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Exceptional Feelings, Ordinary Violence

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Exceptional Feelings, Ordinary Violence

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Dedication

This thesis is dedicated to my mother who, I feel, would be proud.

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Abstract

Exceptional Feelings, Ordinary Violence

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Shepard and James Byrd, Jr. Hate Crimes Prevention Act (2009) and the work of LGBTQ activists in the U.S. I argue that the act consolidates the U.S. nation-state's monopoly on violence by relying on criminal law as a cognitive apparatus and stifles the work of LGBTQ activists and cultural labor to expand or challenge sensibilities regarding violence. I look to the work of trans and queer activists and how they frame "minor" hate crime cases in relationship to space and systems of criminalization. The activism surrounding Sakia Gunn, the New Jersey 7, Chrissy Lee Polis, and CeCe McDonald broaden theoretical account of violence provided by hate crime protections by attending to affect, the body, and space, and make political demands that move beyond criminal law. This thesis attempts to follow those trajectories and provide alternative grammars and methods for addressing violence.

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INTRODUCTION: EXCEPTIONAL FEELINGS, ORDINARY VIOLENCE

On October 8th, 2009, the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act (HCPA) was passed and ratified as an amendment to the 2010 National Defense Authorization Act (NDAA). National LGBT activist groups hailed the passage of the act as a victory, because of its expansion of hate crime protections to include victims targeted for their perceived gender, sexuality, or disability. Through cultural labor and the work of activists, Shepard was transformed into an iconic figure representative of the vulnerability and violence faced by LGBT people in the U.S. Alongside dramatic representations of Shepard's murder in films and plays, LGBT activists mobilized feelings surrounding the case and framed it as a hate crime to make political demands and gain access to legal protections. Feelings of grief were made public and national by processing the case through the apparatus of hate crime protections and organized people who successfully demanded access to hate crimes protections for LGBT groups.

National LGBT organizations like the Human Rights Campaign mobilized the murder of Matthew Shepard and the public feelings surrounding it to demand expanded protections through the Matthew Shepard and James Byrd, Jr. Hate Crimes Protection Act (HCPA). The passage of the act was celebrated as a gesture of the U.S.'s commitment to protecting its citizens and defending the nation. Though the HCPA's passage was a victory for some LGBT groups, smaller, local queer activist groups met it with critique. Organizations like the Sylvia Rivera Law Project, the Audre Lorde Project, and FIERCE were critical of the HCPA because of the reliance on criminal law to

address violence and its passage as an amendment to the 2010 National Defense Authorization Act. The Sylvia Rivera Law Project argued that the HCPA was “a counterproductive response to the violence faced by LGBT people” because of the problem of mass imprisonment, which they explained as “a primary vector of violence in the lives of our constituents,” and the War on Terror. More specifically, these groups understood the passage of the HCPA in collusion with state violence within and beyond the borders of the U.S.

By placing the HCPA in the context with the War on Terror and the NDAA, queer and trans activists highlight the historically specific intersection of LGBT activism and projects of national defense. The passage of the HCPA as an amendment to the NDAA is also suggestive of the ways the War on Terror has affectively shaped the political structure of the U.S. and contemporary LGBT activism on the national level. Queer scholarship such as Jasbir Puar’s *Terrorist Assemblages* (2007) and Chandan Reddy’s *Freedom With Violence* (2011) describes recent turns in LGBT activism that they argue collude with and consolidate national projects of defense and war, thus reaffirming the borders of the U.S. nation-state. Using their work, one could argue that national LGBT activists and supporters of the HCPA as an amendment to the NDAA strategically folded the management of violence and feelings through hate crime protections into projects of national defense.

Puar and Reddy provide useful critical concepts like “homonationalism” for describing the intersection of national LGBT politics and nation building projects. Building upon this existing scholarship, this thesis argues for the role of public feelings

and affect in homonationalist politics. The peculiar intersection of expanded hate crime protections and the War on Terror highlights how the management of violence through hate crime protections functions as an apparatus to make sense of feelings as they intersect with violence in the terms of the nation-state and criminal law. More specifically, this intersection demonstrates the investments of the U.S. nation-state in managing public feelings and violence, and the bio-political and cognitive function of hate crime protections in organizing and preserving the order of nation-state and violence.

LGBT activism and the passage of the HCPA as an amendment to the NDAA suggests the affective contours of the political signaled by the War on Terror, and the function of hate crime protections as a sense making apparatus. By sketching out the affective and emotional structure of the U.S. at this particular moment, we can better understand the kind of emotional strategy LGBT activists used to make effective demands upon the state and to gain protections through emotional appeals processed via hate crime protections. Most notably, feelings of belonging, vulnerability, and national grief were integral to the work of LGBT activists in demanding the expansion of hate crime protections. The passage of the HCPA represented the affective power and promise of the U.S. to protect and defend its citizens.

The murder of Shepard and the HCPA represent a dominant discourse and privilege hate crime protections as a method for approaching violence. While the first half of this paper will think about the method and theoretical account hate crime protections provided for national LGBT groups to make sense of violence, the second

half will turn to recent *minor cases* and queer activism that occurred after the murder of Shepard and before the passage of the HCPA. The cases and attendant activism I place together occur across various localities and approach violence in spatial terms on multiple scales, ranging from the level of the state, the everyday and ordinary, and bathrooms. The cases I will turn to involved Sakia Gunn, the New Jersey 7 (NJ7), Chrissy Lee Polis, and CeCe McDonald and the trans and queer of color activism surrounding them. Each of these cases raise questions for activists invested in the apparatus of hate crime protections as a privileged mode of approaching violence. The activism around Gunn's and the NJ7 case highlight the problem of media coverage and the politics of representation. Gunn's case in particular demonstrates the shadowing effect of Shepard that obscures violent incidents incompatible with national LGBT activism, which found an iconic representative through the ideal, passive victim, Shepard. Considering that Gunn was a black lesbian who spoke back to her aggressor, her case received very little media coverage beyond New Jersey. Despite the lack of national media coverage, the activism and documentary, *Dreams Deferred* (2008), show how the details of the case circulate within the everyday besides the media and the process of collective sense making beyond the terms of hate crime protections.

Though Gunn's case and the accompanying activism demonstrate the ordinary ways information circulates besides the network of national media outlets, the activism around the NJ7 engage with violent and problematic representations of the black lesbians involved in the case. Media outlets like the *New York Times*, *New York Post*, and *NY Daily News* represented those involved in the NJ7 case as outsiders to New York, a "wolf

pack,” and “killer lesbians.” As a counter-response, activist groups including INCITE! and FIERCE situated the violent media representations within discourses and systems of gentrification of the West Village and racism to bring into focus the politics of representation. By contesting the dominant and mainstream representations of the case, these activists complicate understandings of violence that simply reduce it to a question of identity and expand the frame to think about how the gentrification of the West Village informed reporting and the handling of the case by the law.

My discussion of Gunn and the NJ7 pay particular attention to the ways information circulates, is processed, and contested, but is also considerate of the spatial politics each case’s attendant activism stresses. On a much smaller scale, Chrissy Lee Polis’s case raised questions about the violence faced by trans-bodies when using public bathrooms. Attacked by two black women in a Baltimore, Maryland McDonald’s for using a women’s bathroom, Polis’s trans-body violated the gendered structure of the public space. Emerging out of the incident, activist groups like Equality Maryland, TransMaryland, and Trans-United situated Polis’s case next to the failure of Maryland to pass the Gender Identity Anti-Discrimination Act (House Bill 235). The public accommodations clause, which was a part of the act, was framed as an important step to addressing the violence faced by trans people in public spaces. Polis’s case and the political demands emerging from it demonstrate what I call “violating space.” “Violating space” accounts for the way spaces are structured to violate and exclude bodies *and* how bodies violate those structures by simply using the space. Though also useful for understanding Gunn’s case and the NJ7, this term is particularly relevant to Polis’s

because of the effort of activists to legally shift, reorganize, and open the structure of the public spaces. By legally tending to violating space, the demand for public accommodations demonstrates an oblique strategy for addressing violence through the state and beyond criminal law.

Comparing the activism around Gunn, the NJ7, and Polis to Shepard is important because these minor cases engage with and shift us away from hate crime protections as a privileged method for thinking about violence. Though evoking the language of hate crimes, the activism moves beyond the scope of these protections and privilege the event to understand violence as an assemblage of affect, bodies, and systems and discourses of power as they occur in the everyday, micro-political sense. Queer and trans activists treat violence spatially as it emerges to approach it legally within the context of the everyday. The final case I bring into communication with Shepard and the discourse of hate crime protections is CeCe McDonald's. McDonald's case stands out because she provided a personal account and history of her encounters with violence beside media coverage and activist representations and deployments. Through activist blogs including supportcece.wordpress.com and freececemcdonald.tumblr.com, her personal narratives were made public and discuss violence as imminent and impacting and informing the body. In my discussion of McDonald's case, I will look at her personal accounts through the work of Michel de Certeau and Erin Manning to explore alternate approaches to violence through tactics, strategies, touch, and corporeality.

Queer and trans activism around the chosen minor cases is integral to my critique of hate crime protections because they tend to violence at the level of the everyday by

addressing representational politics, the police state, urban and public spaces. Groups like the Sylvia Rivera Law Project, FIERCE, INCITE!, TransMaryland, Trans-United, and activist blogs amplify the dissatisfaction with hate crime protections, point out the limit of criminal law, and attend to the feelings surrounding minor cases. Their work ranges from counter-responses to media representations, the circulation of public feelings, responses to court proceedings, and providing forms of documentation that register affect and the body. Collectively, the activists I engage with move us towards tactical approaches, make sense of feelings against the state, and tend to quotidian and everyday acts of violence. These cases involve women of color, trans-women, and people who inhabit different subject positions. Bringing these cases together will demonstrate that traditional, identity-based ways of approaching violence, whether through criminology, sociology, or area/identity studies have a limit. It is not my goal to dismiss these fields or their methods, because I think they have provided useful ways for addressing violence, but I think that if we are to grapple with the enduring history of violence we will have to develop alternative methods.

Chapter 1: Exceptional Feelings: Grieving Matthew Shepard Through the Hate Crime Protections Act

Federal Hate Crimes: A Brief History

Hate crime protections and its legislative and federal expansions established an entire apparatus for understanding and disciplining this new category of crimes. The emergence of hate crime protections designated a different, exceptional class of criminal behavior motivated by bias, discrimination, and difference to be managed by the nation-state. The development of federal protections, which included increased penalties, funding, and technologies for collecting data, and the adoption of similar laws by a number of states in the U.S. coincided with a proliferation of criminological scholarship and public discourse about “hate crimes.” The ubiquity of “hate crimes” demonstrates the function of these criminal protections as a privileged method for understanding and approaching violence both nationally and within the public sphere through media and culture, but also the means by which we make sense of violence. As an institutionalized apparatus, the predominance of hate crime protections reaffirms the nation-state as the authority on violence.

