

# HEINONLINE

Citation: 32 Child. Legal Rts. J. 5 2012

Content downloaded/printed from  
HeinOnline (<http://heinonline.org>)  
Thu Aug 23 17:11:45 2012

- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <http://heinonline.org/HOL/License>
- The search text of this PDF is generated from uncorrected OCR text.
- To obtain permission to use this article beyond the scope of your HeinOnline license, please use:

[https://www.copyright.com/ccc/basicSearch.do?  
&operation=go&searchType=0  
&lastSearch=simple&all=on&titleOrStdNo=0278-7210](https://www.copyright.com/ccc/basicSearch.do?&operation=go&searchType=0&lastSearch=simple&all=on&titleOrStdNo=0278-7210)

# Us vs. Them! Gays and the Criminalization of Queer Youth of Color in Chicago

By Owen Daniel-McCarter\*

*"There is no reason that anyone of any race should be hanging out on North Halsted if they are underage... This is a 21+ entertainment district for the GLBT community. This is supposed to be our safe area..."*

- Posting on "Take Back Boystown" Facebook Page<sup>1</sup>

For students of American Literature, Richard Wright's *Native Son* is a required reading. But for people who live in the City of Chicago, it's an almost haunting literary description of the impact that long-term, systemic, and deep-rooted societal racism can have on the lives of the city's Black youth. Through the lens of Bigger Thomas, Wright captured the complexity of Chicago's violence, oppression, and white supremacy in a way that eerily still rings true today. The racial landscape of the city has remained virtually intact in the over seventy years since *Native Son*'s writing with white Chicagoans primarily situated on the north side hugging Lake Michigan all the way up to the suburbs, and Black and Latin@<sup>2</sup> Chicagoans on the South and West Sides of the city.<sup>3</sup> Some of these geographic racial zones have shifted over the years with the help of gentrification and the virtual destruction of Chicago's notorious "projects" – high rise public housing (most recently inhabited almost exclusively by black residents) torn down and replaced with vacant lots, "mixed income" flats, luxury condominiums, and high-end shopping stores.<sup>4</sup> These changes undeniably pushed communities of color out and have brought in predominantly white, middle, and upper class neighbors.

Wright does not discuss Chicago's gay communities. Perhaps the most well-known marker of gay communities is the annual Gay Pride Parade, now commonplace and increasingly commercialized in many cities across the country. Held on the last Sunday in June, Chicago's Pride Parade runs down North Halsted Street in the east section of the Lakeview neighborhood, more commonly known as "Boystown."<sup>5</sup> Of course, queer<sup>6</sup> people also live in Chicago on the North, South, and West Sides. The saying is true: *we are everywhere*. Despite the fact that queers live all across the city, in accordance with its segregationist history,<sup>7</sup> certain Chicago neighborhoods have been earmarked as "gay." In fact, the city has geographically institutionalized gayness in "Boystown" by erecting twenty-two, twenty-three foot-high, metal illuminated rainbow-ringed pylons up and down the neighborhood's main thoroughfare at a cost of \$3.2 million from the city's tight budget.<sup>8</sup> "Boystown," of course, is located on the North Side and is situated

directly between Lake Michigan and the Chicago Cubs Baseball stadium.

After several publicly violent incidents<sup>9</sup> in "Boystown" directly preceding and following the 2011 Chicago Pride Parade, residents of "Boystown" responded with calls for more policing, tougher enforcement of criminal laws, and resurrection of gang injunction ordinances. They even demanded that Chicago's LGBT community center, the Center on Halsted, and a shelter for LGBT Youth known as the "Crib" be shut down for "attracting" violent outsiders into the "Boystown" community.<sup>10</sup> While "Boystown" residents' fear of outside "invaders" seems to happen annually following the Pride Parade, this year was particularly hyper vigilant. Residents of "Boystown" created a facebook page called "Take Back Boystown" which touts to be "a venue for suggestions, ideas and thoughts on how we can preserve what we have and go back to the safe fun neighborhood Boystown is known for."<sup>11</sup> The site has provided a venue most notably for free-flowing rants from residents of "Boystown" about young people who are not residents of the neighborhood, referring to them in racialized code words such as "gangs," "thugs," and "hoodlums."<sup>12</sup> Local gay media immediately made the connection between public violence, youth, and race by reporting that "criminal activity" in "Boystown" could be due to the "presence of South and West Side youth."<sup>13</sup> As any resident of Chicago knows, "South and West Side youth" is code for Black and Latin@ youth.

Moved to action by the influx of young queer people from "other neighborhoods," the Lake View Citizens' Council introduced an online Petition to the Superintendent of the Chicago Police and the President of the Chicago Transit Authority that stated:

WHEREAS crime in the Lake View has been on the rise this year;

WHEREAS violent assaults have affected the livelihood of the residents of Lake View;

WHEREAS the crime committed comes from individuals NOT living in the Lake View area;

WHEREAS businesses in the area have felt the affects of the increase in crime and;

WHEREAS police in these areas have been deployed outside of the area;

THEREFORE we, the undersigned, who reside, work or have businesses in the Lake View Community AND PAY TAXES FOR CITY SERVICES demand from the Chicago Police Department an additional 20-30 police in the 19th and 23rd Districts of Lake View during the midnight-4am shift.

We also demand additional security canine patrol at the Belmont L stop during the same period of time.<sup>14</sup>

Taking matters into their own hands, the Northalsted Business Alliance has opted to spend thousands of dollars to hire off-duty police officers to patrol the neighborhood in addition to the police force assigned to the beat in the city on weekend evenings.<sup>15</sup> In fact, it was local security working outside the gay bar “Hydrate” that arrested twenty-year-old Anthony Bledsoe, one of the so-called violent Black youth picked up in “Boystown” in the summer of 2011.<sup>16</sup> Prosecuted with grossly inflated charges including attempted murder, Bledsoe was arrested on June 18 while, according to local media, the white “victim,”<sup>17</sup> Tony Buchele, was well enough to be posting on the “Take Back Boystown” facebook page the next evening.<sup>18</sup> There, highlighting the sharp level of state bias and influence over the case, when asked about the incident Buchele stated, “I was told by the police [Bledsoe] was looking for trouble.”<sup>19</sup> Subsequent facebook postings reflected a flurry of residents’ panic. One poster stated “...the people causing the problems do not live here. The ones causing the problems can’t afford to live here so that is how we know that they are not from here. I think everyone should be able to enjoy different parts of the city no matter where you live or your income but the [problem] is when I go [to] another neighborhood, I don’t act all crazy.”<sup>20</sup> Another person posted “What is not fair is that we are being asked to tolerate this. What is not fair is that I pay a large amount of taxes to live here and I’m not getting the assistance from the Alderman’s office and the police that we deserve.”<sup>21</sup> Yet another posted “Mobs of delinquent teens are destroying an area many hard working citizens have created” and, bordering on a eugenics argument, one person posted “What a waste of sperm and eggs darn thugs.”<sup>22</sup> Following an aggressive state prosecution, Bledsoe pled guilty and is now serving a felony sentence.<sup>23</sup>

Almost paradoxically, while young Black and Latin@ youth were being harshly prosecuted with heightened political pressure from “Boystown” residents and City Alderman Tom Tunney, other members of the gay community celebrated this summer as a triumph in

civil rights for LGBTs. The Illinois Religious Freedom Protection and Civil Union Act went into effect on June 1, 2011 allowing same-sex as well as opposite-sex couples to enter into a civil union in Illinois.<sup>24</sup> An Illinois civil union affords the same rights, privileges, and burdens of a legal marriage at the state level, including the many rights that protect wealth and property transfer between spouses (and former spouses) such as intestacy and maintenance laws.<sup>25</sup> For many, the same-sex marriage fight is a political push for gays and lesbians to be invited into a type of government recognition that they have traditionally been excluded from due to institutionalized homophobia.<sup>26</sup>

For others looking for “legal equality,” such as security and entitlements distributed by regulatory state institutions, the Act is not liberatory<sup>27</sup> as it fails to oppose “the very mechanisms (such as state regulation) that maintain and reproduce inequality.”<sup>28</sup> Under a liberatory theory, normative and state-endorsed “success,” like the passage of a civil union statute, necessarily requires de-sanctioning of supposedly less-desirable queer bodies such as young queer people of color. Removing a liberatory analysis allows increasingly privileged predominantly white gays to ignore the institutional limitations youth and people of color have from reaping the “benefits” of gay marriage. Youth of color may come to neighborhoods like “Boystown” to access basic needs services such as gender-affirming healthcare, case management, meals, safer sex supplies, mentorship, shelter, job training, GED classes, and community<sup>29</sup> because these resources are not allocated in the neighborhoods they are permitted to live in. It is the private and business-generated wealth present in “Boystown” that, in part, created the political power to pass a civil union statute as well as the financial support to sustain non-profit organizations providing the basic services young people need,<sup>30</sup> and that now warrants “protection” through criminalization of “other queers.” For this reason, the pairing of the passage of a civil union statute and a massive movement to criminalize queer youth present in “gay spaces” comes as no surprise.

