neighborhoods were often substandard in comparison to other residential areas. Backed by the Federal Housing Administration, real estate agents, and lending institutions, Oxnard city covenants restricted property west and north of the town’s railroad tracks as “White Only” (Yosso and Garcia, 2013, p. 70). The area east of the railroad tracks in the southern quadrant of Oxnard was set aside for the new adobe residences, and was named “La Colonia Gardens,” being primarily of Mexican tenancy (Yosso and Garcia, 2013, pp. 65-70). While the neighborhoods located away from the factory benefitted from water, electric, and gas service, it was not until after World War II that La Colonia Gardens would receive municipal services, paved roads, or sidewalks (Yosso and Garcia, 2013, p. 70).⁸⁴

⁸⁴ While La Colonia Gardens remains the classic example of residential segregation based on race, the existence of Oxnard’s own China Alley complicates the picture somewhat. Located near La Colonia Gardens in the

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In common practice, the dominant social views tended to take racial segregation as the de facto method of civic organization for communities throughout Ventura County. The default “racial contract,” explain Yosso and Garcia (2013), involved a system where “Whites tolerated [non-whites] as servants, and planned for future generations to remain within these roles” (p. 74). The predominately Anglo community of Ventura county “tolerated the presence of disenfranchised Asian and Mexican immigrants as long as they remained subordinate” and leveraged administrative systems involved in real estate, city governance, and education to entrench multiple forms of segregation within the social structure and geographic layout of Oxnard (Barajas, 2012, p. 58; Yosso and Garcia, 2013, p. 79). This resulted in a municipal organization with the most desirable areas being occupied by Whites, while ethnic communities carved out their own spaces on the outskirts of the growing city. This residential parceling of communities persisted through the 1920’s and 1930’s, well past the World War era, and into the US Civil Rights era (Barajas, 2012; Yosso and Garcia, 2013; McBaine, 1996).

One important question regarding these structural forms of segregation and disenfranchisement remains. If we are to truly understand how the body has been raced and

center of the downtown area, China Alley – heavily populated by Chinese and Japanese immigrants – was considered Oxnard’s “red light district” (Barajas, 2012, p. 73). “The local newspaper regularly reported,” notes Barajas (2012), “the sale of alcohol, marijuana, and opium here, as well as prostitution, sensationalized knifings, shootouts, and homicides” (p. 73). While popular news reports portrayed the area as full of shifty drug deals, prostitutes, and criminal activity, China Alley was actually “where a cross-cultural section of men congregated for recreation, leisure, and companionship” (Barajas, 2012, p. 73). As La Colonia Gardens expanded, China Alley prospered, hosting markets, saloons, pool halls, tailor shops, restaurants, and boarding houses (Barajas, 2012, p. 94). Yet whether Asian citizens, their customs, and their influence of daily life were welcome in the new city was clear – “Integrated cultural events advanced a fantasy of communal harmony” and were tolerated by the greater Oxnard citizenry in order to ensure “the stable presence of a more exploitable and less expensive, non-white labor force” (Barajas, 2012, pp. 50-51). In short, it was not the cultural novelty or human interaction that White Ventura County residents celebrated regarding their immigrant counterparts, but instead, their own ability to leverage immigrant status for cheap(er) labor.

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sexed in the Ventura County area, as well as how those legacies are inflected in present-day social crises, then we must inquire as to the function perceived within the act of separating one social group from another. In addition to existing as a structural tool of material and economic manipulation, what purpose does racial segregation serve? If our current society touts that it has overcome degrees of racism via social integration, and that diversity creates stronger communities, then what was the perceived logic of residential segregation with regard to race and ethnicity in early twentieth-century Ventura County, and how were these social divisions enforced?

One important piece of information regarding the social function of race-based segregation comes from a peculiar 1911 newspaper article. Entitled “Japanese Arrest, Jail, Convict and Sentence Eloping Countrymen,” the article details a situation that broke out in “the Japanese quarter” of Oxnard, in which a young Japanese man attempted to run away with a married Japanese woman (Oxnard Press-Courier, 1911, p. 4). According to the article, after the two individuals were recovered,

... a considerable percentage of the Oriental population of Oxnard took one of the strangest actions in the history of the city. For a few hours the Japanese quarter became a little municipality of its own. A posse was organized, an impromptu jail established with guarding officers, a court with a judge presiding and with a number of Japanese in the capacity of jurymen acting was held and a sentence given and carried out.... The law was taken into their own hands ... [and the] entire case was carried out and full justice administered without the law taking any step. (Oxnard Press-Courier, 1911, p. 4)

The resolution of the case involved temporary incarceration in the makeshift jailhouse, a short trial, and expulsion of the young man from the city of Oxnard, all within the confines of the Japanese-segregated enclave of the town (Oxnard Press-Courier, 1911, p. 4).

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While the details of the article may seem monotonous at first glance, an important refrain emerges that gives us a clue as to one social function of race-based segregation. The methods employed by the Japanese vigilantes, notes the author, were “reminiscent of action taken by such secret orders as the Ku Klux Klan of Civil war days, though having absent from it the violence which most times marked those proceedings” (Oxnard Press-Courier, 1911, p. 4). So compelling is the parallel that the author notes it twice, both in the immediacy of the opening line and as a closing thought (Oxnard Press-Courier, 1911, p. 4). More fascinating to the correspondent is the reality that these proceedings were carried out both in the absence of law enforcement and without the commission of violence, a factor that distinguishes this particular case as unique in comparison to the actions of the Civil War era Klan (Oxnard Press-Courier, 1911, p. 4).

What remains banal to the correspondent, however, is just as important as the aforementioned parallels. That the young bachelor attempted to “break up the house of another Japanese” by absconding with “his wife” seems a relatively uninteresting situation to the reporter, so common that the act of “tamper[ing] with the affections of another man’s wife” seems to be a relatively bland charge within the bounds of the publication (Oxnard Press-Courier, 1911, p. 4). More importantly, the Japanese woman featured in the article is not formally referred to in any fashion; instead, she is referenced only in the context of her paramour or her husband, creating the sense that she is property to be coveted, a matrimonial fixture whose removal from the domestic space marks broken taboos pertinent to marriage, sex, sexuality, and desire. The Japanese woman bears no description save “his wife,” and the only name mentioned in reference to her presence refers to the family name assumed when she married her husband. Likewise, the agency of the nameless woman is diminished as she

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becomes an object to be pursued and acquired, rather than a human being whose agency resulted in the act of absconding from unknown marital conditions.

While seemingly unconcerned with the topic of miscegenation, the commentary featured in the Oxnard Press-Courier is solely focused on the protection of local mores and taboos surrounding marriage, desire, and sexuality. That a “considerable percentage of the Oriental population” of the city actively responded to the decamping of a young man with a married woman suggests the activation of fears concerning marriage, property, sex, and reproduction within this segment of Oxnard’s Japanese community. This becomes more evident when we investigate the language used to refer to the young bachelor, described as an individual who “endeavored to break up the home” of a Mr. Mymi, and who could thereby be labeled a “destroyer of homes” (Oxnard Press-Courier, 1911, p. 4).

To assume, however, that the exposé’s representation of two racially similar individuals eloping bears no tie to themes of segregation and racial supremacy would be to commit an analytical misstep. If we accept the author’s account as conceptualizing Japanese and American taboos surrounding sex, marriage, property, and reproduction through this account, then we must consider the function of the author’s comparisons between the Japanese carriage of justice and the KKK’s vigilantism. To overlook the contrasts made within the article is to take for granted how the author’s point of reference inflects intersections of sex, sexuality, race, marriage, and gender by normalizing White supremacy—to overlook the *imaginary body* as it is simultaneously raced, gendered, and sexed by a rhetoric that weaves together social anxieties regarding racial superiority, inferiority, purity, and contamination. The author’s comparison of the case’s lack of violence is directly tied to the *absence of miscegenation* within this logic, whereas the mention of Klan vigilantism is

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linked to *a broad historical presence* of the race-related, violent, White supremacist, anti-miscegenation attacks of the nation's "Civil war days" (Oxnard Press-Courier, 1911, p. 4). In short, the distinction of the Japanese as being "unlike the Klan" due to the absence of violence points to the ways in which race-based terror, mutilation, and murder were considered normal in the U.S.'s pre-Civil War society.

What this article alludes to is that fact that within the discourse of White supremacy, segregation is linked to anxieties regarding sex, miscegenation, and cultural taboos linked to racial superiority and purity. Historian Edward Ayers, referring to the landmark case that overturned anti-miscegenation marriage laws, *Loving v. Virginia*, comments as follows in a 2011 interview: "Segregation from the very beginning was fundamentally about sex. It was designed, from the very beginning, to prevent men and women of different races ... from occupying the same spaces in which they might be tempted" (Buirski, 2011).⁸⁵ Not only do scholars of White supremacy generally agree upon this point, but so do law enforcement officers familiar with cases of violence linked to such ideologies. "Race and sexuality are always tied together," notes Ventura County Detective Swanson, "because procreation is always tied to [the] generation of a particular race. ... You can't have a race continuing unless you have procreation" (Personal Interview, 2011, Transcript, pp. 3-4).

⁸⁵ Analyses that link segregation to sexual taboos commonly refer to the case of *Loving v. Virginia*, brought to the U.S. Supreme Court in 1967. According to the case, Richard Perry Loving, an Anglo male, and Mildred Jeter Loving, an African and Native American female, married one another outside of their home state of Virginia in 1958 in an effort to evade the state's Racial Integrity Act (Buirski, 2011). After their marriage in Washington, D.C., the Lovings returned to Virginia, where interracial marriage was illegal; subsequently, police arrested them and charged them with violating laws criminalizing interracial marriage outside of state lines (Buirski, 2011). After evading a criminal sentence by agreeing to leave the state, the couple eventually petitioned the American Civil Liberties Union for help at the direction of Attorney General Robert F. Kennedy (Buirski, 2011). With the help of the ACLU, the case was taken to the U.S. Supreme Court, which set a new precedent by overturning all laws structured to criminalize interracial marriage (Buirski, 2011). For a broader discussion of the function of segregation with respect to sexuality, erotics, and race, see: Aliyya Abdur-Rahman (2006), Bibi Bakare-Yusef (1997), Colin Dayan (2011), Roderick Ferguson (2003), Sharon Holland (2012), Celine Parreñas Shimizu (2007), Siobhan Sommerville (1994).

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While ideologies of racial superiority may not overtly refer to sex and sexuality, the discourse of sustaining racial purity relies on rhetoric of “racial mixing” and, conversely, implications of contamination. Within this discourse, the White supremacist’s relationship to sex foregrounds the human capacity for biological reproduction as the sole element capable of sustaining a given race’s population, or contrariwise, contaminating racial purity via interracial sex and conception. White supremacist ideology, therefore, subversively integrates ideas of sex, sexuality, gender, and desire by schematizing the *potential for biological reproduction* as the sole human characteristic propagating Whiteness at the same time that it is under the constant threat of contamination by non-Whiteness. In short, the idea of racial purity can only function via a directive of racially selective procreation whose “spotlessness” is phrased through a discourse of policing sex, sexuality, desire, and procreation. As such, the core of White supremacy ideology is conducive to forms of Othering based in multiracial identity, undefined non-White ethnicity, and any identity that confounds heterosexual classification, such as homosexuality, bisexuality, or transgender identity. This logic seeks to segregate individuals by ethnicity in the name of racial purity while simultaneously marking sexual and gender others on the basis of non-normative desire. Ethnicity, racism, homophobia, and heterosexism all converge within White supremacist ideology in a very distinct fashion that exalts a specific construction of White gender and sexuality and eschews non-White, non-heterosexual gender and sexuality as degenerate.

It is important to note that, much like notions of the *imaginary body*, the variations that White supremacy ideology assumes within a given locale are culturally, socially, and structurally contextualized. It is unquestionable that the historical origin of supremacist groups, such as the Ku Klux Klan, is centered firmly within power struggles linked to

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African American emancipation, a history of pro-slavery secession, and the legacy of violence associated with the U.S. Civil War.⁸⁶ This context often leads students of history to imagine supremacist groups as centered solely within racist politics exclusive to Anglo-Black interaction due to the fact that the Klan and other groups “engaged in various forms of vigilante terrorism directed against Blacks and their White allies” (Bringhurst, 2011, p. 365). While this holds true for states entrenched within the slavery system, Bringhurst (2000) notes that frustrations linked to the Black exodus out of the Southern United States evolved to address the steadily increasing population of Mexican Americans and Mexican, Japanese, Chinese, and South Asian immigrants along the western coastal states (pp. 368-369).

Although no evidence of Klan presence exists in California before 1920, the proliferation of chapters during the 1920’s suggests important developments for the group within the state. By 1921, California boasted at least thirteen chapters of the Ku Klux Klan, with the Santa Barbara chapter being founded during the 1921-1922 year (Bringhurst, 2000, p. 370).⁸⁷ In 1923, decades of non-white immigration into Ventura County “ignited fears in part of the Anglo-Saxon community, and the White supremacists expressed their discontent through a campaign of Ku Klux Klan ... intimidation” (Menchaca and Valencia, 1990, pp. 236-237). During July of the same year, a membership drive was held between Ventura and Santa Barbara counties, resulting in the induction of over 400 members, with a similar event occurring one year later (Menchaca and Valencia, 1990, pp. 236-237). In addition to

⁸⁶ Newell Bringhurst (2000) notes that the KKK emerged as a “paramilitary force whose major objective was to perpetuate White supremacy following the emancipation and the conferral of civil and political rights on Black Americans. Southern Klansmen were drawn from every walk of life, but led by the landholding and professional elite” (pp. 365-366).

⁸⁷ According to Bringhurst (2000), California chapters of the KKK existed in the following cities by 1921: Los Angeles, Santa Monica, Huntington Park, Hermosa Beach, Long Beach, Glendale, San Pedro, Anaheim, San Diego, Imperial Valley, Oakland, Sacramento, San Francisco.

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announcing meetings in local newspapers, KKK members often held public rallies and meetings in town centers or on hilltops overlooking non-white neighborhoods “as a repressive means to subordinate the [non-white] community” (Menchaca and Valencia, 1990, pp. 236-237).

In addition to being a decade of recruitment, the 1920’s marked a period in which the Klan shifted its focus from public displays of violence towards an approach that centered power within positions of municipal and legal authority. Rather than sustaining their previous paramilitary hierarchy, the Klan of the 1920’s was highly integrated into civil society and, in contrast to their nineteenth-century counterparts, were largely nonviolent, seeking to establish “primary influence through the political process” (Bringhurst, 2000, p. 368; McVeigh, 2001, p. 2). A 1922 inquest into members of the supremacist group within Los Angeles and surrounding counties discovered a number of important influential positions as active within multiple Klan chapters, including City Trustees, Justices of the Peace, attorneys, police judges, fire fighting personnel, courthouse personnel, federal and municipal detectives, and one chief of the National Guard (Los Angeles Times, 1922d; Los Angeles Times, 1922e). On at least one occasion, the inquiry found that the KKK influenced the hiring of unqualified Klansmen into important municipal roles.⁸⁸

Given the trend of supremacist groups entering positions of municipal leadership and political influence, it is reasonable to conclude that Ventura County’s legacy of racial

⁸⁸ In May of 1921, a Grand Jury investigation uncovered evidence of an inappropriate appointment to the position of City Marshal that involved KKK influence (Los Angeles Times, 1922g). According to an article detailing the findings, a Klanmember named Mr. Steele attempted to find work in Pasadena after being fired from the Santa Barbara police force (Los Angeles Times, 1922g). Having no luck in his search, “he applied to Klan officials to aid him to get work. He resided in Taft about one week when he was appointed City Marshal by the Board of Trustees, five members of which were Klansmen, according to the evidence” (Los Angeles Times, 1922g.) Interestingly, the same article notes that local chapters of the supremacist organization funded publicity materials for members that ran for public offices.

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segregation was influenced in part by the Ku Klux Klan or similar-minded organizations. Ventura's suppression of the Chinese immigrant population by refusing to integrate Chinatown into municipal services is one iteration of supremacist-based segregation. Likewise, the delayed extension of similar services to the Oxnard neighborhood of La Colonia marks a second, similar instance. More importantly, the refusal of area entrepreneurs and landowners to build worker housing until well after 1910 marks the widespread refusal of the Ventura County citizenry to integrate non-white individuals in the broader society. The confinement of Mexican, Japanese, Chinese, and South Asian populations to the outskirts of cities within the county solidifies the reality that within the early twentieth century, the Oxnard community exercised its ability to segregate neighborhoods based on race, with the threat of miscegenation being one factor among many for these civic divisions.

This chapter has oriented the reader to policies of racial segregation present within Ventura County and the city of Oxnard, an essential step in understanding how the *imaginary body* is conceived of in terms of race, ethnicity, and social privilege at the local level. After discussing the city of Ventura's effort to resist influences by supremacist groups, this chapter has outlined the ways in which the city of Oxnard established segregation in relation to farm-to-factory industrialization. Racial segregation in living arrangements, employment, and education was exhibited throughout the founding of Ventura and Oxnard, suggesting that the process of segregation was not only structural, but also served an important purpose between the 1890's and 1930's. The section then turned to an analysis of how segregation invokes sex and sexuality through procreation, ending with notes on how such policies were tied to the movement of the KKK into local positions of power. In the overall context of the study,

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linking sex, sexuality, and gender identity to racial supremacy marks an essential step in developing an understanding of the *imaginary body* at the local level. Understanding that sex and gender are inculcated into White supremacy ideology's concepts of race is one step in linking violence against sexual others to ideas of racial supremacy. By reasoning through regimes of racial segregation in a manner organized around fears of miscegenation and multiracial identity, White supremacy ideology's logic centers itself within heterosexuality, procreation, and normative gender binaries. Sexual and gender characteristics outside the realm of this schema are processed as threats to heterosexuality, coercions away from sexual normativity and the propagation of a particular race. In this way, lesbian, gay male, and bisexual identities become associated with degeneracy, as do transgender, transsexual, or gender non-normative identities and experiences.

In the next chapter, I turn to a case study of embodiment in 1945 Oxnard. The case of Lucy Hicks, who lived for over thirty years as a woman in Ventura County, illustrates the power of crafting one's own embodiment alongside the state's ability to strip citizens of their corporeal identities. As chapter five shall illustrate, the confluence of corporeal difference, racial otherness, and gendered Otherness invokes a space of conflicting citizenship, where the threat of social death and the erosion of civil rights looms large, even when individuals successfully negotiate social inclusion in the face of difference.

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“The Legend of Lucy Hicks”: Non-normative bodies, citizenship, and social death in early twentieth-century Oxnard

“His body, which I had come to know so well, glowed in the light and charged and thickened the air between us. Then something opened in my brain, a secret, noiseless door swung open, frightening me: it had not occurred to me until that instant that, in fleeing from his body, I confirmed and perpetuated his body’s power over me. Now, as though I had been branded, his body was burned into my mind, my dreams.”

—James Baldwin, *Giovanni’s Room*, (2000/1956), p. 144

“The town was newly rich on sugar beets, and its Chinese and Mexican laborers blew their pay nightly on light ladies, gambling, whiskey and opium. Lucy, a skinny, 6-ft. Kentucky Negro, decided to stay, set out to get a good reputation as a preliminary to getting a bad one.”

—Time Magazine, 1945, “Sin and Soufflé,”

Introduction: Citizenship and Non-Normative Gender Identity

Recall that in the second chapter of this study I presented the history of a specific psychiatric paradigm, “acute pernicious homosexual panic,” that influenced medical, judicial, federal, and popular concepts of non-normative sexual desire and identity. This history, however, marks only one instance in which U.S. societies have attempted to regulate non-normative bodies, sexual interactions, and gender presentations. Writ broad, U.S. civil and criminal law has experienced an extended history of identifying, marking, and attempting to “correct” gender identities, sexualities, and unique corporeal configurations deemed “not normative,” where heterosexually-deployed binaries drive prevailing concepts of being.⁸⁹

⁸⁹ In this study, the term “normative” refers to that knowledge pertaining to sex, sexuality, and sexual identity within the law that signifies “normal behavior.” Rather than a clinical or quantitatively based definition, norms are laden with values and ideals specific to the society in which they occur. Norms and normative understandings of sex and sexuality are both influenced by and occur through culture (where culture is defined as both forms of social regulation and cultural production), both historical and current. They also establish a type of social consent in that they define the normative, baseline, standard for interaction within a given culture and society. Norms can be tracked unofficially, in social interaction, or officially, in forms of cultural and social regulation, such as family and criminal law.

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The earliest examples of this within the US can be seen in colonial records describing “monstrous births,” involving living or stillborn infants with deformed features, including genitalia (Reis, 2005).⁹⁰ Later colonial records confront the legal quandary of classifying the sex and gender of individuals born with genitalia and secondary sex characteristics now classified as “hermaphroditic”; colonial courts mandated that such individuals be classified via the sex to which the majority of their genitalia and secondary sexual characteristics conformed (Brown, 1995; Fausto-Sterling, 2000, Chapter 2; Reis 2005).⁹¹ During the early twentieth century, the phenomenon of cross-gender identification, dress, and mannerism was labeled by sexologists and physicians as “sexual inversion,” in which a “sexual invert” appropriated the mode of dress and expression of the opposite sex (Mumford, 1994). During the first two decades of the twentieth century, a relatively large sexual invert community

⁹⁰ Reis (2005) notes that within the colonial historical record, cases of “monstrous births” often conformed to legal, ecclesiastical, and mythic ideas of sex and sexuality that outlined taboos and crimes within their own imaginary (pp. 414-417). According to Reis, one of the most popular references for these occurrences was known as “Aristotle’s Master-Piece,” a medical manual that was reprinted and circulated throughout the colonies, and which contained drawings and descriptions of monstrous births as well as their sexual origins (p. 414). Among them, drawings and descriptions indicated an abhorrence, taboo, and unnatural fascination with female bestiality, including images of creatures that were born from human-canine copulation, and human-demon copulation (pp. 414-416). These images were often accompanied by renderings and descriptions of genitalia as hermaphroditic, noting that “hermaphroditism” in the colonial imaginary carried not only a disruption of binary sex via genitals, but also the possibility of a mixing between species, a deeper, more marked connotation of evil. Reis also relates the story of Mary Dyer, a vocal follow of the anti-Puritan Anne Hutchinson, who gave birth to a monstrous baby in 1637 (pp. 415-418). Seen as a portent that her activities moved against the will of the divine, doctors described Dyer’s stillborn baby as having scales on its back, no neck, ears similar to an ape’s, four horns above the eyes, misplaced genitals and anal orifice, three mouths, and claws where the digits should have been (pp. 415-416). While lethal deformities of in-vitro infants have been seen in still-born babies, it is difficult to discern whether the description of the child is fact, or whether the Puritan clergy enhanced the deformities to convince Dyer of the consequences of her ill-mannered behavior. While authorities were required to be notified of such births, Puritan societies believed it was within the best interest of the people and the family in question to keep the news of such births secret, noting that they were divinely-inspired intercessions aimed at reforming the actions of the individuals in question (pp. 415-16).

⁹¹ This trajectory with regard to sex, gender, and sexuality set up a system in which claiming one sex was paramount for jurisprudence to take hold of the natural body; as one early twentieth-century sex scholar claimed, “the possession of a [single] sex is a necessity of our social order, for hermaphrodites as well as for normal subjects” (William Blair Bell, as quoted in Fausto-Sterling, 2005, p. 42; see also Nederman & Tacqui, 1996, pp 504-506, 515-516). As Fausto-Sterling notes, “although it was clear that some people straddled the male-female divide, the social and legal structures remained fixed around a two-sex system” (p. 36).

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gathered on the east coast in Newport, Rhode Island. Because these individuals regularly fraternized and sexually socialized with men and women in the armed forces, the US military began prosecuting homosexual conduct, speech, and attitudes, attempting to purge all sexual inverts and homosexuals from its ranks (Arsenault, 2009; Chauncy, 1985; Dong, 2004; Eaklor, 2008; Wake, 2007).

This chapter will investigate questions of non-normative identity and whether the judicial system can adequately present complex, non-traditional identities as whole persons. Specifically, this chapter investigates the ways that male femininity and cross-gender presentation affect notions of citizenship at the social and structural level. In establishing an analysis of socio-legal personhood, I will remind readers of the earlier discussion of Gates' (1996) and Dayan's (1998) theories. After elucidating how bodies, sexuality, and gender presentation play a role in establishing citizenship, I will then turn to what can be considered a foundational case study on the interplay between judicial and social spheres within a specific case that charts the erosion of civil personhood in the early twentieth century. The historical case of Lucy Hicks establishes a legal trajectory that (re)formulates non-normative identities in order to apply legal codes within Ventura County. As I will illustrate, the judicial sphere's actions in this case result in a gradual negation of personhood via practices of sexual- and gender-based dehumanization at the social level, eventually resulting in the nullification of personhood for non-normative individuals.

With respect to Ventura County's local history, I will trace the historical persona of Lucy Hicks, an African American individual who lived her life as woman, before being arrested and tried in 1945 for several judicial charges related to the fact that Lucy possessed male genitalia. Readers may wonder why it is necessary to move backwards in time when

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investigating gender and sexual identity pertinent to a contemporary case of hate-motivated murder. Such an analytical move is important for this project in that it establishes the social and judicial trajectories tied to the case of Lawrence King and Brandon McInerney at the local level, with regard to the intersections of race, ethnicity, (biological) sex, and cultural constructions of gender.

While the study has confronted themes of violence from the standpoint of childhood, race and ethnicity, and the medicalization of otherness, the critical element of gender identity must be explored. The case of Lucy Hicks marks a study of civil personhood and social death in which the factors of race and ethnicity, gender identity, and reputation coalesce to create a high degree of social integration when Lucy was viewed by her contemporaries as a “different” sort of woman, and a degree of Othering resulting in social and civil death when the judicial sphere initiated litigation against her as a male sexual invert. The way Lucy’s appearance, mannerisms, talents, and person were celebrated during her womanhood contrasts deeply with her treatment as a male by the media, Oxnard society, and court system during her trial. The case of Lucy Hicks, ultimately, provides us with an important example of local jurisprudence concerning the effects of classifying individuals pejoratively based on gender identity and sexuality.

A Primer on Civil Personhood

In her 1998 publication, “Legal Slaves and Civil Bodies,” Joan Dayan asserted a radical view of the legal system, noting that rather than producing truths about society and citizenship, judicial processes establish *fictions of personhood* that mark themselves as distinct from social or personal understandings of personhood. In recognizing citizenship, the law invokes the notion of *natural personhood*, which it subsequently places under erasure in

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an effort to assert legal formulae as a method of attaining a higher social order – a *civil* order.⁹² Within the socio-legal sphere, a citizen’s body can be recognized either as “the *civil body*, the artificial person who possesses self and property,” or “the *legal slave*, the artificial person who exists as both human and property” (p. 55).⁹³ These divergent extremes of legal personhood and legal non-personhood are constantly being reformulated by the judicial sphere in ways that demand the civil body submit to further identity fictions, such as those of race and ethnicity, (hetero)sexuality, marriage and divorce, or the status of qualifying as a woman, man, transgender, or transsexual individual (p. 55). At the center of this network exists the human body, unlabeled and unidentified, “a cipher that awaits to be filled by a cluster of beings” (p. 55). Within this system, the human body is literally posed as a legally defined non-entity awaiting the juridical knowledge and process that will identify, name, and

⁹² For Dayan (1998), the possession of civil rights did depend on race, which a second fiction asserted on the personhood of civil body. According to Dayan, the law asserted that race and blood were united through a long history of legal precedent set forth by colonial law, where ultimately:

As a metaphysical attribute, blood provided a pseudo-rational system for the distribution of mythical essence: blood = race. Once the connection is made, color can be referred to, but now it means blood. Like the word *blood*, *color* is fictitious, but the law ... engineered the stigma that ordains deprivation. (p. 64)

By establishing a fiction of race tied to blood lineage, the law could set up a hierarchical system of legal inheritance accompanied by a legal system of deprivation: disinheritance, the stripping of titles, the historical practice of “forfeiture” whereby “the goods and chattels, lands and tenements, of the attained felon were forfeited” to his person or any legal heir (p. 58). This hierarchical system could be applied to and deployed across various characteristics at once – for example, race, sex, gender, and class. As this section details an important case tied to sexual jurisprudence, we shall see how sexuality and gender identity were also related to the practice of forfeiture pertinent to citizenship.