The history of federal hate crimes legislation can be traced back to the U.S. Civil Rights movement of the 1960s. After the Civil Rights Act of 1964, federal laws addressing violence directed towards people because of their perceived race, color, religion or national origin were passed in 1964. The Federal Civil Rights Act of 1964 recognized a list of federally protected activities and permitted the prosecution of anyone who "willingly injures, intimidates or interferes with another person, or attempts to do so,

by force because of the other person's race, color, religion or national origin" (18 U.S.C. § 245). These legal protections, while only recognized on the federal level, slowly gained acceptance among the States as most passed similar legislation.

Although the Federal Civil Rights Act of 1964 did not describe violent crimes directed towards others because of a perceived difference as “hate crimes,” the protections and definitions offered resembled future legislation. In their book, *Hate Crimes: Criminal Law and Identity Politics* (1998), James B. Jacobs and Kimberly Potter suggest that the concept of “hate crimes” did not exist prior to the mid-1980’s. The language of hate crimes was collectively coined by democratic house representatives John Conyers (D-Mich.), Barbara Kennelly (D-Conn.), and Mario Biaggi (D-N.Y.) as co-sponsors to the Hate Crime Statistics Act of 1985. The act required the Department of Justice to collect and publish statistics on the classification and number of reported hate crimes.

Since its legal inception, Jacobs and Potter show, “hate crimes” began appearing in news articles, and they were discussed by politicians and advocacy groups as an “epidemic” and studied by academics. The appearance of “hate crimes” in public discourse increased exponentially from the mid 1980’s with 11 news articles in 1985, 511 in 1990, and more than 1000 stories in 1993 (4). The emergence and relevance of the criminal category of “hate crimes” proved useful for understanding violence in the terms of identity, bias, discrimination. The utility of such a category distinguished “normal” criminal violence from those motivated by hatred and discrimination within the public sphere, and also allowed the state to track its growth.

The next major expansion to federal hate crimes legislation came in 1994 with the passage of the Violent Crime Control and Law Enforcement Act. The act required the U.S. Sentencing Commission to increase the penalties for violent crimes, which included hate crimes, committed against protected classes of people (28 U.S.C. § 994) and those targeted for their perceived disability in hate crimes protections. Furthermore, the act was cited as one of the “largest crime bill(s) in the history of the country” by the U.S. Department of Justice ("Violent Crime Control and Law Enforcement Act of 1994"). Apart from the Campus Hate Crimes Right to Know Act of 1997 requiring campus security authorities to collect and report hate crimes, significant expansions to federal hate crimes legislation lay somewhat dormant for the following three years.

Since initial protections established in the Federal Civil Rights Act of 1964, hate crime definitions have expanded to include more categories of citizens. As the understanding of “hate crimes” developed, the U.S. nation-state also increased its capacity to recognize and document hate crimes, collecting data regarding demographics, types of crimes, times of crimes, and local police responses to hate crimes. These expansions to federal hate crime protections are important because they demonstrate the institutional discourse and establishment of a state apparatus for collecting information, processing, and understanding violence.

The majority of the information collected by the federal government and state agencies has been useful for criminologists in the U.S. Developing a scientific understanding of hate crimes to propose policy changes in relation to the demands of unprotected social groups to gain inclusion, criminologists contributed to the discourse.

For example, Valerie Jenness and Ryken Grattet's *Making Hate a Crime: From Social Movement to Law Enforcement* (2004) examines the ways social groups process murders, such as Shepard's and Byrd's, in the terms of hate crimes and make demands for institutional and policy changes. By representing the murders through the discourse of hate crimes, social groups and movements are able to gain recognition, inclusion, and access to protections. The central concern for Jenness and Grattet in their book is "how to craft a legal definition of hate crime, focusing attention on which forms of law and policy are justifiable, likely to be effective, and constitutional." (3)

Jenness and Grattet work within the terms of hate crime protections to develop a more precise science for understanding, enforcing, and recognizing hate crimes, rather than highlighting the limits of hate crimes, as queer and trans activists have more recently done. Jenness and Grattet discuss hate crimes protections as a discursive site, and how social movements interpret these laws, make demands, present their victim status, and are recognized and institutionally managed through these protections. The authors state that the construction of murders as hate crimes puts pressure on state and legal structures to expand protections by challenging normative understandings of what identity categories can be considered targets of discrimination and bias (7). By focusing on its negotiability and elasticity, these authors privilege hate crime protections as an approach to violence working within its limits instead of offering alternative methods.

As Jenness and Grattet point out, the emergence of hate crimes as a discursive and criminal category distinguished ordinary crimes from those involving discrimination and bias. The distinction between *ordinary* crimes and hate crimes gave rise to a class of

exceptional violence that was to be monitored and punished more harshly by the nation-state. They state, “In the early 1980’s state lawmakers throughout the United States put forward a novel legal strategy: the reclassification and enhancement of penalties for criminal acts stemming from certain kinds of bias. These laws have since spread to nearly every state in the union” (3). The proliferation of similar laws speaks to the dominance of “hate crimes” as a theoretical account of violence that reinforces the (nation-)state’s power to manage violence among populations in terms of identity and discrimination.

Besides the cogent, scientific approach to violence, the discourse surrounding hate crime protections also recognized the symbolic force of hate crimes. Jenness and Grattet argue, the violence and crimes committed against individuals threatens entire communities and “transmits a terrorizing symbolic message” (3). Furthermore, the passage of legislation and expansion of hate crime protections to recognize and include vulnerable social groups affirms “principles of tolerance” and “reassure(s) the actual and potential victims of bias-motivated violence that their safety will be protected” (4) in the U.S. This affirmation of liberal principles of tolerance carries symbolic power, but also an affective promise to include and protect vulnerable groups. As Barbara Perry’s *In the Name of Hate: Understanding Hate Crimes* (2001) demonstrates, hate crimes make clear the vulnerability of certain identity categories and establish identity as foundational to understanding the violence. She argues that hate crimes enforce social hierarchies and are “a mechanism of power intended to sustain somewhat precarious hierarchies, through violence and threats of violence (verbal and physical). It is generally directed toward those whom our society has traditionally stigmatized and marginalized” (3). What the

work of Perry, as well as Jenness and Grattet, makes clear is that integral to the expansion of hate crime protections is the interpretation of violence through the terms of the liberal nation-state: identity, vulnerability, and exclusion from legal protections. By interpreting incidents within the structure of hate crime protections, violence is folded from the everyday into the level of the state.

Matters of the State: The Monopoly and Management of Violence

The appearance and development of hate crime protections gave rise to a state apparatus for knowing and managing violence, which distinguished “ordinary” crimes from exceptional criminal behavior motivated by difference. The investigation of hate crimes established a field to manage violence at the level of the state and nation.

Although criminology has been useful for understanding violence through the apparatus of hate crime protections, it leaves unquestioned the ideological monopoly on violence and the role of legal orders in managing violence and motility. By apprehending violence through a state apparatus, criminology and the social sciences approach questions of violence primarily through the framework of the law and reify what Max Weber has called “the monopoly of the legitimate use of physical force” in his lecture “Politics as Vocation” (2). Weber argues, “the right to use physical force is ascribed to other institutions or to individuals only to the extent to which the state permits it. The state is considered the sole source of the ‘right’ to use violence” (2). The legitimation of violence, or the state’s use of it, is the professionalization of politics (i.e. the bureaucratization, development, and training of politicians and agents of the state who have mastered the law). Weber’s observations also imply that the right to use violence

coincides with the power of mastering and *knowing* it. The emergence and institutionalization of hate crimes and the discourse surrounding it exemplifies Weber's theory of the state and violence. The predominance and privileging of laws that manage violence reify the state's monopoly. Demonstrated by the increased capacity of the state to research violence, the work of criminologists, and the public discourse and deployment of it to make sense of violence, hate crime protections constitute an epistemological impasse.

Weber describes the development of a particular political professional trained to hold a position of authority, as well as the authorization of the state to manage and know violence. Walter Benjamin also explores this management of violence by the state as a function of legal orders while providing a concept of the political. In his essay, "Critique of Violence," he critiques violence and its relation to law and justice by considering distinctions and justifications of violence within and outside the realm of legality. Benjamin locates violence within a sphere of means and argues, "the legal system tries to erect, in all areas where individual ends could be usefully pursued by violence, legal ends that can be realized only by legal power" (238). What he calls "natural ends" are all subsumed to the law, and individual ends pursued through violence become a threat to the legal system to be managed by laws. Furthermore, by locating violence within the sphere of means, Benjamin is able to identify two functions of violence: lawmaking (241) and law preserving (243). He describes these two forms of violence as "mythic violence" (248) because their dialectic produces a circular logic: any law-destroying act results in a new positing of law that again violently tries to preserve itself (242). The

regulation of violence with state-sponsored violence demonstrates that there is something “rotten in the law” (242), and that the state sustains itself through its gaps and structural failures.

Benjamin’s “Critique of Violence” provides a model for better understanding the ways violence, or even force, and individuals are all subjects of and subjected to law. And while his description of violence and law represents an endless repetition of violent order, he seems to hold out the possibility for the resolution of conflict through non-violent means. An interesting moment in his essay is his discussion around the relations between “man and man” which concern objects (244) within “a sphere of human agreement that is nonviolent to the extent that it is wholly inaccessible to violence: the proper sphere of ‘understanding,’ language” (245). The potential for divine violence (which is “law destroying” (249), “pure power over all life for the sake of the living” (250), and opposed to mythical violence) is embedded in this sphere outside of the order of law, where individual, intimate, and perhaps private encounters occur. This sphere describes a space of encounters that has yet to be apprehended by the logics of the state, and that is beyond the knowledge of those invested in the law.

Weber and Benjamin offer valuable insight into the ways violence, force, conflict, and individual activities are mediated through agents of the state, political and legal orders, and the possibility of attending to violence outside of those structures. Benjamin’s critique of violence, in particular, is important because it not only recognizes the state monopoly on violence but also by conceptualizing a sphere prior to or outside of the law highlights the way violent encounters in the space of the everyday are folded or coerced

into legal orders. When discussing interactions between “man and man” he speaks to encounters between people before they are managed by law or enter criminological discourses. This is a productive moment in his essay because it recognizes encounters outside of the management of the state. It’s a space where violence occurs and is attended to by means beyond the law.

Public Feelings, Political Feelings

Criminologists suggest that effective activist demands for inclusion and the expansion of hate crime must frame cases in recognizable terms: identity, victimhood, and discrimination. Though Perry, and Jenness and Grattet are primarily concerned with how social movements interpret the legal language and discourse of hate crimes, their work overlooks the importance of public feelings for activism that circulate on the level of the everyday. Especially considering the public displays of grief surrounding Shepard’s murder organized by LGBT activists suggest that the mobilization of feelings and affect, and the political pressure they exert, cannot be ignored. Expressions of grief were central in organizing and mobilizing a public to demand hate crime protections that recognized the vulnerability of sexual and gender minorities. Prior to their incorporation into hate crime protections, feelings of vulnerability and grief were common among LGBT communities and were in some sense ordinary. Ordinary feelings were amplified by Shepard’s murder and made sense of *through* and framed *as* a hate crime—they were apprehended through a state apparatus—thus converting public feelings into a matter of the state.