In this paper, I argue that a queer liberatory movement in Chicago that does not actively work to dismantle the oppressive systems facing queer youth, and particularly queer youth of color, regurgitates racism within queer communities. Furthermore, the “Take Back Boystown” movement reflects an increasingly powerful Chicago “Gay”<sup>31</sup> political culture that does not in fact reflect a movement about liberation, but rather a movement about gaining, securing, and protecting privilege – a term that by its very definition indicates benefit for *some*, not for *all*. Increased concern about protecting private property, maintaining uninhibited access to bars, restaurants, and nightclubs, and the freedom to

visit shopping establishments reveals a grave mistake of this “mainstream” gay culture as these “community” priorities presume that the criminal legal system, racism, demonization of youth of color, and queerness are not, and have not always been, intertwined in Chicago.

## I. “Diversity is Welcome. Crime is Not:”<sup>32</sup> The Criminalization of Queerness

From the beginning of European conquest of the Americas – white European’s taking of land occupied and cultivated by indigenous people by brutal force – queerness and gender non-conformity have been subject to white supremacist, gendered, and misogynist criminal liability by ruling powers. Coming from a society that criminalized sodomy, Spanish conquistadors responded to visible queerness with violent contempt.<sup>33</sup> Many indigenous cultures had a spectrum of gender identities and many of those who would now be labeled gender non-conforming in dominant U.S. culture were often considered highly spiritual, holy, and to have a positive value in their tribe.<sup>34</sup> However, Europeans labeled these perceived queers “berdache”<sup>35</sup> – an Arabic term meaning “male prostitute.”<sup>36</sup> This term linked them to the criminalized act of selling sex for money and was punished by incarceration,<sup>37</sup> torture, rape, and death.<sup>38</sup> Laws to legitimize these actions were subsequently passed and effectively criminalized “immorality” among indigenous peoples in special courts of “Indian Offenses.”<sup>39</sup>

Meanwhile, European colonizers brought sodomy laws to the Americas.<sup>40</sup> These laws criminalized non-procreative sex<sup>41</sup> and have been present in governed societies since at least 400 BCE.<sup>42</sup> It is important to note that these laws were disproportionately enforced even at their inception in the Americas.<sup>43</sup> Men, particularly Black men, received the harshest punishment for sodomy laws, which in some jurisdictions were punishable by death.<sup>44</sup> While sodomy laws were rarely vigorously enforced in the United States, labeling a sexual activity as a crime has profound social implications. As articulated in 2003 by Justice Kennedy in the majority opinion finding sodomy laws unconstitutional, “When homosexual conduct is made criminal by the law of the State, that declaration in and of itself is an invitation to subject homosexual persons to discrimination both in the public and in the private spheres... Its continuance as precedent demeans the lives of homosexual persons.”<sup>45</sup> In other words, even if not enforced, the threat of criminalization demonizes anyone who engages in or is perceived to engage in an “illegal” activity and subjects them to further marginalization.

Aside from non-procreative sexualities, gender non-conformity has continued to be criminalized through cross-dressing laws and the selective enforcement of criminal statutes beyond the initial period of European conquest. Between 1850 and 1870, as the Civil War and Reconstruction threatened the status quo of U.S. racial, legal, and economic structures, jurisdictions began passing statutes that criminalized wearing clothing disharmonious with one’s assigned gender.<sup>46</sup> Some statutes such as one in Toledo, Ohio made it a “crime for any ‘perverted person’ to appear in clothing belonging to the opposite sex.”<sup>47</sup> Others were more covert, such as New York’s law that prohibited “disguised” individuals in public places. Purposely vague, New York’s law was strategically used to target cross-dressers.<sup>48</sup>

Painfully clear, the City of Chicago’s cross-dressing statute stated:

Any person who shall appear in a public place in a dress not belonging to his or her sex, with intent to conceal his or her sex, shall be fined not less than twenty dollars nor more than five hundred dollars for each offense.<sup>49</sup>

This statute was found unconstitutional as applied to two transgender women in a 1978 Illinois Supreme Court decision. The defendant-appellants were arrested in Chicago after eating breakfast together in a restaurant.<sup>50</sup> The court goes into excruciating invasive detail about their clothing, noting that Wilson was wearing a “black, knee-length dress, a fur coat, nylon stockings and a black wig” and Kimberley had a “bouffant hair style and was wearing a pants suit, high-heeled shoes and cosmetic makeup” but that, following a police lineup in various stages of undress, “both had male genitals.”<sup>51</sup> Both testified at their trials that they were transsexuals undergoing treatment in preparation for “sex reassignment surgery”<sup>52</sup> which required they wear feminine clothing.<sup>53</sup> The Court found that, though not a fundamental right, the Constitution provides an individual some measure of protection with regard to his choice of appearance as a liberty interest.<sup>54</sup> The state’s reasons for enacting the cross-dressing statute were blatantly transphobic, vague, and unsupported by any evidence in the record. These reasons included “(1) to protect citizens from being misled or defrauded; (2) to aid in the description and detection of criminals; (3) to prevent crimes in washrooms; and (4) to prevent inherently antisocial conduct which is contrary to the accepted norms of our society.”<sup>55</sup> Since the Illinois Vital Records Act, revised in 1977, authorized the issuance of a new birth certificate following sex-reassignment surgery, the court reasoned that the legislature implicitly recognized the necessity and validity of such surgery, and thus, treatment in preparation for it.<sup>56</sup> Therefore, the statute was found unconstitutional as applied.<sup>57</sup>

These cross-dressing statutes, and more importantly the state's reasons for enacting them, are just part of a package of transphobic laws in Chicago and Illinois. For example, in 2005, an Illinois Appellate Court declared a marriage between a transgender man and his wife invalid.<sup>58</sup> Finding his legal gender to still be female despite having had his gender marker changed on government-issued documents, the court declared his marriage was same-sex and thus invalid at its inception.<sup>59</sup> Since he and his former spouse were never legally married according to the Illinois Court, he had no standing as a biological and legal stranger to petition for parental rights of his child who was nearly thirteen at the time of the court's ruling.<sup>60</sup> In a 1997 case, the Seventh Circuit Court of Appeals held that a transgender woman in an Illinois prison was not entitled to a diagnosis of "gender dysphoria"<sup>61</sup> (and thus hormonal treatment for that disorder).<sup>62</sup> Noting that most transgender people experience systemic discrimination outside of prisons and jails regarding access to gender-affirming hormones, the court stated in dicta, "we do not want transsexuals committing crimes because it is the only route to obtaining a cure."<sup>63</sup> Thus, while the Seventh Circuit recently ruled that the Eighth Amendment *does* mandate hormone treatment for someone who has been diagnosed with Gender Identity Disorder as a matter of law,<sup>64</sup> without the *right* to that diagnosis, prison administrations have a legal loophole to not provide transgender people with necessary care if they have not already been diagnosed. In 1984, the Seventh Circuit also ruled that a woman who was terminated by her employer for being transgender was not protected from that discrimination under Title VII of the Civil Rights Act.<sup>65</sup> The court found a legal distinction between being discriminated against for being female and (perhaps conversely) for being a transsexual.<sup>66</sup> Finding no legislative history to indicate a Congressional intent to protect "transsexuals,"<sup>67</sup> her termination was completely permissible under the Court's interpretation of Title VII.<sup>68</sup> These examples of barriers in marriage, child custody, prisoner health care, and employment discrimination cases demonstrate the web of intersecting legal barriers transgender people face that contribute to heightened marginalization and lead to criminalization.