⁹³ While Dayan (1998) was concerned primarily with the notion of “civil body” as a historically free citizen and a “legal slave” as an individual owned as property by a free citizen, she asserts that these fictions established future conditions for the status criminals and prisoners assume within the sphere of legal influence (pp. 66-72). I am concerned with the notion of a “legal slave” as criminal and prisoner of the state, and assert that criminality based on non-normative sexuality and/or gender presentation occupied a similar space as slavery based on race. According to my research, the historical trajectory in which sexual and gender non-normativity were tied to criminality in the US occurs over a period of roughly 300 years, with the iteration prior to the “gay marriage debates” being the trial of *Bower v. Hardwick*, a 1986 Supreme Court case that challenged the constitutionality of Georgia’s sodomy laws at the time. While judges disagreed with the idea that consensual homosexual activity should possess the same rights as consensual heterosexual activity, judges’ rulings vacillated between cultural, legal, and popular notions of homosexuality, asserting that the combination of all of these marked the omnipotent reasoning of the law. (For more information on *Bowers v. Hardwick*, and to read judges’ individual rulings, refer to “*Bower v. Hardwick*, 478 U.S. 186” (1986). In Lori Gruen and George E. Panichas (Eds.), *Sex, Morality, and the Law* (pp. 4-14))

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confer rights upon it based on the most prominent identity characteristics it exhibits throughout the citizen's life. In the context of this analysis, the most important fiction of personhood involves the status of "civil death," often associated with criminality; an individual punished with this status

became a 'slave of the state,' ... so that once incarcerated, the prisoner endured the substance and visible form of disability ... [involving a] mandatory and permanent loss of a package of rights, privileges, and capabilities ... [as well as] the total destruction of the individual's status in organized society (p. 68-69).⁹⁴

Put succinctly, an individual who has undergone civil death has "lost the right to have rights" (*Trop v. Dulles*, as quoted in Dayan, p. 69).⁹⁵

The enactment of civil death is not a mechanical process that simply flows from legal codes onto civilians. Instead, the process of establishing and mandating civil death occurs in maintenance of those characteristics deemed normative within civil personhood. The process of litigating and producing legal rulings in cases where non-normative gender and sexuality are salient factors establishes a juridical system whose jurisprudence informs societies about normative identities, desires, sexual conduct, and gender presentation. Rather than simply ensuring the safety of civilians, the legal process of revoking civil and human rights is a legal

⁹⁴ Dayan (1998) also draws out the notion of civil death by linking it to criminality via slavery, noting that: The felon inherited something like a double debt to society: not only in figuring as the intermediate category between slaves and citizens, but also as a synthetic or unnatural slave. An entity held between life and death, this body would then resurface in the late-twentieth-century case law as the *human* who is no longer a *person*. From this perspective, it is possible to see how the shifting identity of the slave could be reborn in the body of the prisoner. (p.67)

⁹⁵ Dayan (1998) notes that in 1799, the state of New York established a "civil death statute [declaring] that a sentence of perpetual imprisonment entailed the loss of personal rights, including divesting the felon of property, and, further, dissolving his marriage so that his wife and children owed him nothing" (p. 67). While incarceration and the status of prisoner have changed throughout time, they have always relied on a curtailment or complete confiscation of rights. Dayan makes a distinction between prisoners and felons by noting that while felons have access to a curtailed set of rights, prisoners' access to the system of rights *as a whole* is nullified; it is for this reason that prisoners exist in a legal space akin to slaves, which is markedly differed from the fiction of "civil bodies" in that the law only recognizes a prisoner's personhood in order to nullify it and its access to civil rights (pp. 65, 69).

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technology that also defines, delineates, and enforces normative notions of civil personhood in a fashion that perpetually reestablishes the contract between natural person and civil law.

Within this analysis of legal personhoods and civil deaths, an inevitable set of questions arises regarding how we might measure the effects of a system that utilizes legal fictions to create and destroy different forms of personhood. What aspects of civil death can be measured, and do these factors hold constant from case to case? How can we adequately identify the production and deployment of legal fictions of personhood? Do such fictions occur solely in the judicial sphere, or do they also occur in the social sphere? Can the process of initiating civil death occur simultaneously in social interactions and litigation, or does one factor always initiate another factor? What role does the individual play in this process, and do they have any agency?

The case of Lucy Hicks engages each of these questions with a focus on how the legal sphere and social sphere dialogue concerning non-normative bodies, their citizenship status, and social death associated with judgments against non-normative identities. Using the theory of the *imaginary body* as a tool to investigate the case, the remainder of this section elucidates connections between popular concepts of the human body, the law, and the importance of language in engaging citizenship and social inclusion. After discussing how juridical and media lexicons can be used to trace aspects of civil personhood and social death, the section entitled “The Legend of Lucy Hicks” turns to archival material indicating that until the 1940’s trial, Lucy experienced a very high degree of social integration and the benefits of a positive reputation throughout the city of Oxnard.⁹⁶ As historical interviews and

⁹⁶ In an effort to draw the reader’s attention to the power of language, this chapter and the following section are titled after a newspaper article that emerged in 1967 in the April 30th edition of The Oxnard Press-Courier.

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media reports indicate, Lucy Hicks was a celebrated member of society, experiencing success in the role of chef, party organizer, and community volunteer during the three decades between her arrival in Oxnard and the trial against her. While the third section of this chapter discusses Lucy's identity from the standpoint of agency, the fourth and fifth sections elaborate how practices of criminalization, juridical lexicons, and media reports were used to reclassify Lucy from a productive female citizen to a degenerate male sexual invert. In addition to questioning Hicks' gender and sex at the levels of medicine, law, and media, the trial against Lucy Hicks confirmed her Otherness to the broader society, resulting in a social death in which she was literally removed from Ventura County. Ultimately, this chapter will show that society can establish social ostracism resulting in the revocation of citizenship at both popular and legal levels.

Because the judicial process in question involves the act of placing a citizen's body under erasure and subsequently (re)constituting the same body through the lens of the law, a framework invoking a critical understanding of corporeality is necessary. In establishing this framework, I turn to the work of theorist Moira Gatens (1996), which investigates how social structures of power phrase the body. Rather than being a purely personal creation, one's body "is developed, learned, and connected to the body image of others, and is not static" (p. 22). In addition to being impacted by the corporeality of fellow citizens, Gatens asserts that "all healthy people who are, or have, in addition to a material body, a phantom body or imaginary body [which provides] motility in the world" (p. 22). Rather than being a creation of the specific, small-scale circumstances involved in any one citizen's life, the imaginary

Written by Norris Murray, the article recreates the account of Lucy Hicks' life, trial, expulsion from Oxnard, and death from the standpoint of a local legend. Important dynamics are to be considered within the actions of The Oxnard Press-Courier, which played a large role in eroding Hicks' citizenship status twenty-two years before lifting her up to the level of a celebrated local hero.

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body is an amalgamation that inflects large-scale social and historical circumstances and events which work in tandem to constitute culturally normative bodies via “a shared language; the shared physical significance and privileging of various zones of the body ... and common institutional practices and discourses which act on and through the body” (p. 12).

If the imaginary body is truly learned and conditioned via socio-cultural interaction, then the ways in which society grapples with dilemmas of corporeality, sex, and gender constantly inform citizens of what identity characteristics qualify as normal, healthy, and modern. If, as Gatens (1996) asserts, the physical body and our understandings of it “are always lived in culture,” then culture and cultural production serve as a touchstone for what qualifies as normative, aberrant, or alien (p. 39). Because this project deals specifically with the way that courts and legal codes read and (re)formulate the body’s lived experience into more manageable “fictions,” it is logical to conclude that the ways in which the judicial sphere invokes corporeality and identity are of tantamount importance. As such, it is necessary to delineate legal codes and formulae used in cases that invoke corporeality-as-identity and vice versa.

While it is important to invoke legal codes and their application to citizens, we cannot safely conclude that each case of legal intervention and litigation can be approached by this theory equally. In looking for cases that will work well with this methodology, it is necessary to identify those moments in which court systems have attempted to apply legal codes specific to reading a citizen’s body. In addition, because each case is unique, and because some cases receive greater legal, cultural, and media-based notoriety than others, it is necessary to locate instances that have produced not only legal rulings, but also cultural

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production at the level of societies, for example, creative literature, art, scholarly research, or an extended media fascination.⁹⁷ The reasons for this relate back to the notion of the imaginary body, that identifying a corporeal imaginary hinges on locating a common lexicon, various privileged areas of the body, and structural forces which interact with and mark the body (Gatens, 1996, p. 12). Application of this method necessitates the identification of such a lexicon, the areas of the body it privileges, and how discourses surrounding a particular case take note of or ignore structural forces at play.

This section has briefly delineated theories pertinent to the notion of *civil death* and their investigation using the analytical tool of the *imaginary body*. To quickly review, the law nullifies personal, complex notions of personhood by reading all citizens as possessing an undefined *natural body*, whose vicissitudes and complexities are literally erased. This erasure produces a legally neutral entity, a non-person that can be subsequently branded by the law in order to effectively deploy *fictions of personhood* that lend themselves to litigation. One possibility present within these fictions is the process of civil death, in which rights are revoked from the citizen based on the law's reading of their corporeality. A useful way of investigating civil death can be arrived at by utilizing the theory of the *imaginary body*, which seeks to identify the language, aspects of corporeality, structural forces, and

⁹⁷ Here, I am asserting that the ideal case for a methodology that utilizes theories of civil death and imaginary bodies does not exist solely within culture or solely within judicial processes. A successful case would generate attention at the cultural and judicial levels, either simultaneously or in a fashion that extends through linear time. Readers should also be critical of the term "notoriety" as it can occur at multiple levels. While it is not necessary to refer to a case that has received attention at the national or international level, it is necessary to refer to a case that has generated the attention of civilians at the local level. This may include the involvement of parties that might traditionally be taken for granted, such as peace officers, lawyers, or community activists. It may also include generation of literature at the level of the media, such as community newspapers, editorials, requests for aid, or interest columns. Additionally – and perhaps most crucial – is the identification of community actions that inform researchers of how societies viewed a particular case at a particular historical moment. The ideal case will involve a number of sources from each category, illustrating the interplay between litigation and social interaction.

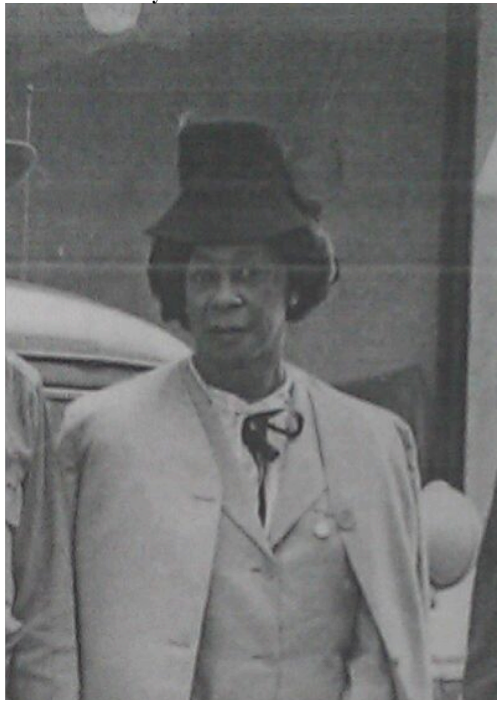
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social circumstances at play in a given case of civil death. Not all cases are applicable to this method, however, and care must be taken to identify a case whose discourses move between judicial and cultural sources in some crucial way. The case of Lucy Hicks is one example of a historical figure that successfully integrated herself into the Oxnard society as a successful woman and entrepreneur for three decades before being prosecuted for fraud, labeled as a legal male, and associated with non-normative gender and sexual identity.

“The Legend of Lucy Hicks”: Personhood, non-normativity, and civil death

The life story of Lucy Hicks, a prominent African American chef, housemaid, and brothel owner who lived as a woman in Oxnard during the World War era, is notable in that it generated discourse regarding gender, sexuality, and the law for over thirty years after its

Figure 5.1 -- A close-up of Lucy Hicks Anderson from a photograph taken during her 1945 arrest by the FBI for possible draft dodging. (Portion of original photograph.) Courtesy Ventura County Museum Library Historical Archive.



closure. It is also critical for this project as it establishes a local history with regard to the law’s reading of non-normative gender, sexuality, and corporeality. Currently, records of Lucy Hicks’ life are maintained at the Ventura County Museum Library, a county historical archive.

In 1945, the Star Free Press Newspaper ran an article with the headline, “Lucy Hicks Takes Stand.” The column began with the phrase, “Lucy Hicks, Oxnard Negro, accused of perjury, today took the witness stand in Ventura superior court to declare that ‘she’ is a woman and not a

man” (Ventura County Star Free Press, 1945g). Rather than being what scientists could

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declare as a simple case of sexual inversion, Lucy noted that her mother became concerned when Lucy was a very young child due to the fact that she would only dress in girls' clothing (Ventura County Star Free Press, 1945g).⁹⁸ Born as a male sometime between 1886 to 1890,⁹⁹ and known as "Tossie" or "Toby" by his family, Lucy described her childhood experience to the court:

"I have always dressed as a woman," Lucy told the jury in a soft low voice. She explained that the family doctor – a Dr. Jesse – had told her mother when she was 9 years old that "I was more of a girl than a boy." Her mother informed her, the defendant said, that "there's nothing to do. You're a girl and you're not like other little girls." (Ventura County Star Free Press, 1945g)

"Toby's" mother then began raising her child as a daughter "in the hills of Kentucky," calling her by the name "Lucy" (Ventura County Star Free Press, 1945g).

By the time Lucy was thirty years old, she had moved to Silver City, New Mexico and went by the name Lucy Beasley (Marriage License, 1920). City records indicate that on October 2, 1920, Mrs. Lucy Beasley married Mr. Clarence Hicks in the town of Silver City; the marriage license, certificate, and application were recorded, "in Marriage Record Book 9, Page No. 3310" (Marriage License, 1920). The marriage would eventually be dissolved via

⁹⁸ At the time of Hicks' trial, the theory of sexual inversion had been known and utilized by the military to identify and eliminate homosexuality from its ranks for roughly sixteen years. Although the theory of sexual inversion had been known before 1919, the Newport Military Scandal made the public aware of the growing sexual invert community in Rhode Island as well as communities where there was a large military presence along the east coast (Estes, 2005, p. 28; Arsenault, 2009; Chauncy, 1985). While Lucy Hicks could have been easily classified as a sexual invert, her case was highly unique due to the age at which she began assuming the characteristics of the opposite sex. Her case is also very unusual due to the fact that a doctor informed her mother that a then male "Tobias" should be raised as a girl – advice that may have been deeply controversial for the time period.

⁹⁹ The dates and ages pertinent to Lucy's life are difficult to deduce for several reasons. While Lucy's birth year is shown as 1890 on her New Mexico Marriage Certificate, she reported under official testimony that she was born in 1886, putting her age in question during the duration of her trials (New Mexico Marriage Certificate, 1920; Ventura County Star Free Press 1945a). One interesting court exchange regarding her age was recorded by a local newspaper:

When [an attorney] asked the defendant if she gave her age as 42 on the marriage license and if her correct age was 59, the defendant answered yes, and, with a nod of the head and arched eyebrows, added, "A woman isn't supposed to have an age after 40." (Ventura County Star Free Press 1945g).

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“an interlocutory decree on grounds of desertion ... granted to Lucy in Ventura superior court in October 1929” (Oxnard Press-Courier, 1945b). During court proceedings, Lucy was asked if Clarence was a man; “He’s supposed to be,” she replied (Ventura County Star Free Press, 1945g).

Two years after marrying Clarence Hicks, Lucy left New Mexico alone, arriving in Oxnard in 1915, “just before World War I” (Oxnard Historical Society, 1980; Oxnard Press-Courier, 1945a). She is described by media reporters and historians as six feet tall, skinny, and very stylish (Oxnard Historical Society, 190; Oxnard Press-Courier, 1967). While all sources accentuate her race as an identifying factor, other sources accentuate different parts of her body and manner of dress. One reporter described her as “A raw-bone Negress,” while another source commented on her “bright, low-cut silk dresses from which her flatlike collarbones protruded” (Oxnard Press-Courier, 1967; Time, 1945). The Oxnard Historical Society notes, “Her tall, bony figures, festive in a gay, low-cut silk gown and picture hat and high heel slippers was a familiar sight at all community gatherings” (1980, p. 10). Her fashions were topic of a great deal of conversation, emphasizing her flowing dresses, stylish high-heeled shoes, fingernail polish, and the flowers or in-vogue hats that adorned her upswept hairdos (Docent Council, 1979; Oxnard Press-Courier, 1967; Time, 1945).

Of equal notoriety to her figure were Lucy’s hairstyles and adornments. Time Magazine described her collection of hairpieces, stating, “Her wigs were her pride – she had a long, black, wavy one, a short, straight, bobbed one, and for special occasions, a shoulder-length job in red” (Time, 1945, p. 26). One citizen who knew Hicks personally commented, “You know, she’d have all colored wigs. Lucy would come out and she’d have a red one on. The next day it would be green. I tell you, everybody heard of Lucy Hicks because she was

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so funny” (Docent Council, 1979). Another private interviewee notes, “She always dressed very nicely, big flower hat.... She always wore a wig. She had very short, curly hair” (Docent Council, 1979). During the duration of her legal battles, media sources were fascinated with Lucy’s dress-suits and hairpieces: “In her black hair – said to be a wig, ‘Lucy’ wore silver combs and ‘her’ nails were tinted a deep red” (Ventura County Star Free Press, 1945b); “‘Lucy’ entered ... dressed in a light beige woman’s suit and high-heeled pumps. He [*sic*] wore pink flowers in his [*sic*] hair” (Ventura County Star Free Press, 1945c); “‘He’ [*sic*] wore a two-piece beige suit, topped off by a fox fur neckpiece, brown high-heeled pumps, light green figured blouse, pearl necklace and pearl earrings. On her black, sleekly coiffured hair – said to be a wig – she wore a tiny brown felt hat” (Ventura County Star Free Press, 1945f). “Lucy asked for a correction in the report ... [that] said she wore three red roses in an upswept hairdo – a wig. ‘That wasn’t a wig,’ she said. ‘That was my real hair I was wearing in court’” (Oxnard Press-Courier, 1945d).

Readers may have noted that some media outlets signaled gender and sexual non-normativity by highlighting Lucy’s gender with the use of quotation marks. While we cannot be certain of whether marking gender and sexual non-normativity in this way was done pejoratively, we can conclude that it was of great import to Oxnard society in 1945. A close reading of media sources also points out that in addition to a fascination with Lucy’s body and attire, referential gender pronouns during the duration of her trial shifted away from the process of questioning Lucy’s womanhood and towards definitively identifying her as biologically male. After the date during which medical doctors reported that Lucy Hicks possessed male genitalia, the media consistently referred to Lucy via masculine pronouns

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while also placing her first name within quotation marks. Towards the conclusion of the trial, Lucy was referred to solely by her last name in the media.

But what was Lucy's life like before the trial? What did Lucy experience as a Black southern female who relocated to California during an economic boom? As time progressed and the World Wars restructured the whole of global society, what did Lucy Hicks experience in Oxnard? Was she an individual who "passed" as a woman, and how did her fellow citizens identify her?

Upon arriving in Oxnard in 1915, Lucy quickly found employment as a housemaid, nanny, and chef in the residences of some of the county's most prominent bankers and entrepreneurs, and it was there that she began to make a name for herself as an excellent chef with unparalleled culinary abilities (Docent Council, 1979; Oxnard Courier Press, 1967; Time 1945). One personal interview stated, "she could cook great dinners. Oh, she was a terrific cook. ... Boy she was good. Everybody liked her" (Docent Council, 1979, p.19). Eventually, she was asked to cater weddings, "coming into society" functions for young women, and was known as such a fashionable lady that she was asked by families to dress their daughters for high-society functions (Docent Council, 1979, p. 19; Oxnard Historical Society, 1980, p. 10; Time, 1945). Mabel Craddock recounted in an interview, "Then, when my youngest sister was married, her sorority sisters came down to be bridesmaids, from Berkeley. Lucy helped them all get dressed and she was just part of the family, more or less" (Docent Council, 1979, p.19). Those individuals who could not afford her services as a chef often asked Lucy if they might "borrow" her recipes for special functions, requests which Lucy was lauded as always happy to comply with (Time, 1945; Oxnard Historical Society, 1980, p.9).

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Yet it is her volunteer activities that are, perhaps, the most interesting, especially concerning the militaristic period in which she thrived. Lucy Hicks was known to be a financial supporter of the Boy Scouts and an active member of a well-known church, often organizing, supplying, and cooking for community barbeque gatherings (Oxnard Courier Press, 1967; Oxnard Historical Society, 1980; Time, 1945). During the World War II years, Lucy organized multiple “champagne going away parties” in order to alleviate the anxieties of local soldiers deployed to war, as well as their families (Oxnard Historical Society, 1980, p. 9; Oxnard Press-Courier, 1967; Time, 1945). She was also active in the grieving process that accompanied large-scale wars, “visiting the bereaved famil[ies] and bawl[ing] like a cow with a thistle in its throat” (Time, 1945).

In addition to being a prominent member of Oxnard society, Lucy Hicks eventually came to notoriety after opening her own business in Oxnard’s prostitution district. Upon gaining enough money to do so, Lucy Hicks bought a brothel in downtown Oxnard, “on the corner of 7th and B Street” (Oxnard Historical Society, 1980, p.9; Oxnard Courier Press, 1967). At one point, Hicks owned so many sex-work establishments that they occupied the space of one-half of a city block (Oxnard Historical Society, 1980, p. 9; Oxnard Courier Press, 1967). She had at least two run-ins with the law, and was arrested and fined on both occasions for selling liquor at her brothels during the Prohibition era (Oxnard Historical Society, 1980, p. 9; Oxnard Courier Press, 1967; Time, 1945). Time Magazine (1945) recounts one very interesting anecdote that points to Lucy’s prominence in society:

When the sheriff arrested her one night, her double-barreled reputation paid off – Charles Donlon, the town’s leading banker, promptly bailed her out. Reason: he had scheduled a huge dinner party which would have collapsed dismally with Lucy in jail. After that, for three decades, Lucy Hicks trafficked successfully in both sin and soufflé. (p. 26)

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According to Time Magazine, “By V-J day she had purchased almost \$50,000 in war bonds,” one measure of how financially successful and well-known Lucy Hicks was (1945, p. 26).¹⁰⁰

According to a very small set of private interviews conducted in 1979 and later collected by the Ventura County Museum Library, Lucy Hicks was generally respected by her fellow citizens, both for her work and her personal character. One interviewee, Laura O’Reilly Dowd, described her as follows:

Dowd: Lucy was a character. ... She was – I’ll guess she was a queer.

Docent: Or a transvestite or something.

...

Dowd: No, she was a black woman ... a black man. ... Everybody liked her.

Docent: How many years was she around before anybody learned what she was? Do you know?

...

Dowd: ... we all knew it. ... Yes. We all knew it, but, well that was Lucy, you know?

Docent: Well, she didn’t work for Mrs. Donlon after Mrs. Donlon knew she was a man, did she?

Dowd: Oh yeah. ... They knew who she was. (Docent Council, 1979)

Another interviewee, W.P. Clark, who served as Chief of Police in Oxnard after Lucy’s trial, highlighted the ways she maintained her womanly stature even while moving through jail during her prohibition-related arrests:

Well, Lucy Hicks was always considered a female.... When she was brought over to the county jail, she invariably went right into the kitchen to cook for the crew and for the prisoners. Lucy, we always figured, was a little queer, but we never knew the true story ... but it turned out that she was a man. ... She had some whiskers, too, but we always accepted that. ... Everybody did like her. She was a wonderful person. [W]e did admire her. (Docent Council, 1979, pp. 43-45)

These sentiments were generally echoed in later media articles that recounted Hicks’ life and struggles, although the tone with which the local newspapers covered her trial was sometimes

¹⁰⁰ For the reader’s reference, “V-J Day” occurred on August 14, 1945, and signals the day on which the U.S. claimed victory over Japan during World War II. A value of \$50,000 in 1945 is equivalent to \$657,894 in 2014, or roughly the size of a small, one bedroom house in Ventura County.

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less than welcoming.

In 1944, Lucy Hicks announced her engagement to Ruben Anderson, a sailor who was between 10 to 13 years younger than her (County of Ventura Marriage License, 1944; Oxnard Press-Courier, 1944). Her wedding announcement in the Oxnard Courier Press read as follows:

Miss Lucy Hicks announced her engagement Thursday evening to Reuben Anderson. She was assisted in entertaining friends from South Los Angeles, Ventura, Santa Paula, and Oxnard.... Hors d'oeuvres and punch were served prior to the buffet supper. The marriage of Miss Hicks and Mr. Anderson will take place in November 'if not sooner' according to the bride-to-be. (1944)

A year after their November marriage, Reuben Anderson would be deployed to Mitchell Field in New York; he would not be present for the duration of Lucy's trial (Oxnard Press-Courier, 1945d). When asked whether her marriage was "a lasting marriage," Hicks responded, "Reuben and I are happily married. Every week that boy writes to me. He has told me that regardless of what all the trouble was, we are married and he loves me and intends to stay with me until death do us part" (Lucy Hicks, as quoted by Oxnard Press-Courier, 1945d).

In looking at Lucy Hicks' life before her 1945 court trials, we can see that she experienced a high degree of social integration via the performance of different types of *reproductive labor*. I use the term "reproductive labor" in order to inflect the social circumstances in which Lucy Hicks thrived during her time in Oxnard. Throughout her life, Lucy assumed employment and volunteer tasks that were constantly geared towards the care of her community on a rather large scale, and across a wide matrix of socioeconomic, sexual, ethnic, and social classifications. To refer to her pursuits as existing solely within the sphere of domesticity, philanthropy, cultural maintenance, or prostitution does not do her person

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justice. Rather, Lucy was a notable citizen due to her pursuits in all of these arenas simultaneously and collectively. The fact that she was able to achieve such a high degree of local fame, wealth, and entrepreneurial success during an era before the emergence of racial civil rights is of tantamount importance.¹⁰¹ The fact that she achieved these successes while still being known as a woman who was “a little bit queer” is even more important in that it forces us to reconsider how society viewed non-normative individuals during this time period. At least in Oxnard, we can say with a high degree of certainty that both Lucy Hicks’ endeavors as well as the social atmosphere induced by the World Wars were elements that helped her achieve a high degree of civil personhood. More importantly, and in an unrelated manner, Hicks’ activity and volunteer involvement revolved around the *reproduction of the body*, its health, and its social stability via a multitude of tasks associated with the domestic sphere – cooking, cleaning, caring for children, clothing families, organizing important family celebrations. To be succinct, the labor engaged by Lucy Hicks sustained family structures, cultural traditions, and communities within Oxnard in a way that encouraged its residents to cross social boundaries.

Surely, Lucy Hicks was accepted as a citizen and woman based on the tasks that she performed throughout the community of Oxnard, tasks associated with a temporally important historical construction of womanhood, femininity, and nationalistic service in support of war efforts. Lucy’s volunteer activities were geared towards the care of the social body, the perpetuation of community health, and the distribution of community resources at

¹⁰¹ Another example of Lucy Hicks’ entrepreneurial spirit comes from a report of her as an inventor, from the LA Times. After reporting on her prohibition-related arrests, the small column states, “In addition to [her arrests,] she has proved herself an inventor of ability. Her invention of an automatic gasoline vending machine, which will operate with coins, has aroused the interest of a large manufacturing concern” (Los Angeles Times, 1928). That Hicks invented a primary iteration of the gas pumps we use today is not only astounding, but also evidence of how Hicks affected her world for the better.

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an important war-time juncture in global history, when the majority of the nation's resources were being funneled away from the US populace and towards a nascent military industrial complex. Lucy organized, cooked for, and catered large philanthropic events, church socials, and military wakes. She was an active and visible figure during the war movement who organized functions for families as their sons left for war, and wakes for the families whose children returned deceased. In short, her activities – like the activities of other “patriotic” women during the World War eras – sustained, nourished, healed, and reproduced communities in an extremely complex fashion that easily moved between social boundaries and enclaves.

From Lucy to “John Doe” Hicks

Throughout this chapter, I have alluded to the fact that Lucy Hicks was prosecuted twice during 1945, and that these prosecutorial efforts eroded Lucy's social citizenship to the point of civil death. Civil death, under the rubric of both Gatens' (1998) and Dayan's (1998) theories, is accomplished at the popular level by engaging in tactics of dehumanization and social ostracism; in the legal sphere, civil death is rendered by legally revoking civil rights and nullifying one's citizenship status. While social ostracism results in civil death at the popular level, it does not always coincide with legal forms of revoking citizenship. On the other hand, the process of criminalizing individuals often coincides with a high degree of social ostracism, indicating that both social and civil death often parallel one another in legal cases.

For Lucy Hicks, social ostracism coincided with the city of Oxnard's efforts to restrain her citizenship status in early October of 1945, when “Police Chief Jack Ryan arrested several women at Lucy's house [of prostitution]. A sailor had charged he had been

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diseased after visiting one of Lucy's accommodating wenches" (Oxnard Press-Courier, 1967). In response, the District Attorney ordered that Lucy Hicks and those women in her employment be examined by doctors for evidence of sexually transmitted diseases; although Lucy protested that she herself was not a prostitute, the District Attorney insisted she be examined (Oxnard Historical Society, 1980, p. 10; Oxnard Press-Courier, 1945a; Oxnard Press-Courier, 1945d; Oxnard Press-Courier, 1967; Time, 1945). After a panel of five doctors identified Lucy as a male, the news was described as so shocking "that even the [Oxnard] daily newspaper refused to print the story until October 19, more than two weeks after the arrest and examination" (Oxnard Press-Courier, 1967).

Lucy was immediately arrested on the charge of perjury, for falsely claiming to be a woman on her marriage license; she was housed in the men's section of the local jail, and the women's attire she wore when arrested was confiscated by police officers (Oxnard Historical Society, 1980, p. 10; Oxnard Press-Courier, 1945a). Three days later, Lucy was "released from government custody on \$1,000 bond," and was informed that she was being investigated by the FBI for draft dodging (Oxnard Press-Courier, 1945b). Upon being informed of a new, federal charge, Hicks and her lawyer immediately sent for a birth certificate from Waddy, Kentucky in order to illustrate that Lucy was at least 59; this was important for her case due to the fact that "there [had] been no prosecutions ... of those between 45 and 65 years old failing to register" for the selective service (Oxnard Press-Courier, 1945b; Star Free Press, 1945a). Eventually, the cases for perjury and draft dodging would be dismissed, but not before another federal suit could be brought against Lucy for perjury (Ventura County Star Free Press, 1945c; Star Free Press, 1945d).

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On November 9, 1945, the Star Free Press reported that “John Doe (Lucy) Hicks, Oxnard Negro ... [will] be charged officially with accepting allowance checks illegally from the United States Government” in the capacity of a military wife, a more serious charge of perjury than the former one dropped days earlier (Ventura County Star Free Press, 1945d).