Occurring at the level of the ordinary and everyday, public feelings were

expressed and circulated in the form of candle light vigils, performative demonstrations, and film. Outside the logic and rationale of law, the feelings of LGBT communities were mobilized by culture and performance to renegotiate the terms of existing hate crime protections that excluded gender and sexuality as protected categories. In Raymond William's *Marxism and Literature* (1986), he describes a theory of structures of feeling which accounts for cultural productions as expressing "meanings and values as they are actively lived and felt" and as "a social formation of a specific kind" (133). William's "structures of feeling" is of particular value here because it allows us, in the context of LGBT activism, to analyze the cultural texts and labor surrounding the work of LGBT activists. "Structures of feeling" stresses the political value of culture and performance and shows how public feelings can be in tension with existing hate crime protections. Films and documentaries including *The Laramie Project* (2002), *The Matthew Shepard Story* (2001), *Anatomy of a Hate Crime* (2001), and *Laramie Inside Out* (2004) provided spectacular and dramatic interpretations of the murder, largely through the rubric of hate crime laws. By extension, the spectacular murder of Shepard came to be representative of the vulnerability of LGBT communities that hate crime protections promised to address.

Everyday feelings of vulnerability amplified by Shepard's murder were processed through hate crime protections, thus reproducing the state's monopoly on violence. In *Murder, the Media, and the Politics of Public Feelings* (2011), Jennifer Petersen emphasizes the centrality of affect and feelings in activism surrounding Shepard. Analyzing media representations of the Byrd and Shepard cases and how they politically mobilized public feelings, she states that the national responses to the murders "offer

insights into the politics and power, both cultural and institutional, of public expressions of emotion” (3). By foregrounding public feelings surrounding these cases and the pressure they applied to political institutions, her project works to rethink models of democratic communication and the public sphere (5). Though less concerned with developing alternative strategies outside of hate crime protections, Petersen’s work highlights the law’s mediation between public feelings and the nation. By presenting the details of the cases, media texts were able to organize publics, both nationally and locally, and to produce political responses that affirmed the state’s authority to manage violence. Petersen states that one of the functions of the media and film in the Shepard and Byrd cases was “to construct relations between people and distant events and others” (4). The formation of publics, which challenges notions of emotions as private and privatizing, opens up a space to point out “glaring examples of structural inequity and, at least for some, the failures of justice and political institutions” to demand inclusion (4, 5).

Petersen’s work provides a convincing argument for the power of emotion to effect change in the law. She argues:

[T]he productivity of these cases challenge instrumental conceptions of the role of public communication in political and legal processes and suggest that more affective sides of communication should be taken into account in prescriptions about political communication, which are largely steeped in the language of proceduralism, rationality, neutrality, and disinterest. (6)

Petersen’s work on hate crimes is more concerned with the use of affect to communicate political demands for inclusion and expansion of protections. While I accept the importance of emotion in affecting political discourse, it is also important to be critical of

how affect *enters* discourse and *becomes* recognizable. Deborah Gould's *Moving Politics* (2009) has demonstrated the affective tactics and strategies adopted by LGBT and queer activists during the AIDS pandemic to make political demands for access to material resources. The affective politics she highlights, however, grew out of systems of care taking and information exchange developed by AIDS activists and those abandoned by the state. Opposed to LGBT hate crimes activism that identified with existing political structures and apparatuses to make sense of violence, the affective politics described by Gould during the AIDS pandemic emerged out of the failures and inability of the law to address the needs of communities devastated by AIDS.

For me, what is at stake in Petersen's work and thinking about public feelings is the potential for affect to generate alternate political models and demands outside of existing structures. In her treatment of affect and public feelings, she is less concerned with structural change and more invested in effective deployments of emotion to gain access to existing protections. Petersen states that she departs from Williams' "structure of feelings" to instead focus on "affect in stasis":

I do not use Raymond Williams's term *structures of feeling*, from *Marxism and Literature*, despite its similar effort to tie affect to structure, because Williams's use is so closely tied to emergence and social change and so rooted in debates over structural Marxism. Here I want to understand the structural role of affect in stasis (in Williams's terms, as part of already precipitated social formations) as well as emergence. (173)

The static affects central to Petersen's analysis domesticated through the recognizable discourse of hate crime protections. Put another way, the public feelings surrounding Shepard's murder were apprehended through the apparatus of hate crime protections,

and, instead of leading to alternative approaches to violence, privileged that apparatus.

Although Petersen argues for the pre-discursive aspects of affect to challenge the political language of “proceduralism, rationality, neutrality, and disinterest,” public and national feelings are ultimately domesticated through the apparatus of hate crimes.

Returning to Williams, he suggests that once structures of feeling are reduced to ideology, generality, or institutionalized they lose their affective quality (133). The legal reduction and domestication of vulnerability and grief for “bias,” “discrimination,” and, in general, criminal behavior becomes a way for the nation-state and public to recognize, manage, and codify these public feelings and cases through a legal system. I want to resist the liberal impulse for inclusion present in *Murder, the Media, and the Politics of Public Feelings* and instead think about what oblique strategies might be developed for tending to violence. What other demands might be made if we think about violence through affect and the everyday? How might we think about addressing violence from within the sphere of interaction and exchange mapped out by Benjamin?

Grieving Shepard and Managing Hate

The history of federal hate crime protections demonstrates the emergence and development of a technical, scientific approach to violence. Also, recent LGBT activism and cultural politics and the expansion of existing laws demand an analysis of the intersection between emotional and affective mobilizations and legal managements of violence. In order to demand the expansion of hate crime protections to include gender, sexuality, and disability as federally protected categories, national gay and lesbian organizations such as the Human Rights Campaign (HRC), the National Gay and Lesbian

Task Force, and the Gay and Lesbian Alliance Against Defamation (GLAAD) mobilized public feelings and constructed the Shepard case as an example of a hate crime. Through the Matthew Shepard and James Byrd Jr. HCPA, activist groups mobilized the Shepard case and framed it in terms of hate crime protections to capture not only the affects his murder produced, but also the attention of the nation.

On June 7th, 1998, James Byrd Jr., a black man in Jasper, Texas, was murdered in what was interpreted as an act of hate motivated by a racial bias. Four months later, on October 6th, 1998, Matthew Shepard was murdered in what was also publically recognized as an exceptional act of hate, this time motivated by a homophobic bias. Focusing specifically on Shepard, national LGBT organizations framed and mobilized his case as a hate crime to gain access to legal protections for LGBT communities. Establishing the image of Shepard as a good son and a victimized American became a project of mainstream LGBT groups. Enlisting the help of Judy and Dennis Shepard, the parents of Matthew, the HRC produced public service announcements that represented Shepard and his parents' efforts to turn "their pain into resolve to stop hate violence" (*"HRC Hate Crimes PSAs"*). The messages included Judy and Dennis Shepard describing their lost child as "my son, my friend, my confidant, my constant reminder of how good life can be." The executive director of the HRC, Joe Solmonese, encouraged viewers to take advantage of political "opportunities to advance equality that have never been available" to demand a "common-sense, meaningful hate crimes law." Furthermore, the HRC mobilized the grief surrounding the death of Shepard and paired it with the urgent

call “as Americans” to “take a strong stand against violence committed against our neighbors for simply being themselves” and to “protect all of our citizens.”

Eleven years after Shepard’s murder, the Matthew Shepard and James Byrd Jr. HCPA was passed on October 8th, 2009. The HRC’s urge to turn “their pain into resolve” translated into an expansion of federal hate crime protections. The “common-sense, meaningful hate crimes law” expands protections to crimes motivated by a perceived bias of gender, sexuality, and disability, whereas before the federal protections recognized only those motivated by race, color, religion or national origin. What is also significant is that the act protects individuals regardless of their participation in federally protected activities (i.e. voting and attending public school), and allows the federal government to assist local authorities in the investigation and prosecution of crimes, thus expanding the jurisdiction of the U.S. nation-state to investigate and discipline hate crimes in all areas of the nation.

While hate crime protections were used to make sense of the Shepard case, LGBT activists also deployed what Jasbir Puar has called a homonationalist politics in order to expand those protections and include LGBT identities, and more generally sexuality and gender, as federally protected categories. In *Terrorist Assemblages*, Puar describes homonationalism as a recent turn in LGBT activism that mobilizes “an exceptional form of national homonormativity” and “operates as a regulatory script not only of normative gayness, queerness, or homosexuality, but also of the racial and national norms that reinforce these sexual subjects” (2). Furthermore, homonationalist politics “continue or extend the project of U.S. nationalism and imperial expansion endemic to the war on

terror” (2). By apprehending Shepard’s murder through the legal language of hate crimes and structuring the feelings of the case in terms of national belonging and vulnerability, mainstream LGBT activists deployed a homonationalist politic that also affectively identified with the nation. LGBT activists strategically gained access to hate crime protections by framing of Shepard as a victimized American and demanded that the public, “as Americans,” “take a strong stand against violence committed against our neighbors for simply being themselves” in order to “protect all of our citizens.”

Defending the Nation Against Hate

The passage of the HCPA as an amendment to the NDAA effectively folded the vulnerability of LGBT communities into the larger problem of national defense. Emerging out of a “post 9-11” historical and political landscape and atmosphere of terror, national LGBT activism used not only a discursive and rhetorical strategy but also an emotional activism that was integral to the homonationalist politics surrounding Shepard. Public feelings of grief, sadness, and vulnerability circulating around the murder of Shepard were processed through the apparatus of hate crime protections in conjunction with terror within the borders of the U.S. Hate crime protections came to be understood as an issue of national security, as a necessary step to defend its citizens internally. The use of hate crime protections to apprehend the feelings surrounding the Shepard case made sense of the murder, but also reconsolidated the space and borders of the U.S. nation-state as an amendment to the NDAA. The promise of the act to turn “pain into resolve to stop hate violence” reproduced the nation-state as the site of resolution for Shepard’s murder and violence faced by LGBT citizens. Furthermore, the sense making

that took place reaffirmed the U.S. as *the* site where these bad feelings were circulating and could be resolved to “protect all of our citizens.”

Concealed in the promise of hate crime protections to resolve violence is the function of criminal law and the consolidation of systems of criminalization and imprisonment. The feeling of safety and symbolic value provided by hate crime protections reify systems of state violence through the endless pursuit of the hate that is productive of state’s monopoly on violence. Those doing work around homonationalism have emphasized the trend’s complicity in the reproduction of state violence. As Anna Agathangelou, Daniel Bassichis, and Tamar Spira demonstrate in “Intimate Investments: Homonormativity, Global Lockdown, and the Seductions of Empire” (2008), the promise of decriminalizing and protecting gay sexuality is accomplished through the production of perverse sexualities falling outside of the nation-state that necessitate discipline and punishment (122). Like the production of perverse sexualities inherent to homonationalist politics, the structure of hate crimes operates by producing vulnerable victims and hateful criminals. Agathangelou *et al.* argue, “[i]n these campaigns, the prison offers the seductive promise of security if we might authorize and support the ongoing roundup and lockdown of subjects marked as threatening” (136). The U.S. nation-state’s investment in the vulnerability and threat of violence faced by LGBT takes the form of the apprehension of the violence through criminal law, thus reproducing systems of criminalization.