As cross-dressing statutes and other criminal laws that target queer and gender non-conforming people have been struck down, the increasing trend of law enforcement is discriminatory policing utilizing criminal laws that are unbiased on their face.<sup>69</sup> Much like racial profiling, seemingly neutral criminal laws are applied in such a manner to target certain segments of the queer community.<sup>70</sup> For example, many transgender women of color are targeted by police as sex workers regardless of whether they are engaging in the sex trade.<sup>71</sup> With

roots in imperialist notions regarding gender fluidity, hypersexualization, and prostitution, many call this "walking while trans" – the crime of being in a public place with a transgender body, a feminine body, and a body of color.

While neighborhoods like "Boystown" may attract queer people from all across the city as a safe haven and as a resource for essential services, selective enforcement of uniform<sup>72</sup> criminal laws happens frequently there as well. One example of this discriminatory practice has been the periodic increase in prostitution arrests in "Boystown." For example, on April 16, 2010 Tom Tunney, City Alderman for the 44th Ward (encompassing "Boystown"), sent an email to his constituents informing them of a "police mission" in the area that "targeted prostitution."<sup>73</sup> He wrote:

I was in court this morning (April 16th), with five Defendants arrested for Prostitution/Soliciting on the 900 block of Belmont...Four of the five were in court and it was their first offense. All of the defendants plead guilty to the charges, received 6 months court supervision and agreed to the admonishment from the court to avoid the areas on Belmont, Sheffield and Halsted [main streets in central "Boystown.]"<sup>74</sup>

What Alderman Tunney did not mention was that *all* of the people arrested during this "police mission" were young transgender women of color ranging in age from seventeen to twenty-six. These cases reveal a trend of selective enforcement of prostitution statutes consistent with the national trends documented by Amnesty International.<sup>75</sup> Whether these women were engaging in the sex trade or not, no one will ever know as there was no trier of fact, no cross examination of witnesses and, for that matter, no testimony—in fact, there was no evidence whatsoever aside from police reports. Thus, the charges were substantiated with Chicago Police officers' allegations alone. All too often, transgender women, particularly young women, plead guilty in misdemeanor cases because it is clear that institutional biases and "isms" are stacked against them.<sup>76</sup> They know it is their word against a police officer's and most judges, prosecutors, defense attorneys, and jurors will look at them and think "that person looks like a prostitute" or "just looks guilty." Thus, hypersexualized archetypes, misogynist stereotypes, misinformation, harmful case law, and institutionalized transphobia have already done much of the work for the State's Attorney's office.<sup>77</sup> The added incentive of getting out of jail—where most transwomen will be housed according to the sex assigned to them at birth not their gender identity and subjected to harassment, violence, assault, and possible rape – makes almost any plea deal better than relying on the "justice" system.<sup>78</sup>

Alderman Tunney makes it a point in his message to constituents to note that these women agreed to avoid “Boystown” in the future despite there being no finding of facts in the cases.<sup>79</sup> Even for those young people who are not charged with crimes, being arrested but not charged, harassed by police, or harassed by business owners and community members can be enough of an indicator that a space is not open to them. Wherever it occurs, “community policing” of queerness is a clear way to send the message to those policed that they are not welcome and that “those people” are criminal. Thus from European conquest to cross-dressing statutes, to the selective enforcement of criminal laws, queer bodies have been policed consistently in the United States and, importantly, it is queer people of color who are feminine or perceived to be feminine who are disproportionately criminalized.

## II. “It’s Not a Race Issue. It’s a Behavioral Issue.”<sup>80</sup> The Criminalization of People of Color

If current trends of incarceration stay the same, nearly one third of black men in the United States will go to prison at least once in their lifetime.<sup>81</sup> Black men are seven times more likely to be incarcerated than white men and make up roughly half of the U.S. prison population.<sup>82</sup> Due to the dangerous effects of pushing for “equality” in state systems riddled with institutionalized oppression, the fastest growing prison population is that of women of color.<sup>83</sup> While people of color, particularly those living in poverty, have experienced exponential increases in incarceration rates in the last thirty years, these rates do not correlate with an increase in crime.<sup>84</sup> In fact, data shows that crime rates have decreased since the 1980s<sup>85</sup> with violent crime rates at historic lows but with conviction rates, particularly for *young* Black men, consistently increasing.<sup>86</sup>

In Illinois, 65,227 people are in prisons or jails on any given day and nearly 200,000 people are on probation or parole.<sup>87</sup> The racial disparities are glaring with 9.1 Black Illinoisans incarcerated for every 1 white person whereas 1.9 Latin@s are incarcerated for every 1 white person.<sup>88</sup> As a white attorney who has visited many prisoners downstate, the racial disparities are glaringly obvious between the “keepers” and the “kept” in the prison setting. 66% of the state’s inmates are Black but 84% of prison guards are white.<sup>89</sup> Deeply connected to race-based chattel slavery, de jure segregation, and state-supported/mandated racial “hyperghetoization” of low income and poor urban Blacks, the criminalization of Blackness has profound roots in U.S. society.<sup>90</sup>

Race in the context of Chicago’s political climate and government-sponsored segregation tactics adds another layer of complexity to the criminalization of race. Chicago is a notorious racist police-state with one of the most corrupt city and state governments in the country. Four former Illinois Governors have been convicted of criminal offenses in the last forty years, some for criminal acts committed while in office.<sup>91</sup> But violence committed by police officers, even some of the most notorious, clear examples of violence, have continued for decades with little or no reprimand within the police force. Perhaps two of the most poignant examples of the extreme lengths members of Chicago’s government will go to quiet the voices of Black Chicagoans are the murder of Black Panther Fred Hampton and the Chicago Torture Cases.

Fred Hampton, a powerful political leader in the late 1960s, was murdered in his sleep by Chicago Police Officers when he was only twenty-one years old.<sup>92</sup> Shot four times in his bed, it is believed that Hampton’s swift ability to organize once divided communities of color was seen as a “security” threat to both Chicago and the Nation.<sup>93</sup> Hampton’s death and the murders of other powerful Black leaders in the late 1960s and early 1970s effectively crushed a significant amount of organized radical Black activism in Chicago, the effects of which are still prominent today.

From 1972-1991 over 100 Black men were tortured by Police Commander Jon Burge and the detectives working under him in Chicago’s Area 2 and 3 police headquarters.<sup>94</sup> These men were tortured via electric shock to their genitals, ears, and lips, and endured anal rape, suffocation, mock executions, and beatings in order to elicit confessions.<sup>95</sup> There is no doubt that this torture was racially motivated.<sup>96</sup> In addition to the victims’ unified Black identity, “numerous victims were repeatedly called ‘nigger,’ while others were threatened or subjected to what detectives referred to as the ‘nigger box’ – the electric shock box.”<sup>97</sup> Despite a wealth of evidence of torture, little to nothing has been done to remedy the impact of this gross police misconduct.<sup>98</sup> After decades of community-led activism, Jon Burge was convicted of two counts of obstruction of justice and one count of perjury for making false denials about and participation in the torture of numerous African American suspects.<sup>99</sup> He is now serving a four-year prison sentence while still collecting his police pension.<sup>100</sup> The glaring mass incarceration primarily of Black men in Chicago coupled with the general city-wide complacency with gross racist police misconduct reflects an alarming acceptance of racist policing and criminalization rates.