Although the five physicians who examined Lucy testified at her trial that their examinations turned up no evidence of hermaphroditic genitalia, the Defense introduced a new physician whose testimony was summarized thusly:

Dr. William T. Rothwell, Riverside gynecologist, testified that an examination he made of Hicks ... left doubt in his mind of the defendant’s sex. He said on the strength of this and Hicks’ case history, he believed the Oxnard Negro could be of dual sex. During cross-examination by District Attorney M. Arthur Waite, Dr. Rothwell said that had he not known the history of the case, he would believe Hicks to be a male. Dr. Rothwell said he found Hicks “shy, which I don’t think was a put on,” and her appearance was not unlike that of a female. “Considering her (Hicks’) story,” he said, “I believe her to contain both female and male characteristics, with the female predominant.” (Oxnard Press-Courier, 1945d)

Hicks also took an active role in defending her sexual and gender identity. While under questioning, media sources published the following courtroom exchanges:

Question: “Are you a man or a woman?”

Lucy: “I am a woman.”

Question: “In what way are you a woman?”

Lucy: “I am a woman internally.”

When interviewed in jail ... Lucy told a reporter, “I will die as a woman.” (Oxnard Press-Courier, 1967)

On November 27, 1945, the District Attorney asked the jury: “Does the jury wish to allow Hicks to continue to live as a woman, to violate the sanctity of homes, to associate with women in rest rooms?” (Oxnard Press-Courier, 1945d). In response, Lucy’s attorney asked, “What good will be gained by imposing punishment even if Lucy Hicks is found to be a man, but with no intention of defrauding the public?” (1945d); the attorney was also recorded as

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commenting, “the masquerade has hurt no one” (Oxnard Press-Courier 1967). Yet the jury disagreed, returning a guilty verdict just two hours after the case had been turned over to them for deliberation (Oxnard Press-Courier, 1945d; Oxnard Press-Courier, 1967). After spending roughly one month in jail, Lucy Hicks was sentenced to one year in the Ventura County Jail and ten years of probation, during which time she could not live in or return to the city of Oxnard (Oxnard Press-Courier, 1945f; Docent Council, 1979). Later, after three years of her probation had been served, Lucy was recorded as having discussed her sentence with Judge Louis Drapeau, who “lifted [the probationary charges] on the condition that she stay out of Oxnard” (Oxnard Press-Courier, 1967).

Social Citizenship, Civil Personhood, and Social Death

In looking at the duration of Lucy’s life, we can see a vastly different experience between the three decades before her 1945 trials, and the period after the initiation of litigation against her. Specifically, it is important to track her life within stages of personhood and social integration, namely, stages defined as experiencing a high degree of civil personhood and social integration, or a nullification of citizenship coinciding with civil death, social death, and social expulsion. Tracking the degree of social inclusion and ostracism that Lucy Hicks faced over her thirty years within Oxnard is an important act, for it traces a legacy of jurisprudence pertinent to gender and sexual non-normativity centered within multiple axes of corporeal difference. Race, age, biological sex, individual constructions of gender identity, legal constructions of womanhood, and social negotiations of citizenship all converge within each stage of Lucy’s biography.

Recall that in the study’s introduction, I described civil personhood, social

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citizenship, and social and civil death as a spectrum capable of being visualized in two dimensions, namely, normativity and social inclusion. Within this construction, a high level of culturally specific sexual and gender normativity corresponds to a high degree of social inclusion, while a lack of normative sexual and gender identity parallels a high degree of social ostracism. While the legal elements of social inclusion are tracked by civil personhood, social ostracism is traced upon a continuum of social citizenship and death. While the two elements do not necessarily match one another, in the case of Lucy Hicks, social ostracism would correspond to the state's attempt to enact civil death, suggesting that civil death and social death are interrelated. On the other hand, civil personhood and social citizenship within Lucy Hicks' life were garnered by engaging in multiple forms of gender-specific activity, indicating that an individual can successfully cultivate social inclusion across culturally important differences.

A basic historical overview of Lucy's Hicks' biography shows great success and prosperity of Lucy Hick's own crafting from the time that she entered Oxnard through the time that it was discovered she was a biological male. These achievements correspond to a high level of social citizenship, and although Lucy experienced several challenges to her civil status, she was able to maintain inclusion within the status of "womanhood" even during periods of incarceration and negotiation for release (for example, when being arrested for selling liquor during prohibition). During this three-decade period, Lucy's work supported a vast network of communities throughout not only Oxnard, but also Ventura County. This support ranged from reproductive labor to financial support during the World Wars, a period of great national and historical austerity.

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When I mention that Lucy's success was *of her own crafting*, I use this phrase to point to several important factors concerning both gender and social citizenship. As an African American individual who lived during the years prior to the civil rights movement of the 1960's, Lucy faced a great number of challenges that had definite, material effects on her person, identity, and body. We cannot discount the circumstance of being born as an African American less than one century after the enactment of Abolition, especially when we take into consideration the fact that Lucy was born in the deep southern state of Kentucky. During this time period, the Black body – and most specifically, the Black female body – was heavily scrutinized and criminalized by a number of methods, the least of which were medicine, psychology, and sexology (Abdur-Rahman, 2006; Blanchard, 1996; Diggs, 1995; Ferguson, 2004, Chapter 1; Martin, 1993; Mumford, 1996; Sommerville, 1994; Terry, 1990). According to these discourses, Black female bodies became the conduit of non-normativity via which White, heterosexual, male sexuality, culture, identity, and privilege normalized itself.¹⁰²

Although Lucy Hicks possessed a body with male genitalia, she was raised as a female from the time of early childhood, according to her own court testimony. As such, her experiences from early life onwards inculcated into her person the common language, gestures, philosophies, privileges (or lack of privileges), and gender performance of a Black American woman. While some citizens may have suspected that Lucy was somewhat non-

¹⁰² Roderick Ferguson (2004) notes that the interdisciplinary process of maintaining white heterosexuality as normative “install[ed] nonwhite sexuality as the axis upon which various notions” of normative male and female sexuality orbited (p. 9). To clarify, while White heterosexuality served as a measure for sexual and gender normativity, the concept of “nonwhite sexuality” was used as a source from which to draw evidence of non-normativity: racialized notions of criminal, violent, and degenerate sex operated as a central theme and example with which to juxtapose a system of White, heterosexist, patriarchal, normative standards. In turn, society upheld heterosexist patriarchal normativity via legal, cultural, and social technologies that contained non-White, non-heterosexual sexuality under the label of non-normativity.

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normative, it may have been the same discourses of Black female sexuality that allowed Hicks to pass as a woman. Similarly, while some legal offices may have had suspicions concerning Lucy's sex, multiple government offices honored her applications for marriage, divorce, re-marriage, and the status of being a military member's wife. In this case, a high degree of social citizenship co-occurs with a high level of civil personhood, with multiple government documents conceding to Lucy's legal status as a woman. These documents include marriage licenses and incarceration documents noting Lucy's sex as female, and her inclusion in the women's quarter (and duties) of the local prison.

In addition to the effects of race and ethnicity, Lucy Hicks also faced unique circumstances with regard to gender and sexuality. To be sure, Lucy Hicks faced many of the same attitudes that criminalized African American women via medicine, psychology, and sexology as an individual who may have "passed" as a slightly unusual woman. Yet Lucy also faced the unique circumstance of being what many may have labeled as a "sexual invert" during this historical era. Although doctors note that Lucy was certainly not a hermaphrodite, knowledge of the theory of sexual inversion was being generated by multiple social and cultural institutions, including the military industrial complex, medicine, popular media and literature focused on raising children, and popular art such as comic books and period-specific art (Arsenault, 2009; Chauncy, 1985; Dong, 2004; Berube & D'Emilio, 1984; Eaklor, 2008; Martin, 1993; Segal, 1996; Wake, 2007). That Lucy Hicks' family had encountered a doctor in Kentucky who encouraged her mother to raise her as a girl may have been due to the circulation of such discourses during this era. However, the circumstance of encouraging a possible sexual invert to express themselves as the opposite gender by medical doctors is highly irregular for the time period. As well, the 1919 Newport military scandal,

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in which the government entrapped sexual inverts into illegal situations, had the effect of familiarizing the nation with sexual inversion via media reports of the incident (Arsenault, 2009; Chauncy, 1985; Eaklor, 2008). That Lucy was able to experience a high degree of social integration, financial and entrepreneurial success, and even marriage as a woman who seemed “a little bit queer” without being questioned is nothing short of remarkable.

In order to think critically about Lucy’s life, we must also apply the concepts of *the civil body* and *civil death* to her biography. To briefly summarize these concepts for the reader, I remind them that the law approaches identity and biography as a fiction of personhood, which it then places under erasure. Specifically, the individual present before the law is conceived of as a “natural person” within the logic of jurisprudence; this construction of “natural personhood” – the subject’s complex self-conceptualized identity—must be subverted in order to instill the legally neutral classification of non-citizen, the “civil body.” This entity can then be manipulated, read, and branded with various other fictions of personhood, as deemed necessary by the law. In some cases, this may lead to a process of civil death, in which a citizen’s right to even possess rights is stripped from them via the (re)reading of their body as non-normative.

Lucy Hick’s life from 1915 to 1945 established her biography as that of a woman of unparalleled achievement. Based on the archival evidence presented concerning her life between 1915 and 1945, Lucy Hicks was considered a woman by her countrywomen and countrymen, and that this status existed as distinct from the biological status of “female.” Although non-normativity was part of Lucy’s gender-performance (for example, her wigs of multiple colors and styles, or the fact that some people located queerness within her body), those who encountered her most often accepted her in the general social roles that women

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assumed in the thirty years spanning the initiation and aftermath of the World War era. If Lucy Hicks experienced the effects of having a civil body before 1945, they were based predominantly in the fictions of Black American female personhood.

During the trial of 1945, we can clearly see that this fiction is gradually eroded by the state, well up to the point of experiencing civil death. While Lucy Hicks lived as a woman, crafting her own reading of the civil body associated as a successful entrepreneur and wife, the state's actions sought to nullify the very documents that had legally qualified her as a woman. By charging that Lucy Hicks' biological sex was incongruent with the sex stated on her marriage license, the judicial sphere was able to nullify Lucy's embodiment of womanhood. In one fell swoop, the Ventura County legal system disassociated Hicks' social status as "woman" from her now-criminal status of "male criminal perjurer." Effectively, the trials brought against Lucy had the effect of eradicating the complex personhood of "Lucy Beasley Hicks," supplanting this identity with the formula of civil personhood, and subsequently referring to Hicks' non-normativity via medical and legal lexicons, resulting in a narrative of criminality.

If Lucy Hicks enjoyed any credibility as a charitable citizen during her trials, it was quickly eroded by the actions of the state and the media. By bringing multiple charges against Lucy Hicks via two separate trials and a federal FBI investigation, the state associated Hick's name with criminality for a protracted period of time. In addition, the state's placement of Hicks in the men's section of jail along with the removal of her female attire served as a way of re-figuring her gender performance as criminally non-normative, effectively and forcefully re-figuring her physical appearance and the readability of her gender performance in a heterosexist manner.

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In tandem with these state actions, the media functioned to disseminate a new lexicon pertinent to non-normative gender, most specifically, Lucy's non-female sex. By manipulating the use of Lucy's first name, the intentional use of mismatched gender pronouns, and by referring to her as "John Doe (Lucy) Hicks," Lucy's rendering of her own person was placed under erasure in a manner easily digested by citizens of Ventura County. This re-figuring of language, based on a twisting of meaning, the expected use of language, and punctuation, functioned to bring not only Lucy's gender and sex into question, but also the whole of her embodiment in the social sphere. In short, the Lucy Hicks who lived as a woman was erased and replaced with a criminal, whose rights were revoked under the auspices of civil death. By incarcerating Hicks for federal perjury and illegally accepting military pensions, and by subsequently ruling that she could not return to Oxnard for a period of ten years, Lucy Hicks endured both civil and social death. After completing her jail term, her removal from the community that she had been so deeply involved in was nothing short of a form of divestment, in which her person was legally dissociated from the social, cultural, and financial resources she had built up over her lifetime.

Nine years after completing her sentence, Lucy Hicks was spotted in Oxnard holding an infant male child. The Chief of Police at the time reported in an individual interview that she had asked him for help in adopting the child, but he begrudgingly told her she was to leave Oxnard in comportment with the legal conditions with which her probation was dismissed, which was still being upheld by the judge who assigned it (Docent Council, 1979). Lucy died a year later, in 1954, in Los Angeles, alone.

Paying special attention to the ways that she crafted her own personhood and experienced civil death via the judicial actions of the state, this section has recounted the life

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of Lucy Hicks, a unique and notable citizen from Oxnard's history. Although involving a wonderfully unique story about a non-heterosexual individual, the case of Lucy Hicks illustrates a history of criminalizing non-normative gender identity to revoke fictions of personhood, resulting in civil death. In addition, however, Lucy Hicks' biography illustrates the power of asserting one's own life narrative within society. As demonstrated by Hicks' efforts to lead life on her own terms, civil personhood and social citizenship can be asserted via community-based interaction that elevates an individual's prestige in a given society.

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An Archive of Rumors: The panic defense and *The People v. Brandon McInerney*

“Will he die alone? I do not know if death, in this county, is a solitary or mass-produced affair.”

—James Baldwin, (2000/1956) *Giovanni’s Room*, p. 167

“Yesterday upon the stair
I met a man who wasn’t there.
He wasn’t there again today,
I wish, I wish he’d go away...”

—Hughes Mearns, “Antigonish,” 1899

Introduction: The Story of a Gown

On the afternoon of the eighteenth day of *People v. Brandon McInerney*, Defense Attorneys Robin Bramson and Scott Wippert entered Defense Exhibit EEE into the custody of the Chatsworth, California courthouse (Author’s Field Notes, July 28, 2011). Sealed with brown tape, the official evidence label noted that the box contained Lawrence King’s personal effects, recovered on July 29, 2008 from a local shelter for abused and neglected children. On July 28, 2011, Brandon McInerney’s defense team unsealed the box, revealing several brown paper bags stuffed with items unknown to the jury and trial onlookers (Author’s Field Notes, July 28, 2011). Almost exactly three years from their placement in county evidence storage facilities, Attorneys Wippert and Bramson systematically opened each bag, displaying their contents to the courtroom and asking witnesses to describe them aloud.

Appearing with lawyers representing the interests of child, parent, and client anonymity, a licensed caregiver at the children’s shelter was asked to name each item she helped detectives collect from the facility. Labeling the whole of the collection “female clothing articles,” witness T. Carroll noted that Lawrence King wore only a few of the items

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in the box, most specifically a pair of ankle-length, brown suede boots with a heel, and a pair she described as “wedge heel shoes.” The two pairs of shoes came from a set of four pairs that King had collected, using money he had been given during the winter holiday to purchase some of the items secondhand. In addition to the wedge heels and ankle boots, King acquired a pair of dress shoes with a three-inch heel and a pair of knee-high boots described as “Size 10, four inch, high-heel boots, brown suede up to the knee” (Author’s Field Notes, July 28, 2011). Other items included a pink leopard bag with a makeup case, a blue purse, makeup pencils and brush, and a green “prom dress, Zoom Zoom brand, size 1” (Author’s Field Notes, July 28, 2011).

The scratching sound of thick paper being crumpled and unraveled periodically cut through the silence in the courtroom as defense attorneys pressed the children’s shelter employee to detail each item they produced from the creased brown bags. As the witness described each item, my eyes shifted nervously from the witness stand, through the gallery, and towards the jury box. Out of twelve possible citizens, the jury was comprised of ten women and two men between their early twenties and mid-sixties. Three non-white individuals sat within the twelve-person jury — two women and one man. One juror, Juror 10, bit his fingers through a majority of the testimony, appearing angry or unsettled after the witness was dismissed (Author’s Field Notes, July 28, 2011).

After dismissing Ms. Carrol and working with a second witness, the Defense called Dawn Boldrin to the stand, the teacher present during the shooting. Although she had testified for the prosecution, Ms. Boldrin was re-called to the witness stand by Defense Attorneys. Shortly after the teacher sat down in the courtroom, Attorney Robin Bramson opened one paper bag from the county evidence box, unraveling it and reaching inside with

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both hands. Slowly, she pulled up a lime-green dress from the bag, holding each side of the sleeveless bodice between her thumb and the tip of her forefinger. Almost immediately, the witness yelled, “I gave Larry that dress!” and began sobbing in front of the courtroom (Author’s Field Notes, July 28, 2011). After regaining her composure, the witness recounted how her daughter asked her to give Lawrence King the dress, which the teacher delivered to him the day before he was murdered (Author’s Field Notes, July 28, 2011).

After placing the dress back in a brown evidence bag, Defense Attorney Bramson projected a photograph of Lawrence King onto a large retractable display screen. Labeled Defense Exhibit FFF, the color photograph showed Lawrence King delicately holding the lime-green gown with hands clad in pink gloves (Author’s Field Notes, July 28, 2011). The vibrant hem of the dress pops against the backdrop of King’s grey sweater, the young boy’s slight smile and gel-tousled hair. Barely discernible on King’s face are the faint shadows of eye makeup and the sheen of lip-gloss. In the background, a row of posters hangs against a

Figure 6.1: Defense Exhibit FFF, showing Lawrence King holding a lime green dress given to him by his teacher.



blackboard, directly above a row of cleanly regimented school desks. A book cart full of novels peeks from behind Lawrence King’s left hand, the stripes of an American flag lazily hanging above their colorful spines.

(See figure 6.1)

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The atmosphere in the courtroom was somber, heightened by an overwhelming stillness that had descended over the gallery and jury box. Smiling, Ms. Boldrin described how she took the photograph with her cellular phone; Attorney Bramson quietly wept, intermittently touching her fingers to her eyes (Author's Field Notes, July 28, 2011). Shortly thereafter, an elderly gentleman in the courtroom began to cry, soundlessly (Author's Field Notes, July 28, 2011). The witness's daughter exited in tears, swinging the heavy wooden doors to the courtroom, their swish and metallic clank sharp against the silence (Author's Field Notes, July 28, 2011). Juror 9, perhaps sympathizing with the teacher or affected by the overwhelming sorrow in the courtroom, gently dabbed the corners of her eyes (Author's Field Notes, July 28, 2011).

At first glance, it may not seem obvious how the defense team's introduction of these items fit into their overall argument regarding Brandon McInerney's dissociative psychosis and murder of Lawrence King. James Gilliam, deputy executive director of the Southern California chapter of the ACLU, however, argued that these tactics fell in line with what has been termed the "gay panic defense" (Gilliam, 2011). "His defense attorneys say McInerney was so horrified by a request by King to be his valentine that he was driven, a day later, to ... shoot King in the back of the head ... in the heat of passion," Gilliam wrote in an editorial five days before Defense Attorneys unsealed King's personal effects before the court (Gilliam, 2011). The activist and community organizer continued his editorial, succinctly outlining the arguments encapsulated within panic defenses:

[McInerney's] attorneys have suggested, pointing to King's increasingly flamboyant clothes, women's accessories, and makeup, that perhaps [Lawrence] invited the bullying prosecutors say he received from McInerney and other boys.... Like thousands of other lesbian, gay, bisexual, and transgender (LGBT)

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teens across the country, King was the victim of bullying long before his murder. . . .McInerney's attorneys assert that [Brandon McInerney] was driven to temporary insanity following unbearable and humiliating sexual harassment on the part of King; that revulsion and violence are the natural responses to homosexual behavior. (Gilliam, 2011)

This chapter investigates the theme of panic defenses from the standpoint of the imaginary body and the practice of enacting civil death. While Gilliam's characterization of McInerney's defense is accurate, the history of "gay panic" is far more complex than the word "homophobia" is capable of portraying. The remaining chapter has been divided into three sections. While this first segment has provided the reader with some background regarding how Brandon McInerney's defense team used Lawrence King's personal effects to portray him as different, the next section expands upon the basic theory and practice behind the "gay panic defense" as it is most commonly used in cases of LGBT hate murder.¹⁰³ After discussing the legal argument's "gay panic" and "trans panic" iterations and how they are related to the diagnosis of "acute pernicious homosexual panic," the third section turns to an analysis of the ways in which the panic defense was used in the case of the People v. Brandon McInerney. After discussing implicit and explicit panic arguments within the case, the final section serves as a meditation on the specter of normativity that presides over jury deliberations in cases where gay and trans panic defenses are used.

Heterosexual Privilege and the Gay Panic Defense

¹⁰³ In terms of "panic defenses," legal scholars have claimed that "panic defenses" are usually not deployed in cases of lesbian or female bisexual murder. While this claim is technically true, it is my assertion that there are murders of lesbian and bisexual women whose circumstances can qualify for such defenses and have even been described in the media in similar terms. One example of this is the case of Sakia Gunn, who was murdered in Newark, New Jersey in front of her friends while waiting for a bus. The reason for her murder, according to her attacker, was due to the fact that she was a masculine lesbian whose assertive appearance caused a violent reaction within him, resulting in his stabbing her in the heart. For more information on the case, see Appendix A.

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Having outlined the trajectory of this chapter, I will now turn to a brief introduction of what is known popularly as “the panic defense.” The majority of legal scholarship concerning this defense conceives of the argument as pertaining most commonly to violence against homosexual males (Lee, 2008; Perkiss, 2013; Tilleman, 2010). This widespread association with gay male sexuality is reflected by the fact that the tactic itself has also been widely termed the “gay panic defense,” although it is legally termed the “Non-violent Homosexual Advance (NVHA) defense” (Perkiss, 2013). The overall goal of this defense, according to Tilleman (2010), is to activate fears, phobias, and taboos surrounding homosexuality, sexuality, and gender within a given jury, judge, or witness (p. 1667). Rather than asserting specific value-laden judgments about the victim of violence, these arguments seek to activate multiple culturally situated prejudices already present within society, representing arguments that employ homophobic, heterosexist, and heterocentric worldviews (Tilleman, 2010, p. 1667).

While some characterizations of the homosexual panic defense suggests a single, unified tactic, legal scholar Cynthia Lee (2008) argues that there exist multiple lines of rhetoric within an overarching theme referred to as the “panic defense.” These may include arguments aimed at mitigating legal culpability and punishment, claims of psychosis or mental deficiency, self-defense, or provocation (Lee, 2008, p. 475). In addition to activating culturally salient prejudices, these arguments phrase LGBT individuals as sexual deviants and predators by building upon biases that exalt heterosexuality as the normative, superior orientation within an unstated hierarchy of sexual and gender identities (Lee, 2008, p. 475). Prejudicial arguments by defense attorneys and witnesses are not always explicitly claimed but often occur implicitly, as biases common to jurors, witnesses, and defendants, coalesce in

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the mind of the juror and/or within jury deliberations. For this reason, argues Lee, it is necessary for lawyers to dismantle preconceptions that activate heterocentric prejudices during witness testimony, a tactic that offers the best chance of neutralizing the effect of panic arguments on juries (Lee, 2008, pp. 476-477).

The non-violent homosexual advance defense, when presented as a mental deficiency or psychosis, generally relies on two standards. Perhaps the most common tactic in readers' minds can be summed up in the phrase "insanity defense." Within this logic, sexual advances by homosexual men are so threatening as to evoke a psychotic break that results in violent attacks committed during "the heat of passion" (Garmon, 2011, p. 632). Also termed the "diminished capacity defense," this tactic relies upon participation by medical or psychiatric professionals capable of asserting a symptomatology conducive to claims of psychosis (p. 632). After all arguments, it is up to juries to decide whether the situation portrayed by the panic defense rises to a level capable of inducing violent irrationality (Garmon, pp. 632-633). This "heat of passion" clause, notes Perkiss (2013) is intended to represent "human frailty within the law" (p. 798).

A separate argument that utilizes the same "heat of passion" clause exists, however, through legal claims to the "provocation doctrine" (Lee, 2008; Garmon, 2011; Perkiss, 2013; Tilleman, 2010). According to this formula, provocation occurs in cases when the attacker asserts that they were the target of unwanted homosexual advances, which provoked them into an extreme state of rage capable of nullifying rational judgment (Garmon, 2011, p. 633). In such cases, the jury must determine whether the defendant was provoked into a state of psychosis via the "reasonable person test," which notes that if another person finds themselves in the Defendant's circumstances, it is plausible that they

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would be equally provoked into a “heat of passion” state, or a state of “extreme emotional stress ... for which there is reasonable explanation or excuse” (Garmon, 2011, p. 633-634).

Whether claiming heat of passion via insanity or provocation, panic defenses assert that legal culpability for violence should be diminished based on the actions of the victim.

Violence due to temporary psychosis marks the earliest claim of homosexual panic brought to a criminal court in 1967 under the case *People v. Rodriguez* (Garmon, 2011, p. 632; Perkiss, 2013, p.796). According to the case, Rodriguez assaulted and murdered a gay man after the individual fondled Rodriguez’s testicles as he urinated in a public ally (Perkiss, 2013, 796). During the case, defense attorneys asserted that the defendant experienced a moment of temporary insanity due to the fact that he connected the fondling with sexual molestation he experienced earlier in his life (p. 796). While the jury rejected the option to acquit the Defendant, the defense was successful in that the jury downgraded Rodriguez’s penalty judgment from Murder I to Murder II (p. 796).

Of equally important concern is what some legal scholars have termed the “trans panic defense,” which originally emerged as an outgrowth of the gay panic defense (Perkiss, 2013). While similar to the non-violent homosexual advance defense, the “trans panic” argument focuses on limiting culpability to transgender, transsexual, or gender non-conforming individuals (Perkiss, 2013; Tilleman, 2010). According to Tilleman (2010), the trans panic defense “resonates with juries that harbor biases, misinformation, or confusion about transgender individuals” (p. 1671). This argument asserts that an unconscionable degree of deception took place on the part of individuals who do not conform to binary standards of gender, posing a disruption of heterosexual masculinity so severe as to elicit reasonable violence (Tilleman, 2010).

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In terms of deception within the trans panic defense, Tilleman (2010) asserts that legal arguments involving deception place such manipulation into one of three categories (pp. 1673-1689). Anatomical sex (versus gender presentation), revelation of anatomical sex that is incongruent with outward gender appearance, or “sexual fraud” based on failure to disclose one’s anatomical sex constitute the three categories of deception utilized in this argument (Tilleman, 2010, pp. 1673-1689). Once the perceived discrepancy between anatomical sex and outward gender appearance is realized and the Defendant becomes aware of the alleged deception, the trans panic defense asserts that an overwhelming crisis in masculinity and/or sexuality envelops the Defendant (Tilleman, 2010, p. 1669). As Tilleman states, “Thus, the revelation that, from the defendant’s perspective at least, they had been intimate with a trans-woman — decidedly not a person with the anatomical sex with which heterosexuality dictated that the defendant be interested, would be shocking” (Tilleman, 2010, p. 1670). Unlike the gay panic defense however, the trans panic defense often occurs via explicit claims of phobia and panic. “In its present form,” notes Tilleman (2010), “the trans panic defense is often asserted explicitly — the defendant argues that he was extraordinarily provoked and that he should be punished more leniently because of his state of mind” (Tilleman, 2010, p. 1670). Other tactics include dehumanizing the subject of violence in an attempt to dampen any sympathies the jurors might develop for the victim (Tilleman, 2010, p. 1671).

The influence of the trans-panic defense was illustrated in June of 2004, when the jury deliberating the murder of Gwen Araujo failed to return a verdict after one month of deliberations (Aguirre, 2004; Delventhal, 2004a; Delventhal, 2004b; Delventhal, 2004c; Delventhal, 2004d; Delventhal, 2004e; St. John, 2004a; St. John, 2004b; St. John, 2004c;

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Wronge, 2004). While the prosecution had used the two Defendants' own prison communications to illustrate their disdain for the victim after the murder as well as attempts to conceal the crime, the defense portrayed Araujo as a deceptive and manipulative predator (Arioldi, 2003a; Arioldi, 2003b; Airoidi, 2004a; San Jose Mercury News, 2003; Wronge, 2003a). According to one of the three Defendants' attorneys, "[Araujo] perpetrated a sexual fraud on heterosexual men, who, when discovering they had been having [oral] sex with a [biological] man, had their masculinity, sexual identity, and self-esteem called into question at a time when they had been drinking heavily" (Wronge, 2003a). During trial, the Defense presented a psychologist who claimed that the young men who perpetrated the attack were "unemployed, lived with [their] parents, had no school or career plans and no serious dating relationship," factors indicating that they were "'stuck' and immature in their emotional reactions" (St. John, 2004a). The combination of these characteristics along with drugs and alcohol, claimed the psychologist, created a situation where the defendants were more likely to

... "panic" and overreact with violence.... "It would flip them out ... they'd have a strong sense of panic and uproar and wanting to fix it. It would be very upsetting. ... There would be a sense of betrayal that the person was not who they said they were. ... You have the shame of the individual plus the shame of having my buddies know that I did this" (Michael Pojman, as quoted in St. John, 2004a).

