

#SAYHERNAME: RACIAL PROFILING AND POLICE VIOLENCE AGAINST BLACK WOMEN

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As the nation wrestles with the relentless reality of police violence against Black, Brown and Indigenous bodies and the enduring impacts of mass incarceration on individuals, families and communities of color, we also continue to grapple with invisibility and erasure of women's experiences of state violence. In November of 2015, I had the distinct honor and privilege of delivering a Scheinberg lecture at New York University School of Law entitled Say Her Name: Racial Profiling and Police Violence Against Women of Color. I began with an exercise designed to render these erasures-- and these stories-- visible within the broader public discourse. The remainder of the lecture sketches historic and present day patterns of policing illuminated by individual instances of police violence against Black women, and the ways in which they necessarily shift and expand our understanding of racial profiling and police violence--as well as the solutions we pursue.

What is the first name that comes to mind when I say police brutality?

The answer tends to be generational, but almost universally Black and male Rodney King, Amadou Diallo, Oscar Grant, Mike Brown, Eric Garner, Freddie Gray.

Did any women's names come to mind?

If not, why not?

What were their experiences? How were they similar to, or different from, those of men whose stories drive our analysis and responses to racial profiling and police violence?

And how would centering women's stories change the conversation?

What about Eleanor Bumpurs, a Black woman shot by the NYPD in 1986, six years before Rodney King was beaten by the LAPD, as she was being evicted for defaulting on her rent of less than a hundred dollars a month?¹ If her case had become iconic in the way King's did, maybe in addition to talking about "driving while Black," we would also be talking about living while poor, Black, disabled,

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¹ See Selwyn Raab, *State Judge Dismisses Indictment of Officer in the Bumpurs Killing*, N.Y. TIMES (Apr. 13, 1985), <http://www.nytimes.com/1985/04/13/nyregion/state-judge-dismisses-indictment-of-officer-in-the-bumpurs-killing.html?pagewanted=all>.

elderly and female.

LaTanya Haggerty was killed the same year Amadou Diallo was-- in her case, instead of a street stop, it was a traffic stop; instead of a wallet, the officer who shot her mistook her cell phone for a gun.² If her story had garnered the same national attention as Diallo's did, perhaps there wouldn't need to be a call to "Say Her Name" and recognize Black women as targets of police violence.

Many people know of Eric Garner, but not Rosann Miller, a seven-month pregnant Black woman put in a chokehold by an NYPD officer just weeks after Eric Garner was killed.³ Like Garner, who was being harassed by police for allegedly selling loose cigarettes, Miller was being harassed by officers engaged in "broken windows" policing, which posits that targeted enforcement of small offenses is the way to prevent violent crime.⁴ In Miller's case, the interaction started when police threatened to ticket her and her husband for grilling outside their own home.⁵ Not only does Miller's experience illuminate the broader impacts of the policing practices that killed Eric Garner, it also points us toward the need for focused attention to police use of force against pregnant women.

Just three months after Mike Brown was killed by Ferguson police officer Darren Wilson, Tanisha Anderson was killed by Cleveland police officers called to assist her in a mental health crisis.⁶ Yet her case did not spark a rebellion in her hometown or across the country, and did not play the iconic role that Brown's continues to play in the current moment and movement to end police violence.

Similarly, just weeks before Freddie Gray's death at the hands of police rocked Baltimore and the nation, Mya Hall was killed by police just outside Baltimore for essentially taking a wrong turn onto NSA property.⁷ Mya Hall was not given the

² See Todd Lighty & Gary Washburn, *City to Pay Haggertys \$18 Million: Deal Makes Daley Meet with Family*, CHI. TRIB. (May 8, 2001), http://articles.chicagotribune.com/2001-05-08/news/0105080231_1_settlement-latanya-haggerty-mayor-richard-daley.

³ See, e.g., James Ford, *Pregnant Brooklyn Mom Says Cop Put Her In Chokehold During Dispute over BBQ*, PIX11.COM, (July 28, 2014, 7:44 PM), <http://pix11.com/2014/07/28/pregnantbrooklyn-woman-says-cop-put-her-in-chokehold-after-dispute-over-bbq/>; Emily Thomas, *Pregnant Woman Allegedly Put in Chokehold by NYPD Officer*, HUFFINGTON POST (July 28, 2014, 6:54 PM), http://www.huffingtonpost.com/2014/07/28/pregnant-woman-chokehold-nypd-rosanmiller_n_5628306.html.

⁴ See George L. Kelling & James Q. Wilson, *Broken Windows: The Police and Neighbourhood Safety*, THE ATLANTIC (Mar. 1982), <http://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/>.