While not necessarily referring to a particular population or body, the figure of the criminal complements the position of “victim” assumed by LGBT activists to sustain the

monopoly of hate crime protections as means for address violence. The figure of the criminal enables the state's power to manage violence and defend life. The production and management of life by the nation-state, or biopolitics in short, is a theory Giorgio Agamben develops beyond Foucault. Linking biopolitics with his concept of "the state of exception, he argues that in times of crisis or emergency, the production of an "other" life outside of the juridical order creates a state of crisis or emergency determining which subjects belong or don't belong to the nation-state. Agamben's theory of exception is useful for thinking through the political function of positioning of bodies outside of the state, and how the management of them consolidates and preserves the order of nation-state and the national body. Like demands for hate crime protections, the figuration or reproduction of a criminal life threatening to the nation-state justifies projects of nation building and defense.

While the HCPA can be read for its biopolitical function, it is also important to pay attention to the promise of hate crime protections to resolve the future threat of violence. Brian Massumi, writing on terror and 9/11, has described the affective structure of the political and biopolitics in the U.S. In "The Future Birth of the Affective Fact: The Political Ontology of Threat" (2010), he argues that the management of terror and threats that "would happen if they could happen" after 9/11 becomes real through feeling and produces an indefinite state of crisis. In his work, the state is justified in intervening and managing the "future threat" through the capture of affect and sensation. Massumi's theory of threat and the "future fact" helps conceptualize the organization of the threatening event, current productions and deployments of terror, and state managements

of vulnerability. He proposes that “preemptive security is predicated on a production of insecurity to which it itself contributes” (58), where “threat has no *actual* referent” (59). The feedback loop of future threat to present feelings produces an indefinite state of exception, a perpetual state of crisis that must be managed and attended to in order to consolidate the U.S. nation-state. Furthermore, he states that “there is no apparent limit to the generic diversification of threat” (61) where the U.S. public can be threatened by terrorists, or even hateful criminals. The apprehension of violence through hate crime protections recognized LGBT citizens as vulnerable and enabled the perpetual pursuit of a hateful criminal.

Managing Violence, Defending the Nation

The passage of the HCPA as an amendment to the 2010 NDAA demonstrates that the mode of attention to feelings of vulnerability, and the management of the threat of violence through hate crime protections consolidates the political structure of the U.S. nation-state. Furthermore, structuring the circulating emotions through the discourse of hate crime protections suggests that the state and law also function as cognitive apparatuses by which feelings and violence are made sense of—they are given a legal and criminal language. The apprehension of violence through law reproduces the state as *the* site where violence and bad feelings are reconciled.

By reproducing the state’s “monopoly on violence,” vulnerable populations that the HCPA promised to protect were further marginalized as the law also operates along systems and lines of race, gender, sexuality and class. The Sylvia Rivera Law Project, a group that foregrounds racial and economic justice in their work for queer and trans

people of color, have positioned themselves against the HCPA because they understand “mass imprisonment as a primary vector of violence in the lives of our constituents” and “believe that hate crimes legislation is a counterproductive response to the violence faced by LGBT people” (“SRLP On Hate Crime Laws”). Citing research demonstrating the high rates of incarceration of people of color in the U.S., the use of hate crime legislation and criminal law to police marginalized communities, and the failure of hate crime protections to prevent violence, the SRLP works instead to create systems of accountability that do not rely on prisons or policing in order to improve the health and safety for queer communities of color.

As the work of the SRLP demonstrates, the limit of the HCPA is its reliance on criminalization, which further marginalizes and targets trans and queer people of color. By managing violence through state-sponsored acts of force, such as (criminalization and policing, violence directed towards vulnerable bodies is authorized so that the state may exercise its mastery over them and reproduce itself as the sole arbiter of violence. Once again, law and criminalization make sense of violence and public feelings regarding it. The critiques of the SRLP suggests that by neglecting the violence of the state and criminal law itself, the demand for hate crime protections and the HCPA work as a cognitive block or an impasse to prevent alternative modes of attending to and managing violence. The HCPA reconsolidates the violent order of the U.S. nation-state, and restricts the possibility of attending to violence outside the state.

Although historically there have been alternative strategies used by LGBT communities to address violence, most attempts have relied on the police and community

patrolling through “safe street” programs to lay claim to a space or neighborhood through racial profiling. Space, violence, and affect converge when violence is perceived and managed through criminalization, which allows a community or public to feel a unified vulnerability and a need to defend a space and themselves against outside threats.

Chapter 2: Minor Feelings: Minor Cases and Rethinking Hate Crime Protections

I would like to turn now to minor cases that occurred after Shepard's murder, to think about incidents that move beyond the apparatus of hate crime protections. The cases I look at involve Sakia Gunn, the NJ7, Chrissy Lee Polis and CeCe McDonald. I treat these cases as "minor" because of they are peripheral to Shepard's and received very little attention on the national scale. These minor cases express feelings or senses of discontent that are not easily folded into the apparatus of hate crime protections. Activists who have taken up these cases respond to violent incidents by foregrounding questions of affect, the body, and the everyday. The political demands that emerged from these cases used the language of "hate crimes" but also moved beyond demands for increased protections.

By looking to minor cases alongside that of Shepard's, we can think about the different ways violence is made sense of beside criminal law or the state, and the activism as a critique of hate crimes emerging from the space of the ordinary and everyday. Having considered national LGBT responses to violence, and the bio-political and cognitive function of hate crime protections, I'm interested in how queer and trans activists of color use affect and the body to make sense of violence in ways attuned to the everyday, the ordinary, and the state. These cases amplify discontent with the state and its management of violence and offer oblique strategies for addressing violence such as demands for public space, gender neutral bathrooms, police accountability, and housing and workplace rights.

"I don't want outbursts": Erupting Emotions and Collecting Feelings Beside the Archive

On May 11th, 2003, Sakia Gunn, a 15-year-old black lesbian, was murdered in Newark, New Jersey (“Sakia Gunn”). On that night, Gunn and three of her friends traveled to the Chelsea Piers in Manhattan, a space historically used by queer people, and more recently by queer of color youth, as a safe communal space. After spending the evening at the piers, Gunn and her friends took the train from Manhattan back to Newark. When Gunn and her friends arrived in Newark, they walked to a bus stop to wait for the #1 at the corner of Broad and Market Street downtown.

While waiting for the bus, a white station wagon carrying two men pulled up to the bus stop and began harassing Gunn and her friends. Asking them to come over to the car, the women responded by saying “no,” that they were not interested, and also explaining that they were lesbians. One of the men, 29-year-old Richard McCullough, got out of the car and began attacking the women. When McCullough held one of them in a headlock, Gunn and Valencia Bailey, her cousin and friend, fought with him in self-defense. After hitting McCullough, Gunn was stabbed in the chest. McCullough got into the car and fled the scene.

Across the street from the #1 bus stop stands a police booth that is supposed to be manned 24 hours a day. On the night of Gunn’s murder, there was no one in the booth. Looking for help, Gunn’s friends flagged down a car stopped at a light and asked the driver to take them to the hospital—the driver did. During the drive however, Gunn died in Bailey’s arms.

The murder of Sakia Gunn raised many questions for Newark’s LGBT community and gave rise to political activism regarding the safety of queer people of

color. Sparking candle light vigils and rallies in honor and remembrance of Gunn, activists began to raise awareness of the nature of the violence Gunn and her friends encountered that night, the responsibility of the law and law enforcers, and the severe underreporting of the case. In a conversation with Democracy Now's Amy Goodman, LaQuetta Nelson of the Newark Pride Alliance states she was under the impression that "everyone knew about [Gunn]" ("It's a Shame That You Have to Walk Down the Street Not Knowing What's Going to Happen to Us': The Sakia Gunn Murder"). She was shocked to discover this was not true. According to her, it had only been covered in The Star Ledger, New Jersey's major newspaper and appeared nowhere in national mainstream news. In the same conversation with Democracy Now, Jamon Marsh, Gunn's girlfriend, stated her high school did not provide a memorial service "because [Gunn] was gay" and argued there was no grief counseling offered to Gunn's friends. Although little to no grief counseling was ever provided to Gunn's friends, public displays of grief, including a candle light vigil at the scene of the murder, opened up and allowed for feelings to circulate—a space of grief, anger, and rage was organized and allowed for collective sense to emerge.

As Kim Pearson demonstrates in "Small Murders: Rethinking News Coverage of Hate Crimes Against GLBT People," the amount of coverage Gunn's case received paled in comparison to Shepard's. Although the case occurred only six months after Shepard's, there was very little media attention given to her murder. The effect of this disproportionate reporting establishes Shepard as the "yard stick" by which other cases are measured and compared—he becomes the example (159). Furthermore, the neutral

position reporters claim to inhabit, and the desire to cover stories that speak to a “general audience” and imagined public neglects cases like Gunn’s and the problems the incident, and activist treatments of it, gestures towards—the failure of the case to reach a national level, the unaccountability of the police in Newark, and the lack of resources available to those grieving.

Despite the lack of mainstream media coverage given to Gunn’s case, there have been attempts to document and circulate the details of the incident. Though not reaching an audience as broad as mainstream media outlets, documentaries like *Dreams Deferred: The Sakia Gunn Film Project* (2008) archived Gunn’s murder, while demonstrating the way information travels by word-of-mouth and activism. Created by Charles B. Brack, the documentary depicts the trial of Richard McCullough, weaves in interviews with some of those who had an intimate relationship to Gunn, and also depicts the aftermath of her murder. The documentary does not attempt to fold Gunn’s murder into the larger and dominant archive of Shepard. Instead it evokes the language of hate crimes while simultaneously amplifying the silences in the Shepard/hate crimes archive that overshadow those cases that transgress institutional understandings of hate crimes. It thus gestures to something beyond criminalization as the appropriate or only response. Revealing the relative silence surrounding this hate crime by weaving together interviews from across the U.S., this documentary offers a critique that is collective and comparative and that emerges from experiences in the everyday.

Dreams Deferred opens up with Peter Wong of the Harvey Milk LGBT Democratic Club in San Francisco asking, “[w]ho is Sakia Gunn?” The documentary

moves between those who have and haven't heard of Gunn's murder. Collectively, they piece together fragments of the incident: she was a black lesbian in Jersey who got murdered by a black man "because of some hate crimes." Bringing together details of the case and accounts of it, the documentary creates a narrative of Gunn's murder but also underscores the collective, decentralized, and ordinary circulation of information. One person being interviewed says that it wasn't a surprise at all that he didn't hear about a black lesbian from Jersey being murdered: "what did you expect?" Although the underreporting of Gunn's murder was predictable considering her identification as a black, gender queer, lesbian, the documentary circulates the details of the case, while also demonstrating the ways in which information travels by word-of-mouth outside of the media.