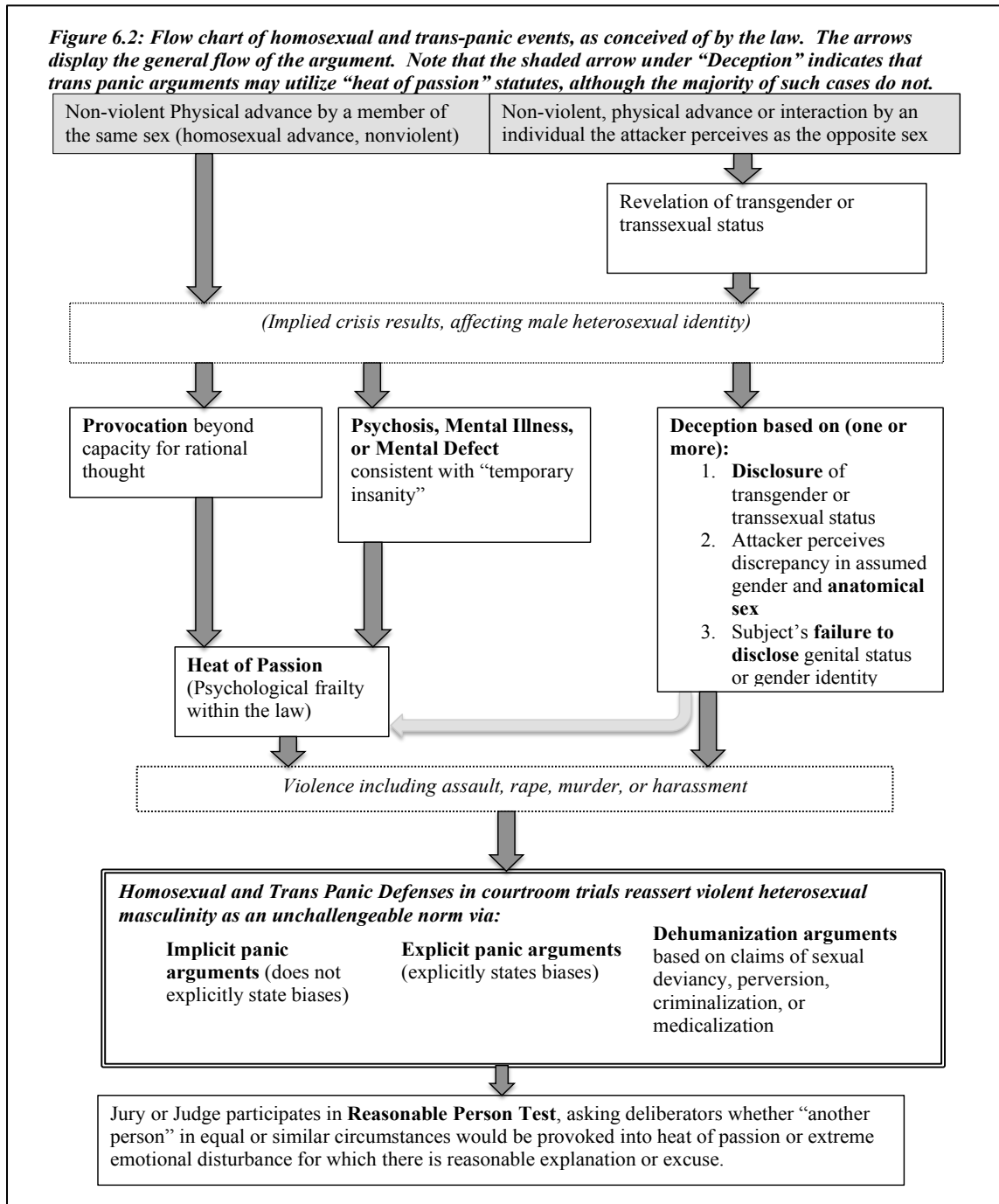
On the same day that the Defense psychologist made these claims, Gwen Araujo's mother legally petitioned the California Superior Court system to change Araujo's name from Eddie to Gwen Amber Rose Araujo (St. John, 2004a).

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In response to the mistrial, Sylvia Guerrero, Gwen's mother, thanked the jurors for their service, saying, "We know you tried your best" (Aguirre, 2004). Shortly thereafter, the Mayor of Newark, California and the City Supervisor of San Francisco publicly denounced the murder and trial, requesting that all panic-type defenses be limited (Herel, 2004; Delventhal, 2004f). The Alameda County Supervisor subsequently began proceedings in favor of drafting legal language expanding anti-discrimination statutes to include transgender, transsexual, and gender non-conforming individuals (Maitre, 2004). Months later, before the retrial was scheduled to commence, California Assemblywoman Sally Leiber of San Jose introduced Assembly Bill 1160 into the state legislative system, which prohibited defendants from contending that they were provoked to murder by discovering the victim's "disability, gender, nationality, race, ethnicity, religion or sexual orientation" (Alameda Times-Star, 2005a; Richman, 2005). The bill was approved by the California Senate on August 31, 2006, titled the "Gwen Araujo Justice for Victims Act," and was popularly represented as preemptively blocking any panic defense for multiple types of hate crime before reaching the quarters of an assigned judge (Park Labrea News, 2006).

While the mechanics of the gay and trans-panic defenses may seem complex, they can be elegantly summed up graphically using a flowchart. As illustrated in figure 6.2, both gay- and trans-panic arguments can be understood as an interlocking unit that accesses specific prejudices related to heterosexist, heterocentric world views. These legal assertions phrase heterosexual male masculinity as naturally opposed to non-heterosexual sexuality and non-masculine gender presentations. What results from this assertion is a schema of bodies, binary identities and anatomies, and forms of attraction deemed acceptable or incompatible by a central, unnamed subject, namely heterosexual male masculinity. Both arguments imply

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that the attacker experienced a crisis of (hetero)sexuality, masculinity, and self-identification resulting in the fracture of rational cognition. The circumstances of the individual case at hand determine whether defense teams choose to utilize provocation-, psychosis-, or

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deception-based arguments, yet a majority of cases access “Heat of Passion” arguments. This incorporation of “human fragility within the law” solidifies the sensation that non-heterosexuality and non-normative gender identity are, in short, unnatural by positioning these subjectivities as the sole, rational catalyst to violence. As figure 6.2 illustrates, this series of mental events occurs before the commission of any violent act by the defendant. This rhetorical positioning of the panic defense indicates its utility in retrospectively rationalizing anti-LGBT violence via a mental process that folds social biases and dehumanizing tactics into its narrative as “reasonable” explanations for violent interactions. After presenting a rationale intent on manipulating jury prejudices, the law then asks deliberators to determine whether a fictitious “reasonable person” existing in similar or equal circumstances would be provoked into committing the same crime.

In practice, panic arguments typically rely on tautological rhetoric that reaffirms violent, heterosexual masculinity as the center of sexual identity, sexual interaction, and acceptable sexual desire. It cannot be denied that the origin of these panic arguments, as Lee (2008) states, “stem[s] from a specific construction of masculinity ... that values heterosexism and violence as traits of the masculine and implicitly rejects homoerotic desire” (p. 488). To argue in favor of hate-based violence via assertions that “a reasonable [heterosexual] man would be insulted and enraged” when a non-heterosexual individual voices their attraction, and that such a scenario qualifies as “legally sufficient provocation” is to argue that there are specific circumstances under which brutality is not only an acceptable response, but a constructive one (Tilleman, 2010, p. 1667). Such rhetorical assertions are dangerous in that they produce two important (il)logical conclusions, namely, that issues of sexual and gender transgression can be constructively processed through physical cruelty,

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and that certain bodies are naturally invested with the ability to enact corrective violence in social situations. Should we rightly recognize that no form of savagery is beneficial, then we are left with a more insipid reading of violent hetero-masculinity: that all viable forms of sexual and gender self-expression must exist in service to heterosexual coupling or be reprimanded. Violent heterosexual masculinity, in short, reigns within its own imaginary hierarchy of sex, gender, sexuality, and gender expression; in doing so, it argues that various degrees of impunity be considered in cases of hate-based anti-LGBT murder.

Like other forms of homophobia, panic defenses assert tautologies that rely on the assertion that LGBT sexuality, gender identity, and personhood do not and should not exist. These claims can easily be teased out of the sexual and gender rubric espoused by panic arguments based on the hierarchy of sexuality, gender, and attraction that such rhetoric delineates as “normal.” “Thus, the revelation that, from the defendant’s perspective,” Tilleman (2010) states, attempting to rationalize the attacker’s thinking, “[the defendant] had been intimate with ... a person [who did not exhibit] the anatomical sex with which heterosexuality dictated that the defendant be interested ... would be shocking.” (pp. 170-171). In the reasoning set forth by panic rhetoric, homosexuality, transgender identity, and other non-heterosexual identities possess neither the agency nor social privilege capable of safely voicing non-normative attraction. These individuals have little hope of safely voicing or embodying their own nonviolent desires and attractions within this formula, for to do so disrupts hetero-masculinity to a level eliciting socially acceptable brutality. Rather than existing as complex identities with the right to embody desire and attraction, persons of non-binary gender identity, transgender and male femininity, as well as transgender and female masculinity occupy spaces within this regime that are perceived as simply “not gay,” “not

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male,” and “not female.” In removing agency from these subjectivities and branding them as available for violence, violent hetero-masculinity disregards multiple forms of sexual and gender subjectivity, collapsing them into categories that have historically indicated otherness, including “gay” and “queer.”

It is important to note that the first legal use of the term “acute homosexual panic” in the 1967 case of the People v. Rodriguez indicates a direct connection between the diagnosis fashioned by Dr. Edward Kempf and the appearance of homophobic legal technologies within criminal civilian cases (Perkiss, 2013). Recall that in chapter two, I discussed an important diagnosis established by Kempf that associated homosexual desire with psychiatric illness. The medical identification of “acute pernicious homosexual panic” was adopted by the United States military and federal government in an effort to expunge LGBT individuals from multiple sectors of military and government service through the 1950’s. However, the ailment’s history within the medical and psychiatric community experienced a much more truncated popularity. Although Kempf’s diagnosis was recognized in the first edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) in 1952, thirty-two years after Kempf first published his findings, subsequent editions of the reference removed the term and its associated symptomatology completely (Lee, 2008, p. 484).

Of great importance, however, is the fact that the function of homosexuality shifted when the diagnosis of “acute homosexual panic” first entered the courtroom.¹⁰⁴ Recall that within Kempf’s symptomatology, the experience of homosexual desire resulted in social

¹⁰⁴ Interestingly, the first edition of the DSM was still considered an authoritative reference on psychiatric conditions in 1967, allowing defense attorneys to establish a firm connection between homosexuality and psychosis during trial proceedings. The second edition of the DSM was not released until 1968, on year after the trial of the People v. Rodriguez. Interestingly, the diagnosis of “acute pernicious homosexual panic” was removed in the second edition of the reference, and never reappeared in subsequent editions.

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ostracism and eventually an internal state of psychological panic marked by degeneration in psychiatric stability, physical health, and social inclusion. In the most severe cases, the internal panic and confusion resulting from feelings of homosexual desire resulted in a catatonic state similar to post-traumatic stress syndrome. In short, it is the *internal experience* of undeniable homosexual yearning within the mind and body of the patient that causes a psychotic break within Kempf's delineation of the condition.

In contrast to Kempf's diagnosis, however, the use of "acute homosexual panic" in the courtroom repositions the catalyst initiating psychosis from an *internal desire* to an *external threat*. Perkiss (2013) elegantly portrays this shift, noting the following:

With homosexuality no longer classified as a medical disease, the doctrine could no longer rationally relate the defense to the defendant's pathology by focusing on [homosexual desire] as an illness causing the violent reaction, and gay panic could no longer support a claim of insanity. Rather, the defense had to shift from the defendant to the victim, focusing on the latter's conduct. In this new formation of the gay panic defense, the victim's unwanted, nonviolent homosexual advance was characterized as an external stimulus causing the defendant's homicidal reaction. (Perkiss, 2013, pp. 796-797)

Within the legal delineation of panic defenses, it is interaction with homosexual individuals that initiates mental breakdown. In essence, panic is literally transposed from an internal state resulting from a personal crisis to an imposed mental condition initiated by the indication of unwanted sexual attraction. In this system of thought, LGBT desire shifts from an *internal state* to an *infectious threat*, transforming from a *symptom* indicating mental breakdown into the *external cause* of violent psychiatric fracture.

Having outlined a basic understanding of panic defenses as they occur in cases of gay and transgender hate-motivated murder, I will now turn to specific examples of panic-related arguments that took place during the trial of Brandon McInerney. Trial proceedings

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exhibited aspects of both the gay and trans-panic defenses, eliciting testimony that explicitly voiced homophobic prejudices, as well as testimony that presented implicit, unstated biases of non-normative gender and sexuality.

Explicit and Implicit Panic: An archive of rumors

Between July 28 and August 3 of 2011, Brandon McInerney's defense team engaged in a process of eliciting witness testimony regarding Lawrence King's gender presentation, aggressive sexuality, and tendency to harass male classmates during his school attendance. Over five days of testimony from E. O. Green Middle School students, staff, and faculty, attorneys Scott Wippert and Robyn Bramson were able to outline thirteen allegations of sexual harassment initiated by Lawrence King (Author's Field Notes, July 28 to August 3, 2011). Of these allegations, two recounted Lawrence King harassing male students in a school bathroom, two accounts portrayed King as applying excessive amounts of makeup on school grounds, and one witness claimed to have seen King walking through the campus in a lime-green prom dress (Author's Field Notes, July 28 to August 3, 2011). A separate pair of allegations involved general observations noting that King engaged in "negative attention-seeking behavior" in the weeks before his murder, including one witness who claimed she saw King wearing dresses and applying makeup in a student bathroom twice a week for at least three months before the attack (Author's Field Notes, July 28 to August 3, 2011).¹⁰⁵ Five scenarios by defense witnesses portrayed King as disrupting recess and leisure time by openly flirting with male classmates, blowing kisses, waving in a feminine manner, or

¹⁰⁵ The claim that Lawrence King attended school in female clothing and makeup for up to three months before the shooting was quickly discredited by the Deputy District Attorney (Author's Field Notes, August 3, 2011). According to the staff and faculty of E. O. Green Middle School and Casa Pacifica, Lawrence King dressed in a feminine manner during the two weeks before his murder in 2011; this behavior did not extend into January 2011 or December 2010.

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“parading” in front of male classmates in a “suggestive” manner (Author’s Field Notes, July 28 to August 3, 2011). Of the original twelve allegations, at least two melded the aforementioned themes, with one witness claiming that the tension between King and McInerney involved a secret romance that Brandon McInerney did not want publicly known (Author’s Field Notes, July 28, 2011).

During cross-examination, the Deputy District Attorney was able to confirm via testimony that eight of the twelve charges were never directly witnessed, instead being reported by faculty members who failed to investigate events that students had relayed to them. (See Figure 6.3 for a chart of witness allegations and verity.) Claims that Lawrence King harassed his male peers in the bathroom, regularly applied excessive makeup on school grounds, blew kisses to other male students, and disrupted recess activities were established as hearsay under questioning by King’s lawyer (Researcher’s Field Notes, July 28 to August, 2011). Of the five claims not classified as hearsay by the prosecution, two involved general observations regarding attention-seeking behavior, one involved flirtatious behavior, one involved retaliation against an individual who had attempted to steal King’s high heels, and a final scenario involved a teacher witnessing Lawrence King “parading suggestively” in high-heel boots in front of the school, after classes were dismissed for the day (Researcher’s Field Notes, July 28 to August, 2011).

As a general rule, elements of witness testimony were discredited as inaccurate via the deputy district attorney’s introduction of evidence collected in the days directly following the shooting. During one particularly contentious cross-examination, a teacher testified that Lawrence King sexually harassed a student during a special education session involving King and one other classmate (Barlow, 2011f). During the defense’s direct examination, teacher

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A. Sinclair testified that Lawrence King announced he needed to use the restroom while she worked closely with the other student (Barlow, 2011f; Author’s Field Notes, July 28, 2011). After realizing she was ignoring his request, Sinclair claimed that Lawrence approached her and the student she was working with, standing with his groin almost directly in front of the seated student’s face, demanding that he be allowed access to the restroom and thrusting his hips to illustrate his discomfort (Barlow, 2011f; Author’s Field Notes, July 28, 2011). On cross-examination, the Deputy District Attorney pressed the teacher, asking if she had

Figure 6.3: Witness allegations concerning Lawrence King and hearsay status.

Rumor	Versions of Rumor	Number of Testifiers	Hearsay Status
Lawrence King asked Brandon McInerney to be his Valentine	Two	4 (One teacher; three students)	Hearsay; no witnesses
Lawrence King and Brandon McInerney were dating before the attack	One	1 (One Student)	Hearsay; no witnesses
Lawrence King chased a group of boys into the boys’ bathroom and began harassing them	Two	4 (Two teachers; two students)	Hearsay; no witnesses
Lawrence King blew kisses to male classmates	One	1 (One teacher)	Hearsay; no witness
Lawrence King waved to Brandon McInerney in a feminine manner near the school bus	One	1 (One student)	Questionable; testimony throughout trial contradicts itself
Lawrence King applied excessive makeup in a student bathroom twice a week for three months before the shooting	One	1 (Parent)	Hearsay; no witnesses and contradicts timeline of feminine appearance suggested by investigators
Lawrence King sexually harassed male peers in public	One	1 (Teacher)	Hearsay; no witnesses
Lawrence King instigated discord by applying makeup or “parading” in a feminine manner in front of his peers	One	2 (One teacher; one staff member)	Verifiable ; two witnesses
Lawrence King engaged in disruptive, negative attention-seeking behavior	Two	2 (Two teachers)	Verifiable ; one witness
Lawrence King chased male classmates on the playground	Two	3 (One teacher; two students)	Verifiable ; one student testifies to instigating a chase by removing King’s high heels from his feet and refusing to give them back

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embellished her testimony somewhat based on her own prejudices (Barlow, 2011f; Author's Field Notes, July 28, 2011). When the witness denied the attorney's claim, the Deputy District Attorney produced a binder of transcripts collected in the days after the shooting; after asking Sinclair to read one page to refresh her memory, the attorney re-stated her question (Barlow, 2011f; Author's Field Notes, July 28, 2011). The local newspaper describes the exchange as follows:

Senior Deputy District Attorney Maeve Fox reminded [Sinclair] of a statement she made after the shooting during which she never characterized the incident as sexual harassment. Fox even did a little dance of moving back and forth on her legs as if she had to go to the bathroom, asking Sinclair if that's what King did. Sinclair said she couldn't remember. (Barlow, 2011f)

These five days of testimony served to refigure the narrative of hate-motivated violence by portraying McInerney as defending himself from a sexually aggressive, manipulative, and deviant child. Allegations of sexually inappropriate flirting, bathroom harassment, and sexually-charged activity signaling King's homosexual attraction to McInerney served as an access point into the machinations of the panic defense. By classifying King as unnaturally feminine and sexually aggressive, prosecutors were able to assert Brandon McInerney as existing within a space of rational, normal hetero-masculinity. In essence, while Lawrence King occupied the space of non-normative homosexual identity and gender presentation, Brandon McInerney occupied the form of masculinity outlined by Lee: a gender orientation steeped in violence that "implicitly rejects homerotic desire" (p. 488). Within the defense's assertions, the actions of Lawrence King – whether qualifying as harassment or not – occupy the space of "nonviolent physical advance," or the catalyst that infects the defendant with a crisis of heteromascularity. Although the district attorney was able to discredit the verity of most allegations against King, testimony elicited by

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McInerney’s defense team was aimed at igniting homophobic and heterosexist prejudices within the jury.

Defense witness testimony portraying Lawrence King as engaging in transvestitism for a period of months was a separate tactic that mobilized transphobic prejudices within the jury. This occurred on explicit levels, with witnesses describing sensations of discomfort due to Lawrence King’s change in appearance – his use of hair gel to create messy hairdos, use of makeup and nail polish, and enjoyment of feminine accessories. Yet the employment of “trans panic” tactics also involved implicit panic, initiated when defense attorneys displayed Lawrence King’s personal items and clothing to the courtroom. (See figure 6.4 for a list of items displayed by defense attorneys and referred to during witness testimony.) Rather than highlighting King’s humanity, the attorneys’ display of King’s prom dress, shoes, high heels, makeup, and feminine accessories heightened a sense of anxiety and sorrow within the courtroom, and elicited a strong emotional display from at least one witness. Dawn Boldrin’s outburst at seeing the green prom dress, relayed in the opening of this chapter, was a moment in which implicit panic was relayed to the jury and court attendees. The overwhelming

Figure 6.4: Personal effects of Lawrence King referred to and displayed during courtroom testimony.

Items Displayed by Defense Attorneys	Items Referred to by Defense Witnesses
<ul style="list-style-type: none"> • Size 10, four inch high heel boots, brown suede up to the knee • Size 9, brown suede, ankle-length boots with a heel • Wedge heel shoes • One pair, Black Merona female shoes, three inch heel with pointed toe • Pink Leopard bag with makeup case • Blue purse • Colored pencils and makeup • Cream and application brush • Green Prom Dress, Zoom Zoom Brand, Size 1 	<ul style="list-style-type: none"> • A scarf • Pink gloves • Tight girl’s jeans • Long earrings • Sparkly Nail Polish • Eyeshadow, eyeliner, and mascara

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display of fear, grief, frustration, and guilt by Boldrin – rather than highlighting the loss of Lawrence King – served as a mirror to the intense inner turmoil that defense attorneys delineated as occurring within Brandon McInerney. If it was possible for Boldrin, the sole individual who sought to honor Lawrence King’s non-normative identity, to break down in the middle of court proceedings at the sight of the student’s feminine attire, then it was equally possible that King’s alleged harassment of McInerney might, at the very least, initiate feelings of confusion, frustration, and psychological disruption in another individual, according to the panic defense. In essence, the defense team’s use of King’s appearance and the display of his personal effects within the courtroom served to mobilize the second aspect of the panic argument – the “trans panic” element.

Within the context of gay and trans panic, the whole of Lawrence King’s undefined gender identity and sexual orientation became a catalyst to violence. The act of expressing his gender identity, exploring sexual attraction in a non-physical manner, and engaging in feminine gender performance became elements in which Lawrence King was portrayed as provoking Brandon McInerney into a dissociative state. Although encompassing no more than two weeks, according to assertions by defense attorneys, Lawrence King’s feminine demeanor and non-normative behavior was enough to drive Brandon McInerney to a point of psychological instability and, eventually, violent dissociation. The act of embodying non-heterosexual sexuality, attraction, and gender identity, argued the defense, was egregious enough to severely disrupt notions of male heterosexual identity, privilege, and power to the point of existential crisis. Within this framework, the only adequate response to such a threat against heterosexual males is the destruction of non-normativity rather than the evolution of

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male heterosexual identity to accept, non-violently deflect, ignore, proactively address, or otherwise tolerate non-normative sexual and gender identity.

Although the district attorney worked throughout trial proceedings to point towards defense attorney's actions as a form of jury manipulation, the activation of homophobia and transphobia within the jury seems to have been successful. Jury comments after mistrial indicated that deliberations centered on factors such as McInerney's age, life circumstances, and what the jury termed "the civil rights of the one [heterosexual person] being taunted by another person who is crossdressing" (Cunningham, 2013). The documentary "Valentine Road" contains the following exchange by four female jurors as they discussed the case over wine and pastries:¹⁰⁶

Woman 1: Where are the civil rights of the one being taunted by another person who is cross-dressing? They [the prosecution] have to address that. It's very important.

Woman 2: Clearly that wasn't addressed.

Woman 3: No, it wasn't, and [Brandon McInerney] had no one that he could turn to because the school was so pro-Larry King's civil rights, but where were Brandon's civil rights?

Woman 1: It was the high heels, I think it was the makeup, the behavior.

...

Woman 1 and Woman 2:[Simultaneously] Larry didn't get it.

...

Woman 2: We were supposed to not consider his [Brandon McInerney's] age, which is very hard to do.

Woman 1: That was the very first thought I had. He is so young.

Woman 3: How can I say that this kid needs to go to jail for the rest of his life? It would have to be so much more compelling in every way for me to even go down that avenue.

¹⁰⁶ Jurors responded to the case and the available sentences in a number of ways, including writing to the District Attorney, writing to the Ventura County Star, and participating in a special on the case created by ABC News, on the "20/20" program ("8th Grade Shooting," 2011; "Shots in a Classroom," 2011). Although not the only source of information concerning juror reactions to the case, this powerful documentary contains footage of jurors in an informal gathering, being interviewed by the director. "Valentine Road" was released in 2013, directed and produced by Marta Cunningham, and produced by BMP Films. The names of the participants have been retracted in this quotation to protect juror anonymity.

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Woman 2: I do not think it was First Degree Murder. However, it was premeditated; he had a plan to resolve this terrible problem, because nobody was taking care of this problem –

Woman 3: By murder? Or to maim him [Lawrence King]?

Woman 2: We don't know. And then he's having second thoughts about doing it. But then the green light, when [someone] says, "Hey, Larry, I hear you're changing your name to Leticia." For him that's a green light, he [Brandon McInerney] pulls out the gun and shoots him [Lawrence King].

Woman 3: Yeah.

Woman 2: He [Brandon McInerney] was solving a problem. (Cunningham, 2013)

Rather than recognizing claims by defense witnesses as steeped with prejudice, the jury in the case of the People v. McInerney identified with arguments central to the “panic defense,” namely, that displays of non-normative gender identity, homosexuality, and queer attraction are egregious enough to break the rational faculties of heterosexual males. In essence, the jury in the case of the People v. Brandon McInerney came to the conclusion that the crime, although possessing the hallmark quality of the charge in question – premeditated and willful homicide – did not rise to the legally defined level of Murder I. Acting against instructions not to consider age as a salient factor in judgment, the jury turned to Lawrence King’s appearance, feminine demeanor, and non-normative identity as the mitigating elements in the attack. As Perkiss (2013) states, “It seems that the jury was persuaded by the gay panic defense at trial, despite evidence that King had been the subject of homophobic bullying and a jury instruction that ostensibly disallowed antigay bias from influencing the jury’s decision-making process” (p. 783).

“The Man Who Wasn’t There”: A meditation on panic and the specter of heterormativity

In the space of deliberating hate-motivated murder involving panic arguments, legal instructions on how to approach evidence becomes a riddle, involving the act of conjuring

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specters. Via nuanced legal manipulations, jurors are capable of occupying a space that allows them to phrase their conclusions as objective facts, obfuscating the subjective links between social location, experience, and knowledge. Rather than approaching evidence directly as an accumulation of unique circumstances, jury instructions involved in processing panic arguments request deliberators conjure a specter of the defendant, a doppelgänger that faces equally distressing circumstances. Would such a fictive person that possesses the quality of “ideal reason” commit the same crime when presented with an equal scenario?

In cases where defendants claim psychosis as a salient factor leading to violence, many U.S. states require juries to engage in what is termed the “reasonable person test” (Garmon, 2011; Lee, 2008; Perkiss, 2013; Tilleman, 2010). Under this rubric, the law asks juries to deduce whether the perpetrator of a given hate crime was “reasonably provoked into the heat of passion” (Garmon, 2011, p. 633). Several important factors qualify as “reasonable provocation,” including being goaded into a “heat of passion” state from which there was not adequate time to recover, and uninvited physical interaction of a sexual nature (Perkiss, 2013, p. 798; Tilleman, 2010, pp. 1665-1666). Within this system, language, taunting, and teasing do not qualify as adequate provocation to violence (Perkiss, 2013, p. 798; Tilleman, 2010, pp. 1665-1666). The ultimate charge of this benchmark requires that “jurors to ask themselves, ‘Is it reasonable to kill someone for making a nonviolent homosexual advance?’” (Perkiss, 2013, p. 780). Would the defendant’s doppelgänger, possessing more reason than the defendant themselves, resort to the same level of violence in a matching scenario?

Questions abound. What identifying characteristics does the “reasonable man” possess, and can they be considered an “ideal citizen” as well? Do jurors inflect themselves

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into the representation of the fictive person endowed with “reason?” Does the law account for the ways in which individual deliberators might embed their own privileges or oppressions into the process of crafting this specter? How far back into the life of the defendant can juries delve in establishing “equal circumstances” or deducing the difference between the defendant’s lack of and the doppelgänger’s possession of “ideal reason?”

According to Perkiss (2013), the “reasonable man” is most often conceived in a way that reflects the normative standards of heterosexual masculinity (p. 798). The reasonable person is “presumptively heterosexual,” often conceived of in terms of middle class Whiteness (p. 798). This legal caricature is phrased as naturally in tension with the plaintiff, transforming the victim of violence into a sexually aggressive, unreasonable, dangerous individual. In recasting the scenario as infringing on normative heterosexuality, the “reasonable man” becomes the *potential target* of unwanted homosexually charged interaction. The prospect of usurping heterosexual privilege, or alternatively, the act of LGBT individuals sexualizing heterosexual men is phrased as logically resulting in psychological distress under the rubric of the “reasonable man test.” The resulting variable, then, is not whether unwanted homosexual advances result in mental distress, but what level of violence is evoked by this mental distress.

Although the construction of the “reasonable man” involves the conjuring of non-living subjectivities, it is crucial to understand that the doppelgänger to which I refer is only one specter involved in deliberations of panic charges. A second, more elusive phantasm exists on the fringes of the imagination, on the borders of what is considered conscious cognition. “The man who wasn’t there,” the shadow that is sensed, communicated with, yet largely invisible, influences the schematics of normativity that juries inflect when

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constructing a reasonable person. This specter of normative heterosexual masculinity brings with it those social hierarchies that exist in service to normative heterosexuality, gender identity, and gender presentation – the legacies of local sexual, gender, and raced oppressions upon which the logic of the law is built. To be “reasonable” within the law is to uphold a status quo that is socially, economically, and culturally invested in such legacies.

The process of creating a fictive persona that reflects the normative standards of heterosexual masculinity is, in short, a process of re-inscribing heteronormative privileges, prejudices, and preconceptions into the deliberation process. Rather than weighing the unique form of reason required for a specific situation, the “reasonable person test” can be best understood as a test of *reasonable homophobia as it may arise within a particular jury*. Rather than controlling for the presence of homophobic, anti-LGBT prejudices within deliberations, the act of creating a “reasonable person” involves constructing a caricature of citizenship, the silhouette of a living person within which are deposited those concepts, prejudices, and cognitive processes deemed “reasonable” by a given jury.

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Branding, Citizenship, and Queer Survival

“The body in the mirror forces me to turn and face it. And I look at my body ... the incarnation of a mystery. And I do not know what moves in this body, what this body is searching. It is trapped in my mirror as it is trapped in time and it hurries toward revelation. ... I look at my sex, my troubling sex, and wonder how it can be redeemed, how I can save it from the knife.”