### III. “There’s a Reason the Youth are Lashing at Everybody, Because You All Look Down on Us:”<sup>101</sup> The Criminalization of Youth

In 2009, 18,287 young people aged sixteen or younger were arrested in the City of Chicago.<sup>102</sup> Nearly one quarter of these arrests happened at a public school.<sup>103</sup> With the rise of the militarization of Chicago Public Schools and what many call the “School to Prison Pipeline,”<sup>104</sup> young people are being shunted into the criminal legal system as schools heavily rely on law enforcement to punish students for predominantly minor incidents of adolescence.<sup>105</sup> Without question, this youth-targeted policing in public schools and other spaces frequented by youth is highly racialized. Considered a form of profiling in classrooms,<sup>106</sup> young people of color, particularly Black youth in Chicago, are disproportionately arrested and incarcerated. For example, in eight of the most policed communities, 86% of the youth arrested in 2009 in Chicago were Black.<sup>107</sup> 75% of the pupils of Chicago’s public schools are living below the poverty line and nine out of ten are Black or Latin@.<sup>108</sup> For many young people who are arrested in school, expulsion may ensue leaving them with a harder chance at being school-educated.

While there have been few widespread studies of the arrest patterns facing youth in the United States, existing studies show that nearly one in three people in the United States have been arrested by the age of twenty-three,<sup>109</sup> indicating a growing trend in punitive and criminal responses to adolescence. In Chicago, local organizations like Project NIA<sup>110</sup> study the implications of the growing trend of the criminalization of youth, particularly youth of color, and are working toward more holistic, transformative responses that do not rely on the legal system to resolve interpersonal violence – a cause of many of the problems youth in Chicago face.

Queer young people that I work with as an attorney report a profound lack of safety in school. Due to their queer identity and/or expression many have reported harassment by school staff and teachers, or undisciplined violence by other students that is condoned by teachers and staff. Transgender students, both locally and nationally, seem to fair worse with added issues of bathroom access, locker room and mandatory gym policies, preferred name and pronoun usage, violence, and retaliation. In a 2009 national report, Gay, Lesbian, & Straight Education Network (“GLSEN”) found that *almost all* of the transgender students it surveyed had

been verbally harassed (ie: called names or threatened) in the past year at school because of their sexual orientation and or their gender expression and over half had been physically harassed.<sup>111</sup> For some queer youth, leaving school becomes the safest option.

Lack of access to education makes it harder to secure employment, healthcare, and housing, especially when confronted with other layers of institutionalized violence and lack of family acceptance. Many young people who cannot access a school education spend some time living in shelters or on the streets.<sup>112</sup> Some may wind up in the custody of the Department of Children and Family Services as wards of the state.<sup>113</sup> According to a major research study by the National Gay and Lesbian Task Force, it is estimated that between 20% and 40% of all homeless youth in the United States identify as lesbian, gay, bisexual, or transgender.<sup>114</sup> As cities like Chicago criminalize homelessness through “quality of life”<sup>115</sup> legislation like loitering, research shows that many street-based and homeless youth are thrust into the criminal legal system, moving them further away from support services they need.<sup>116</sup> Indeed much of the “criminal activity” reported in neighborhoods like “Boystown” are crimes of poverty such as trespass and retail theft. Unreported crimes such as drug use, supplying alcohol to minors, solicitation, intimate violence, and sexual assault occur in neighborhoods like “Boystown,” just as they do elsewhere, but their illegality is less enforced.

Amnesty International reports that LGBT individuals, particularly youth of color, are routinely targeted by police for being “too loud” or lacking good conduct even in so-called “gay” neighborhoods.<sup>117</sup> In other words, they are charged with “acting like criminals” due in large part to racialized stigma attached to proper etiquette. Ironically, many queer youth in “Boystown” are arrested near “Steamworks,” the largest gay bathhouse in the city, or the “Cell Block,” the only remaining leather bar in “Boystown.”<sup>118</sup> The glaring historical connection with accusations of “loudness,” “lewdness,” and “proper” behavior between gay (predominantly white) men and queer youth of color seems like an almost obvious connection and potential point of solidarity and support.

Thus, the criminalization of youth has become a rising trend in the United States for all youth and within “gay” communities. Whether the Castro in San Francisco or the Piers in New York City’s West Village or “Boystown” in Chicago, these notorious “gayborhoods” have become increasingly dangerous spaces for young queer people as the gay rights agenda “progresses” and *some* gay people gain access to wealth with new-found comfort through welcome into dominant institutions.



#### IV. “This Work is Personal to Us—It is About Our Lives:”<sup>119</sup> Liberatory Approaches

A liberatory approach to violence is one that “seeks safety and accountability without relying on alienation, punishment, or state or systemic violence, including incarceration and policing.”<sup>120</sup> Thus, gay (and straight) residents of “Boystown” investing in increased policing, private policing, and harsh prosecution of queer youth of color “not from this neighborhood,” lacks a liberatory analysis. Many residents of “Boystown” argue that their property rights, the enjoyment of their neighborhood 21+ entertainment, and the privileges they have worked toward and donated to as gays are at stake with the “threat” of young people of color in their neighborhood. And, in some instances, physical violence and a threat of real physical violence has presented itself.<sup>121</sup> All too often though, when the “victim” of interpersonal violence is a person of color, the violence is underreported or even accepted.<sup>122</sup> As Kimberle Crenshaw argues, this downplaying of violence against people of color is a contemporary manifestation of racist narratives involving crime and violence with predetermined racial assumptions about who is “victim” and who is “perpetrator.”<sup>123</sup> Regardless, it is without question that the people who are suffering the most due to “Take Back Boystown” movements are young people of color. For true liberation the gay community in “Boystown” needs to reject the divisive “Us v. Them!” strategy and instead seek a transformative framework to help address the deep-seeded histories and current practices of anti-queer, anti-youth, and racist laws and policies in Chicago. This liberatory framework, then, must also include healing from violence and the internalized violence that systemic oppression manifests.

In her book, *Democracy Remixed: Black Youth and the Future of American Politics*, Cathy J. Cohen reveals the findings of the Black Youth Project, a groundbreaking survey asking young Black respondents living in America what they think about the government, their own lives and opportunities, their sexualities, etc.<sup>124</sup> Considering the web of barriers to young Black people accessing so-called “opportunity,” it is not surprising that many have little to no faith in the ideology that the U.S. government aims to protect them. 61% of the Black youth surveyed believe that it is hard for young Black people to get ahead because they face so much discrimination.<sup>125</sup> Further, nearly 80% of Black youth surveyed felt that the police discriminate more against Black youth than white youth.<sup>126</sup> Cohen also reports that youth are aware that this is largely due to stigma about Black youth in general.<sup>127</sup> She reiterates the response of one seventeen-year old Black young

person who said “If [the police] see four or five black young dudes standing on the corner, we gotta be selling dope and stuff like that. So, they just already got us labeled.”<sup>128</sup> She reveals that Black youth who experience overt discrimination, which is the majority of Black youth, have a profound disbelief in notions of “equal opportunity,” a disbelief that becomes more entrenched as they age.<sup>129</sup> The connection between social alienation and so-called “deviance” is undeniable. Despite glaring social inequality for youth of color, “Boystown” residents, politicians, and business owners demand “[f]riendly, respectful social behavior,” not “anti-social, confrontational, and intimidating behavior.”<sup>130</sup> Just as Richard Wright painted in his fictional Bigger Thomas, stigmatized and oppressed young Black people are both treated as though they are outside of society, and yet at the same time expected to behave with respect for the society that ostracizes them.<sup>131</sup>

Youth who frequent “Boystown” have modeled many liberatory approaches in response to being labeled a threat to public spaces. As part of its “Street Youth Rise Up!” campaign, a campaign designed to change the way Chicago sees and treats its homeless, home-free, and street-based young people, youth from the Young Women’s Empowerment Project wrote a bill of rights by and for young people living on the streets of Chicago.<sup>132</sup> This includes rights when accessing health care, interactions with the police, when working with social services agencies, and in education – places where queer youth of color experience pervasive institutionalized violence.<sup>133</sup> In addition to addressing rights for youth, this document also addresses action steps for others. For example, it states that “The police should receive trainings by youth or youth competent services providers on how to work with homeless, home free or street based young people in a respectful way and help them connect to voluntary and nonjudgmental services instead of arresting us.”<sup>134</sup> In conjunction with the release of this “Street Youth Bill of Rights,” youth marched through “Boystown” on September 30, 2011 to demand their basic needs be met and that there be accountability for the criminalization of their survival.<sup>135</sup> The Street Youth Rise Up campaign is, at its very core, a liberatory movement led by youth of color that resists participation in state violence.