Despite the lack of media attention given to Gunn's case, the documentary performs a decentralized, collective process of sense making. The circulation of Gunn's case intensified discontent with hate crime protections and the lack of attention given to her case. Speaking from the Castro in San Francisco, Cecilia Chung states that the murder speaks to the hatred people have towards the LGBT community, but what is more appalling to her is "the apathy of our own community, the lack of interest of the media to really show what happened to the community...she got killed because she was courageous enough to speak the truth about who she is"—to declare herself as a lesbian. Though Gunn's lesbian identity was used to make sense of violence as a homophobic hate crime, the documentary complicates that argument by emphasizing the intersection of her sexuality, gender presentation, race, and class. *Dreams Deferred* underscores the

difficulty of making sense of the case as simply based on sexual identity, or identity in general. Clarence of the NYC Gay and Lesbian Anti-Violence Project argues that questions of race were obscured or effaced from discussions about Gunn's murder, expressing an ambivalence about framing the case solely through the lens of homophobia.

Bringing together fragments of the incident, the documentary's assemblage of interviews functions similarly to courtroom proceedings that bring together witnesses, testimony, and lawyers who interpret the evidence to make sense of the incident. Juxtaposed with the sequence of interviews, the documentary also plays footage of the case's court proceedings. While deploying a courtroom style, the documentary also focuses on the everyday to make sense of the tensions between Gunn's murder, its public reception, and management by the state. As the interviews suggest, Gunn's murder was publically understood not only as a hate crime, but also in terms beyond criminal law. In the footage of the courtroom, the Judge states that while the case is "highly charged in emotion," he expects those present to behave themselves, saying "I don't want outbursts." While McCullough's lawyer argues this was not a bias motivated crime, because McCullough had no history of criminal behavior and did not go out with the intention to harm someone because of who they were, Valencia Bailey, Gunn's best friend, can be seen crying in the courtroom. As the interviews demonstrate, the emotionally charged case intensified public feelings and led to outbursts to occur outside of the courtroom. In Gunn's case, affects proliferate, and there is an intensification of the already existing discontent concealed and shadowed by the Shepard case. The

documentary amplifies discontent with hate crime protections by drawing in and connecting minor affects expressed about the lack of media coverage, and feelings of neglect, abandonment, grief, and ambivalence. What Gunn's case and the work surrounding it also speaks to are the multiple ways violence is represented and the affects that are captured or allowed to escape and disperse serve to obscure the violence embedded in space.

The political demands and activism that emerged from Gunn's case registered the minor affects and addressed violence beyond increased hate crime protections. One of the demands made by Nelson and other activists was for the establishment of a community center for LGBT youth in Newark and also a larger police presence in the Newark area.

In a conversation with Democracy Now, LaQuetta also stated:

There also needs to be, in my opinion, some education that takes place in the city of Newark to reeducate the legislators as well as the people in the city, about the lives of gay and lesbian bisexual and transgender people to hopefully at some point in the future eradicate the atmosphere of hatred and bigotry in Newark that's directed towards this particular community so that the children will feel safe to walk the street, and not feel that they're going to be targeted by people with hate in their heart. ("It's a Shame That You Have to Walk Down the Street Not Knowing What's Going to Happen to Us": The Sakia Gunn Murder")

LaQuetta's demands are telling of the ambivalences or hesitations in making political demands for space and a larger police presence. In other words, her demands for the education of political officials and agents of the state suggest that political and legal structures themselves might also reproduce the violence queer communities of color face.

Thus, demands for safe community spaces, housing, and youth leadership training

become important indirect ways of addressing violence.

At a memorial service for Gunn, Spanky Ross, a friend of Gunn, spoke about the vulnerability and violence she and her friends face: “In Jersey, we really don’t have anywhere to go. To be freely [sic] about our sexuality. So we come out here to be around people like us. I really don’t know what to say...” Left without words, the crowd started cheering Ross. After a minute, Ross began speaking again: “It’s a shame that we have to walk down the street not knowing what’s going to happen to us” (“It’s a Shame That You Have to Walk Down the Street Not Knowing What’s Going to Happen to Us”: The Sakia Gunn Murder”). Her eyes began to well up with tears, and she walked off stage crying. The camera recording the service frames Ross with New Jersey behind her, across the Hudson River. Feeling unsafe in Jersey, Ross describes New York as offering safety and space for queer youth. However, Ross also demonstrates that “not knowing what’s going to happen” weighs on her mind, and her tears suggest ambivalence about New York’s status as a LGBT safe haven.

Although Pearson argues that Gunn’s case is overshadowed by Shepard’s in terms of media coverage, *Dreams Deferred* demonstrates and performs the ways information circulates outside of mainstream media. As the information travels, people also process it in terms of their lived experiences and the everyday. Ultimately, what I think the documentary shows is the process of sense making that occurs among people as a case like Gunn’s travels. By collecting interviews performed in different locations and contexts, the documentary provides a meta-commentary on this process and provides a model of collective sense making. The recontextualization and reframing of certain cases

is central to cultural activism, because it thinks about violence in broader terms than of hate crime protections.

The NJ7: Framing the Visual, Framing the Crime, and the Problem of Representation

Another example of this activist strategy involves the case of the N7. Responding to violent media representations of the women involved, activist groups like INCITE! and FIERCE situated the case among larger systems of gentrification and the politics of representation to think about violence in broader and spatial terms. On Aug. 16, 2006, just three years after Gunn's murder, seven young, black, lesbian-identified friends were walking in the West Village ("Lesbians Sentenced for Self-Defense"). As they passed the Independent Film Cinema, Dwayne Buckle, a 29-year-old Black man selling DVDs, sexually propositioned one of the women. Reports of the attack state that the women told Buckle they were lesbians and not interested—the women continued to walk away. A surveillance camera from a nearby store captured the encounter that would come to be known as the New Jersey 7 (NJ7). As the women walked away, Buckle shouted, "I'll f—you straight, sweetheart!" He followed them, screaming homophobic slurs, grabbing his genitals and making explicitly obscene remarks. The women stopped and confronted him. As the encounter escalated, the verbal confrontation quickly became a physical one. Buckle spat in the face of one of the women and threw his lit cigarette at them. In the video, Buckle can be seen grabbing and pulling out large patches of hair from one of the young women. At some point during the attack, Buckle ended up on top of one of the women, choking her. Johnson pulled a small steak knife out of her purse. She aimed for his arm to stop him from killing her friend. The video captures two men finally running

over to help the women and beating Buckle. At some point he was stabbed in the abdomen. The women were already walking away across the street by the time the police arrived. Buckle was hospitalized for five days after surgery for a lacerated liver and stomach. When asked at the hospital, he responded at least twice that men had attacked him.

After almost a year of trial, four of the seven women involved with the NJ7 case were convicted in April 2007 and charged with gang assault in the 2nd degree, a Class C felony with a mandatory minimum of 3.5 years. On June 14th, 2007, with three of the women accepting plea offers, the remaining four (Venice Brown (19), Terrain Dandridge (20), Patreese Johnson (20), and Renata Hill (24)) received sentences ranging from 3 1/2 to 11 years in prison. Johnson was additionally charged with first degree assault. None of them had previous criminal records.

Despite the video footage caught on the surveillance camera and used as evidence, the women were framed as aggressors by the New York City media, criminally charged with gang assault, and subsequently given prison sentences. Media reports of the NJ7 case framed the women as aggressive, violent outsiders. Reports from New York City based papers, including the *New York Times* and the *New York Daily Press*, were problematic at best. On August 19, 2006, the *New York Times* published one of the first articles reporting on the case. Titled “Man is Stabbed in Attack After Admiring a Stranger” (2006), the report suggests that Dwayne Buckle, “the victim...from Queens” made a harmless comment and paid a compliment to a woman who walked past him. According to the *NYT*, the encounter began around 1:55 AM in front of the Independent

Film Center. Buckle, “a sound mixer...working on an independent film, ‘The Minority,’” noticed the women and asked, “How are you doing?” The article positioned Buckle as a productive member of the Greenwich community and framed his comments to the women as harmless and friendly—he was simply admiring the women. “He liked how the woman in white wore her hair,” to which the women “shot back a caustic remark.” After words were exchanged between Buckle and the women the situation escalated. According to the *NYT* article, the women initiated the fight when they slapped and spat at Buckle. When Buckle retaliated, “the entire group attacked him” and other people joined in. At the end of the scuffle Buckle had been stabbed.

The *NYT* article raised questions about the relationship between representation and violence. Representing Buckle as a victim of a misunderstanding, the article also neglects the accounts of the women involved who say they were defending themselves from him. In the article he states, “[i]t's not a crime to say hello to a human being...Now, I think I'll know which girls not to talk to.” So “which girls” was Buckle referring to? While the article describes the women as outsiders from New Jersey, according to an article published in the *New York Post*, he encountered “killer lesbians” (Italiano, “ATTACK OF THE KILLER LESBIANS”). The *NY Daily News* repeated similar, violent representations in a more animalistic tone. Calling the women “a howling pack of lesbians” the *NYDN* represented the women as a “lesbian wolf-pack” (Martinez, “Lesbian Wolf Pack Guilty,” and Ross, “Pack Howls - Judge Won't Bend”). The case even reached the national level when Bill O'Reilly reported on the crime as symptomatic of a larger, national concern in a report titled “Violent Lesbian Gangs a Growing Problem” (Day,

"Killer Lesbians Mauled by Killer Court, Media Wolf Pack").

Despite the overwhelming amount of hostile media coverage, many activist groups like INCITE! and FIERCE and progressive media blogs reframed the case and situated it within larger, structural systems of gentrification in NYC and state violence. The media coverage, both national and local to NYC, framed the encounter as a violent misunderstanding that disallowed the accounts of the women involved in the NJ7 case. In an article titled "Critical Lessons From the New Jersey 7" (2008), INCITE!, a woman of color national organization, state that the women were defending themselves from a "homophobic sexual assault." The article states that Buckle shouted "I'll fuck you straight, sweetheart!", spat at the women, and then proceeded to attack them. The article argues that despite the videotape of the events, the women were still criminalized: "This horrifying event is a stunning crystallization of multiple kinds of violence." They continue to argue that women of color and queers of color "do not fit the racialized and gendered mold of who gets to be perceived as legitimately victimized or legitimately resisting oppression." They list a number of normalized representations of violence that neglect the historical experiences of women and queer people of color, including the failure to report police brutality endured by heterosexual black, and Latino men, the narrative of innocent white women and domestic and sexual violence, and the limit of hate crime protections.

In addition to invoking these normalized representations, INCITE! contextualized the events of the NJ7 case within the systemic gentrification of the West Village and class marginalization to also understand the violence as spatially and systemically

embedded. In reports from the court proceedings, the presiding judge commented that this “incident creates an unsafe place for tourism.” In “The FIERCE Fight for Power and the Preservation of Public Space in the West Village,” Rickke Mananzala of FIERCE provides a history of the West Village’s gentrification and comments on the historical significance of the West Village as the site of gay activism and the Stonewall Riots. Detailing a number of legislative acts, developments of public-private partnerships, and policing practices, the article argues that queers of color, and particularly queer youth of color, are being unfairly targeted and marginalized by the police and the new West Village community.