⁵ See Thomas, *supra* note 3.

⁶ See Brandon Blackwell, *Daughter of Mentally Ill Cleveland Woman Who Died in Custody Hopes for Change*, CLEVELAND.COM (Nov. 18, 2014, 5:02 PM), http://www.cleveland.com/metro/index.ssf/2014/11/daughter_of_mentally_ill_cleve.html.

⁷ See, e.g., Peter Hermann, *Baltimore's Transgender Community Mourns One of Their Own, Slain by Police*, WASH. POST (Apr. 3, 2015), https://www.washingtonpost.com/local/crime/baltimores-transgender-community-mourns-one-of-their-own-slain-by-police/2015/04/03/2f657da4-d88f-11e4-8103-fa84725dbf9d_story.html; Justin Moyer, *NSA Attacker Identified as Transgender Homeless Sex Worker*, WASH. POST (Apr. 2, 2015), <https://www.washingtonpost.com/news/morning->

benefit of the doubt; she and her unarmed passenger were shot first, and asked questions later. Her Black trans life, like Gray's, was treated as if it was of no consequence.

What is the first image that comes to mind when I say police brutality?

Usually the answer features some variation of a white officer beating a Black or Brown man with a baton. Perhaps, in the wake of events last fall, it is for some the image of a white school safety officer dragging a young Black woman across a classroom floor at a high school in Spring Valley, South Carolina.⁸

Perhaps for those who read an Associated Press report of a yearlong investigation revealing that over 1,000 officers lost their licenses over a six-year period due to sexual misconduct,⁹ or those who are survivors of such misconduct, it is police rape. But while it may have been in the news in recent months, when we think of police brutality, we often don't think of police sexual misconduct, which ranges from calls of "hey baby" to young women walking to school, to groping and requests for phone numbers during stops and frisks, to extortion of sex in exchange for leniency, to the sexual assault/rape perpetrated by Oklahoma City police officer Daniel Holtzclaw against thirteen Black women and girls.¹⁰ Police sexual violence takes place on the street, in the back of police cars, at police stations, and, alarmingly, in the context of responses to violence, targeting women who are vulnerable, criminalized, and women who officers think will not be believed. Although sexual misconduct is the second most frequently reported form of police violence,¹¹ it is certainly not the second most frequently talked about.

Usually the first thing that comes to mind when we hear the words "police brutality" is police shootings or beatings. Yet even within this narrow frame, the subject is almost universally understood to be a man--and one who is neither gay nor transgender at that. Narratives of police brutality often don't include the experiences of people like Rosann Miller.¹² Nor do they include that of one of my clients, a Latina trans woman who, during a prostitution sting, was thrown to the ground by

mix/wp/2015/04/02/nsa-attacker-identified-as-homeless-transgender-sex-worker/; Peter Hermann, Sari Horwitz, & Ellen Nakashima, *A Fatal Wrong Turn Suspected at NSA*, WASH. POST (Mar. 30, 2015), https://www.washingtonpost.com/local/crime/officials-respond-to-incident-at-nsa-on-fort-meade-campus/2015/03/30/08bdf56-d6e1-11e4-ba28-f2a685dc7f89_story.html.

⁸ Kristen West Savalli, *Another Black Girl Assaulted by a White Cop: Do We Matter Yet?*, THE ROOT.COM (Oct. 27, 2015, 6:07 AM), http://www.theroot.com/articles/news/2015/10/assault_at_spring_valley_high_school_black_girl_choked_dragged_by_white.html.

⁹ Matt Sedensky & Nomaan Merchant, *Hundreds of Officers Lose License over Sex Misconduct*, BIGSTORY.AP.ORG (Nov. 1, 2015, 12:00 AM), <http://bigstory.ap.org/article/fd1d4d05e561462a85abe50e7eae4ec/ap-hundreds-officers-lose-licenses-over-sex-misconduct>.

¹⁰ *See id.*

¹¹ CATO INST., NATIONAL POLICE MISCONDUCT REPORTING PROJECT: 2010 ANNUAL REPORT, <http://www.policemisconduct.net/statistics/2010-annual-report/> (last visited March 7, 2016).

¹² Thomas, *supra* note 3.

an officer who then stomped on her head three times, breaking a bone in her face and a tooth. As the officer was abusing her, her skirt rode up, revealing her genitals, which another officer then grabbed and twisted while calling her a faggot. Or my two lesbian clients who were thrown to the ground outside a club hosting a “ladies’ night” and beaten by police calling them “dyke ass bitches.”