—James Baldwin, *Giovanni's Room*, (2000/1956), p. 168

In the award-winning Japanese animation series *Mushishi* (2005), the vagabond shaman, Ginko, visits the archive of a family rumored to be cursed with a strange, almost paranormal illness (Murai & Nagahama, Episode 20, “A Sea of Writings”). The lineage consisted of a dynasty of scribes who had amassed information about spiritual illnesses in a vast, subterranean library, now tended by the elder shaman, Tamma, and the family's youngest transcriptionist, Tannyu. Despite all knowledge of ailment and antidote the generations had collected, the family was unable to cure one particular affliction that appeared in every fourth generation. In the child who was to become the next archive master, a coal-black, dark and paralyzing epithelial mark would envelop one quadrant of the body, immobilizing a single limb. The birthmark, Tamma noted, was actually an illness contained within Tannyu's body, a living vessel that quarantined the malady, thwarting its proliferation.

Although treatment seemed hopeless, Tannyu's ancestors had discovered one vital phenomenon. The child bearing the mark was to be accompanied by a master shaman who, in addition to raising the child, would teach the scribe-to-be traditional methods of gradually diminishing the black smudge (Murai & Nagahama, 2005, Episode 20, “A Sea of Writings”). As her mentor recounted her adventures in treating the spiritual afflictions of her contemporaries, Tannyu transcribed a record of the particular illness, its description, and

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suggested treatments. As she wrote this information, the disorder within her leg would neutralize, travelling through the young adept's body, through her hands, and onto the delicate vellum scrolls Tannyu worked with. As the scrolls trapped the neutralized contaminant, the paralytic birthmark would diminish slightly, causing great fatigue. As Tamma exhausted her own recollection as a healer, she invited other spiritualists to the archives, urging Tannyu to vanquish the malady that hindered her. "If I don't lose [the mark] before I die," explains Tannyu, "my descendants will inherit the birthmark and carry on the curse, as it's always been... for generations now" (Murai & Nagahama, 2005, Episode 20, "A Sea of Writings").

The story of Tannyu, Tamma, the curse, and its treatment is an important metaphor that can be used to explore the effects of language on the living body. While Tannyu's malady most certainly marks her as different, her body itself functions as a site of containment for the illness, a condition that renders one of her limbs immobile. Yet this hardship is conquerable: the young scribe's act of neutralizing her ailment through the practice of writing engages a unique sense of agency. By transforming the toxins in her body through written language, Tannyu is able to remove the illness's power, rendering her condition harmless to those around her.

Just as the shaman-scribe, Tannyu, is interested in nullifying a legacy of her pupil's bodily fetters, my research is invested in emancipating sexual and gender non-normative individuals from multifaceted legacies of oppression. From the standpoint of social and legal history, queerness has been defined within discourses of difference that uphold and exalt heterosexuality, binary gender, and anatomical regularity. In addition to phrasing heterosexual relationships, society, and culture as the normative standard, these discourses

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also function to contain sexual and gender non-normativity within bodies exhibiting difference. Investigating language asserting otherness is crucial to the process of understanding contemporary structures of ethnic, gender, and sexual minority liberation and oppression. Queer liberation and oppression are ostensibly linked within the current historical moment due to the reality that the corporeal imaginary of non-normative sexual identity – the very logic involved in the process of reasoning through LGBT identity and being – has been identified, delineated, and bound by ideologies calling for its concealment.

To write from within the social location of a person influenced by structural legacies maligning difference is to write from within the experience of being branded as an Other. The practice of studying legacies of oppression from within the experience of otherness involves working with what Veena Das (2007) terms “poisonous knowledge,” or awareness generated from the unique experience in which “the self separates into that which can be destroyed and that which must endure” (p. 61). “The zone between two deaths” – the experience of sensing the erosion of civil personhood and the associated disintegration of social inclusion – involves a unique position from which “the unspeakable truth about the criminal nature of the law might be spoken” (p. 61). The ability to grant or negate civil personhood based on sexuality and gender, the capacity to order systems of deliberation that reassert heterocentric standards of citizenship – these are only a few of the machinations witnessed in multiple mistrials of LGBT hate-motivated murder. Bearing witness to this negation of LGBT personhood is an act that both informs queer citizens of their precarious social location in a homophobic hierarchy of citizenship, and a call to endure within a larger struggle to achieve greater access to civil rights. The process of interacting with poisonous

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knowledge is steeped in a tension between toxic life circumstances and the ability to actively work against oppressive forces, to “remake a world” more tolerant of difference (Das, 2001).

As the U.S. society evolves through the twenty-first century, investigating and dismantling oppressions existing at the intersection of race, gender, sexuality, and citizenship remains a crucial task. On March 27, 2014, news sources began following the trial of an Oregon mother who brutally beat her four-year-old son to death in 2012 on suspicion that he was gay (Castano, 2014). The crime was committed in front of the couple’s three other children, who noted during testimony that their mother did not like Zachary Duttro-Boggs based on “how he was acting”; data from online communications indicated that Duttro disliked her son because he walked and talked like he was gay (Castano, 2014; Kuruvilla, 2014). Hate rooted within homophobia, heterosexism, and transphobia remains a salient factor in the lives of all citizens, whether children, adolescents, or adults.

This study marks an intervention in the methods scholarly paradigms utilize in understanding cases of hate-motivated violence, specifically, lesbian, gay, bisexual, transgender, and transsexual cases of hate murder. The majority of scholarly work regarding hate-based murder engages a single paradigm to understand these crimes, confining their analyses to the sphere of legal, cultural, or gender studies. Such studies have grappled with legacies of homophobic, eugenic representations of sex, sexual desire, corporeality, and identity within traditional systems of legal rationalizations, medicine, and psychiatry. Tracking hate motivations in one arena naturally leads researchers to question the involvement of characteristics formerly deemed dormant. The proliferation of these studies, I assert, marks the growing realization that gender, sex, sexuality, race, and ethnicity intersect as the motive for hate-based LGBT murder. The struggle of whether to honor complex

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identities within the sociology of law, or whether to transpose intersectional personhood into legal terminology marks a shift towards the recognition that multiple identity factors are inflected in structures of oppression, instances of hate-motivated violence, and the experience of understanding social location through the paradigm of citizenship.

Like the parable of Tamma and Tannyu, however, I cannot avoid the personal investment in understanding and dismantling the oppressive forces that I feel mark my own person. Difficult to track from traditional structures of cognition, the act of writing about the embodied struggle for liberation requires new ventures into the world of liberative endeavors, healing narratives, cognitive structures that honor multiple forms of personhood. The act of studying poisonous knowledge, of writing from the standpoint that struggles to relieve social, structural, and legal technologies that nullify queer citizenship is an effort that strives “to unbalance or disarrange the discourses” pertinent to the crafting of identity within cases of hate-motivated violence, to “create *new conditions* for the articulation of difference” (Gatens, 1996, p73; emphasis mine). As we move through the first quarter of the twenty-first century, it is undeniable that the need for dismantling the historical legacies of anti-LGBT ideologies and heterosupremacy has intensified.

This study, then, marks a call to action, the announcement of the pressing need to understand legacies of embodied oppression, their associated violences, and the generation of new concepts that will be used to re-inscribe the meaning of LGBT survival in the twenty-first century. This call is a directive to understand the intersecting histories that have crafted the current social location of minority LGBT individuals, to face the moment of realization that James Baldwin describes as “the dreadful weight of hope” in an age when daily life allows us to recognize instances of oppression while easily moving in the opposite direction

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(Baldwin, 2000/1956, p. 169). It is a call to understand the way we imagine complex forms of embodiment, and the way citizenship itself is affected by our inflections of intersectional personhood.

Appendix A

Five Important Cases of LGBT Hate Murder

The following is a basic report of the murders pertinent to this study. While they have not been discussed in their entirety, the major characteristics of each instance of violence have been outlined for the reader. With the exception of Matthew Shepard, each of the following cases involves the murder of an ethnic youth who was either ostracized for a non-normative gender presentation apart from sexuality, or who was ostracized due to transgender identification. Each case involved a fair amount of community activism either during the trial period shortly after, with much of this activism continuing presently.

Gwen Araujo

Gwen Araujo was born Eddie Araujo, and according to her mother, “[Eddie] always felt like a girl” (Dunn, 2002). Interviews with Araujo’s mother indicate that as a young Eddie, Araujo was taunted and bullied, and “by the eighth grade, people started calling him names. The f-word, faggot” (Saint John and Lee, 2002, “Navajo”). At the age of fourteen, Eddie confessed to his parents that he felt he was a girl, began wearing make-up and women’s clothing, began living as a female, and began calling himself Gwen after his favorite singer, Gwen Stefani (Saint John and Lee, 2002, para. 2).

At seventeen, Araujo was murdered on October 4, 2002 by military men between the ages of nineteen and twenty-two whom she had engaged in oral sex (Prevost, 2007). Although the sex was consensual, Araujo was later forced to reveal her male genitalia while inebriated at a large party; she was taken away from the party, violently attacked, beaten, strangled to death, wrapped in a blanket, and buried in a shallow grave more than one-hundred miles from the location where she was murdered (Dunn, 2002; Lavoie, 2002;

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Prevost, 2007; Saint John and Lee, 2002, “Help”). Araujo’s mother reported her missing to the police on October 5, after she did not return home; Newark police commented to news sources that they were in contact with individuals who could have intervened in the situation, but did nothing to stop it (Saint John and Lee, 2002). On October 16, 2002, Jaron Nabors, a suspect in Araujo’s disappearance, confessed to being part of the group that buried Araujo after investigators played a tape of him recounting the incident to a witness whom they had wired earlier that month; in addition to confessing, Nabors led investigators to Araujo’s grave (Airoldi, 2004a).¹⁰⁷ A number of vigils were held in Gwen’s honor in the days after her murder, where money was raised for her funeral and where her mother began to garner support from community activists and citizens (Dunn, 2002). The Reverend Fred Phelps, a Baptist fundamentalist famous for engaging in homophobic speech in public spaces, claimed openly that he would picket Araujo’s funeral (Airoldi, 2002). The case was immediately compared to other high-profile murders of gay and transgender individuals, such as Matthew Shepard and Brandon Teena (Saint John and Lee, 2002, “Help”).¹⁰⁸

Araujo’s case is unique for a number of reasons. Although her male-to-female gender identity was considered non-normative, her female gender presentation was relatively straightforward and mainstream. There is a fair amount of research into the early phases of Araujo’s life, her ostracism from public school and church, and her eventual decision to be

¹⁰⁷ Other important evidence of the murder, included in the suspects’ trial, involved letters that Nabors wrote to his girlfriend from jail after being arrested. The letters, sent on November 15, 2002, approximately a month following his arrest, contained details of the murder that would later be referred to during courtroom testimony (Delventhal, 2004c).

¹⁰⁸ In a strange coincidence, a high school in Newark, CA was preparing to stage the play “The Laramie Project,” about the murder of Matthew Shepard, perhaps the most high-profile hate crime relating to sexuality in the United States (Saint John and Lee, 2002, “Comment”). Students and teachers involved in the production stated, “It’s Laramie in Newark. It’s like déjà vu. ... You think that people would have more tolerance ... [b]ut it can happen anywhere” (Saint John and Lee, 2002, “Comment”).

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home-schooled and gain a degree for cosmetology (Prevost, 2007). Similarly, the trajectory of Gwen's life – being born a boy and moving towards a female gender identity and corporeal construction (via sexual reassignment surgery) – remains, at the very least, acknowledged as present by the mainstream, and at the most, seen as a process of becoming a “whole person” (Agid “Normal”, 2006). According to the Long Beach Press-Telegram, Gwen's mother commented that “Araujo ... intended to have sex-change surgery, according to her mother ... who promised the teen she would file a name-change petition after the surgery was accomplished” (December, 2002). Gwen's death at a time before achieving her goal of sex reassignment surgery presented problems for the way media outlets, community members, and legal representatives referred to Araujo; while some individuals wished to honor her wish to become a corporeal female, others argued that Araujo died while still in a male body, thereby requiring a masculine pronoun (Lavoie, 2002; Long Beach Press-Telegram, 2002).¹⁰⁹

Gwen's murder also brought to light a national trend of hate crimes against transgender and gender non-normative youth. Among crimes against transgender and gender non-conforming individuals, community activists began to point out important statistics and facts about these types of crimes: they largely involve youth; about one hate crime per month against a transgender or gender non-conforming individual is reported in the United States

¹⁰⁹ Of particular interest is the note from the Associated Press itself that it does not have the linguistic particularity to voice the unique travel of transgender individuals to transsexual embodiment of their gender. The Long Beach Telegram-Press notes, “The AP stylebook doesn't have an entry for ‘transgender,’ but does address the issue in part under ‘sex changes’” (December 22, 2002). This is particularly interesting, considering that sex changes do not have to be associated with transgender identity at all. The explanation of the lack of lingual particularity with respect to non-normative gender experiences set forth by the AP enforces the above point, namely, that a hegemonic understanding of transgender experience and identity requires an eventual transition into an “appropriate” gender identification via bodily modification. To linger in the “transgender state” without an eventual movement towards corporeal modification remains unimagined territory for, at least, the Associated Press and, at most, hegemonic media outlets that inform the social.

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every year, possibly indicating a higher number of unreported attacks of the same nature; of the data garnered from these individuals regarding their lives, two-thirds have stated they have been physically or sexually assaulted in their lifetime (Lavoie, 2002; Mason, 2002). In the same year that Araujo was murdered, community advocacy groups noted that thirteen anti-transgender murders had also been reported (Airoldi, 2002).

In addition, Gwen's murder created a great deal of community cohesion and activism almost directly after it happened. In the wake of Rev. Phelps' announcement that he planned on executing a homophobic rally outside of Gwen's funeral, Araujo's family emerged on local news stations asking citizens of the Newark area to support Gwen's funeral and oppose the rally and "let Phelps know he's not welcome in Newark" (Airoldi, 2002). News sources and community members actively associated the murder with lesbian, gay, and transgender/transsexual rights, describing it as "a watershed moment in the gay, lesbian, bisexual, and transgender movement" (Lavoie, 2002). One citizen was quoted as commenting, "This could become one of the important, defining moments of our time," in an article that also noted how national activists and advocates for lesbian, gay, bisexual, transgender, and transsexual youth were "planning education and outreach programs ... [and preparing to send] representatives to the Bay Area to show solidarity in the wake of the slaying" (Lavoie, 2002, para. 11-12). In response to the media flurry and the whirlwind of potential community activism, Sylvia Guerrero (Gwen's mother) immediately hired high-profile lawyer Gloria Allred, who agreed to confront state lawmakers with demands "to include hate crimes in the list of special circumstances that make a defendant eligible for the death penalty if found guilty" (Wronge, 2003a).

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The trial of Araujo's murderers pointed out a deep tension between the judicial system and civilian attitudes towards hate crimes in that the judicial system itself acted with a heavy hand upon the perpetrators, yet the jury was unable to come to a sentence during the years of 2004 and 2005. On January 23, 2003, the San Jose Mercury News reported that the prosecuting attorney had convinced a judge to consider the possibility of raising the bail of Michael Magidson, a suspect in the murder of Araujo, for misrepresenting his family's financial means (San Jose Mercury News, 2003). On January 29, six days later, Jose Antonio Merel (age 23), Jaron Chase Nabors (age 19), Michael William Magidson (age 22), and Jason Michael Cazares (age 23) were all charged with hate crime during preliminary proceedings, during which they pleaded not guilty to all charges brought against them (Wrong, 2003a). Each defendant was granted a separate defense lawyer. According to official officer reports and court files, "the defendants had discussed Araujo's [biological] gender among themselves several days before the killing. [The] Deputy District Attorney ... has called the case premeditated murder" with the intent to forcefully uncover Gwen's biological gender (Wrong, 2003a). Nabors' previous confession was referred to in the courtroom on July 23, 2003, essentially allowing the presiding judge to deny defense motions that would overturn previous rulings on bail and hate-crime enhancements. (Airoldi, 2003a; Airoldi, 2003b; Wrong, 2003a).¹¹⁰ In addition, the prosecutor introduced evidence detailing how Magidson, perceived as the primary actor in the case, spoke with a previous prison cellmate about the murder, finding a possible alibi, concealing evidence of the murder,

¹¹⁰ Jaron Nabors, who had pled his case and supplied testimony about the murder against his peers, received a plea bargain of voluntary manslaughter with "a maximum of 11 years in state prison," and a resulting judicial separation from the remaining three suspects (Airoldi, 2003). Nabors' defense attorney stated, "[His] goal was to take responsibility for the limited role he played in the crimes and to testify truthfully. ... If not for Jaron's truthful testimony and his statements to the police, [Gwen Araujo] could still be in a shallow grave" (Airoldi, 2003a).

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and chemically washing the bed of the truck he used to transport Gwen's body (Airoldi, 2003a). Magidson's defense attorney retorted in written documents, "[Araujo] perpetrated a sexual fraud on heterosexual men, who, when discovering they had been having [oral] sex with a [biological] man, had their masculinity, sexual identity, and self-esteem called into question at a time when they had been drinking heavily" (Wronge, 2003a). Regardless of these statements, the presiding judge ordered three of the four suspects to stand trial on murder and hate crime charges (Airoldi, 2003a; St. John, 2003). In addition, the presiding judge revoked Magidson's bail of \$1.68 million, "calling the 22-year-old the 'primary actor' in the killing" (Airoldi, 2003a; St. John, 2003). The judge affirmed the reasons for his ruling by noting that revoking bail would ensure his presence at proceedings as well as preserving the public from further violence, adding, "It would be very easy for him to walk away ... and anybody who was standing in his way could be in danger" (Wronge, 2003b). Outside of the courtroom, activists denounced Magidson, asking the court to deny his bail, and supporting Araujo's mother (Wronge, 2003b).

The trial to convict and sentence Araujo's murderers was expected to be a tame trial with a quick deliberation and conviction, with the judge stating that the trial would end in four months (Delventhal, 2004a). On April 15, 2004, the trial of Araujo's murderers began with opening statements, where the prosecuting attorney noted the origins of the assault and murder lay within the suspects' need to confirm Gwen's biological gender, and a number of conversations the three men engaged in concerning what would happen to someone who lied to a straight man about their biological gender (Delventhal, 2003b). According to the prosecutor, "In one such conversation about a week before the slaying, Magidson, Merel, and Nabors were in the garage of the Merel home and talked about what a 'real bad, rough dude'

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might do if sexually deceived. One of the men said the person responsible for the deception could end up dead” (Delventhal, 2004b). On October 3, after arriving at a party and consuming some alcohol, Araujo was sequestered in a bathroom by a mutual female friend of the three men, where she forcefully reached down Gwen’s skirt against her will in order to identify whether Gwen had male or female genitalia (Delventhal, 2004b). After learning that Gwen had male genitalia, Araujo tried to leave the residence but was violently assaulted in the living room by Magidson and Merel; her final words as the assault began were, “Please don’t; I have a family” (Delventhal, 2004b). As the assault continued, Gwen Araujo was punched, choked, kicked, and kneed in the head so violently that her head left a hole in the living room wall and she was knocked unconscious; during the assault, Merel went from the living room to the kitchen in order to acquire objects with which to beat Araujo (Delventhal, 2004b). Once unconscious, Araujo was carried to the garage where she was strangled with a rope by Magidson; her body was placed in the bed of Magidson’s truck, where Cazares struck Araujo’s head twice with a large shovel (Delventhal, 2004b). During the first phase of the trial, prosecutors spent days questioning Jaron Nabors about the murder, and was noted by media sources as, “Articulate and analytical ... the most important prosecution witness” (Delventhal, 2004c). Gwen’s Mother, accompanied by lawyer Gloria Allred, was recorded as saying that the proceedings were difficult; “I love Gwen and I miss Gwen,” she said (Delventhal, 2004b).

In response, the defense attorney attempted to discredit the testimony of Nabors by referring to him as a liar. Cazares’ defense lawyer labeled Nabors an “expert liar,” a coward who was interested only in saving his own life by attaining a plea bargain (Delventhal, 2004b). Cazares’ defense attorney attacked Nabors’ motives during cross examination,

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arguing that Nabors was aware that his letters would be read by investigators, and that his “selfish motives” included “improv[ing] his chances of getting a plea deal” (Delventhal, 2004c). In comparison to the other defendants, Nabors received eleven years in state prison, while his peers were eligible for twenty-nine years to life if convicted (Delventhal, 2004c). Additionally, the defense lawyer presented Nabors as “a sophisticated liar who uses ‘self-authenticating detail’ to accomplish his deception – often mingling truthful details with fiction to spin a more believable tale” (Delventhal, 2004c). The process of discrediting Nabors was central to the lawyers’ arguments that the murder was akin to a crime of passion, “an explosion of emotion” (Delventhal, 2004c).

The cornerstone of the suspects’ defense rested on a panic defense, with prosecutors bringing a paid psychologist who had not interviewed any of the suspects (St. John, 2004). According to the psychologist, the fact that the young men who perpetrated the attack, “who [were] unemployed, lived with [their] parents, had no school or career plans and no serious dating relationship” indicated that they were “‘stuck’ and immature in their emotional reactions” (St. John, 2004a). The combination of these characteristics along with drugs and alcohol “is likely to ‘panic’ and overreact with violence.... ‘It would flip them out ... they’d have a strong sense of panic and uproar and wanting to fix it. It would be very upsetting. ... There would be a sense of betrayal that the person was not who they said they were. ... You have the shame of the individual plus the shame of having my buddies know that I did this’” (Michael Pojman, as quoted in St. John, 2004a). Critics and activists of this position labeled it a “trans-panic” defense that effectively blamed the suspect’s actions on the victim; the director of Communities United Against Violence in San Francisco, CA, stated, “Defenses like this really allow defendants to have a license to kill people that they perceive to be

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transgender There is bigotry within that type of defense.... It is making a statement that if a transgender person wants to sleep with or touch you, you have the right to react with violence, gratuitous violence” (Tina D’Elia, as quoted in St. John, 2004a). Madgison’s attorney was quoted as saying, “Sexuality, our sexual choices are very important to us.... They’re things that for some people, for young men in particular, forms a substantial part of their identity. That’s why the deception in this case ... was such a substantial provocation” (Wronge, 2004). Sylvia Guerrero was later quoted as commenting to the San Jose Mercury News, “I feel like this case has been about these guys [Gwen’s murderers].... What about me and my daughter? She’s gone and you can’t bring her back” (Wronge, 2004). On the same day that this psychologist testified against Gwen, Sylvia Guerrero legally petitioned the California Superior Court system to change Araujo’s name from Eddie to Gwen Amber Rose Araujo (St. John, 2004a).

On June 4, 2004, the jury in Gwen Araujo’s murder trial began what would be a frustrating and confusing set of deliberations that not only garnered close media attention, but also sparked outrage and controversy in the surrounding communities, and with transgender activists and advocates (Delventhal, 2004d; Wronge, 2004). As the deliberations opened, media sources ran stories that summarized the assault, murder, and trial in whole; as deliberations entered their second week, media sources noted that jurors asked to listen to testimony of a pathologist who conducted an autopsy on Araujo after her death, citing asphyxiation and head trauma as the main causes of death (Delventhal, 2004e; St. John, 2004b). On the eighth day of deliberations, the jury reached an impasse, and the foreman asked for the judge to re-state instructions and allow them to read and watch testimony by the prosecution’s primary witnesses (St. John, 2004c). After roughly four weeks of

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deliberations, the jury returned to the courtroom saying they could not reach a unanimous verdict, requiring the judge to declare a mistrial (Aguirre, 2004). Gloria Allred was quoted as saying that “this [was] not a jury who was accepting of a manslaughter conviction,” indicating “that they rejected the defense’s argument that the killing was a crime of passion” (Aguirre, 2004). Araujo’s family showed strong reactions of disappointment, yet Sylvia Guerrero thanked all of the jurors for their service, stating: “We know you tried your best. ... We are very disappointed but we hope and pray that another jury in the next trial will reach a verdict in this case. That will bring justice to Gwen’s murder” (Aguirre, 2004). The mistrial declaration resonated throughout the surrounding gay, lesbian, transgender, and bisexual communities, and many community activists reported that community members felt undervalued and second-class (Aguirre, 2004). Newark Mayor Dave Smith was quoted as saying, “everybody knows there was a crime that was committed and everybody knows who did it ... yet no verdict was reached” (Aguirre, 2004). A month after the mistrial declaration, the San Francisco City Supervisor, Tom Ammiano, formally requested that the case be re-tried “and seek to limit the three defendants’ use of a ‘trans-panic’ defense” (Herel, 2004). Shortly after the request, the presiding judge declared that the re-trial would begin in May of 2005, one year later (Delventhal, 2004f).

Shortly after the retrial was scheduled within the legislative system, activists and city officials across the San Francisco Bay Area began initiating minor investigations into anti-discrimination laws, and in some cases, initiated expansions of these laws into protections specific to transgender individuals. Roughly five months later, the Alameda County supervisor began proceedings to expand anti-discrimination policies in order that they advocate for the safety of transgender, transsexual, and “people who are seen as out of

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character with traditional gender roles – such as women perceived as very masculine – as well as more obvious behaviors, such as [transvestites] and transsexuals” (Maitre, 2004). Months before the trial was scheduled to commence, California Assemblywoman Sally Leiber of San Jose, introduced Assembly Bill 1160 into the California legislative system; the bill, backed by Equality California, “[modified] the existing definition of ‘voluntary manslaughter’ to prohibit defendants from contending they were provoked to murder by discovering the victim’s disability, gender, nationality, race, ethnicity, religion or sexual orientation” (Alameda Times-Star, 2005a; Richman, 2005). Critics of the bill, such as Randy Thomasson of Campaign for Children and Families, pointed out that any sort of murder was a hate crime, and that because the bill covered characteristics such as race, ethnicity, or nationality, characteristics such as sexuality or gender should not necessarily be emphasized, because they run the risk of creating “special interests” (Richman, 2005). Legal critics called the bill redundant, noting that judges had the right to exercise the law in blocking a panic defense (Wrong, 2006). In January 16, 2006, well after the trial of Araujo was completed, a revised version of the bill began slowly moving through the California Assembly; it would be approved by the California Senate on August 31, 2006, named the Gwen Araujo Justice for Victims act, and would preemptively block any panic defense for any kind of hate crime before reaching the quarters of an assigned judge (Park Labrea News, 2006).

Before the passage of this bill, however, after selection of a second jury, the re-trial of Araujo’s murderers began on June 1, 2005 (Dennis, 2005; Lee, 2005). Opening statements indicated that the prosecuting and defense teams presented arguments in the retrial that were similar to the previous case: the District Attorney presented evidence of the attack, murder, and burial utilizing Nabors’ testimony while the defense attorney attempted to discredit

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prosecution witnesses as pathological liars (Dennis, 2005; Lee, 2005). In response to the intense media coverage, the court issued a gag order on all lawyers present (Dennis, 2005). During Nabors' testimony, he once again outlined the murder and burial as the state's primary witness, noting that "On their way home ... they stopped at McDonald's and took a vow of secrecy never to tell a soul about the killing" (Wrong, 2005a). On June 22, after Nabors ended his nine-day testimony, the prosecution introduced testimony, evidence, and cross-examinations from the first trial; a day later, the prosecution introduced tape-recordings of Cazares speaking with police and compared them to statements he made during the first trial, noting inconsistencies in his confessed locations at the time of the murder (Alameda Times-Star, 2005b; Daily Review, 2005; Oakland Tribune, 2005). On July 19, the prosecution questioned Nabors' father about a letter he received from his son while incarcerated which described the moments after the group's discovery that Gwen was a biological male: "[Jaron Nabors] said he'd never seen eyes like that," Ronald Nabors said, adding that his son's statement referred to a look on Magidson's face" (Aguirre, 2005c). Ronald Nabors confessed that he had thrown the letter away after receiving it because he did not want his family to be involved in the possibility of court testimony (Aguirre, 2005c). Emmanuel Nabors, the family's youngest son, was called to the stand by defense attorneys to clarify what they felt were discrepancies, and in order to attempt to move towards a motion for mistrial; the judge dismissed the motion, however, based on Emmanuel's adamant defense of his previous testimony (Aguirre, 2005c).

The defense, upon initiating their proceedings, planned to put each defendant on the stand in order to let them testify against the charges brought against them. Jason Cazares maintained that he did not attack or kill Araujo, but also "stopped short of trying to save [her

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life because he] was drunk at the time and wasn't thinking that way" (Wronge, 2005)a.

During testimony, Cazares stated that he "was outside smoking a cigarette and talking with [another suspect's] older brother ... when the killing occurred," claims which were not corroborated by the witness's earlier testimony (Wronge, 2005a). A day later, when Jose Merel took the stand to speak publicly of the murder for the first time, he confessed that learning of Gwen's biologically male identity resulted in an immediate emotional crisis and process of questioning his sexuality, as well as nauseating him to the point of vomiting (Aguirre, 2005d). In addition to confessing that he immediately began crying after learning Gwen was a man living as a woman, Merel stated, "I thought I was going through an identity crisis or something because I thought I was gay. (Your) whole life you think you're heterosexual, then you find out you were pleased by a man. I guess you could say it disgusted me" (Merel, as quoted in Aguirre, 2005d). As Merel's guests tried to get Araujo out of the house, she threatened them, telling them not to touch her; Magidson and Merel then began assaulting, with Merel walking to the kitchen intermittently to retrieve a skillet and canned goods, which he used to beat Gwen (Aguirre, 2005d). "She never should have been killed," Merel was recorded as saying (Aguirre, "Started with teasing," 2005d). Throughout the trial, reporters kept a close eye on the emotional state of Gwen's mother. When asked why she endured the horrific testimony of the suspects, Sylvia Guerrero stated, "I'm a mom and I deserve to know what happened during my daughter's final moments I want to know what happened. I deserve it and Gwen deserves it" (Aguirre, "Disposal of body," 2005d).