The reports of NYC media and also those of the activists groups demonstrate that no representation assumes a neutral position. What is important to pay attention to is how the framing of the case and evidence in The West Village and New Jersey affects our understandings of the violence and who belongs. These reports and frame who belongs and who doesn’t. Furthermore, the activist responses address the misrepresentations of the women as violent, and complicate them, but also move beyond a representational analysis. Some frames violate the body while others attack the structure, like the work of INCITE! and FIERCE that expanded the frame of the case to include not just those involved, but also the discourses and spatial systems their encounter with violence was embedded in and emerged. By critiquing and responding to problematic media representations, INCITE! and FIERCE put bodies and spaces in a productive tension that moves beyond the logic of hate crime protections, and thinks about violence in spatial terms. That the NJ7 responded to the homophobic and sexual slurs and physical assault

with self-defense speaks to a limit of hate crime protections. The women of the NJ7's use of self-defense made it impossible to represent them as pure victims like Shepard, and highlights a representational limit of hate crime protections and who can legitimately use violence. The body and what it is capable of doing is mediated by representations and state structures that manage violence and space.

As the work of FIERCE and INCITE! demonstrate, systems of gentrification create hostile environments, while simultaneously framing and managing that violence as an outside threat. In the case of the NJ7, bodies moving through a space and representations of those bodies bring us closer to violence not as an effect of subject positions, but as something spatially embedded. The term “violating space” allows us to think about how space violates, but also how space can be violated. Gunn's and the NJ7 case speak to larger structural forces and pressures. For example the violence confronted by the NJ7 was an effect of and affects the issue of gentrification in the West Village. Cases like this and the discourse of gentrification surrounding it raises questions about structural issues and space—Who belongs? Who can be in the space? Who can occupy it? Who can move through it safely? How does space violate, and how is space violated? Beyond questions of identity and belonging, these cases raise questions about which bodies are allowed or are permissible in particular spaces.

As the activist work surrounding Gunn highlighted the larger atmosphere and culture of violence within the mainstream media and state, the activist work around the NJ7 case situated the violence in localized terms. These multi-scalar approaches to violence, I suggest, focus on the proximate and everyday, while still providing a critique

of federal hate crime protections that works from the bottom up. Though smaller in scale, these critiques collectively offer different ways for thinking about violence as spatial, material, and felt within the ordinary. The work of activists hone in on the ways national, state, and local legal structures interact with, contain, and manage violence in spatial terms. By doing so, their work offers alternative methods of approaching violence with attention to space and bodies.

Violating Space: Law, Space, and Violence in the Chrissy Lee Polis Case

Another case that evokes the language of hate crime protections while moving beyond it involved Chrissy Lee Polis, a white trans-woman attacked in a Baltimore, Maryland McDonald's. As with Gunn and the NJ7's, activists approached Polis's case with attention to the political context and questions of space, but on the much smaller scale of bathroom politics when compared to urban politics. Considering the failure of the Maryland General Assembly to pass the Gender Identity Anti-Discrimination Act, the activists groups including TransMaryland and Trans-United framed the case to demand reconsideration of the act through public accommodation laws to provide gender neutral bathrooms. The attention to the regular occurrence of violence, in a space as ordinary as a McDonalds, triggered over Polis's use of a women's restroom suggests that space is structured not only to exclude certain bodies, but also to create an atmosphere of violence and vulnerability. By focusing on the threat of violence trans bodies experience when using public restrooms, the activists working on the case move beyond hate crime protections to address other kinds of violence.

On April 18, 2011, a video depicting Polis being attacked by two black women in

a Baltimore, Maryland McDonalds emerged on worldstarhiphop.com and immediately went viral. As Polis was being attacked and dragged around the restaurant by her hair, a McDonald's employee stopped working to film the incident. The video recorded two black women, 19-year-old Teonna Monae Brown and a 14-year-old woman whose name was not released by the police, attacking 22-year-old Polis. During the attack, workers can be seen stepping in between the women to interrupt the attack, and 55-year-old Vicky Thomas is seen physically stopping the women from attacking Polis. At the end of the video, Polis begins to seizure and the workers can be heard telling her attackers to "get out of here." The women were eventually arrested. It is reported that the attack began because Polis was using the women's bathroom.

Immediately following the incident, Polis was hospitalized. When she was released from the hospital, she spoke with the Baltimore Sun about the attack on April 24th, 2011. Detailing the nature of the attack, she said her attackers had announced, "[t]hat's a dude, that's a dude and she's in the female bathroom," when she stopped at the McDonald's to use the restroom. In the same article her brother, Matty Polis, tells the reporter that she "has gotten this her entire life." Furthermore, Lisa Polyak the vice president of the board of directors for Equality Maryland argued, "[s]he was simply trying to use a public accommodation. People should not feel threatened when they exist in public space." Polis's account of the attack echoes that of trans activists in Baltimore, which was that her body was in danger because of the gendering of the bathroom.

As soon as the video became viral, Baltimore trans activists mobilized. Days before the attack, the Maryland General Assembly had failed to pass the Gender Identity

Anti-Discrimination Act (House Bill 235). Though groups like Equality Maryland were in support of the bill, organizations such as TransMaryland and Trans-United argued the bill was inadequate because it did not include “public accommodations.” The provision to ban discrimination in public accommodations (which would cover restaurants) was removed by the bill’s sponsor, Del. Joseline Pena-Melnyk, who cited difficulty in passing the inclusive legislation because of legislators’ fear of addressing the issue of bathrooms with public accommodations. When “public accommodations” was struck from the bill, Equality Maryland framed it as a political strategy and celebrated the passage from the House to the Senate. The bill passed into the Senate would have banned discrimination on the basis of gender identity in employment, housing, and credit. Though work place and private property rights were important for TransMaryland and Trans-United, the public accommodations provision was seen as integral to addressing the public safety of trans people.

For Equality Maryland, Trans-United, and TransMaryland, the video demonstrated the heightened vulnerability trans people face in public spaces. Furthermore, using the failed passage of the Gender Identity Anti-Discrimination Act, the activists framed the video in relation to the law to think about the ways legislation could be used to open up public accommodations and provide economic protections. The video of the violence provoked by Polis’ “trespassing” into a women’s bathroom was framed as evidence of the ways space is structured to make it difficult for trans bodies to move and hence sustains an immanent violence.

The demands of trans and queer activists for public accommodation laws address

violence by means other than criminalization. Maryland activists made demands for public accommodation laws that addressed the immanent potential for violence that makes trans-people anxious about gendered bathrooms. The activists framed the video in terms of space and bodies in relation to the law, while simultaneously transgressing the language of hate crime protections, like the activism around Sakia Gunn and the NJ7.

Following the article by the Baltimore Sun, a rally was organized by Trans-United and TransMaryland on April 25th, 2011. Converging at the McDonald's where the attack took place, the rally was meant to bring attention to the violence faced by the trans community in Baltimore. In a video titled "Chrissy Lee Polis: A Rally for Peace," a participant in the rally depicted the "calm atmosphere, the warm embraces, and the support of signs" that let the Virginia-based video maker "know that [she] was in the right place." Sandy Rawls of Trans-United stated, "[w]hen people see us, they don't understand us. So it's an educational problem." Blaming "a violent culture," Rawls highlights the ways violence could be addressed culturally and also through education. The cultural politics expressed by her also locate the violation outside the scope of hate crime protections to raise questions about representations, visibility, and the feeling of being public for trans people. Drawing together trans activists from around the Baltimore area, including Mara Keisling of the National Center for Trans Equality in D.C., the rally also drew the attention of groups like the Baltimore Guardian Angels a non-profit volunteer organization that "provides security and support to communities in need." Working with local police, community organizations, neighborhood watch groups, schools, and individuals, they "help build stronger and safer communities and inspire

positive change.” In the video, a member of the Baltimore Guardian Angels states: “It’s a senseless act of violence, and uh that’s why we’re here, because we want people to know that we’re here to support the community and uh to make people aware that we find this unacceptable, like all people.”

The case raises questions that the apparatus of hate crime protections do not account for, namely that of space and how violence is embedded in it. At the level of the everyday, in spaces like a McDonald’s, trans bodies can encounter violence for simply using a restroom, which legislation including public accommodations and gender identity discrimination would address. The work of activists and the rally demonstrate this attention to space and violence that is commonly expressed and known by trans people.

Though the demands of trans and queer activists for public accommodation laws address violence through the state without relying on criminalization, what needs to be further interrogated, however, is the end of the video where Polis’ attackers are told to “get out of here.” Though the outcome of the case was a hate crime conviction and 10 years in prison for Brown, and juvenile detention for the 14-year-old woman, I’m curious as to how we might grapple with this peculiar moment in the video. It would be easy to view the conviction as just, but it does not address the women are, again being told to flee, which is conveniently left out of the frame by most activists. While I don’t deny that the beating was horrendous, I think the end of the video suggests something about the relationship of black bodies to the law and law enforcement agents. The complexity of this case regarding race, gender, and surveillance require us to develop alternative ways of attending to violence, documentation, and space that don’t merely rely on the

imprisonment of criminal bodies.

Outside the Framing of Violence

I would like to turn to two cases that occurred prior to Chrissy Lee Polis's to think about the relationship of black bodies and transbodies to the state and criminal law, and to focus on the limit of the frame or what is beyond the scope of the demands made by Maryland's trans activists. Two months before Polis's case, Tyra Trent, a 25-year-old, black transwoman was murdered in Baltimore. She was reported missing two weeks before her strangled body was discovered in the basement of a vacant city-owned home. At a candle light vigil in remembrance of Trent someone states, "They don't really care for the wellbeing of our community because we are transgendered." In this story, broadcast by Baltimore ABC News, the reporter states that those concerned with Trent's murder felt as though the cops were neglecting the case. Between 2003 and 2008, Trent had a criminal record including dozens of arrests for loitering and prostitution. Since then she had not been arrested. Speaking on Trent's case, Sandy Rawls, director of Trans-United, stated:

The whole transgender community is at risk... We don't have the economical foundation set up for us as transgender people. We can't go into jobs without being discriminated against, and it's really hard for individuals to be themselves and have a way of living. Sometimes they end up doing wild things to survive, and they end up in dangerous situations.

The case was still unsolved nine months after Trent's murder.

The feelings of neglect and abandonment voiced by those working on Trent's case were also evidenced in the case of Tyra Hunter, a black transwoman in Baltimore. On

August 7, 1995 Hunter died after a car accident, because a firefighter at the scene, Adrian Williams, refused to aid her when he discovered “[t]his bitch ain't no girl...It's a nigger, he got a dick." When she was finally brought to the hospital, a doctor refused to treat her. Hunter died of blunt force trauma at 5:20 PM. Cases like those of Trent and Hunter invite us to think about the relationship of black bodies to agents of the state. Neglecting to address and solve the murder of Trent, and failing to provide medical attention to Hunter suggests a common sentiment—that the police are not necessarily trustworthy.