Similarly, lesbian, gay, bisexual, transgender, queer, and allied youth of color from GenderJUST, an intergenerational multiracial organization based on Chicago’s South Side, orchestrated a number of protests to the push for increased policing in “Boystown” as a solution to violence in the community.<sup>136</sup> Young people boldly stood up at the Chicago Alternative Policing Strategy meeting held on July 6, 2011 with nearly 800 people – mostly residents of “Boystown” – in



attendance, stating “we see policing and profiling as tools of violence – and you can’t fight violence with violence.”<sup>137</sup> In 2010, they also protested the Northalsted Business Alliance for supporting the policing of young people of color in “Boystown” neighborhood stores and at the Center on Halsted.<sup>138</sup> In addition to protesting the policing of young people of color in “Boystown” public accommodations, they also launched the Committee on Urban Resource Sustainability & Equity (“COURSE”) campaign which aims to help solve another problem rooted in the “Take Back Boystown” movement: the lack of resources for queer people living on the South and West Sides of Chicago.<sup>139</sup>

The role of lawyers in a liberatory movement is complex. Gabriel Arkles, Pooja Gehi, and Elana Redfield, attorneys at the Sylvia Rivera Law Project<sup>140</sup> in New York City, identify several key ways that lawyers can support grassroots movement building and resist the inherent limitations of a liberatory framework as agents of the legal system.<sup>141</sup> They suggest that lawyers can utilize their privilege in a number of ways by sharing information critical to the lives of those impacted by legal systems to help facilitate leadership building and empowerment and to use legal skills to support community organizing work.<sup>142</sup> This can take many shapes from providing direct legal services to providing organizing support for youth-led actions, marches, and materials.<sup>143</sup> Legal advocates working with young people targeted by the criminal legal system also push for a more holistic approach to criminal defense of young people.<sup>144</sup> At the Transformative Justice Law Project of Illinois (“TJLP”), we are continually developing a liberatory approach to criminal defense. TJLP has found that it is essential that lawyers think critically about the “justice” system and do the work to educate themselves about the implications systemic ageism, poverty, racism, policing, homophobia, ableism, sexism, and transphobia have on the lives of young people we represent and incorporate this critical thinking into legal practice itself. For example, lawyers should acknowledge oppression in conversations with clients, demystify the legal process by taking the time to explain it to their clients using accessible language, incorporate a critical analysis into legal arguments, strategies, and theories of the case, and should actively honor clients’ resilience when confronted with such deeply rooted barriers to their survival.

Further, residents, politicians, and business owners in “Boystown” need to break down their pro-policing, pro-privatization, “Us v. Them” strategy by taking into account the U.S. legacy of criminalization of queerness, of people of color, and of youth. Civil rights

gains of the mainstream gay movements – marriage, antidiscrimination laws, family rights, decriminalization of gay sex, hate crimes legislation, etc. – must be kept in perspective as gains that indicate recognition by flawed institutions, not an erasure of the flawed institutions themselves. Thus, while the U.S. Supreme Court struck down sodomy laws in the landmark case of *Lawrence v. Texas*,<sup>145</sup> the decision necessarily left other criminal laws more commonly impacting queer communities unquestioned, juxtaposed, or validated. For example, the Court’s decision in *Lawrence* made clear it was not decriminalizing harsh prostitution statutes.<sup>146</sup> This caveat was a loss for transgender women across the country who are targeted by police under a presumption they are engaging in the sex trade simply by putting their body in public spaces, a violent stereotype that has persisted since European conquest of the Americas. Instead of reinforcing segregation, increasing police power, and further criminalizing other members of the queer “community,” not unlike attorneys, people claiming to “Take Back Boystown” must utilize their collective privilege to think, consider the context, and step outside of their fear-based mentality to support the needs of youth, honor the resilience of their resistance, and work to combat the rampant enduring racism, classism, and ageism that marks Chicago.

Reflecting on the acute sense of abandonment she felt by the Gay Rights movement as a young criminalized transgender woman of color, Sylvia Rivera warned: “The oppressed becomes the oppressor.”<sup>147</sup> A gay community politic that demands and even self-funds harsh policing of queer youth of color within a city, state, and country that oppresses youth, queers, and people of color at shocking rates is an oppressive politic. While many youth and adult allies are fighting for liberation, for now, gay residents, gay politicians, and gay business owners of “Boystown” are developing instruments of abuse, criminalization, and stigmatization against young queer people of color consistent with U.S. traditions of ageism, white supremacy, and institutionalized heterosexism. Queer youth in Chicago demand frameworks for liberatory political action that challenge the oppressive thinking of mainstream “gays” in “Boystown.” In their participatory action research report, youth from the Young Women’s Empowerment Project suggest concrete steps to end the systemic violence they experience that residents of “Boystown” must consider: “Think critically about the law before advocating for a policy ... [W]ill it just lead to an increase in police presence? Will removing a law decrease girls’ risk for violence or abuse?”<sup>148</sup> Without asking these questions and grappling with their answers, liberatory dreams are lost.

## Endnotes

\*J.D., City University of New York School of Law, 2007. Project Attorney with the Transformative Justice Law Project of Illinois and Adjunct Faculty at DePaul University. I would like to send solidarity and appreciation to Lisa Marie Alatorre, Gabriel Arkles, Lara S. Brooks, and Avi Rudnick for their critical feedback and support in the process of drafting this article.

<sup>1</sup> *Neighbors, Police Discuss Violence in Boystown*, CBS CHI. (July 6, 2011), <http://chicago.cbslocal.com/2011/07/06/neighbors-police-to-address-violence-in-boystown>.

<sup>2</sup> “Latin@” is a term some queer, trans, and feminist Latin@ and Chican@ organizations have been using to address the gender binary and sexism rooted in our language. See, e.g., THE NATIONAL LATINA/O LESBIAN, GAY, BISEXUAL & TRANSGENDER (LGBT) HUMAN RIGHTS ORGANIZATION, <http://www.unidoslgbt.com> (last visited Jan. 25, 2012).

<sup>3</sup> Bill Rankin, *Cartography and the Reality of Boundaries*, THE REAL PERSPECTA 42, 42–45 (2010).

<sup>4</sup> David Kohn, *Tearing Down Cabrini-Green*, CBS NEWS (February 11, 2009), <http://www.cbsnews.com/stories/2002/12/11/60II/main532704.shtml>.

<sup>5</sup> I feel it is important to note the rhetorical and sexist implications of referring to a so-called “gay” neighborhood as, literally, a town that belongs to boys. Since I take issue with this term, I used quotations to call its use into question for readers.

<sup>6</sup> “Queer” is a term I use to describe people whose sexualities are outside the ideological norm of “heterosexuality.” This term could include gay, lesbian, bisexual, questioning, kinky, and many other individuals who self-identify with it. Gender identity and sexuality aren’t synonymous and thus I do not include “transgender” here even though some transgender people may identify their sexualities as queer. Self-identified queers use this term as one of reclamation: a word with a derogatory history that has been adopted by communities with power and pride. One of the reasons why I use this term is that it allows for gender fluidity – it does not gender the person identifying as queer, nor does it gender the people they have sex and other intimacy with. This term is not without important critique. Cathy J. Cohen, for example, has suggested that oftentimes the word “queer” is inherently privileged (whether it be class privilege, race privilege, academic privilege, etc.) and argues that the term shouldn’t be used solely to describe lesbian, gay, bisexual, questioning, etc. people but instead any sexuality or family identity that is deemed expendable, marginal, and deviant by the government and dominant ideology. Cathy J. Cohen, *Punks, Bulldaggers, and Welfare Queens: The Radical Potential of Queer Politics?* 3(4) GLQ: A JOURNAL OF LESBIAN AND GAY STUDIES 437 (1997). Thus the term “queer” could apply to anyone who exists

(by choice or due to institutional barriers) in the margins of society, access, and mobility.