When Michael Magidson was allowed to take the stand, the same individual who was called a primary actor and whose bail was revoked in the first trial, a flurry of contradictions

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and outright homophobia ensued during courtroom testimony. Throughout the cross-examination and testimony, Magidson told jurors “he had gaps in his memory, wasn’t willing to ‘self-authenticate’ details, and he denied killing Araujo, although there’s a chance that he strangled her [according to his own testimony]” (Aguirre, 2005e). In addition, Magidson claimed that it was Nabors who actually committed the murder, saying, “he saw a rope around [Gwen’s] neck after Nabors admitted to the killing” (Aguirre, 2005e). The District Attorney utilized the opportunity of cross-examination to paint the picture of a young, insecure, homophobic man; for the most part, Magidson’s testimony upheld this argument regardless of previous character witnesses who testified that he was not homophobic (Aguirre, 2005e). When questioned about his thoughts on homosexual sex, Magidson was quoted as saying, “I don’t want to [copulate with] a man – never have, never will. I don’t want another man to touch my [penis]. That’s not my thing,” adding that he always assumed Gwen was a biological women (Aguirre, 2005e).

As testimony drew to a close, jurors were left with at least four different scenarios of what happened on the night of Gwen’s murder presented by the state and by each of the three defendants. During closing statements, the District Attorney labeled Magidson as the primary murderer, Cazares as his right-hand-man, while Merel was deemed “an emotional basket case ... too timid to pull away from the violence and too distraught to understand the gravity of the events unfolding” (Wronge, 2005b). He was recorded as stating, “There was a genuine human being in the case, a living, breathing, individual 17-year-old ... deprived of the right to live her life the way she chose to live her life” (Wronge, 2005b). In addition, the District Attorney presented jurors with a photograph of Gwen, prompting her mother to thank him and to note, “[The suspects and defense lawyers] talked about her like she was inhuman

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... [l]ike she was an ‘it’” (Wronge, 2005b). As with the first trial, defense attorneys attempted to present the case as a typical crime of passion involving panic-induced temporary insanity; however, rather than presenting a united front against accusations, the defense lawyers engaged in a game of claiming their own client’s innocence while blaming the other defendants for Gwen’s death (Wronge, 2005b).

On August 31, 2005, jurors of the second trial for the murder of Gwen Araujo began deliberations (Wronge, 2005b). While deliberating, jurors asked the judge for clarification on hate-crime enhancement law, asking if it was possible to remove the enhancement for a given defendant (Aguirre, 2005f). Nine days after deliberations began, press sources announced that the jury had reached two verdicts for two of the three suspects, which remained sealed within the courthouse (Aguirre, 2005f). By Tuesday, September 13, the court had opened the sealed judgments, noting that Magidson and Merel were both convicted of second-degree murder without a hate-crime enhancement; a mistrial was declared for Cazares, due to the fact that jurors could not agree on a verdict for the individual (Aguirre, 2005f). In explaining why the hate-crime enhancement was dismissed by jurors, one juror told the press, “it was difficult enough to reach a unanimous decision on the charges [because of so many versions of the murder], and also because it was tough for [jurors] to determine what the men were thinking” (Aguirre, 2005f). Three months later, on December 17, 2005, Jason Cazares pled guilty to manslaughter on a plea deal, receiving six years in prison.

Gwen’s family members, community activists, and citizens of the San Francisco Bay Area met the verdicts with mixed emotions, frustration, and a high level of disapproval. Some individuals commented that the rejection of a trans-panic defense represented a social shift away from victim-blaming in hate-oriented attacks (Buchanan, 2005). Other individuals

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noted that the case and media coverage had resulted in a large amount of social discourse surrounding transgender identity and communities, resulting in community actions by some presses to clarify how gender-specific pronouns should be used when referring to gender non-normative individuals (Buchanan, 2005). Media outlets noted that the Spanish-language news attended the case and actively covered it, which individuals “didn’t see with the Matthew Shepard case” (Buchanan, 2005).¹¹¹ More critical commentators noted that the cases did not garner hate-crime enhancements, and the head of the Lesbian Gay Bisexual Transgender Center in San Francisco commented, “If this is not a hate crime, I don’t know what is,” noting that many individuals were left feeling that “some lives are worth more than others” (Buchanan, 2005). A citizen of Newark whose child attended school with Gwen noted, “It’s horrible that Gwen’s life is only worth six years. It’s just very sad” (Wong, 2005). Other citizens commented on the unbalanced nature of the sentencing system within the judicial system; one parent noted, “We’ve confused some priorities in how we sentence people.... Victimless crimes get some outrageous amounts of time, while someone taking another’s life only gets six years” (Wong, 2005).

Sakia Gunn

Sakia Gunn was a fifteen-year-old African American teenager returning to Newark, New Jersey by train after attending a party in Greenwich Village, New York City with four friends between the ages of fifteen and seventeen (Carter, 2003a; The Star Ledger, 2003).

¹¹¹ This claim, made by media outlets and activists, is actually erroneous, as many Spanish-language sources from Florida, Mexico, Spain, and many other Latin-American countries carried stories of Shepard’s murder, death, and trial. However, these Spanish-language sources were not local to the Laramie, Wyoming community, as they were to the Hayward, California community. In the case of Matthew Shepard, news sources far away from the origin of the story translated and circulated news that had first been reported in English. In contrast, Araujo’s case allowed local Spanish-language news sources the opportunity to generate original media coverage of the case in the Spanish language, and within the community in which the attack took place.

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Near the hour of 3:30 AM on May 11, 2003, Sakia Gunn and her friends were approached in a bus station by two black men who attempted to strike up a conversation with them from inside their car; when the girls rejected the men's advances, the men exited the car and began arguing with the youth (Carter, 2003a; The Star Ledger, 2003). The encounter became a violent fight, during which Gunn was stabbed in the chest with a knife; both individuals fled the scene of the murder (The Star Ledger, May 12, 2003). Sakia's friends flagged down a passing motorist, who transported the teenager to University Hospital in Newark, where she died shortly after arriving (Carter, 2003a). Sakia's mother, LaTona Gunn, and her grandmother, Thelma Gunn, were contacted by hospital officials later that morning requesting their presence (Carter, 2003a). Upon meeting doctors, the women learned of Sakia's attack and murder, and the elderly Mrs. Gunn briefly fainted, lost consciousness, and was also admitted to the hospital (Carter, 2003a).

La Tona Gunn remembered her daughter as having "a talent for braiding hair and doing fashionable hairstyles for friends. On the day before her death ... Sakia's room looked like a beauty salon. Sakia was washing and styling her friend's hair. 'She was good,' [LaTona] said. 'That's how she got her little money'" (Carter, 2003a). She loved to play basketball, and "She liked Captain Crunch [cereal] and hot wings" (Carter, 2003a).

Shortly after Sakia's assault and murder, news sources began to speculate as to whether this was a case of hate-motivated violence. One day after news sources broke the story of the murder, they began integrating statements from Gunn's mother, who reported that all of the girls involved in the incident dressed in a masculine manner, and Sakia identified as a lesbian (Carter, 2003a). Based on these statements, police and media sources began to speculate whether the crime was hate-motivated; the Newark City police spokesman

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noted that although the men did not know the women's sexual orientation upon approaching them, "At some point during their interaction, they made their sexual orientation known" (Carter, 2003a). On May 14, 2003, the police issued a warrant for Richard McCollough of Newark, New Jersey, aged 29, an individual whom they believed to have assaulted Sakia Gunn (Kelley, 2003). According to the New York Times, the charges listed on the warrant included "murder, weapons, and bias-intimidation charges" (Kelley, 2003). The second individual was not "charged in the death because police [were] still trying to determine his role" at the time the warrant was issued (Carter, 2003b).

On the same day that a warrant for arrest was issued, Gunn's friends organized a vigil in her honor at the site of the stabbing, citing a need for stricter laws "to protect gays" (Carter, 2003b). The vigil was attended by many youth, friends, and family, as well as community and religious leaders including the local Jehova Jehri Christian Worship Center (Carter, 2003b). At the vigil, a senior bias crime advocate for the New York City Gay and Lesbian Anti-Violence Project declared the attack as a clear case of hate-motivated violence (Carter, 2003b). A day after the vigil, on May 15, a demonstration with roughly 300 attendees of friends, relatives, and classmates was staged outside of the Newark City Hall "to bring attention to ... inadequate laws protecting gay rights" as well as a lack of law enforcement officers in a location deemed by community members as exhibiting a "hostile atmosphere [towards] most gay young people" (Carter, 2003b; Smothers, 2003a). The demonstrators wore white headbands and t-shirts with slogans of remembrance and support for Sakia (Parry, 2003). LaTona Gunn also spoke to the crowd, and was quoted as saying, "Nobody had the right to take my child away. ... Nobody deserves to die the way she did" (Parry, 2003). Also of interest to community members was the fact that the bus station did

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have a police booth, yet it had “not been manned between 1 and 6 a.m. for several years, after an analysis showed that there was too little activity at the intersection to justify an overnight police presence” (Parry, 2003).

Shortly after the rally ended and the crowd began dispersing, at about 5:00 PM on May, 15, Richard McCollough turned himself into the Essex County prosecutor’s office with the aid of his lawyer, where he was “arrested and charged with murder, weapons possession, and bias intimidation” (Parry, 2003; Smothers, 2003a). Upon the arrest of McCollough, the Newark City Mayor Sharpe James called a news conference to announce the arrest of the suspected attacker, stating, “We will not tolerate bias crime in the City of Newark” (El-Ghobashy, 2003; Smothers, 2003a). According to the New York Daily News, LaTona Gunn commented, “I’m glad they got custody of him because I could rest a little better. ... I just couldn’t rest with him running around loose after what he did to my daughter” (El-Ghobashy, 2003). At McCollough’s arraignment hearing at the New Jersey Superior Court, his lawyers entered a plea of not-guilty, and the judge set his bail at \$500,000; Richard McCollough was absent from the hearing, an action which would repeat itself throughout the judicial process (Carter, 2003d). According to The Star Ledger, McCollough’s mother stated that her son could not be homophobic due to the fact that his grandmother was pivotal in his upbringing, and his grandmother was also a lesbian (Carter, 2003d). In response to LaTona Gunn’s statements, McCollough’s mother stated, “[W]e are all so sorry because [LaTona] has lost a daughter, and I lost my oldest son” (Carter, 2003d).

On May 17, two days after McCollough turned himself into authorities, a group of over 2,500 citizens gathered at the funeral of Sakia Gunn in order to mourn her passing (Carter, 2003d). At the funeral, Mayor James said that his administration would contact

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community leaders of the local lesbian, gay, bisexual, and transgender community to begin discussing the possibility of establishing “a gay and lesbian counseling center in [Newark, New Jersey]” (Carter, 2003d). In reference to the need for a counseling center, James stated, “The problem has to be recognized so they can get counseling, so they can get information without being ashamed of their sexual orientation. . . . That’s why they want to go to New York. It’s now out of the closet [and] visible because of the tremendous outpouring of love . . . for this young lady” (Carter, 2003d). On the same day of the funeral, James has the Essex County College convert its gymnasium into an open counseling center, where students could get help, food, and beverages after the services (Carter, 2003d). After the services, Mayor James joined citizens in a procession from the funeral home to the community college (Carter, 2003d).

Roughly three weeks later, on June 4, 2003, citizens of New Jersey demonstrated at Newark City Hall once again, demanding that James honor his pledge to establish a gay and lesbian counseling center (Carter, 2003e; Carter, 2003f). While community organizers waited for James’ administration to contact them, they began to collect information on what resources the center should include, citing “HIV social workers, computers and counselors” as a few of the key components (Carter, 2003e; Carter, 2003f). Joy Black, a mentor to young queer youth, noted that although appointed city officials had contacted her, “she and other activists believe[d] the city [was] moving too slow on the issue” (Carter, 2003f). In response, the community began forming Newark Pride, “a coalition of gay and lesbian advocates and supporters [who sought] to bring attention to the needs of the gay community, particularly for local youth” (Carter, 2003f). A number of prominent politicians, and gay and lesbian advocate groups spoke out in support of the center, including former councilman Cory

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Booker, the founder of the New Jersey Stonewall Democrats, and clergy of the Liberation in Truth Unity Fellowship Church of Newark (Carter, 2003e; Carter, 2003f). In the midst of these actions, students began commenting that public school officials would not allow them to display images of Sakia or to wear rainbow colors identifying them as non-heterosexual, citing suspension as the mode of enforcement (Carter, 2003f). The Deputy Superintendent for the school district noted that no clothing allowing any student to be identified with a specific group could be worn in school; “The school is neutral territory,” she stated (Carter, 2003f).

In the wake of these criticisms, other figures and groups began asserting that the media’s and community’s insistence on highlighting Gunn’s sexual orientation had created a bias-crime charge where there was no reason to enforce one. The spokeswoman for Mayor James’ office commented, “I think this is about all teenagers. ... It’s no more difficult to be a teenager in Newark than in any other city” (Kugiya, 2003). McCullough’s lawyer “said too much attention had been drawn to Gunn’s sexual orientation,” noting that although the victim of the attack was gay, the crime was not necessarily hate-motivated (Kugiya, 2003). Other critics noted that the assault and murder had “become an opportunity to implement the state’s year-old bias-crime statute,” while parents across the city countered these claims by describing the crime as “a call for better policing and more resources for local teenagers” (Kugiya, 2003). The national chapter of the Gay and Lesbian Alliance Against Defamation’s Michael Young noted, “When you talk about hate crimes ... there is a lack of coverage when it comes to people of color” (Kugiya, 2003). According to The Record, the community and media response provided in the wake of Sakia’s assault was small compared to that of Matthew Shepard, yet “Relative to other murder victim’s in Newark [a city that] has one of

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the highest murder rates among the nation's large cities – Gun has received a lot of attention” (Kugiya, 2003).

While city officials and media outlets preached greater tolerance against lesbians and gays, queer youth within the city of Newark began reporting experiences that showed an open opposition to tolerance and acceptance of queer youth. Students at West Side High School, where Sakia attended classes, reported that the principal of the school refused a request for a moment of silence in Gunn's honor; a school official noted that requests for interviews which were referred to the principal went unanswered (Strunsky, 2003a; Strunsky, 2003b; Strunsky, 2003c). Three months after Sakia's funeral, LaTona Gunn had become extremely active in efforts to create a queer youth center in Newark, New Jersey, becoming “an ad hoc spokeswoman for the difficulties faced by young black lesbians like her daughter” (Strunsky, 2003a). She reported in the month of August that the community was still waiting to be contacted by the mayor's office, while city officials refused to comment on the issue to media sources (Strunsky, 2003a; Strunsky, 2003b). The Newark Pride Alliance cited race, socioeconomic status, and hate speech against gays and lesbians by religious groups were reasons that Sakia Gunn's murder had not garnered more attention from the Newark community, media networks, or the state of New Jersey (Strunsky, 2003c). Amy Goodman, of the award-winning news show “Democracy Now,” commented, “I am shocked at the lack of response, the lack of support” in the case of Gunn's murder (Strunsky, 2003b; Strunsky, 2003c). Both the Lambda Legal Defense and Education Fund and the New Jersey Lesbian and Gay Coalition refused to comment on the case (Strunsky, 2003b; Strunsky, 2003c).

In September of 2003, on their thirtieth anniversary, Parents and Friends of Lesbians and Gays began their year-long schedule of programming with a “Call to Action Against

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Hate,” read by LaTona Gunn and poet Amiri Baraka on the steps of the New York City Hall (PR Newswire, 2003). While the group celebrated its foundation in New York city, they also celebrated the “imminent launch of Newark PFLAG” as well as the release of a touring book art exhibition titled, “Moved to Remember: Determination Against Hate Violence” (PR Newswire, 2003). The exhibition was fashioned to allow exhibit participants the option of creating a page aimed at healing incidents of hate violence and hate speech; pages were compiled into individual books which were kept by the local communities visited by the exhibition (PR Newswire, 2003). The executive director of the organization was quoted as saying, “We strongly believe that families in the Newark community have a critical need for support. ... Their youth are at tremendous risk and we want to do everything we can to support them” (Strunsky, 2003d). The state of New Jersey itself had ten active PFLAG chapters at the time Newark’s chapter was officially launched (Strunsky, 2003d). On October 4, 2010, the Newark chapter of PFLAG held a rally at the spot of Sakia Gunn’s death to mark its founding, noting that its first order of business was to press Mayor James’ office to hold to its promise of building a queer youth community center (Wang, 2003). LaTona Gunn, who was in attendance at the rally, was recorded as saying, “We’re going to make a difference. ... I’m gonna make a difference”; poet laureate Amiri Bakara, whose lesbian daughter was also murdered at gunpoint, stated, “You cannot struggle for democracy for black folks unless you struggle for democracy for lesbians. ... There is no separation” (Wang, 2003). A week later, Matthew Shepard’s mother, Judy Shepard, authored a story which ran in USA Today noting that little had changed in the five years since her son’s murder, citing Sakia’s murder as proof that more action needed to be taken against hateful attitudes and actions against gays and lesbians (Shepard, 2003).

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A month later, as November was about to come to a close, Richard McCollough was indicted by a grand jury on eight individual charges, facing a 118 years in prison if convicted on all charges (Smothers, 2003b). Although sexual orientation had been included in the state's bias crime statute since the early 1990's, the judicial system was quick to note that "There [had] been five recorded bias murders in New Jersey since the State Police began keeping statistics in 1988," although no official figures were immediately available (Kleinknecht, 2003). Under New Jersey legal codes, offenders are charged with their original crime and a separate, bias-enhanced crime, which a jury must deliberate over; the sentences from the two charges cannot be merged (Kleinknecht, 2003). At the time of indictment, the New Jersey District Attorney noted that they were not seeking the death penalty for McCollough, as bias crimes were not associated with the state's death penalty code (Kleinknecht, 2003). On the same week that McCollough was indicted, a community caravan protesting violence began traveling from Irvington, to East Orange, and ending in Newark New Jersey, where they would meet families affected by violence (Kleinknecht, 2003). The grassroots-organized procession consisted of a police escort announcing the passage of a hearse, which led over fifty cars through the neighborhoods (McDermott, 2003). At each stop along the route, community members placed white handkerchiefs with the names of victims who had died due to violence in their community (Kleinknecht, 2003).

As the sentencing phase of his trial began in December, McCullough waived his right to appear at preliminary hearings, prompting his attorney to enter a plea of not-guilty on his behalf (Stewart, 2003). McCullough's absence and his plea elicited an emotional reaction from LaTona Gunn, who was warned that she was breaking courtroom decorum when she stated, "He doesn't want to show his face, but my daughter can't show her face" (Stewart,

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2003). His case would not resume trial until roughly a year-and-a-half later, in February 2005 (Sterling, 2004).

During the one-and-a-half year lapse between McCullough's indictment and sentencing, a great deal of community activism continued to occur in connection to Sakia Gunn's memory, and the struggle to garner resources for queer youth in the Newark Area. In January, 2004, the executive director of PFLAG announced a scholarship for high school students named after Sakia Gunn; the scholarship coincided with other scholarships named for lesbian and gay public figures, such as Esera Tuaolo, a former NFL player (Strunsky, 2004a). In April of 2004, the superintendent of Newark's public schools "wrote to principals of its 77 schools with instructions for the moment of silence at 1 p.m.," during which "Teachers, administrators, janitors, and all 42,000 students" discontinued their activities momentarily in remembrance of Sakia Gunn and five other individuals who died due to violence (Strunsky, 2004b). The day on which the moment of silence was to be observed was called "No Name Calling Day," and was suggested to the district superintendent by Laquetta Nelson, founder of the Newark Pride Alliance, in a letter pointing suggesting the action (Strunsky, 2004c). On May 11, the one-year anniversary of Sakia's death, Newark schools engaged in a district-wide moment of silence; activists, families, and friends also returned to the site of her attack that evening "to remind society they [would] not tolerate hate crimes and discrimination against the gay and lesbian community" and to emphasize "that ... remembrance was intended to brain about positive change from Gunn's death" (Carter, 2004a). Media outlets quickly labeled the spot, a gathering spot for vigils and for young women after school hours, was quickly deemed "'the gay corner,' where [teenagers] meet and hang out" (O'Crowley, 2004). A month later, community groups

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organized a second caravan throughout the state, in order to raise awareness of violence in New Jersey communities; the 2004 motorcade was expected to consist of over 100 automobiles with an escort of 40 motorcycle riders from the East Coast Bad Boyz biker club (Carter, 2004b).

In March of 2005, Richard McCullough reached a plea bargain by confessing to the murder of Sakia Gunn in May, 2003. Before pleading guilty to the charge, McCullough attempted to argue that Gunn had run into his knife as he was holding it: “I stood in a defensive stance with my knife in my hand, and she lunged at me” (Kleinknecht, 2005a). When the presiding judge threatened to revoke the plea bargain, McCullough “said he was making slashing movements with the knife when it killed Gunn ... [and] also admitted hurling epithets like ‘dyke’ and calling her a lesbian during the confrontation” (Kleinknecht, 2005a). The Assistant County Prosecutor in the case noted that when the suspect grabbed one of the girls and Gunn ran to her aid, he stabbed her with the knife; the prosecutor added, “All these girls were very small in stature They were never any threat to [McCullough]” (Kleinknecht, 2005a). McCoullough pled guilty to “aggravated manslaughter, aggravated assault, bias intimidation” and crimes associated with the possession of a weapon; the murder charged was dropped as part of the plea bargain (Kleinknecht, 2005b). McCullough’s incarceration time was set between 20 and 25 years, to be set by a jury, and with only fifteen percent of his sentence eligible for parole (Kleinknecht, 2005a).

Matthew Shepard

Matthew Shepard was a young man of United States citizenship who lived in various parts of North Carolina, Wyoming, Denver, and various countries abroad including Switzerland, and Saudi Arabia, where his father worked as an oil-rig inspector (Akron

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Beacon Journal, 1998a; Simpson, 1998a). Before moving to Laramie, Shepard had lived in Denver, Colorado and attended junior college in Casper, Wyoming; he was known to have pursued academics in various countries abroad (Akron Beacon Journal, 1998a; Vaughan, 1998). However, Laramie had a special significance to Matthew, as his father's alma mater was the University of Wyoming; Shepard decided to pursue a degree in political science and a minor in foreign languages (Simpson, 1998a; Simpson, 1998b). According to some news sources, Laramie (a town of 27,000 residents) was a place where Matthew felt safe after having lived in Denver, which he associated with high rates of hate crime (Simpson, 1998a; Vaughan and Hamilton, 1998). During his time at the University of Wyoming, Matthew was active in the local lesbian and gay community, and often talked of working in Washington to end prejudice (Vaughan, 1998). The director of the university's Lesbian, Gay, Bisexual, Transgender Association noted, "It was a goal of his to help people like himself who are discriminated against" (Vaughan, 1998).

On Wednesday evening, October 7, 1998, a biker on a remote Wyoming street came across a comatose Matthew Shepard, at first believing that he was a scarecrow tied to a wooden fence (Rocky Mountain News, 1998a; Smith, 1998a). He had last been heard from a day earlier, when he had called friends from a bar (Rocky Mountain News, 1998a; Smith, 1998a). His skull had been smashed with a handgun, he had been robbed of his wallet and shoes, and he had been left outside in temperatures just below freezing level for over sixteen hours (Akron Beacon Journal, 1998a; Hughes, 1998; Vaughan, O'Keeffe, and Gonzales, 1998). Shepard was transported to Poudre Valley Hospital in Fort Collins, Colorado, where he was placed on a respirator and remained in critical condition for five days, passing away on October 12, 1998 (Charleston Daily Mail, 1998). Investigators later

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released information indicating that Shepard was struck in the head with a handgun eighteen times and kicked in the groin area multiple times; and his hands were bruised and beaten due to the fact that he tried to cover his face and head with his hands during the attack (McCullen, 1998c). Officials at the hospital noted that Shepard had a large skull fracture encompassing the area between the back of his head and ear, and that head trauma had damaged his brainstem, an area critical to cardiac and pulmonary stability, temperature control, and involuntary movements (Vaughan, O’Keeffe, and Gonzales, 1998). In order to stabilize his condition, medical professionals had to drain fluid building up between the skull and brain, order to relieve pressure on the brain (Vaughan, O’Keeffe, and Gonzales, 1998). Doctors commented that because brain injuries required immediate care, the amount of time for which Shepard was abandoned as well as his hypothermic state after the attack diminished his chances for survival (Vaughan, O’Keeffe, and Gonzales, 1998). Doctors also commented that due to the amount of damage posed to the skull, the trauma remained inoperable and surgery posed a risk; Shepard’s skull was literally shattered (Black, 1998a). A large volume of inquiries regarding Shepard’s condition, as well as numerous flower bouquets poured into the hospital (Hughes, 1998). So many flowers were sent to Shepard that they overcrowded his room, and many bouquets had to be given to other patients in order to maintain a safe environment (Vaughan, O’Keeffe, and Gonzales, 1998). Matthew’s parents asked that in lieu of flowers, donations be sent to a Fort Collins benefit fund; Poudre Valley Hospital staff created a webpage updating Shepard’s medical status from 9:00 AM to 9:00 PM daily (Hughes, 1998).

On October 9, five individuals were arrested for coercing Shepard out of a local bar and luring him to a remote location where they assaulted, tortured, robbed, and tied the

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unconscious man to a wooden fence (Rocky Mountain News, 1998a; Smith, 1998a). Aaron McKinney, age 22, and Russel Arthur Henderson, age 21, were arrested along with their two girlfriends in connection with the beating (Lockwood, 1998). By October 10, both men were charged with attempted first-degree murder while the two young women were charged with accessory to first-degree murder; the final individual was determined not to be involved with the assault and murder (Akron Beacon Journal, 1998a; Rocky Mountain News, 1998a; Smith, 1998a). On October 11, police officers revealed that they had stopped the two suspects on a routine traffic stop in the early morning of October 7; although the suspects had fled from their pickup truck, officers found a bloody handgun, Shepard's shoes, and one of Shepard's credit cards inside the truck (Vaughan, O'Keeffe, and Gonzales, 1998). Matthew's wallet was later found in the home of one of the suspects (Vaughan, O'Keeffe, and Gonzales, 1998). Acquaintances and former employers of the suspects voiced how shocked they were at the attack, noting that the suspects had taken part in employment, volunteer opportunities, and even gave donations to charities (Vaughan and Hamilton, 1998). The main suspect's father commented that his son was "embarrassed that Shepard flirted with him in front of his friends," and that media sources had blown the sexual dimension of the story out of proportion (Akron Beacon Journal, 1998b). The final charges upon arraignment aside from accessory to murder included attempted first-degree murder, kidnapping with intent to inflict bodily injury or torture upon a victim, and aggravated robbery (Akron Beacon Journal, 1998a; Mobile Register, 1998; Vaughan, O'Keeffe, and Gonzales, 1998). On Tuesday, October 13, 1998, the judge presiding over the arraignment imposed a gag order intended to

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keep lawyers from discussing the case with media sources, citing the open records act, which restricts information circulation during investigations (Glover, 1998).¹¹²

During Shepard's brief time in Laramie, efforts within the state to pass hate-crime legislation had failed, along with efforts to ban same-sex unions on the grounds that they offered homosexuals "special rights" (Akron Beacon Journal, 1998a; Miniclier, 1998).¹¹³ Despite numerous hate crimes against ethnic, religious, and sexual minorities, all attempts to pass hate crime legislation in Wyoming never completely passed through the legislature; earlier actions of organized hate violence, such as cross burnings on Black families' lawns, and placement of swastikas in synagogues, was dismissed as juvenile behavior that should not be associated or prosecuted as serious crimes (Miniclier, 1998). The police officer who investigated Shepard's murder commented that "there have been a few hate crimes over the years, 'but nothing anywhere near this'" (as quoted in Akron Beacon Journal, 1998a). On the same day that arrests were made, the Rocky Mountain News ran a story that opened with the statements, "Cowboy country is in shock. This college town of 27,000 [residents] has rarely seen violent crime of the magnitude suffered by Matthew Shepard" (McCullen, 1998a). The FBI conceded at the time that hate crimes were largely underreported, citing statistics from 1996 (the most recent year available) that recorded only four instances of "hate-motivated intimidation, destruction, damage, vandalism, and aggravated assaults" (Carman, 1998;

¹¹² Often, Judges in trials including a hate-crime enhancement may choose to impose a gag order "if the judge sees a danger to the trial's fairness" (Glover, 1998). The order imposed in Shepard's murder case, however, targeted the fact that the case was under investigation, and therefore, all information and documents pertinent to future litigation should be considered confidential (Glover, 1998).

¹¹³ During the year of 1998, Washington legislators had not voted to include sexual or gender identity in the national Hate Crime Prevention Act (Miniclier, 1998). More recently, on October 22, 2009, President Obama signed into law the Matthew Shepard and James Byrd, Jr. hate crimes prevention act, named for individuals who were assaulted and murdered due to the fact that they were perceived as homosexual. In the case of James Byrd, Jr., the assumption of homosexuality was erroneous. However, racially-motivated hate also played a role in Mr. Byrd's death.