Cases like this invite us to think about violence beyond the apparatus of hate crime protections and criminalization, and against the political and structural violence. The feeling of abandonment expressed by these interviews are telling of the relationship between the black transbody, economic structures, and the state. Lack of access to jobs or discrimination and hostility in the work place, and transphobic neglect from institutional structures and agents of the state, these accounts make sense of violence in terms of everyday experiences magnetized to black transbodies. Polis's case and these incidents do not foreground identity as their central analytic, but instead think and feel violence through the body within particular spaces regulated by the state. To think about space and violence, however, would require thinking about the everyday as it intersects or collides with the state. If we are to address violence we will need to go beyond merely relying on agents of the state and law enforcement to protect us, because in some cases they are the threat.

As the cases of both Hunter and Trent demonstrate, to simply rely on criminal law and hate crime protections as the only way to approach violence would mean neglecting

the bodies of black transwomen or the violence encountered by bodies without recourse to hate crime protections or the state. Furthermore, these cases demand that we move beyond the frame of visual “evidence” and spatial borders if we are to get closer to violence. What the cases have demanded thus far, beyond the legal and state demands, are the interrogation of the methods and theories that allow us to make sense of violent encounters that may collude with methods of the state, and have invited us to think within but also beyond them in queer ways that foreground the body.

CeCe McDonald: Arresting the Senses and Bodies that Feel Otherwise

I turn now to a recent incident involving CeCe McDonald, a black transwoman in Minneapolis, Minnesota. McDonald’s case is important because of the personal accounts she provided after the case. Maintaining a public persona through activist blogs such as supportcece.wordpress.com, McDonald provides a personal history that complicates understandings of hate crimes by describing everyday encounters with violence. Unlike Shepard, whose death was narrativized by national LGBT organizations, film, and performance, McDonald provides her own history to demonstrate the ordinariness of violence.

On June 5, 2011, police responded to a report of a stabbing at the intersection of 27th Avenue South and 29th Street in Minneapolis, outside of the Schooner Tavern. McDonald was walking to the grocery store with a group of friends (all of them queer youth of color) in Minneapolis, Minnesota, when they passed a local bar. A group of older, white people who were standing outside the bar’s side door began harassing McDonald and her friends with racist, homophobic, and transphobic slurs without

provocation. When McDonald approached the group and told them that she and her friends would not tolerate hate speech, one of the women said, "I'll take you bitches on" and smashed her glass into McDonald's face. Her cheek was punctured all the way through, lacerating her salivary gland. Following the physical attack, a fight ensued, during which one of the attackers, Dean Schmitz, was fatally stabbed.

With two counts of second-degree murder, McDonald was the only person faced with charges. The death of Schmitz was the main concern of the court at her trial, which began on April 30, 2012. McDonald denied stabbing Schmitz with a pair of scissors and claimed he had run into them. During the process of jury selection, Judge Moreno denied several motions from the defense to submit details about the victim and his past as evidence, including a photo from the autopsy report showing Schmitz's swastika tattoo and his criminal record (Pasulka, "The Case of CeCe McDonald: Murder-or Self-Defense Against a Hate Crime?"). According to Andy Birkey in *American Independent*, "The judge ruled that his criminal history was sufficiently different from his actions on June 5 and therefore could not be shown to the jury" (Birkey). The judge also ruled that the defense could not call an expert witness who would testify to transgender people's experiences of violence in their everyday lives. Furthermore, Chuck Laszewski of the Hennepin County Court stated:

Over the past several months, the Hennepin County Attorney's Office has received a number of comments from some members of the LGBTQ community criticizing our handling of a case... Our role as prosecutors is to examine the facts provided by police investigators and determine if there is sufficient admissible evidence to bring a charge. It is our mission to serve justice and public safety. Gender, race, sexual orientation and class are not part of the decision-making process.

The trial and court proceedings highlight the limits to using the court as a site for resolving violence. Preventing testimonies regarding prior histories of violence and neglecting identity (which immediately dismisses the case as having anything to do with hate crimes) isolates the violence McDonald encountered to the night of June 5th, 2011, and the evidence to what the police reported. But as the Gunn, NJ7, and Polis cases demonstrated, violence cannot be isolated or contained to a specific site, and is immanent everywhere: violence travels, manifests, and assembles.

Following the incident, a blog was formed to support McDonald and to mobilize a public to demand her release and charges be dropped. The blog argued that “[b]y not recognizing the hate crime committed *against* CeCe, Hennepin County continues to side with her white supremacist attackers” and urged supporters to contact the Hennepin County Attorney, Michael Freeman, and ask that the charges against McDonald be dropped. By failing to recognize the violence committed against McDonald and her friends because of their queerness as a hate crime, the court failed to recognize the incident as one of self-defense. Leslie Feinberg, in support of McDonald, has argued that “[t]he right of self-defense against all forms of oppressions—the spirit of Stonewall—is at the heart of the demand to free [McDonald]” (“Support Statements”). The failure of hate crime protections to make sense of this case is evident in McDonald’s sentence to 41 months in prison to begin on June 5, 2012. As the SRLP and numerous grassroots activists argue, the state, criminalization, and practices of policing fail to serve the most vulnerable populations and, in fact, often target and further marginalize those hate crime

protections are thought to serve.

In the face of what might have been recognized as a hate crime (as many of McDonald's supporters argued, and the Hennepin County Attorney Michael Freeman failed to acknowledge) and the lack of support from legal institutions, what was McDonald to do? How were she and her friends to make sense of and respond to the violent attack? How was she to navigate this particular event and space? Would the case have turned out differently had she been docile and Schmitz still alive? Was self-defense not an option for McDonald in relation to the law and hate crime protections? If she wasn't allowed to defend herself, who would have? I raise these questions to underscore the limit of hate crime protections and what they are not able to recognize. If we are to accept Shepard's representation as the ideal hate crime victim, then Gunn, the NJ7, Polis, and McDonald's cases cannot be made sense of through the apparatus of hate crimes. The violence they and the activists responded to place them beyond the scope of hate crime protections. In these cases, they approached violence on their own by speaking back to it and defending themselves against it, and in some cases risked their lives.

Everyday Violence, Ordinary Violence

While McDonald faces 41 months in prison, there remains something articulated in her blog entries that gestures towards a different understanding of violence grounded in the ordinary, and beyond legal understandings and representations of hate crimes. In Thomas Dumm's *Politics of The Ordinary* (1999), he describes ordinary, everyday lived experience "in an always indefinite relationship to the event." Bringing together the work of Stanley Cavell and Foucault, he argues for a way "to protect the ordinary from that

which is ordered so as to enable plural possibilities of ways of being free in an increasingly administered world” (22). Similar in concept to Deleuze and Guattari’s “plane of imminence,” the ordinary is the site of potential, where events emerge, order and structure the ordinary.

Although McDonald’s case and experience with violence on the night of June 5th might be considered exceptional or discrete within the terms of hate crime protections, her blog entries suggest otherwise (“CeCe’s Blog”). Describing her experiences growing up in an entry titled “AS LONG AS WE LIVE IN FEAR,..... WE LIVE IN IGNORANCE....”, she states, “I can remember having loaded guns being put to my head and being beat until bloody.” After leaving her black community for a more suburban and predominantly white neighborhood, she remembers “people grabbing their purses and children, like I was a thief and was going to steal their money and kids” and still be called a “queer” and “faggot.” Her movement from community to community “made [her] feel upset...that [her] efforts of leaving one community to another, went without victory.”

McDonald’s encounters with violation were not only public, but also belonged to the private. Having also been a survivor of domestic violence, she describes an experience with her uncle at a family gathering in her blog entry “PURSUIT OF HAPPINESS! <3”. Upon discovering a letter between her and a boy at school, her uncle confronted her. As she attempted to leave the hostile situation “[her] very own uncle wrapped his hands around [her] neck, and threw [her] to the floor with force, and continued choking [her].” She describes being “so shocked, [she] didn’t even know how

to process what actually was going on, because [she] expected behavior like this from strangers, but to have it happening in front of [her] family by [her] family was a totally different experience in which [she] didn't know how to handle.”

McDonald's experiences with violence can be best understood as ordinary, or at least occurring within the everyday as articulated by Dumm's work. Her history with public and private violence suggests that strategies to address violence are space specific, but her accounts also track the movement of violence between spaces. It also suggests that violence cannot be so easily isolated to particular and exceptional events, such as McDonald's experience on the night of June 5th, and that violence is embedded within the ordinary and that it is always possible. But what blurs the distinction between these seemingly separate events is the way violence marks the body, leaves an impression, and is tactically addressed. In Michel de Certeau's *The Practice of Everyday Life* (1984), he describes the ways people navigate the everyday “by *poaching* in countless ways on the property of others” (xi-xii). In an effort to rethink theories regarding cultural consumption and the way people encounter structures and navigate systems, he argues that the cultural consumer “‘makes’ or ‘does’ during this time and with these images” (xii).

Although Certeau begins by intervening in cultural criticism, he makes distinctions between what he calls tactic and strategy in order to understand how people “manipulate the mechanisms of discipline and conform to them only in order to evade them” (xiv). Strategy, he states, “assumes a place that can be circumscribed as *proper* and thus serve as the basis for generating relations with an exterior distinct from it...political,

economic, and scientific rationality has been constructed on this strategic model” (xix). His notion of strategy could be applied to hate crime preventions that operate as a strategy to approach violence by delimiting a space with a victim and criminal.

Opposed to strategies are tactics which depend on time “it is always on the watch for opportunities that must be seized ‘on the wing’” (xix). To describe tactics, Certeau uses the example of a housewife who goes grocery shopping for dinner, takes account of everything she has at home, discounts, recipes, and what’s available, and is then able to tactically create a plan of action. Though McDonald’s case hardly reflects the experience of someone grocery shopping for dinner, Certeau’s theory of tactic resonates with her experience and accounts of violence. McDonald’s prior experiences and encounters with violence gave her an intimate knowledge with which to tactically approach the night of June 5th, 2011 in order to survive. In Erin Manning’s *Politics of Touch*, she argues that the experience with violence writes itself onto the bodies of both the violator and the violated, a violent becoming (67). The ontogenetic function of violence in Manning’s *Politics of Touch* complements and expands Certeau’s theory of tactic by emphasizing the epistemology of touch and violent encounters, the bodily knowledge produced and registered by these encounters that is outside of language, and in McDonald’s case, is outside of the discourse of hate crime protections. The ontogenetic function of violence, which changes the body, also serves as a tactical resource, and enables an understanding of violence and provides a way of approaching it in the future. Given McDonald’s history with violence, the only option to preserving her life was self-defense.

McDonald’s case is different from the other cases discussed because she survived

her attack, and wrote extensively about her experience and history with violence to make it public. McDonald highlights the impact and impression violence makes on the body, and how encounters with it may influence the ways we know it and approach it.

McDonald's historical and affective accounts provide approaches to understanding violence that complicate our understandings of violence as simply matters of law and crime. She gestures towards other trajectories that move beyond simple categories of victim or criminal and that suggest approaching violence is something intimately learned in our daily encounters.