<sup>7</sup> ARNOLD R. HIRSCH, *MAKING THE SECOND GHETTO* (1998).

<sup>8</sup> Christopher Reed, *We’re from Oz: Marking Ethnic and Sexual Identity in Chicago*, 21 ENV’T & PLAN. SOC’Y & SPACE 425 (2003).

<sup>9</sup> An important looming question in the “Take Back Boystown” movement is the question of violence and safety. Who is safe and what is violent? Is the policing of youth violent? Is the history and lasting property interest in whiteness violent? Is the maldistribution of wealth and resources violent? For more on reframing issues of violence, see INCITE! WOMEN OF COLOR AGAINST VIOLENCE, *COLOR OF VIOLENCE: THE INCITE! ANTHOLOGY* (2006); see also Avi Rudnick, *Fear and Safety in Boystown*, WINDY CITY TIMES (July 13, 2011), <http://www.windycitymediagroup.com/gay/lesbian/news/ARTICLE.php?AID=32766>.

<sup>10</sup> Kate Sosin, *Hundreds Pack into Boystown Violence Forum*, WINDY CITY TIMES (July 7, 2011), <http://www.windycitymediagroup.com/gay/lesbian/news/ARTICLE.php?AID=32676>.

<sup>11</sup> TAKE BACK BOYSTOWN, <http://www.facebook.com/TakeBackBoystown?sk=info> (last visited Feb. 10, 2012).

<sup>12</sup> *Id.*

<sup>13</sup> Erica Demarest, *Boystown Stabbing Leads to Racial Controversy*, WINDY CITY TIMES (June 29, 2011), <http://www.windycitymediagroup.com/gay/lesbian/news/ARTICLE.php?AID=32538>.

<sup>14</sup> MORE FOOT PATROL FOR LAKEVIEW, <http://www.petitiononline.com/lvcc5822/petition.html> (last visited Feb. 10, 2012).

<sup>15</sup> *Neighbors, Police Discuss Violence in Boystown*, *supra* note 1.

<sup>16</sup> *Id.*

<sup>17</sup> I use the term “victim” in quotations not to minimize Tony Buchele’s experience but to criticize legal frameworks that dichotomize and simplify violence by calling for a “victim” and a “perpetrator.” This model of thinking is embedded in the adversarial and non-transformative nature of the legal system that only provides remedies for individual acts of violence and fails to address institutional causes of violence such as systemic racism. The language itself discourages a trier of fact to question how both parties have been harmed and to view the incident in a social context by also considering the systems of oppression at play.

<sup>18</sup> *Take Back Boystown Status Update*, TAKE BACK BOYSTOWN, (June 19, 2011, 6:16 PM), <http://www.facebook.com/boystownchicago/posts/209207449117039>.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Illinois Department of Corrections, Inmate Search, <http://www.idoc.state.il.us/subsections/search/default.asp>

(type “Bledsoe” using the “Last Name” search method; then click “inmate search”; select “BLED SOE, ANTHONY” and click “Query A Highlighted Inmate”).

<sup>24</sup> Illinois Religious Freedom Protection and Civil Union Act, 735 ILCS 5/13-209 (2011).

<sup>25</sup> *Id.*

<sup>26</sup> *Americans for Marriage Equality*, HUMAN RIGHTS CAMPAIGN, <http://www.hrc.org/americansformarriageequality> (last visited Feb. 10, 2012); *Marriage*, LAMBDA LEGAL, <http://www.lambdalegal.org/issues/marriage> (last visited Feb. 10, 2012).

<sup>27</sup> I use the term “liberatory” to refer to a movement that is not about capital gain and success measured by relative privilege in relation to others but rather a movement premised on working toward a fundamental re-structuring and dismantling of systems of oppression. Some organizers have used this term as a framework to approach real concerns about violence in our communities without relying on harmful state response systems such as police, courts, and prisons. For an example of a liberatory framework for responding to violence, see GENERATION FIVE, *About generationFIVE*, <http://www.generationfive.org/g5.php> (last visited Feb. 10, 2012).

<sup>28</sup> Craig Willse & Dean Spade, *Freedom in A Regulatory State?: Lawrence, Marriage and Biopolitics*, 11 WIDENER L. REV. 309, 311 (2005).

<sup>29</sup> Youth have access to all of these services through the Broadway Youth Center, a program of Howard Brown Health Center, the Night Ministry Youth Outreach Team, the Chicago Women’s Health Center, and the Center on Halsted – all located within a few blocks of one another in Chicago’s “Boystown.”

<sup>30</sup> The very same basic needs services that are lacking and/or decreasing from state provision.

<sup>31</sup> I use the term “Gay” in this paper to highlight what I see as a divisive lack of solidarity between communities with traditionally oppressed sexualities. The vast majority of people involved in “Take Back Boystown” are non-transgender men who identify as gay and their allies. This predominantly white gay culture reflects an acute lack of understanding of systems of oppression, most notably sexism, ableism, transphobia, ageism, and institutionalized racism.

<sup>32</sup> At the Community Alternative Policing Strategy meeting on July 6, 2011, over 200 residents of “Boystown” and their supporters held signs that stated: “*Diversity is Welcome. Crime is Not.*” This slogan is a reflection that residents of “Boystown” see little to no connection between crime and queerness both currently and historically. Sosin, *supra* note 10.

<sup>33</sup> SERENA NANDA, GENDER DIVERSITY 11 (2000).

<sup>34</sup> *Id.*

<sup>35</sup> A term commonly used by indigenous peoples today to refer to these tribe members is “Two-Spirit.” See, e.g., NORTHEAST TWO-SPIRIT SOCIETY, <http://www.ne2ss.org/about> (last visited Feb. 10, 2012).

<sup>36</sup> NANDA, *supra* note 33, at 11.

<sup>37</sup> LESLIE FEINBERG, TRANSGENDER WARRIORS 25 (1996).

<sup>38</sup> JOEY L. MOGUL, ANDREA J. RITCHIE & KAY WHITLOCK, QUEER (IN)JUSTICE 11 (2011).

<sup>39</sup> *Id.* at 5.

<sup>40</sup> *Id.* at 11.

<sup>41</sup> Note that these laws were not limited to same-sex acts but instead criminalized oral and anal sex between any individuals. See *Bowers v. Hardwick*, 478 U.S. 186 (1986).

<sup>42</sup> MOGUL, *supra* note 38, at 11.

<sup>43</sup> *Id.* at 11.

<sup>44</sup> *Id.* at 12.

<sup>45</sup> *Lawrence v. Texas*, 539 U.S. 558, 575 (2003).

<sup>46</sup> I. Bennett Capers, *Cross Dressing and the Criminal*, 20 YALE J.L. & HUMAN. 1, 8 (2008).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 9.

<sup>49</sup> *City of Chicago v. Wilson*, 389 N.E.2d 522, 523 (Ill. 1978).

<sup>50</sup> *Id.* at 522.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* It is important for readers to note that one all-encompassing surgery for transgender people does not exist. “Gender reassignment surgery,” “sex reassignment surgery,” or “sex change operation” are largely undefined terms used in medical texts, media and laws. Transgender people may elect or desire supportive psychotherapy, hormonal therapies, a wide variety of gender-affirming surgical procedures, voice therapies, and/or electrolysis or laser hair removal. See, e.g., Pooja S. Gehi & Gabriel Arkles, *Unraveling Injustice: Race and Class Impact of Medicaid Exclusions of Transition-Related Health Care for Transgender People*, 4 SEXUALITY RESEARCH & SOC. POLICY: JOURNAL OF NSRC 7 (2007).

<sup>53</sup> *Wilson*, 389 N.E.2d at 523.

<sup>54</sup> *Id.* at 523–24.

<sup>55</sup> *Id.* at 524.

<sup>56</sup> *Id.* at 525.