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Miniclier, 1998). Aside from these statistics, the FBI also noted that their national data indicated anti-homosexual hate crimes at a rate of 11.6% nationally, “the third largest category of hate crimes reported at the bureau” circa 1998 (Carman, 1998). Officials from the Southern Poverty Law center noted that “attacks on gays tend to be more severe than offenses against other groups,” while in the same interview, he director of a New Jersey state college noted that “most of the offenders [of hate-based assault] are 22 or younger, most are male” (Black, 1998b). Regardless of this national coverage advancing sentiments voicing the need for statues against hate crime, lawmakers in Laramie and the state capital insisted that hate-crime laws would not have deterred the violence suffered by Shepard in the cold Wyoming night between October 6 and October 7 (Miniclier, 1998). Comparing Shepard’s murder to the prominent racially motivated murder of James Byrd, Jr., one columnist commented:

That same level of compassion [offered to James Byrd’s family] does not exist for the Shepard family. Once again, there will be a chorus screaming “special rights” when the subject of gay bashing being punished as a hate crime arises. But near as anybody can tell, the opportunity to be threatened, humiliated and to live in fear of being beaten to death is the only “special right” our culture bestows on homosexuals. ... The only real difference [between these two cases of hate crime] is the epithet the killers use to describe their victim. (Carman, 1998)

Immediately after the murder broke national headlines, the community of Laramie began to mourn Shepard’s attack in various ways as his condition in the Poudre Valley Hospital deteriorated. The day after arrests were made, on October 11, the University of Wyoming’s annual homecoming parade became a vigil in support of Shepard, beginning with little more than 150 students before it set out through the town and ending with 450 residents as it returned to campus (Vaughan, O’Keefe, and Gonzales, 1998). Individuals wore yellow arm bands in support of Shepard and values of tolerance, and many of the march

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participants held signs of support or painted epithets such as “No hate in our state” on their floats (Kenworthy, 1998). An open forum and “speak-out” was planned for the Monday following the murder at Laramie’s University of Wyoming; the same day, a rally in support of including sexuality in hate-crime legislation was planned for Monday evening at the state Capitol (Vaughan and Hamilton, 1998).

On the same day that national news broke the story regarding Shepard’s murder, outpourings of fear, grief, anger, and disgust began to surface throughout different communities within the nation. The Rocky Mountain news reported how what was to be a celebration of National Coming Out Day at the University of Colorado, Boulder quickly devolved into a public forum for reactions to the murder and fear of further hate violence (Hamilton, 1998). Students, faculty, and staff considered postponing homecoming games and dances, deciding instead to memorialize Shepard during these gatherings; throughout the week, reporters, activists, and residents stood outside of the Albany County Courthouse, some holding picket signs with slogans decrying homophobia and hate (McCullen, 1998a). A gay pride rally in Akron, Ohio shifted in tone from a rally in support of unity and tolerance to a “reminder of the challenges – and even the danger – homosexuals often face” (Goforth, 1998). A march for gay rights from Orono to Bangor, Maine commemorated the life and death of Matthew Shepard at the same time that marchers and leaders placed wreaths and roses into the nearby Kenduskeag Stream to commemorate the murder of a gay man thrown off of a nearby bridge by three teenagers (Gagnon, 1998).

On the day after Shepard’s attack broke national news, national leaders began publicly condemning hate crimes and conservative speech that referred to homosexuals in a pejorative manner. The House Minority Leader at the time, Richard Andrew Gephardt of

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Missouri, commented, “This heinous crime deserves the condemnation of all Americans” (Columbus Ledger-Enquirer, 1998; Commercial Appeal, 1998). President Clinton described the attack as “horrifying,” immediately drawing ties to the racially motivated murder of James Byrd, Jr., which occurred earlier that same year (Columbus Ledger-Enquirer, 1998; Commercial Appeal, 1998).¹¹⁴ President Clinton was also noted as saying he was “deeply grieved by the act of violence,” and that he and the First Lady asked all Americans’ “thoughts and prayers be with Mr. Shepard and his family[,] and with the people of Laramie” (Chicago Tribune, 1998).

Regardless, the words of various national leaders prompted some responses that refused to acknowledge the unique dimensions that sexuality played in the way this hate crime occurred. Within the midst of Laramie’s march in support of tolerance, Governor Jim Geringer was noted to have questioned whether “any law could deter ‘perverted individuals’ more than the state’s already tough law enforcement statutes” (Kenworthy, 1998). The Family Research Council, a conservative religious who had previously lobbied against tougher hate crime laws, contributed to political condemnations of the attack (Columbia Daily Tribune, 1998a). However, leaders of the Family Research Council were recorded as stating, “Violently attacking a person is unconscionable, whatever the reason. . . . Every crime is a ‘hate’ crime,” effectively attempting to remove the dynamics that homosexuality played

¹¹⁴ James Byrd, Jr., an African-American citizen of Texas, was abducted by his attackers after he accepted a ride home from them, during which they sequestered, beat, and urinated on him. He was brutally attacked, humiliated, chained from the ankles to the back of a pickup, and dragged along a rough, macadam country road until he was decapitated and partially dismembered. His body was dragged until only the torso remained, which was dumped in a nearby Black cemetery. Investigation into the crime as well as the reputation of local white-supremacist groups led the police to believe the murder was a racially-motivated hate crime; they immediately called upon the FBI for assistance. Directly after the murder broke headlines, US Attorney General Janet Reno insisted an immediate investigation into possible violations of federal civil rights laws be initiated (Carman, 1998).

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in marking an individual as different, socially unacceptable, and a target for extreme violence (Columbia Daily Tribune, 1998a). Reverend Ralph Ovadal, of the Wisconsin-based Christians United group, was quoted as stating in reference to the attack:

It should be remembered that the new saint of the gay world was a 22-year-old man engaged in sexual perversion who was apparently cruising a bar for the purpose of finding a partner, or two, to commit vile acts. . . . One legitimate law . . . which may have saved Mr. Shepard's life is a law against sodomy and other homosexual acts. But . . . that would be imposing our morality on others. . . . [Shepard's attack] has set the liberal media and the promoters of sexual perversion on yet another frenzy of guilt-mongering [if favor of hate-crime laws]. . . . All across America last week, men, women, and children were brutally murdered, yet it is the murder of Matthew Shepard which we will have recounted to us over and over for months to come because his death benefits those who would impose an . . . unjust system of government in America. (Nowlen, 1998).

On Monday, October 12, 1998, Matthew Shepard passed away while on life support; his family stated that they were "grateful they did not have to make a decision regarding whether or not to continue life support for their son" (Charleston Daily Mail, 1998). The governor of Wyoming, on the same day that Shepard was declared dead, conceded that the state needed to look into the possibility of stronger hate-crime legislation (Columbia Daily Tribune, 1998b). President Clinton's press secretary, Joe Lockhart, "renewed the president's call for 'some kind of a national standard, law, on hate crimes'" on the same day Shepard passed (Smith, 1998b). In the face of these calls for hate crime legislation, the U.S. Supreme Court upheld a ruling allowing the city of Cincinnati to deny protections against discrimination for homosexuals, two years after it had struck down a similar measure in Colorado (Hamilton Spectator, 1998).

A day after his passing, many different stories began to circulate which reinterpreted the murder and hate-crime in various ways. The Boston Herald ran a story outlining the "homosexual panic" defense, with psychological expert and author of Male Sexual Armor,

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Patrick Suraci, commenting at-length on how hate-crimes were a sign of immature, and insecure sexual identity:

If a straight man is secure in his sexual identity and is secure in his masculinity, he can afford to be flattered by a man or a woman commenting on his good looks. ... But when a young man who is psychologically disturbed or has some gender identity disorder or deep feelings of insecurity, he lashes out. ... Instead of being able to accept [any homosexual] feelings within himself, he wants to kill those feelings. ... However, a self-defense mechanism known as projection kicks in. The attackers project their own self-loathing onto a gay victim.... (Lawrence, 1998)

In Torrance, California, Shepard's death was blamed on anti-gay-rhetoric and bullying by activists and pastors of queer-friendly churches, who initiated a public call for national hate-crime legislation (Breznican, 1998). In Boulder, Colorado, five miles from where Shepard passed away, officials at Colorado State University investigated a homophobic slur written on a scarecrow atop a festival float, which had been organized by local chapters of Pi Kappa Alpha fraternity and Alpha Chi Omega sorority (Daily Breeze, 1998). The administration of Dickinson College, in Pennsylvania, responded to a series of anti-gay fliers posted by a group known as The Defenders of Christ, shortly after Shepard died; in reference to the fliers on the heels of Shepard's attack, many students reported feeling threatened and unsafe at the college (Gibson, 1998). The Daily News of Los Angeles noted that at a rally attended by over five-hundred individuals, local "Gay and lesbian leaders ... called Matthew Shepard a martyr to anti-gay hatred" (Daily News, 1998). A day after Shepard's death, Senator Pauline Esenstadt of New Mexico drafted a measure imposing harsher penalties "for crimes that targeted victims because of their race, religion, color, national origin, ancestry, gender, sexual orientation, or disability"; at the time that the bill was authored, New Mexico was one of five states that had no legislative provisions against hate crimes (Fecteau, 1998). The same day,

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the icon of gay identity and civil rights – the Castro Street rainbow flag, located in San Francisco, California, was lowered to half-staff in honor of Shepard’s life (Black, 1998a).

While the ensuing media and political frenzy continued, investigators and judges worked on trying to uphold justice in a case that seemed to present new challenges at every turn. Aside from the chorus of cries pejoratively framing hate crime legislation, new testimony from the perpetrators made it clear to investigators that an investigation into hate-oriented motives was necessary to make sense of the case. On October 13, 1998, shortly after Shepard’s death, investigators noted that charges would be upgraded from attempted first-degree murder, to first-degree murder; the new charge carried a possible penalty of death (Black, 1998a). Newspapers also reported that the suspects also assaulted two Latino teenagers, also hitting them with the gun in question before the two young men were able to run away (Black, 1998a). The suspects’ girlfriends were charged as accessories to the crime, due to the fact that they helped the two men conceal their bloodied clothing, and providing false alibis to the men in question (Black, 1998b). Police also learned that Shepard did not sexually approach the men in any way, and instead, they lured him out of the bar into their pickup truck by telling Matthew they were gay (Black, 1998b). Once in an isolated setting, McKinney told Shepard, “Guess what? We’re not gay. You’re going to get jacked. It’s gay awareness week,” as relayed by officers during the trial (McCullen, 1998c). According to testimony and police recreations, as McKinney attacked Shepard, Henderson watched and laughed as Matthew pleaded for his life; during the attack, the two also questioned Shepard about where he lived, intending to burglarize his residence after abandoning him (McCullen, 1998; Mobile Register, 1998). The prosecuting attorney in McKinney’s case was recorded as saying, “[they] beat him for \$20, your honor, the contents of the wallet” (Mobile Register,

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1998). Although the McKinney and Henderson testified that they were planning on stripping Shepard naked before tying him to the fence, they opted to steal only his wallet and shoes before abandoning him (McCullen, 1998).

The ensuing process of litigation resulted in a number of motions and hearings for information suppression, gag orders imposed on lawyers against media involvement, and inquiries as to the penalty sought for the crimes by the District Attorney. At the arraignment hearing, both suspects pled not-guilty, and the prosecuting attorney called for a joint hearing into the murder (Mobile Register, 1998). During a preliminary hearing on December 10, 1998, the District Attorney officially called for a joint trial for the two suspects, requested that the suspects' criminal files to be sealed, and asked that the judge impose a legal order barring all parties from discussing the case at hand publicly, and with the media (Rocky Mountain News, 1998b). In response to these motions, the judge ordered that both suspects be given an individual trial, that all future motions in the case be sealed for confidentiality reasons, yet remained undecided on the request to impose a second gag order (Biebersmith, 1998; Black, 1998c). On December 28, 1998, the prosecution announced that they would seek the death penalty for both suspects (Boston Globe, 1998). In February, 1999, a month before the trial of Russell Henderson, the US television channel Court TV petitioned to be present during proceedings; the petition was denied by the judge later that day, citing "concern for the privacy of witnesses and jurors" as well as maintaining the ability to "seat an impartial jury in the trial of the second defendant, Aaron McKinney" (Biebersmith, 1999a; The Deseret News, 1999). In the month before the trial was set to begin, the judge heard and

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drew legal judgments on over sixty-four motions (Bibersmith, 1999b).¹¹⁵ At the time of jury selection, activist groups began commenting that defendants may employ a “gay panic defense” (Rocky Mountain News, 1999a).¹¹⁶

Russell Henderson’s trial began with jury selection on Wednesday, March 24, 1999, where the presiding judge mandating that one jury oversee both the trial and sentencing phases of the case (Biebersmith, 1999c; The Journal Gazette, 1999). Mr. Wyatt Skaggs, Henderson’s defense attorney, noted that his strategy would be to highlight that although Henderson was present during the attack, it was Mr. McKinney who attacked and killed Matthew, while Russell Henderson watched (The Augusta Chronicle, 1999). The press reported that both attorneys “downplayed Shepard’s homosexuality” during jury selection, instead reminding potential jurors that they had an obligation to judge acts under the state

¹¹⁵ Judges traditionally rule on motions and petitions before trial in order to set up a set of guidelines about what can and cannot be referred to upon entering trial. Among the motions ruled on by the judge, including the aforementioned gag orders and media requests, the judge also listened to motions requesting:

Jurors not [being] able to refer to the Bible when deciding the fate of [Henderson] ... [as well as] restricting the prosecution from telling jurors: Society will laugh at them if the defendant is not punished adequately. The defendant’s death will be quick, painless and save taxpayers money. The death penalty is a message being sent to lawbreakers. The defendant could receive a gubernatorial or presidential pardon. The defendant’s chances for rehabilitation are improbable. ... Other defense motions granted by [the judge] prevent the prosecution from: Referring to Henderson as a ... villain. Commenting on Henderson’s right to silence during the trial and sentencing. Commenting on Henderson’s plea of not guilty. Telling jurors life imprisonment carries possibility of parole. Saying the case is one of the most aggravating cases that has ever come before the court. Saying the death penalty should be imposed out of love for the deceased victim. Telling jurors they are deemed moral and caring if they put Henderson to death. Saying jurors could join the war on crime by sentencing Henderson to death. ... Other motions granted to the defense include: The ability to remove any juror who would automatically be in favor of the death penalty. Giving each juror an individual copy of sentencing instructions. A motion of discovery for Henderson’s record. ... Defense motions denied include: Request for separate juries for trial and sentencing phase. Motion to question jurors after a guilty verdict. To elect between premeditated first-degree murder and felony murder. Request for two juries: one death-qualified and one not death-qualified. To exclude any evidence from guilt phase that is excludable from the penalty phase. (Biebersmith, 1999b).

¹¹⁶ According to Denise de Percin, who the Rocky Mountain News interviewed regarding the Henderson trial, a “gay panic defense” or “[h]omosexual panic defense” is similar to blaming the victim in rape trials. ... It says that [the attackers] were so affronted by this perception that somebody came onto them, or did come onto them, or said anything that they interpreted as being a come on, that they were not responsible for their actions” (Rocky Mountain News, 1999a).

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constitution, which guaranteed equality regardless of race, religion, gender, or sexual orientation (Hughes, 1999). Shortly after the jury was selected and the trial was scheduled to begin, media sources were informed that a possible plea bargain was being reached between Henderson and lawyers; press sources speculated that Henderson was considering a plea bargain that might allow him to evade the death penalty, yet which would require him to testify against Aaron McKinney (Crosson, 1999). On April 5, 1999, media sources reported that Russell Henderson pled guilty to felony murder, “[indicating] a murder that happens during the commission of another felony, in this case robbery” (Chicago Tribune, 1999). He was sentenced to two consecutive life sentences without parole (Shore, 1999). At the time of his sentencing, gay-rights and anti-gay groups clashed on the steps of the courthouse, while Shepard’s mother was recorded as telling Henderson during official proceedings, “I hope you never experience another day or night without experiencing the terror, humiliation, the hopelessness and helplessness that my son felt that night” (Black, 1999; Shore, 1999).

While Henderson’s trial was underway, McKinney’s lawyers were gearing up for what would be condemned as a case of lawyer grandstanding by both media analysts and McKinney’s Presiding Judge. On March 6, McKinney’s lawyers noted that they were not sure if they should file a change of venue motion due to Henderson’s trial and confession, but that they “expected to file over 100 more pretrial motions, including a motion to suppress evidence” (McCullen, 1999a). On March 25, McKinney’s lawyers noted that rather than using their time to prepare their client’s defense, they had been forced to intervene in multiple infractions of McKinney’s rights committed by detention center staff (Biebersmith, 1998d). While the presiding judge conceded that McKinney’s civil rights were being violated, he also remarked that the acts in question were civil matters that should not affect

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the outcome or due process of the upcoming trial; one month later, the same judge imposed a gag order on the lawyers in order to enforce requests for them not to speak to media outlets (Biebersmith, 1999d; McCullen, 1999b).¹¹⁷ Shortly after Henderson pled guilty, McKinney's lawyers received letters written by their client and addressed to Henderson in which McKinney appeared to claim culpability for the murder; this resulted in a semi-public argument between McKinney's and Henderson's lawyers, both utilizing the media to smear the other's name (McCullen, 1998b). In response, the presiding judge imposed a gag order on all parties involved in either trial, noting, "There exists a very real danger that counsel's playing to the media has already gravely injured, or at least made much more difficult, the prospect of seating a jury in this case" (Press of Atlantic City, 1999). Shortly after this ruling, McKinney's attorneys began to question the motives of the District Attorney's effort to pursue the death penalty citing calls received from President Clinton and Attorney General Janet Reno as evidence that political pressure had been placed on prosecutors (Biebersmith, 1999e). McKinney's lawyers contested that their client had "federal and state constitutional rights to disclosure of ... information [used] to determine if the decision to try to kill Mr.

¹¹⁷ On March 25, 1999, Judge Barton Voight denied McKinney's attorneys' motions regarding violations of McKinney's rights; in these motions, the lawyers "contended they should be paid their fees as a sanction for future violations of McKinney's constitutional rights" (Biebersmith, 1999d). According to an article featured by the Wyoming Tribune-Eagle, McKinney was denied shoes, money, and visits accommodated by his family, and was also denied medical treatment during his time in jail, where he suffered hearing loss after being hit with a baseball bat during a second quarrel on the night Shepard was beaten (Biebersmith, 1999d). McKinney's lawyers also alleged:

While [McKinney] is allowed to visit only with family members, Henderson, his co-defendant, can have any visitors he desires. Jail staff deny [McKinney] his family visitation at their will. His cell is repeatedly searched without reason. He can't shave without asking permission first. ... Because McKinney has received about \$3,000 in medical treatment at the cost and expense of the county, money placed into his account [by his family, intended to be used for food and incidentals] has been applied toward the medical costs without his knowledge, or that of the people giving him the money. (Biebersmith, 1999d)

McKinney's lawyers cited the Eight Amendment of the US Constitution, prohibiting cruel and unusual punishment, as well as a statute within Wyoming law indicating, "No person arrested and confined in jail shall be treated with unnecessary rigor" (Biebersmith, 1999d).

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McKinney is in whole or part based on ... politics, personal ambition, or the like” (Biebersmith, 1999e). The prosecuting attorney responded by noting that he had not been party to the jailhouse letters where McKinney implicated his own guilt in Shepard’s murder, suggesting that attempts to deny the existence of the letters were simply lies (McCullen, 1999b). Two months after announcing a possible change of venue, the media announced that the trial would remain in Laramie after a deadline to file a change of venue motion expired; the Rocky Mountain News surmised that the lawyers had intended to keep the trial in Laramie all along, due to the fact that a jury had rejected the death penalty in a capital murder case earlier that same year (McCullen, 1999c; Press of Atlantic City, 1999). In June of 1999, a month after the case was announced to stay in Laramie, Andrew McKinney was interviewed via telephone live on KGAB, a Cheyenne radio station, where he said, “he didn’t target Shepard because he was gay and that he [had] ‘a lot of remorseful feelings over this whole matter’” (Denver Post, 1999). The prosecution called for McKinney’s defense lawyers to be held in contempt of previously imposed gag orders; in response, the defense attorneys and their colleagues scoffed at the request, noting, “McKinney has the First Amendment right to talk to anyone he wants ... so long as he is not listed under the gag order” (Denver Post, 1999).

On October 10, 1999, Andrew McKinney’s trial began with jury selection procedures; roughly one year after the original attack shocked the nation and Mr. McKinney had been painted simply as a “suspect,” news sources began referring to McKinney as “a high school dropout” (Star-Ledger, 1999). Two days later, McKinney’s lawyers noted that they would not contest their client’s assault and murder of the victim, but that “McKinney’s judgment was clouded by drugs and alcohol” (Austin American-Statesman, 1999). During

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opening statements, the defense team “told jurors that the crime was triggered by a combination of McKinney’s drug and alcohol use, traumatic youthful homosexual episodes and an unwanted sexual advance by Shepard” (Black, 1999e). Upon initiating a defense strategy relying on “gay panic” theories, the presiding judge barred the defense team from pursuing this line of argumentation, citing “that the strategy was, in effect, a temporary insanity or a diminished capacity defense, both of which are prohibited under Wyoming law” (Black, 1999e). In addition, the judge remarked via written statement to the lawyers “that he did not believe defense attorney had offered any evidence that such a strategy would be relevant. ... Even if relevant, the evidence [could] mislead and confuse the jury” (Black, 1998e). Prosecuting attorneys brought multiple witnesses to the stand, including the arresting officer, the two Latino teenagers assaulted by McKinney later that evening, and the bartender of the bar who waited on both Shepard and the defendant; the bartender and his accompanying bouncer both commented multiple times during testimony and cross-examination that neither McKinney nor Henderson appeared intoxicated that evening (Orr, 1999). Roughly a week after beginning their defense testimony, the defense called an end to its proceedings; the jury went to deliberations on Wednesday, November 3 and returned with a verdict a day later (Kenworthy, 1999). Aaron McKinney was convicted of felony murder, kidnapping, and aggravated robbery on November 4, 1999, by the same jury that would also sentence him (Kenworthy, 1999). A day after his conviction, Shepard’s father read a testimony in court where he called Matthew Shepard his personal hero, and stated directly to McKinney, “this is the time to begin the healing process. To show mercy to someone who refused to show any mercy. Mr. McKinney, I am going to grant you life, as hard as it is for me to do so” (Cart, 1999a). On the same day, the presiding judge allowed a deal to be

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brokered between lawyers, in which McKinney would “serve two consecutive life sentences, [have] no chance for parole, and no opportunity to appeal” (Cart, 1999b). McKinney was recorded as responding to the sentence and Shepard’s parents by saying, “I don’t know what to say other than I am sorry to the entire Shepard family. There won’t be a day that goes by that I am not ashamed at what I did” (Cart, 1999b).

Just over ten years after the assault, murder, and ensuing trial of Matthew Shepard, the case still remains a touchstone for other cases of hate crime, whether or not they catch the public eye. During October 2009, President Barack Obama signed the federal hate crimes prevention act into U.S. law; the act was named in part for Matthew Shepard, as a reminder of the sexual and gender dimensions of hate involved in select hate crimes. The act also included the name of James Byrd, Jr., in order to highlight the racial dimensions of hate present in other incidences of hate crime. Since the murder, various media sources have returned to Laramie and/or contacted Shepard’s friends in order to ask for comment an anniversary of his passing, or to delve deeper into the young man’s story. Shepard’s attack and death remains the most reported case of sexuality-based hate crime in the United States, with over three-thousand, five hundred articles referring to Shepard alone in popular international news bank databases.

Fred “F.C.” Martinez

On June 16, 2001, Fred Martinez Jr., a young half-Navajo man who dressed in a feminine manner, and identified as two-spirit and possibly gay, set out in rural Colorado to attend a festival at the Ute Mountain Roundup Rodeo (Gazette, 2001a).¹¹⁸ Martinez never

¹¹⁸ “Two-spirit” is a term used to describe the spiritual aspect of non-heterosexual identity within some Native American cultures, recognizing that masculinity and femininity can coexist within the same person and body. It

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returned home, and five days later in the town of Cortez, residents of a trailer park recovered a decomposing body with a mirror etched with Fred's name "near sewer ponds south of the city" (Draper, 2001a; Gazette, 2001a). Preliminary coroner's investigations suggested Martinez was struck multiple times in the head with a blunt object, abandoned, and passed away due to exposure to the night cold and other elements around the environment where he was located (Gazette, 2001a). Authorities originally focused on Martinez's race, commenting that race may have been a factor in his murder, while friends and classmates of Montezuma-Cortez High School remembered him as "openly gay, outgoing and happy, with a good sense of humor," as well as a tendency to "[pluck] his eyebrows, [wear] makeup, and [carry] a purse at school" (Gazette, 2001a). School counselors and staff commented that Martinez was a happy individual who seemed well adjusted and comfortable with his self-identity (Miller, 2001a). Fred Martinez was known to have commented to a number of teachers and counselors that "he wanted a sex change operation," and while he was often bullied and teased due to his effeminate nature, friends and educators said Martinez would "laugh and brush off the taunts" (Bartels and Miller, 2001a).

Although law-enforcement officials originally stated that Fred might have been attacked due to his race, they were reluctant to state that the possibility of violence could have been tied to hate-oriented violence due to gender and/or sexuality. While law-enforcement officers admitted that Martinez died due to blunt-force trauma to the head, they declined to state whether they believed Fred was the subject of a violent attack, noting that "A fall is possible. A homicide is possible. We just don't know yet" (Miller, 2001a). While

is often preferred to the terms "gay" or "homosexual," which are read as terms introduced to Native American cultures by outsiders, and often focusing on sexual attraction and sexual activity versus sexuo-spiritual identity.

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authorities interviewed hundreds of possible witnesses and suspects, Montezuma County Sheriff Lieutenant Calvin Boggs was recording as stating, “It was not unusual for [Fred] to go missing for periods of time,” further noting that Montezuma County was usually a harmonious community, with little violence save “fighting between groups” (Miller, 2001a).

Days later, on Monday, July 2, 2001, the Montezuma County Sheriff’s office openly changed its position on the case as the Federal Bureau of Investigation prepared to attend investigations into the case as “technical advisers” (Miller, 2001b). County officials openly called the case a homicide, and seemed to be open to the idea that the motivation for violence may have been race or sexual orientation, “a reversal since ... Lt. Kalvin Boggs said the teenager might have fallen, hit his head, and died” (Miller, 2001b). Simultaneously, community activists began openly commenting to media sources that anti-gay violence was common in the area; Mike Brewer, the director of the Colorado Legal Initiatives Project, which openly advocates for the rights of gays and lesbians, stated, “Violence directed against gay teens is far too common in this nation” (Miller, 2001b). Members of the Four Corners Gay and Lesbian Alliance for Diversity released a press statement describing Martinez as “a model for us in his ability to express his individuality despite the pressures of convention, while garnering the love of many around him. We respond to the murder of Fred with the concern that his attack may have been a hate-motivated crime” (Draper, 2001a). The director of the Denver Office of the U.S. Commission on Civil Rights said that racially motivated incidents had been reported to the office, including reports of racist activity in schools, law-enforcement, and employment (Miller, 2001b).

On Thursday, July 5, 2001, Fred “Freddy F.C.” Martinez, Jr., was buried by family members and friends in traditional Navajo regalia on a clear, sunny day (Bartels and Miller,

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2001a). One family member was recorded as commenting, “God bless everyone who loved him for the way he was” (Bartels and Miller, 2001a).

On Friday, July 6, officials in the Aztec, New Mexico San Juan County jail arrested Shaun Murphy, age 18, in the case of Martinez’s death for undisclosed reasons, citing a sealed case file active within the federal court system (Chanute Tribune, 2001). Having a juvenile criminal record at the time of his booking for a history of violent behavior, Shaun Murphy was being held in a youth detention facility for probation violation for a juvenile offense at the time of his arrest and booking into San Juan County Jail, Aztec, New Mexico (Bartels and Miller, 2001a). At Martinez’s funeral, officials from the high school and school district were distraught at Murphy’s arrest, commenting that he had been dismissed from Cortez Middle School and alternative schools within the city due to “some violent behaviors” (Bartels and Miller, 2001a). Members of the Colorado Legal Initiatives Project and the Colorado Anti-Violence project applauded the arrest (Bartels and Miller, 2001a). Murphy was held on \$500,000 bail and charged with second-degree murder upon his booking (Rocky Mountain News, 2001a).

In an affidavit presented to investigators, a friend of Murphy’s confessed that he had heard Murphy bragging about having “beat up a fag” (Bartels and Miller, 2001b). According to Clint Sanchez, the two young men had given Fred Martinez a ride from a party to a second location on the night of his murder (Bartels and Miller, 2001b). After leaving Fred at another location, Sanchez “said he asked Murphy, ‘Do you think [Fred] thought we were gay?’” (Bartels and Miller, 2001b). After the statement, Murphy dropped Sanchez off at another friend’s house, but left saying he wanted to locate some marijuana to smoke; he returned to the house twenty minutes later covered in blood, saying had been involved in a fight (Bartels

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and Miller, 2001b). Later, investigators reported that Sanchez left Murphy's home with a bag, which he disposed of in a dumpster; according to investigators, the bag contained bloody clothing, including shoes, a shirt, and pants (Bartels and Miller, 2001b).

On July 12, 2001, the Rocky Mountain News ran a story that detailed the troubled childhood and home life of Murphy, as well as interviewing Murphy's mother, who attempted to provide false information to investigators about his whereabouts earlier that year. Angel Tacoronte, Murphy's mother, "said her son was not homophobic or racist, adding she is a lesbian and has dated [Native American] women" (Bartels and Miller, 2001b). Upon being questioned by investigators, Tacoronte stated that her son was out of the area during the time of the murder, working in New Mexico; upon contacting the employers, investigators learned that Murphy had not worked at the location for at least three months (Bartels and Miller, 2001b). Investigators also learned that Murphy spent much of his childhood in a troubled home with a stepmother, his father, and his half-brother, Joseph Gallegos, who was killed by police snipers after murdering three roommates in Bayfield, Colorado (Bartels and Miller, 2001b). At the time of the murder, neither Murphy's stepmother nor his biological mother felt that his home life and his brother's murder of three college students played a role in their son's well being and tendency to commit violent acts (Bartels and Miller, 2001b).