CONCLUSION: ORDINARY VIOLENCE

McDonald's case is at the intersection of strategy and tactic, script and improvisation. Depending on how the case is framed, she is at the intersection of the law and self-defense, fight or flight. She switches from docile victim to aggressor. The structure of the case and the courtroom denied the tactic of self-defense as valid. No prior history of violence was admitted as evidence. No documentation of the violence trans people face everyday was allowed. The criminal history of Schmitz was left aside. What happens when the improvisation or tactic does not fit with the script of hate crime protections? In McDonald's case, she was marked as a criminal. McDonald's sentence can best be described as an arresting of the senses. The arresting of the senses describes the encounter with the limit of the structure, the encounter with the cognitive function of hate crime protections. McDonald's self-defense made no sense to the law, it was criminal and had to be disciplined. The management of affective excess of unruly feelings and bodily responses to violence, is archived via imprisonment, and the control of discourse. Encounters between the feeling body and the law, like McDonald's, are arresting of the senses—the moment where everyday sensibilities confront institutionalized cognitive apparatuses.

With the violence of her communities, intimates, and the state inscribed on her body, McDonald's act of self-defense can be best understood as a tactical move to survive within a habitus of violence. Though it might have seemed like the loss of Schmitz' life had become the only concern in McDonald's trial, she states:

I am truly sorry for the loss of a person who also was involved in the

incident, but how would my mom and family feel if she heard that I was killed by a group of racist, homophobic/transphobic people...Or even looking at it in different aspects, would the situation have been the same. Would they have taken the same lengths to prosecute him if he had killed me? Or would they have even cared if it were a black on black crime. But once again not too many people care if it doesn't involve them or is of their concern. But think if it were your child, your sister or brother, a friend or family member. How would you feel?

What McDonald's experience demonstrates is that this kind of violence cannot just be made sense of as hatred, strange and unfamiliar, but must also be thought of as something emerging in the intimate and ordinary. Our bodies run up against structures, encounter them, feel and make sense of our experiences through culture and law, but sometimes those resources fail us and we're forced to improvise, creatively, to do something else in order to survive. As McDonald asks, what would have happened if she and her friends tried to call the police instead of confronting the situation themselves? Would Schmitz have survived? Would McDonald? Would someone else have died? One of the failures of hate crimes protections is its flattening out of difference, the erasure of violence and how it is lived and felt in relation to the state and public. Unfortunately for McDonald, for a victimized body to make sense through hate crime protections and to be protected (that is, to be intelligible, but also, potentially to affect others), it must respond to violence with docility and through the state: it must arrest any senses that the body might feel otherwise.

The movement beyond hate crime protections and other sense making apparatuses of the state and criminal law is also a movement towards danger. Though the apparatus of hate crime protections might enable some to move freely, and provide a sense of safety

and protection, it only does so through identification with the promise of the nation and state. People can feel safe and protected through hate crime protections if they locate themselves in the imagined space of the protective nation. To move away from the logic of the state is to risk safety and to give up the fantasy and illusion promised by hate crime protections. Beyond the apparatus of hate crime protections is the space described by Benjamin, where violence is handled in a logic inaccessible to the law, between people in the ordinary, everyday sense.

Trying to provide alternative grammars of violence means having to engage with difficult cases like Gunn, the NJ7, Polis, and McDonald's—cases that evoke the language and feelings of hate crimes discourse, while offering alternative strategies and questions regarding the violence. The cognitive apparatus of hate crime protections is inadequate for making sense of incidents involving people who do not have the option of going to the state for help, are targeted by the police, and refuse to be passive victims. The (nation-) state has a monopoly on violence, disciplines our bodies to feel and make sense of violation in terms of the law and criminalization, and punishes those who feel and do otherwise. The stakes are far too high to neglect the limits of hate crime protections and the state's management of violence. If we are to develop alternative strategies for approaching violence, different modes of attending to hate, then we must grapple with bodies in transit, those that move between spaces and are reinscribed in every step.

Bibliography

- Agathangelou, Anna M., M. D. Bassichis, and Tamara L. Spira. "Intimate Investments: Homonormativity, Global Lockdown and the Seductions of Empire." *Radical History Review* 100 (2008): 120-43. Web.
- Anatomy of a Hate Crime*. MTV, 2001.
- "Background: CeCe McDonald." *Support CeCe*. N.p., n.d. Web. 02 May 2013. <<http://supportcece.wordpress.com/>>.
- Benjamin, Walter. "Critique of Violence" in *Selected Writings, Vol. 1*. Cambridge, MA: Belknap Press of Harvard UP, 1996. Print.
- Birkey, Andy. "The American Independent." *The American Independent*. N.p., 4 May 2012. Web. 02 May 2013. <<http://americanindependent.com/216037/the-trial-of-cece-mcdonald/>>.
- "CeCe's Blog." *Support CeCe*. N.p., n.d. Web. 02 May 2013. <<http://supportcece.wordpress.com/category/ceces-blog/>>.
- Certeau, Michel De. *The Practice of Everyday Life*. Berkeley: University of California, 1984. Print.
- "Chrissy Lee Polis: A Rally for Peace." *YouTube*. N.p., 26 Apr. 2011. Web. 02 May 2013. <<http://www.youtube.com/watch?v=N4D7hwTja5A>>.
- Day, Susie. ""Killer Lesbians Mauled by Killer Court, Media Wolf Pack"" *MR Zine*. N.p., n.d. Web. 02 May 2013. <<http://mrzine.monthlyreview.org/2007/day270607.html>>.
- Dreams Deferred: The Sakia Gunn Film Project*. Dir. Charles B. Brack. Third World Newsreel, 2008. DVD.
- Dumm, Thomas L. *A Politics of the Ordinary*. New York: New York UP, 1999. Print.
- "Family and Friends Remember Transgender Murder Victim." *WMAR*. N.p., n.d. Web. 02 May 2013. <http://www.abc2news.com/dpp/news/crime_checker/baltimore_city_crime/family-and-friends-remember-transgender-murder-victim>.
- Gould, Deborah B. *Moving politics: emotion and ACT UP's fight against AIDS*. University of Chicago Press, 2009.
- HRC Hate Crimes PSAs*. *YouTube*. N.p., 19 Apr. 2007. Web. 02 May 2013. <<http://www.youtube.com/watch?v=tvNE5rJB4vU>>.

- INCITE!, and FIERCE. "Critical Lessons From The New Jersey 7." *INCITE!* N.p., n.d. Web. 2 May 2013. <http://www.incite-national.org/media/docs/9908_toolkitrev-nj7.pdf>.
- Italiano, Laura. "ATTACK OF THE KILLER LESBIANS." *New York Post*. N.p., 12 Apr. 2007. Web. 02 May 2013. <http://www.nypost.com/p/news/regional/item_YsBHcO5HbOeB4ap83YbLVO>.
- "It's a Shame That You Have to Walk Down the Street Not Knowing What's Going to Happen to Us": The Sakia Gunn Murder." *Democracy Now!* N.p., n.d. Web. 02 May 2013. <http://www.democracynow.org/2003/7/14/its_a_shame_that_you_have>.
- Jacobs, James B., and Kimberly Potter. *Hate crimes: Criminal law & identity politics*. Oxford University Press, USA, 2000.
- Jenness, Valerie, and Ryken Grattet. *Making Hate a Crime: from Social Movement to Law Enforcement*. New York: Russell Sage, 2001. Print.
- Laramie Inside Out*. Prod. Beverly Seckinger. New Day Films, 2004.
- The Laramie Project*. Dir. Moisés Kaufman. Home Box Office, 2002.
- "Lesbians Sentenced for Self-defense." *Lesbians Sentenced for Self-defense*. N.p., n.d. Web. 02 May 2013. <<http://www.workers.org/2007/us/nj4-0628/>>.
- "Man Is Stabbed in Attack After Admiring a Stranger." *The New York Times*. N.p., 19 Aug. 2006. Web. 2 May 2013. <select.nytimes.com/gst/abstract.html?res=F20F11FB3E5A0C7A8DDDA10894DE404482>.
- Mananzala, Rickke. "The FIERCE Fight for Power and the Preservation of Public Space in the West VillageBy Rickke Mananzala." *SF Online*. N.p., 2012. Web. 02 May 2013. <<http://sfonline.barnard.edu/a-new-queer-agenda/the-fierce-fight-for-power-and-the-preservation-of-public-space-in-the-west-village/>>.
- Manning, Erin. *Politics of Touch: Sense, Movement, Sovereignty*. Minneapolis: University of Minnesota, 2007. Print.
- Martinez, Jose. "Lesbian Wolf Pack Guilty." *NY Daily News*. N.p., 19 Apr. 2007. Web. 02 May 2013. <<http://www.nydailynews.com/news/crime/lesbian-wolf-pack-guilty-article-1.209128>>.
- Massumi, Brian. "The Future Birth of the Affective Fact: The Political Ontology of Threat." *The Affect Theory Reader*. Durham, NC: Duke UP, 2010. 52-70. Print.
- The Matthew Shepard Story*. Dir. Roger Spottiswoode. 2001.

- Pasulka, Nicole. "The Case of CeCe McDonald: Murder-or Self-Defense Against a Hate Crime?" *Mother Jones*. N.p., 22 May 2012. Web. 02 May 2013.
<<http://www.motherjones.com/politics/2012/05/cece-mcdonald-transgender-hate-crime-murder>>.
- Pearson, Kim. "Small Murders: Rethinking News Coverage of Hate Crimes Against GLBT People." *News and Sexuality: Media Portraits of Diversity*. By Laura Castañeda and Shannon B. Campbell. Thousand Oaks, CA: Sage Publications, 2006. N. pag. Print.
- Perry, Barbara. *In the name of hate: Understanding hate crimes*. Routledge, 2001.
- Petersen, Jennifer. *Murder, the Media, and the Politics of Public Feelings: Remembering Matthew Shepard and James Byrd Jr.* Bloomington: Indiana UP, 2011. Print.
- Puar, Jasbir K. *Terrorist Assemblages: Homonationalism in Queer times*. Durham: Duke UP, 2007. Print.
- Reddy, Chandan. *Freedom with violence: Race, sexuality, and the US state*. Duke University Press, 2011.
- Ross, Barbara, and Dave Goldliner. "Pack Howls - Judge Won't Bend." *NY Daily News*. N.p., 15 June 2007. Web. 02 May 2013.
<<http://www.nydailynews.com/news/crime/pack-howls-judge-won-bend-article-1.222283>>.
- "Sakia Gunn." *The LGBT Hate Crimes Project*. N.p., n.d. Web. 02 May 2013.
<http://www.lgbthatecrimes.org/doku.php?id=sakia_gunn>.
- "SRLP On Hate Crime Laws." *Sylvia Rivera Law Project*. N.p., n.d. Web. 02 May 2013.
<<http://srlp.org/our-strategy/policy-advocacy/hate-crimes/>>.
- "Support Statements." *Support CeCe*. N.p., n.d. Web. 02 May 2013.
<<http://supportcece.wordpress.com/support-statements/>>.
- "Violent Crime Control and Law Enforcement Act of 1994." *National Criminal Justice Reference Service*. N.p., 24 Oct. 1994. Web. 02 May 2013.
- Weber, Max. *Politics as a Vocation*. Philadelphia: Fortress, 1965. Print.
- Williams, Raymond. *Marxism and Literature*. Oxford : Oxford UP, 1986. Print.