<sup>57</sup> *Id.*

<sup>58</sup> *In re Marriage of Simmons*, 825 N.E.2d. 303, 309 (Ill. App. Ct. 2005).

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 313.

<sup>61</sup> *Maggert v. Hanks*, 131 F.3d 670, 671 (7th Cir. 1997). Gender Identity Disorder and “gender dysphoria” are used interchangeably in cases involving transgender people. Both refer to a disorder once known as “transsexualism” adopted in 1980 by the American Psychiatric Association in its Diagnostic and Statistical Manual (DSM). This disorder was added after “homosexuality” was removed as a mental disorder in 1974. While arguing for the validity and recognition of this disorder in legal contexts can be beneficial for some transgender clients, I believe the overall impacts of doing so are quite harmful. Not only does the disorder pathologize transgender people by utilizing

ableist stigma, but it does so using rigid binary notions of gender such that many transgender people cannot get access to gender-affirming medical care. Antithetical to a self-determinist model of gender autonomy, it places control in the hands of (non-trans) doctors instead of with the transgender person themselves. In addition, this “diagnosis” does not acknowledge the racial and class disparities in access to medicine and freedom to choose a medical provider. For more on this topic, see Dean Spade, *Resisting Medicine, Re/modeling Gender*, 18 BERKELEY WOMEN’S L. J. 15 (2003).

<sup>62</sup> *Maggert*, 131 F.3d at 671.

<sup>63</sup> *Id.* at 672.

<sup>64</sup> *Fields v. Smith*, 653 F.3d 550, 557–559 (7th Cir. 2011).

<sup>65</sup> *Ulane v. Eastern Airlines*, 742 F.2d 1081, 1084 (7th Cir. 1984).

<sup>66</sup> *Id.* at 1085–87.

<sup>67</sup> *Id.* at 1085 (labeling plaintiff as “a biological male who takes female hormones, cross-dresses, and has surgically altered parts of her body to make it appear to be female”).

<sup>68</sup> Transgender people are protected from discrimination in employment in Chicago under the Chicago Human Rights Ordinance, the Cook County Human Rights Ordinance, and the Illinois Human Rights Law (the definition of “sexual orientation” includes “gender-related identity”). However these statutes aren’t widely used despite the glaring number of incidents of discrimination against gender non-conforming people. This is due to a web of barriers including a lack of knowledge about existing legal protections, difficulty in finding a lawyer who is trans-friendly, short statutes of limitations, difficulty in proving discrimination, and exhaustion on the part of people who are routinely discriminated against and vilified. Further, antidiscrimination laws present a perplexing dilemma. In order to prove discrimination, a petitioner must show that an individual actor intentionally discriminated against them on the basis of a protected class. There is no claim to societal discrimination. In other words, you may have a claim for individual incidents of bias but cannot litigate on the basis of a system of discrimination that has limited your “opportunity” including your access to healthcare, housing, education, employment, political participation, etc. See Alan Freeman, *Legitimizing Racial Discrimination through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, in CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT 29 (Kimberle Crenshaw, Neil Gotanda, Gary Peller & Kendall Thomas eds., 1995).

<sup>69</sup> USA: *Stonewalled: Police Abuse and Misconduct Against Lesbian, Gay, Bisexual, and Transgender People in the U.S.*, AMNESTY INT’L 16 (2005), <http://www.amnesty.org/en/library/asset/AMR51/122/2005/en/2200113d-d4bd-11dd-8a23-d58a49c0d652/amr511222005en.pdf> [hereinafter AMNESTY INT’L].

<sup>70</sup> *Id.* at 17.

<sup>71</sup> *Id.* at 17–21.

<sup>72</sup> Here I use the term “uniform” to describe laws that do not target a specific population despite their disproportionate impact on specific populations. An example of a non-uniform law is the sodomy law struck down in *Lawrence v. Texas* that applied only to same-sex non-procreative “deviate” sexual activities (as opposed to any non-procreative “deviate” sexual activities) and therefore targeted gay people.

<sup>73</sup> Email from the office of Tom Tunney, 44th Ward Alderman, to Owen Daniel-McCarter, Esq. (April 16, 2010) (on file with author).

<sup>74</sup> *Id.*

<sup>75</sup> AMNESTY INT’L, *supra* note 69, at 21.

<sup>76</sup> Note that for most first-time misdemeanor prostitution charges, at the discretion of the State’s Attorney, those being charged are offered the option of attending a “deterrence” program run by Chicago’s Christian Community Health Center. If this deterrence program is completed, the state will agree to dismiss the charge against the defendant. Until recently, this was not an option for transgender women as they were rejected from the program for women called “Footprints” despite their feminine gender identity. Recently the Christian Community Health Center has instituted a new deterrence program specifically for transgender women called “Quest.” For more information, see e.g. *New Resources In and Around Chicago*, Tumblr, <http://www.tumblr.com/tagged/queer-resources> (last visited March 23, 2012).

<sup>77</sup> MOGUL, *supra* note 38, at 23.

<sup>78</sup> This year, a new directive was enacted in Cook County that gives discretion to a committee within the Cook County Department of Corrections to determine where transgender detainees will be housed in jail. Cook County Interagency Directive No. 64.5.43.0 (2011). At the time of this writing, I am only aware of two transgender women who have actually been housed according to their gender identity in a women’s facility under this directive. The vast majority are still detained in the men’s jails.

<sup>79</sup> Email from the office of Tom Tunney, *supra* note 73.

<sup>80</sup> This comment from a “Take Back Boystown” supporter received a standing ovation from the crowd at the Community Alternative Policing Strategy meeting hosted by the Chicago Police Department on July 13, 2011. See Sosin, *supra* note 10.

<sup>81</sup> TODD R. CLEAR, IMPRISONING COMMUNITIES: HOW MASS INCARCERATION MAKES DISADVANTAGED NEIGHBORHOODS WORSE 63 (2007).

<sup>82</sup> *Id.*

<sup>83</sup> Traci Schlesinger, *Equality at the Price of Justice*, 20 NWSA J. 27, 28 (2008).

<sup>84</sup> BRUCE WESTERN, PUNISHMENT AND INEQUALITY IN AMERICA 35 (2006).

<sup>85</sup> *Id.*

<sup>86</sup> MICHELLE ALEXANDER, *THE NEW JIM CROW* 99 (2011).

<sup>87</sup> SENTENCING PROJECT, <http://www.sentencingproject.org/map/map.cfm#map> (last visited Feb. 4, 2012).

<sup>88</sup> *Id.*

<sup>89</sup> Loic Wacquant, *Deadly Symbiosis: When Ghetto and Prison Meet and Mesh*, 3 PUNISHMENT & SOC'Y 95, 114 (2001).

<sup>90</sup> *Id.*

<sup>91</sup> *Blago the 4th Past Illinois Gov. Convicted of Crime*, CHI. SUN-TIMES (June 27, 2011), <http://www.suntimes.com/news/metro/6205668-418/blagojevich-joins-3-past-illinois-governors-convicted-of-crimes.html>.

<sup>92</sup> See JEFFREY HAAS, *THE ASSASSINATION OF FRED HAMPTON* (2010).

<sup>93</sup> *Id.*

<sup>94</sup> Andrea J. Ritchie & Joey L. Mogul, *In the Shadows of the War on Terror: Persistent Police Brutality and Abuse of People of Color in the United States*, 1 DEPAUL J. FOR SOC. JUST. 175, 184 (2008).

<sup>95</sup> *Id.* at 184–85.

<sup>96</sup> *Id.* at 185.

<sup>97</sup> *Id.* at 185–86.

<sup>98</sup> *Id.* at 186–87.

<sup>99</sup> G. Taylor Flint, *Judge Sentences Chicago Police Commander Jon Burge in Torture Case*, 10 POLICE MISCONDUCT AND CIV. RTS. L. REP. 2 (2011).

<sup>100</sup> *Id.*

<sup>101</sup> Statement from a young Black transgender woman at the Community Alternative Policing Strategy meeting hosted by the Chicago Police Department on July 13, 2011. Sosin, *supra* note 10.