On Thursday, July 19, Pauline Mitchell, the mother of Fred Martinez, issued a statement through the Gay and Lesbian Alliance Against Defamation detailing her frustration with a judicial system that would not keep her informed of her son's murder investigation (Draper, 2001b). Mitchell noted that her initial missing person's report was filed on June 18, and that there was no further communication from law enforcement officers; on June 20 and

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June 23, Mitchell contacted police again, asking if her son had been found, and finally, if the body that had been recovered was that of Fred Martinez (Draper, 2001b). Police officers responded that the body had not been identified, but neither called Mitchell in to view the body, nor updated her on any investigations regarding her missing son (Draper, 2001b). In total, Mitchell claimed to have filed approximately three reports between June 18, June 20, and June 23 regarding her missing son, saying that “authorities failed to act on the first two calls before her son’s body was found” (Draper, 2001c). While law enforcement officers had earlier claimed that Mitchell had not filed a missing person’s report immediately due to the fact that she was used to her son’s truancy, the mother of Fred’s best friend reported Pauline calling her household to ask if they had seen Fred shortly after the rodeo ended (Bartels, 2001). In her statement, Mitchell stated, “I am angry that police have not taken the time to explain what is happening and help me deal with this” (Draper, 2001b). Police officers stated in response to Mitchell’s accusations that they felt they had made efforts to inform Mitchell of the situation, stating, “If she feels like she’s been left out of some loop, that is something we will try hard to remedy. ... She has every right to be informed about every aspect of this investigation” (Draper, 2001b). In response to the situation, Mitchell was quoted as saying, “Because [Fred] was different his life was taken from him, and we will never know the person Fred would have become” (Draper, 2001b). In response to descriptions of Martinez as “gay,” “transgender,” or “confused about his gender identity,” Mitchell was adamant that the Cortez community was mislabeling Fred’s identity, which she asserted was better understood as “two-spirit” (Draper, 2001b). In direct opposition to the stories of a gay man who was teased but respected by his community, Mitchell stated that Martinez was constantly bullied and harassed by his peers. (Gazette, 2001b). Mitchell

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clearly responded to police and community speculations about whether Fred's death involved traces of a hate crime or not; "We firmly believe Fred's murder was a hate crime," her statement read (Gazette, 2001b). She elaborated, "One of the places Fred faced a lot of trouble was in school.... I blame the people in charge at the school for not making sure he was safe. I am very angry that they thought he was the problem. Fred tried very hard to fit in" (Bartels, 2001). A week later, police told the media that they scoured their phone records looking for Mitchell's calls, but could not find any record of her communication; Assistant Police Chief Russ Johnson noted that he did not believe Mitchell made any calls to the precinct (Draper, 2001c). Johnson also noted that Mitchell requested not to be contacted by law enforcement officers, asking that all communications on her son's case be brought to the attention of the Four Corners Gay and Lesbian Alliance for Diversity, or other advocate organizations (Draper, 2001c).

On July 25, the pathologist who examined Fred Martinez's body confirmed that a great deal of cranial and abdominal trauma was at the center of the boy's death; however, the pathologist was unable to pinpoint an exact cause of death after investigating the body (Draper, 2001c; Miller, 2001c). Head wounds, a large cut on his abdomen, and cuts near his wrists were also recorded by the pathologist, although the rate of decomposition did not allow more information to be gathered (Draper, 2001c; Miller, 2001c). The pathologist also noted that there were no drugs or alcohol in Martinez's system, leading him to believe that the death was not accidental; however, examiners noted that they were unable to determine whether head trauma or blood loss were the main factors in Martinez's death (Draper, 2001c). Investigators were not sure how long Martinez lay unconscious in the extreme Colorado climates before he passed away (Draper, 2001c).

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As investigations and litigation into the crime continued, Pauline Mitchell continued to contest the state's disregard for her requests to be informed of the case's progress. On August 9, 2001, Mitchell told The Gazette that while community members and activists have come to her support, the Montezuma County Sheriff's Office remained uncommunicative concerning the investigation's progress (Gazette, 2001c). She elaborated that "she was not told about the first court appearance of a suspect in the case, Shaun Murphy.... She said she learned of the details of her son's autopsy from newspaper reports," rather than from the Sheriff's office or pathologist directly (Gazette, 2001c). In addition, she noted that acts of vandalism and desecration had been committed at Martinez's gravesite and a shrine at his place of death (Gazette, 2001c). Although sheriff's office officials could not be reached directly, the report noted that "Sheriff's Lt. Calvin Boggs ... has said the investigation is important for the community" (Gazette, 2001c).

As the trial, investigation, and attempts to establish communication between Martinez's mother and the law-enforcement system continued, Pauline Mitchell wrote an e-mail to multiple advocate and activist organizations asking them to hold vigils spreading the message that "this [anti-queer violence] must stop now" (Nair, 2001). On Friday, August 10, roughly sixty individuals gathered in Colorado in support of stricter hate-crime laws that included lesbians, gays, bisexual, transgender, and gender identities; as two-spirit Native American drummers chanted throughout the gathering, participants created a makeshift altar with cloth, stones, and roses that would later be transported to Pauline Mitchell at a future memorial service (Gazette, 2001d). Judy Shepard, Matthew Shepard's mother, agreed to be present during the presentation of the altar (Gazette, 2001d). Miles away in Roanoke, Virginia, activists gathered to light candles at the Unitarian Universalist Church in support of

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strengthening hate crime laws (Nair, 2001). A separate vigil was planned in Modesto, California for August 19, in front of the Stanislaus County Courthouse (Modesto Bee, 2001).

Four days after vigils, on August 14, charges against Shaun Murphy were upgraded from second-degree murder to first-degree murder, although law-enforcement officers continued to contend that the crime was not an incident of hate-crime (Gazette, 2001d). The shift from second- to first-degree murder amended the possible sentencing to include a possible penalty of life in prison or death (Rocky Mountain News, 2001b). The prosecutor in the case commented that “testimony provided [a week earlier] led to the amended charge,” although he declined to elaborate on his statement (Gazette, 2001e). Montezuma County Sheriff’s officials maintained that the crime was not a hate crime; Deputy Lieutenant Calvin Boggs was recorded as saying, “It doesn’t fit the criteria of a hate crime at this time,” but would not elaborate on what said criteria entailed (Gazette, 2001e). The prosecutor noted that the case he was bringing against Murphy relied on robbery of Martinez as the main motive for attack (Rocky Mountain News, 2001b). A day later, District Attorney Joe Olt was recorded as asking for aid from the State Attorney General’s office in prosecuting the crime; the Attorney General agreed, and allowed Olt to consult with the First Assistant Attorney General who was employed with the Capital Crimes Unit (Draper, 2001d; Gazette, 2001f). The State Attorney General’s office commented that the case was relatively unique in that it presented elements of a hate-crime case, although state penal codes only allowed race, nationality, or religion to stand as the bases of hate crimes (Draper, 2001d). The absence of sex, gender, sexual orientation, or ability from the statewide hate-crimes statute indicated a need to expand the law, with Martinez’s death presenting a strong case for change, the Attorney General Ken Salazar stated (Draper 2001d; Gazette, 2001f).

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On September 7, 2001, Cortez authorities moved forward with the arraignment of Murphy in the Montezuma County Court (Draper, 2001e). While the defense attorney contended that the prosecution based its case off of heresy and its witnesses cooperated only in an effort to garner judicial leniency, the prosecution contended that statements by Murphy's friend as well as his own statements corroborated the prosecution's murder scenario (Draper, 2001e). On September 9, The Denver Post noted that Murphy's mother, Angel Tacoronte, was arrested and was being investigated for intimidation and harassment of a material witness at the witness's; the district attorney reported that he would seek felony charges against Tacoronte for "menacing and intimidating a witness" in her home after the arraignment hearing (Draper, 2001e; Rocky Mountain News, 2001b).

On Thursday, October 20, Shaun Murphy pled not-guilty to first- and second-degree murder charges brought against him in the beating murder of Fred Martinez; his trial was scheduled for March 4, 2002, his eighteenth birthday (Gazette, 2001g; Rocky Mountain News, 2001c). Details from the trial were not collected and reported on as in other trials; however, media sources did report that the prosecution's largest challenge was "proving the cause of death ... [included] Martinez was struck in the head with a blunt object, possibly a rock" due to the decomposition investigators faced at autopsy (Miller, 2002). On February 9, 2002, media sources reported that Murphy accepted a plea deal where he would be charged with second-degree murder, carrying a penalty of up to forty-eight years in prison; Murphy's sentencing was scheduled to be handed down by the presiding judge on May 16, 2002 (Miller, 2002).

Shortly after the plea bargain, on April 19, the Colorado Senate "gave preliminary approval ... to a 'hate crimes law' that would include gays and lesbians under its protection"

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(2002d). As early as January 8, 2002, religious community leaders involved in the Interfaith Alliance of Colorado joined lawmakers to support hate-crimes measures that included lesbians, gays, bisexuals, transgender, and transsexual individuals, saying, “It’s not granting any group a new right or privilege ... it’s simply a protection” (Rocky Mountain News, 2002a). Colorado Senate Bill 9 was introduced by Senator Penfield Tate on January 16, 2002; media sources widely noted that earlier versions of the bill had been killed in both the Colorado senate and house the five previous times it had been set forth (Rocky Mountain News, 2002b; Rocky Mountain News 2002d). On January 17, the bill survived its first vote, with a result of 4 supporting and 3 opposing; all of those opposing the bill were Republican committee members (Rocky Mountain News, 2002c). The bill, which contained new legislation allowing a convict of the hate-crimes statute to perform community service on a first time offender or restitution to surviving victims, expanded intimidation statutes to include “crimes based on physical or mental disability, age, sexual orientation or gender identity” and covered a range of acts such as “assault on someone because they had a sex change operation to vandalism, such as spray painting swastikas on a synagogue” (Siebert, 2002). Although the bill’s passage looked promising, reports from the Rocky Mountain News a year later indicate that the bill was defeated by February of 2003 (along with a bill addressing workplace protections for lesbian, gay, bisexual, transgender, and disabled individuals); Republican Committee Members cited special interests as the main reason for opposition (Sanko, 2003). Although no citizens testified against either measure, “GOP opponents questioned whether they were really needed or created a special classification” (Sanko, 2003). In response, the author of the bill noted, “targeting people as a class is a crime that extends beyond immediate victims. ... ‘The incidents of this type of crime have

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been well documented and well publicized.... It's demonstrable, it's clear, it's known. We do need another tool to deal with it. The incidents continue. They haven't abated" (Sanko, 2003).

However, as Senate Bill 9 moved through the Colorado capitol in 2002, news sources reported that Shaun Murphy attempted to rescind his guilty plea in favor of a new litigation process (Draper, 2002a; Rocky Mountain News, 2002e; Rocky Mountain News, 2002f). On May 14, Shaun Murphy's attorney submitted a motion to retract his guilty plea for second-degree murder, after he previously "admitted hitting Fred Martinez in the head ... but said he didn't intend to kill him" (Rocky Mountain News, 2002e). According to The Denver Post, while Murphy's attorney declined to comment on the motion, Murphy mailed a letter to the presiding judge earlier that month, noting, "I was wondering if you would allow me to withdraw my plea because I feel that I would have a chance to get a lesser charge if I would take this all the way. ... I have two kids that I would really like to be a father to, and if I get a life sentence, then I can't do that.... So that is why I took the plea I did. Ma'am, I didn't intentionally or even knowingly eledgedly [*sic*] kill this guy [*sic*]" (Draper, 2002a). According to a statement by the judge in open court, the motion would likely be dismissed; prosecutors openly opposed the motion, saying that if the judge granted it, they would bring both first- and second-degree murder charges back to the case (Draper, 2002a). A hearing was set for May 22 regarding the motion (Rocky Mountain News, 2002e). A day after the hearing, Murphy decided to retract the motion to change his plea, and was scheduled to be sentenced on June 3, 2002 (Rocky Mountain News, 2002f).

On June 4, 2002, Shaun Murphy appeared in court for his sentencing phase; during proceedings, he addressed the judge by saying he had made a mistake while intoxicated and

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confused, and “asked the judge to see him as a human being capable of becoming a better man” (Draper, 2002b). Murphy’s mother, grandmother, and transgender aunt attended the sentencing hearings, maintaining that Shaun was not homophobic due to the fact that he was raised by a lesbian mother and a transgender aunt (Draper, 2002b). Murphy’s grandmother pleaded with the judge for leniency, collapsing in the courtroom before the sentence was read; she was taken to the hospital by an ambulance (Draper, 2002b). In response, Pauline Mitchell stated that she believed her son was killed due to his gender identity and pejorative labels associated with them; she stated to the court and to Murphy:

To me, these labels mean nothing, and they meant nothing to F.C. ... It is so sad that fear and hate of difference put young people like Fred and many others in the path of danger and violence. ... Mr. Murphy ... [y]ou took my son away from me in the most vicious way I can imagine. You smashed his head with a rock. You were covered with his blood. You deliberately left him there to die. (Draper, 2002b)

The presiding judge in the case sentenced Murphy to forty years in prison, addressing the most problematic aspects of his defense by stating: “[Y]ou knew that you had injured someone, yet you didn’t even make an anonymous call [to law enforcement or paramedics]. ... It might have made the difference whether or not Fred Martinez lived or died” (Draper, 2002b).

Lawrence King

Although information about King’s childhood has largely remained confidential, media sources have been able to gather some information. During the year of 2008, King lived at a local live-in facility that treated abused and neglected children, although officials could not discuss how long he had lived at the facility (Creston News-Advertiser, 2008; Saillant-Covarrubias, 2008). A friend of Lawrence’s, Averi Laskey, stated that Larry had commented, “He never felt like he had a family, but he told me when he got to Casa Pacifica

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he had one there” (Saillant and Covarrubias, 2008). Lawrence attended E.O. Green high school, which educated a student body of roughly 1,150 students (Foxman and Scheibe, 2008). Media sources indicated “King had been receiving help from school support staff ... [although] no details on the type of assistance” being offered were ever released (Creston News-Advertiser, 2008).

Likewise, McInerney had a relatively troubled childhood in that both of his parents had violent encounters with one another or law enforcement officers throughout his youth. According to an article published by the Los Angeles Times, McInerney’s father Bill pled not guilty to counts of disturbing the peace in 2000, and on a separate occasion that same year, a count of domestic abuse; he was sentenced to ten days in jail and three years of probation (Saillant and Covarrubias, 2001). In 2002, Bill McInerney pled guilty to drunk driving and was required to serve roughly a week in jail (Saillant and Covarrubias, 2001).

On Tuesday, February 12, 2008, Lawrence King was shot in the head during class in a computer lab, when classmate Brandon McInerney stood up at a desk behind him, retrieved a gun from his book bag, and shot King in the back of head and in the back in front of over twenty classmates; police said both students were fifteen years old at the time of the incident, although later they would learn that McInerney was fourteen years old while King was fifteen (Creston News-Advertiser, 2008; Foxman and Scheibe, 2008; Saillant and Covarrubias, 2008; Ventura County Star, 2008a). The rest of the school was placed on lockdown and police began efforts to apprehend McInerney while King was rushed to St. John’s Regional Medical Center (Foxman and Scheibe, 2008). Traumatized students text-messaged and called their parents on cell phones while the school was in lock-down process, prompting many parents to gather outside the school to wait for their children to be released

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(Foxman and Scheibe, 2008). McInerney was apprehended blocks away from the school (Foxman and Scheibe, 2008; Ventura County Star, 2008a). On the evening of February 12, King was described by media sources as being “alert and well,” and improving in the hospital’s intensive care unit (Fox and Scheibe, 2008; Ventura County Star, 2008a). Later, Mr. Greg King, Larry’s father, would state that “Contrary to previous reports that [Lawrence] talked with hospital staff and was improving after the shooting, the boy never emerged from a coma induced by doctors shortly after he arrived [at the hospital]. When [Larry] arrived at the hospital, he was making some sounds and gestures, but they were not intelligible” (Foxman, 2008). Doctors and King’s father noted that Lawrence had survived six hours after the attack – a critical window for treatment – during which he was induced into a coma; while his neurosurgeon remained “guardedly optimistic,” King remained stable throughout the night (Foxman, 2008a). In morning hours of February 13, King suffered a massive stroke while still in a comatose state, “causing his brain to swell and die” (Foxman, 2008a). Larry King remained on life support until February 16; after his organs were collected for donation, his body was transported to the county coroner’s office for autopsy (The Argus, 2008).

On Wednesday, February 13, Lawrence King was reported as being brain dead in the hospital, dying from his injuries (Chronicle Herald, 2008). Lawrence was officially declared brain-dead at 2:00 PM, after two neurosurgeons examined him (Creston News-Advertiser, 2008). King’s adoptive family and medical officials decided to keep King on a ventilator in order to proceed with organ donation, with King’s adoptive father stating, “I think that’s what he would have wanted” (Creston News-Advertiser, 2008; Record-Journal, 2008). The Ventura County District Attorney’s Office began preparations to arraign and charge McInerney, saying, “He could face charges of murder and use of a firearm in commission of

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murder” (Creston News-Advertiser, 2008). A day later, the district attorney charged McInerney as an adult with first-degree murder and discharging a firearm in the commission of a crime, saying the attack “inside an Oxnard classroom was a premeditated hate crime,” although the Senior Deputy District Attorney declined to comment on the possible motive (Foxman, 2008a; Saillant and Covarrubias, 2008). Because McInerney was still a juvenile, he was housed in Juvenile Hall and transported to court regularly; his bail was set at \$770,000, and he faced twenty five years for murder, twenty five years for discharging a firearm in the commission of an attack, and an extra one to three years if found guilty of a hate crime (Daily Breeze, 2008; Saillant and Covarrubias, 2001). Although preliminary hearings began in February of 2008, the arraignment trial would not begin until March 21 (Daily Breeze, 2008). From the time McInerney was sequestered in juvenile hall to the time his arraignment hearing was scheduled, Brandon remained on suicide watch (Hernandez, 2008a).

On Valentine’s day 2008, one day after the shooting, school officials continued school operations, while roughly one-quarter of the student body opted not to attend school (Carlson, 2008a). Students and staff created a makeshift memorial shrine for Lawrence outside of the school, leaving stuffed animals, candy, balloons, and a large poster board inscribed with the lyrics to John Lennon’s song “Imagine” (Hernandez, 2008a). According to the Ventura County Star, school officials “were struggling Wednesday, wondering if they had missed a warning sign before the shooting. [Brandon McInerney] apparently had an argument with King on Monday,” despite the fact that school officials stated they had attempted to intervene in the situation without going into specifics (Carlson, 2008a). Students commented that the McInerney and King “were involved in an ongoing dispute and

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had an argument on Monday[, February 11]” with one student telling police that McInerney told her King was “having his last day” (Foxman and Scheibe, 2008). School district officials said it was the first school shooting faculty and staff could remember in the city’s history (Foxman and Scheibe).¹¹⁹ A team of counselors was on hand to meet with students who felt they needed help with the situation, and to visit classes in order to “help supervise and look for students who might need some help” (Carlson, 2008a). Port Hueneme Public School District Superintendent Jerry Dannenberg commented, “Virtually every public agency ... and school district in the county contacted [E.O. Green High School] to offer help.... There’s been a tremendous response,” (Carlson, 2008a). Regarding the ongoing case and investigation, Smith stated, “It’s an equality issue, and we want to make sure the district attorney looks at this from all facets and all sides.... We are here to support other who are living in this country that may deal with the same issues,” noting that it was unclear whether the hate motivated in the attack was geared towards gay or transgender identity (Hernandez, 2008a).

While school officials attempted to conduct regular school business and lawyers were preparing for arraignment hearings, the press began crafting a story of the murder that focused on King’s gender differences as central to the shooting. Media sources speculated that because King “had recently started to wear makeup and jewelry and had proclaimed himself gay,” he had been bullied by a group of school boys who “had a confrontation concerning King’s sexual orientation a day before the killing” (Saillant and Covarrubias,

¹¹⁹ Senior Deputy District Attorney Maeve Fox, who is currently prosecuting McInerney in the sentencing phase of the trial, corroborated the claim that no previous school shootings had occurred in the county’s history, stating, “In Ventura County, we’ve never had a school shooting like this. It is very tragic” (Hernandez, 2008a). However, she did note that McInerney was not “the only young murder suspect in the county’s history,” noting a case of 14-year-old Rocky Mattley, sentenced to seven years in the California Youth Authority after being convicted of killing a homeless man in 2002 (Hernandez, 2008a).

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2008). Friends noted that King had been dressing in a feminine manner for only about two weeks at the time of his murder (Saillant and Covarrubias, 2008). Later reports would add that King wore “high heels and other feminine attire”; one media report quoted a student as confessing that King’s efforts to express his own gender identity “was freaking the guys [male students] out” (Foxman, 2008a).

Shortly after the incident, community leaders and an openly gay politician began speaking out against homophobia in society and in the school system. The director of the Ventura County Rainbow Alliance, Jay Smith, noted that King had been active with the organization’s youth group, and had provided in support sessions for youth between the ages of thirteen and twenty-three (Saillant and Covarrubias, 2008). Smith challenged the school’s statements regarding efforts to intervene between King and McInerney, commenting that educational institutions must move beyond diversity and tolerance, do “more than just education, [because] it’s about acceptance, not just tolerance. ... The big question I have is: Was the school equipped to have a student like Larry in attendance? ... Was everyone in the district on the same page? Did they have the same diversity training? Were they supportive?” (Saillant and Covarrubias, 2008). Openly lesbian California State Senator Sheila Kuehl released a statement reading, “I recently learned that this shooting will be prosecuted as a murder and a hate crime, which I believe to be appropriate. ... We know that Lawrence King ... had already endured a number of incidents of serious harassment based on his stated sexual orientation and because others thought that his dress and demeanor didn’t fit conventional gender stereotypes,” noting that all schools must take action to end homophobia, discrimination, and “bigotry” (Hernandez, 2008a). The County Superintendent of Schools noted that although schools already had programs in place to teach students

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tolerance and acceptance of difference, greater efforts and more resources were needed in schools, including how to deal with difficult and negative emotions and allowing them access to a greater number of counselors and mentors (Bakalis and Carlson, 2008a). The Hueneme superintendent of schools responded that the burden for teaching tolerance should not be placed solely on schools but on the whole of society (Bakalis and Carlson, 2008a). At the time of these comments, a county study of public schools conducted by a nonprofit research group noted that “10 percent of Ventura County seventh-grader, 9 percent of ninth-graders, and 7 percent of 11th-graders reported harassment based on actual or perceived sexual orientation” (Bakalis and Carlson, 2008a).

Three days after King’s death, over one thousand individuals gathered at a march organized in Lawrence King’s memory (Wilson, 2008). The march, organized by classmates who began to organize on the same day that King was shot, stretched for over a mile through the public streets of Oxnard; marchers held signs with King’s name, pictures of Lawrence, and t-shirts with his image (Wilson, 2008). Comprised of students, parents, teachers, elected officials, and members of the group Parents of Murdered Children, the march proceeded through the center of the city, ending at the town’s central plaza where the crowd chanted King’s name and held a moment of silence (Wilson, 2008). A second memorial was planned for Friday, February 25 in honor of King, and a website was established for grieving individuals to leave messages for Lawrence (www.RememberLarry.com) (Hoops, 2008).

Two days after the district attorney announced their plan to prosecute McInerney as an adult, the Ventura County Star began running stories and opinion pieces countering the decision. According to a piece printed on February 17, 2008, “the number of juvenile

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offenders tried as adults [had] nearly tripled from 10 in 2006 to 27 in 2007 ... a nearly 170 percent increase”; between 2002 and 2005, only five cases were recorded in Ventura County with juveniles being tried as adults (Hernandez, 2008b). According to the publication, the legal ability to prosecute adults was transferred from judges to lawyers in 2000, when then Proposition 21 allowed prosecutors “sole discretion on whether juveniles 14 and older who commit serious crimes [would] be tried in adult courts”; before the proposition passed, judges would conduct private hearings to determine if the juvenile was fit to be tried as an adult (Hernandez, 2008b).¹²⁰ In a separate article attributed to the publication as a whole, the Ventura County Star made its opposition to the ruling clear by stating, “The question is not whether the district attorney can try the case in adult court, but whether he should. We believe there is a strong reason for a juvenile-justice system and that justice is served in that system. The Star believes, in this case, it is the only way justice can be truly served. ... A boy 19 days into his 14th year is absolutely not a candidate for adult court” (Ventura County Star, 2008b). The entry mentioned Lawrence King’s name only once, and did not mention McInerney’s name but referred to his age at least eight times, suggesting the weight of attention on the case was placed on characteristics lending to or detracting from the defendant’s privileges as a white minor, including moral statements pertinent to characteristics such as race, age, and possibly gender identity and performativity.¹²¹ A day

¹²⁰ Proposition 21 was passed on a state ballot, and was largely described as a measure that would allow prosecutors to provide tougher sentences for gang members (Hernandez, 2008b). This is an interesting phenomenon when considered in conjunction with attitudes surrounding McInerney’s trial. While other, possibly ethnic individuals were tried as adults while still legally minors, only the possibility of trying a white minor as an adult garnered backlash against the measure from Ventura County residents. According to the Ventura County Star, “Supporters of Proposition 21 say prosecutors must have more power in dealing with gang members. Supporters also say they are tired of ‘slap on the wrist’ justice meted out by judges, which, they say, has made a mockery of the juvenile justice system” (Hernandez, 2008b).

¹²¹ In contrast to these statements that paint McInerney in a neutral light, other articles written by Hernandez of the Ventura County Star engage in a practice of Othering King via his gender presentation and mode of self-

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later, California Assemblyman Mike Eng announced plans to propose legislation aimed at quelling school violence and promoting tolerance among students, teachers, parents, and school staff; Eng noted that after introducing the legislation in 2007, Governor Schwarzenegger vetoed the bill (San Gabriel, 2008). In response, Eng stated, “I was shocked when I heard about the tragic death of Larry King. ... I thought that if our legislation had been enacted, perhaps there would have been a different result” (San Gabriel, 2008). While advocates of the measure said that it would teach school leaders to identify signs and “symptoms of hate” by implementing a curriculum based on tolerance, opponents of the measure touted it as providing “nothing more than ‘flowery language’” (McLain, 2008). On February 19, the Ventura County Star ran a piece that detailed violence in educational institutions ranging from elementary school to universities, noting that “At least six school shootings occurred from Feb. 4 [2010,] to Feb. 14 (Scheibe, 2008).¹²²

Roughly eight days after the shooting, California saw a wave of vigils in support of King, where community leaders and members spoke out against homophobic violence, speech, and bullying. On Tuesday, February 20, vigils were held at the Ukiah County Courthouse, Willits, San Francisco, Sacramento, Fresno, and Los Angeles/West Hollywood areas within the state (Brown, 2008x). In Ukiah, vigil participants were largely silent, holding signs of protest such as “support kids who are different” (Brown, 2008). In West

expression, while maintaining descriptions of McInerney as an unwitting juvenile who did not know the legal, physical, or mortal consequences of his actions.

¹²² Among the cases of school shootings that occurred during the time of King’s murder were the following: A high-school sophomore shot a classmate in Memphis, Tennessee “during an argument over rap lyrics in an algebra class” on February 4; on February 7, an Ohio elementary-school teacher’s husband stabbed and shot her to death in front of her fifth-grade students; on February 10, a 23-year-old man shot two female classmates to death in Baton Rouge Louisiana Technical College before killing himself; on February 11, a student in Memphis, Tennessee was shot twice during gym class (Schiebe, 2008). On February 15, a student at Northern Illinois University committed suicide after shooting five classmates to death and wounding sixteen others (Scheibe, 2008).

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Hollywood, CEO of the LA Gay and Lesbian center Lorri Jean was quoted as stating, “We live in a society where discrimination against gay, lesbian, bisexual and transgender people is promoted and encouraged That leads to violence and that violence has to stop” (Lyons, 2008). West Hollywood Mayor Pro Tempore Jeffrey Prang was quoted as stating, “Despite the many advances that have been achieved to protect gays and lesbians against discrimination and the changing attitude of Americans about the LGBT community we are reminded in the wake of this terrible tragedy that there is still profound hatred in our country” (Lyons, 2008x). Lisa Hurwitz, a teenage member of the statewide Gay, Straight Alliance was quoted as stating, “Today feels like we are re-living Matthew Shepard all over again” (Lyons, 2008). Community members looked towards the approaching proposals of politicians such as Mike Eng and Sheila Kuehl to garner legal standards for school safety and accountability; responding to the school district’s claim that they attempted to intervene between King and McInerney, Eng stated, “When you are in a school system you can’t just offer assistance, you have to act. I want to find a way to create some accountability. School officials should have a system for reporting bullying to law enforcement officials. . . . The anecdotal evidence in the King case says that if law enforcement had known about the bullying, they wouldn’t have had to intervene in riot gear” (Lyons, 2008).

For those parents and community members who did not attend vigils, school safety and questions about King’s identity seemed on the forefront of their minds. On the same day as vigils were held throughout California, leaders and administrators of Port Hueneme School District held a public hearing for community members concerning school safety; over five-hundred parents and community members crowded the E.O. Green School auditorium, where police assured them that due to the school’s quick emergency lock-down procedure,

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every child in the school remained safe throughout the ordeal (Carlson, 2008b). While parents asked about the possibility of metal detectors being installed in school entrances, police officers and the district superintendent assured them that the school was safe and that counselors on campus were ready to help students deal with the recent outbreak of violence (Carlson, 2008b). Two days later, a close friend of the King family who created the www.rememberlarry.org website, was quoted as stating, “I want Larry remembered for who he was as a person, and not just this faced of his life.... I’d rather not have him known as that gay kid. I’d rather have him known as Larry, a good kid who tried his best. ... A lot, if not too much, if being made of his sexuality, if indeed it was his sexuality. At 15, how can anybody know what his [sic] sexuality is?” (Foxman, 2008c). The executive director of the Ventura County Rainbow Alliance responded to these statements by stating, “I’m sensitive to how the family feels, but this is a global issue. ... Every child in school is different, and every one of those difference should be acknowledged and nurtured, and it shouldn’t end up that because of those differences, you have a bullet in your head” (Foxman, 2008c).

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