<sup>102</sup> Project NIA Chicago Youth Justice Data Project, available at [http://www.chicagoyouthjustice.com/Project\\_NIA\\_Arrests\\_page\\_v2.html#](http://www.chicagoyouthjustice.com/Project_NIA_Arrests_page_v2.html#).

<sup>103</sup> *Id.*

<sup>104</sup> See, for example, the NAACP and the ACLU School to Prison Pipeline Projects.

<sup>105</sup> ANNETTE FUENTES, *LOCKDOWN HIGH: WHEN THE SCHOOLHOUSE BECOMES A JAILHOUSE* 55 (2011).

<sup>106</sup> *Id.* at 63.

<sup>107</sup> Project NIA Chicago Youth Justice Data Project, *supra* note 102.

<sup>108</sup> Wacquant, *supra* note 89, at 108.

<sup>109</sup> Erica Goode, *Many in U.S. Are Arrested by Age 23, Study Finds*, NY TIMES (December 19, 2011), [http://www.nytimes.com/2011/12/19/us/nearly-a-third-of-americans-are-arrested-by-23-study-says.html?\\_r=2&ref=us](http://www.nytimes.com/2011/12/19/us/nearly-a-third-of-americans-are-arrested-by-23-study-says.html?_r=2&ref=us).

<sup>110</sup> PROJECT NIA, [www.project-nia.org](http://www.project-nia.org) (last visited February 9, 2012).

<sup>111</sup> Emily A. Greytak, Joseph G. Kosciw & Elizabeth M. Diaz, *Harsh Realities: The Experiences of Transgender Youth in Our Nation's Schools*, GLSEN 18 (2009), available at [http://www.glsen.org/binary-data/GLSEN\\_ATTACHMENTS/file/000/001/1375-1.pdf](http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/001/1375-1.pdf).

<sup>112</sup> NICHOLAS RAY, *LESBIAN, GAY, BISEXUAL AND TRANSGENDER YOUTH: AN EPIDEMIC OF HOMELESSNESS* 12 (2006).

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> AMNESTY INT'L, *supra* note 69, at 31, 51. "Quality of Life' Policing is a law-enforcement strategy that seeks to create public order by aggressively enforcing laws against minor offenses; for example, public drunkenness, loitering, vandalism, littering or public urination. This method of policing is premised on a theory, which asserts that minor social disorder, if left unattended, causes serious crime."

<sup>116</sup> *Id.* at 56–58.

<sup>117</sup> *Id.* at 53.

<sup>118</sup> I mention this in no way to demonize bathhouses, kink, or other sex-positive spaces although I do believe critical race, class, disability, and feminist critiques of bathhouse and leather cultures are warranted. Rather, I mean to highlight the similarities in the attacks on queer youth of color in "Boystown" and how even gay men can be, have been, and are "othered" with accusations of disrupting social comfort. A liberatory approach would work in solidarity, drawing strength in differences and strategizing tactics for mutual support of stigmatized communities, so as not to re-create othering.

<sup>119</sup> Young Women's Empowerment Project, *Girls Do What They Need to Do to Survive, Dedication*, 4 (2009).

<sup>120</sup> *Toward Transformative Justice*, GENERATION FIVE 5 (2007).

<sup>121</sup> One of the incidents of violence sparking the widely attended CAPS meeting involved young people of color where the person stabbed was a 25 year-old Black man. Rex W. Huppke, Dawn Turner Trice & Jeremy Goner, *Weekend Stabbing Adds to Boystown's Street-crime Woes*, CHI. TRIB. (July 6, 2011), [http://articles.chicagotribune.com/2011-07-06/news/ct-met-boystown-fight-20110706\\_1\\_boystown-weekend-fight-young-people](http://articles.chicagotribune.com/2011-07-06/news/ct-met-boystown-fight-20110706_1_boystown-weekend-fight-young-people).

<sup>122</sup> Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STANFORD L. REV. 1241, 1268 (1991).

<sup>123</sup> *Id.* In the context of rape and battery cases, Crenshaw offers many examples of how violence and sexual assault of women of color receives little to no media attention and legal remedy when compared to battery and sexual assault of white women.

<sup>124</sup> CATHY J. COHEN, *DEMOCRACY REMIXED: BLACK YOUTH AND THE FUTURE OF AMERICAN POLITICS* 122 (2010).

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* at 124.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* at 138.

<sup>130</sup> Jim Ludwig, owner of Roscoe's Tavern, a popular gay bar in "Boystown." Kate Sosin, *Boystown Responds to Violence*, WINDY CITY TIMES (July 13, 2011), <http://www.windy-city-times.com>.

windycitymediagroup.com/gay/lesbian/news/ARTICLE.php?AID=32718.

<sup>131</sup> RICHARD WRIGHT, *NATIVE SON* 239–240 (1940).

<sup>132</sup> STREET YOUTH BILL OF RIGHTS, <http://ywepchicago.files.wordpress.com/2011/07/bill-of-rights1.jpg> (last visited Feb. 10, 2012).

<sup>133</sup> Young Women's Empowerment Project, *Girls Do What They Need to Do to Survive* (2009).

<sup>134</sup> *Id.*

<sup>135</sup> CHI-TOWN STREET YOUTH RISE UP!!!!, <http://www.facebook.com/events/255669924465212/> (last visited Feb. 23, 2012).

<sup>136</sup> GENDER JUST, <http://www.genderjust.org/2012-news/news/genderjustchicagomayoralcandidatescorecardreleased/lgbtqagncstudentspayavisittocpschiefronhubermanathome/July6CAPS> (last visited February 9, 2012).

<sup>137</sup> Darren Hayes, *24-Year-Old Indiana Man, Charged in Boystown Stabbing; Facebook, YouTube Aided Detectives*, HUFF. POST CHI. (July 8, 2011), [http://www.huffingtonpost.com/2011/07/08/darren-hayes-24-year-old\\_n\\_893355.html](http://www.huffingtonpost.com/2011/07/08/darren-hayes-24-year-old_n_893355.html).

<sup>138</sup> Yasmin Nair, *Gender JUST protests Northalsted Business Alliance*, WINDY CITY TIMES (September 8, 2010), <http://www.windycitymediagroup.com/gay/lesbian/news/ARTICLE.php?AID=28323>.

<sup>139</sup> For more on this campaign see GENDER JUST, <http://www.genderjust.org/get-involved/committee-on-urban->

[resource-sustainability-equity-course](#) (last visited Feb. 10, 2012).

<sup>140</sup> The Sylvia Rivera Law Project is a legal organization that works to guarantee that all people are free to self-determine their gender identity and expression, regardless of income or race, and without facing harassment, discrimination, or violence in New York. For more information, see SYLVIA RIVERA LAW PROJECT, [www.srlp.org](http://www.srlp.org) (last visited February 9, 2012).

<sup>141</sup> Gabriel Arkles, Pooja Gehi & Elana Redfield, *The Role of Lawyers in Trans Liberation: Building a Transformative Movement for Social Change*, 8 SEATTLE J. FOR SOC. JUST. 579 (2010).

<sup>142</sup> *Id.* at 611.

<sup>143</sup> *Id.* at 614.

<sup>144</sup> See, e.g., Barbara Fedders, Randy Hertz & Stephen Weymouth, *The Defense Attorney's Perspective on Youth Violence*, in SECURING OUR CHILDREN'S FUTURE: NEW APPROACHES TO JUVENILE JUSTICE AND YOUTH VIOLENCE 84, 93 (Gary S. Katzmann ed., 2002).

<sup>145</sup> *Lawrence*, 539 U.S. at 578.

<sup>146</sup> *Id.* at 560.

<sup>147</sup> Sylvia Rivera, *Queens in Exile, the Forgotten Ones*, in GENDERQUEER: VOICES FROM BEYOND THE SEXUAL BINARY 82 (Joan Nestle, Clare Howell & Riki Wilchins eds., 2002).

<sup>148</sup> Young Women's Empowerment Project, *Girls Do What they Need to Do to Survive*, 39 (2009).