Likewise, narratives of racial profiling center Black men to the exclusion of women like Sandra Bland.¹³ They also exclude the experience of another client of mine, a Black trans woman stopped by police as she walked to a McDonald’s. In my client’s case, nine New York City branded condoms officers claim to have found in her purse were cited as evidence that she was engaged in prostitution.

Of course, this doesn’t happen to everyone, it all depends on who is carrying the condoms, what they are wearing, and where they are stopped. For women of color--trans and not trans--and LGBT youth of color, condoms are a tool of gender and sexuality-based racial profiling and punishment of actual or perceived sexual and gender nonconformity.¹⁴ What happened to my client probably wouldn’t happen to a white male NYU law student, for instance-- he could be carrying so many condoms that they were literally falling out of his pockets, and simply be considered to be following good public health practices (and perhaps overly hopeful).

What is the first thing that comes to mind when I say “violence against women” or “hate crime”?

Did any of the things we just talked about come to mind? Why not? Are they not clearly examples of both?

The stories I have just shared are not isolated incidents or anomalies in an overall pattern of police violence that primarily targets Black and Brown heterosexual, non-transgender men. They are central, yet often invisible points in a systemic arc of police brutality and state-sanctioned violence against Indigenous, Black and Brown women and gender nonconforming people, beginning with the first colonizing armies and the advent of slave patrols, and continuing through the systematic rape, denial of reproductive autonomy, and theft of children of Indigenous and African descended women, to the enforcement of the nation’s borders on the bodies of immigrant women. These stories also reflect a pattern of systemic criminalization

¹³ See David Montgomery, *New Details Released in Sandra Bland’s Death in Texas’s Jail*, N.Y. TIMES, (July 20, 2015), <http://www.nytimes.com/2015/07/21/us/new-details-released-in-sandra-blands-death-in-texas-jail.html>.

¹⁴ See, e.g., HUMAN RIGHTS WATCH, *SEX WORKERS AT RISK: CONDOMS AS EVIDENCE OF PROSTITUTION IN FOUR US CITIES*, (2012), http://www.hrw.org/sites/default/files/reports/us0712ForUpload_1.pdf; ACACIA SHIELDS, OPEN SOC’Y FOUND., *CRIMINALIZING CONDOMS: HOW POLICING PRACTICES PUT SEX WORKERS AT IV SERVICES AT RISK IN KENYA, NAMIBIA, RUSSIA, SOUTH AFRICA, THE UNITED STATES, AND ZIMBABWE* (2012), <https://www.opensocietyfoundations.org/sites/default/files/criminalizing-condoms-20120717.pdf>; Leigh Tomppert & PROS Network, *SEX WORKER PROJECT PUBLIC HEALTH CRISIS: THE IMPACT OF USING CONDOMS AS EVIDENCE OF PROSTITUTION IN NEW YORK CITY* (2012), <http://sexworkersproject.org/downloads/2012/20120417-public-health-crisis.pdf>.

and punishment of sexual and gender nonconformity that facilitated the colonization of this land, and preceded, continued alongside, and extended beyond the enactment, enforcement, and striking down of sodomy laws.¹⁵ The arc continues through the lynchings of Mary Turner, Laura Nelson and scores other Black women,¹⁶ through the exclusion of Asian women under anti-prostitution laws,¹⁷ the beatings of Fannie Lou Hamer and countless other Black women during the Jim Crow and Civil Rights eras,¹⁸ and through the declaration of the “war on drugs,” the emergence of “broken windows policing,” and the continuing criminalization of poverty.

Police violence affects Black women uniquely, but not exclusively. Indigenous women and Two Spirit people have been primary targets of colonial, state and police violence since 1492. Asian women continue to be routinely profiled and subjected to discriminatory policing of prostitution-related offenses, and also experience police violence, as did Cau Bich Tran, a mother of two shot dead by San Jose police within minutes of responding to a call for help at her home.¹⁹ Muslim, Arab, Middle Eastern and South Asian women also suffer police profiling and violence, particularly in the context of the “war on terror.”²⁰ And Latinxs like Jessie Hernandez, shot dead by Denver police in early 2015, are clearly in the cross hairs of police brutality.²¹ That said, I focus here primarily on the experiences of Black women, both because that is the community I am part of and which has been the focus of the majority of my research and advocacy over the past two decades, and as a contribution to the conversation about anti-Black racism and state violence fueled by the Black Lives Matter Movement.

Black women’s experiences of policing are similar in many respects to those of other members of Black communities. For instance, in New York City, racial disparities in stops and frisks are identical among women as they are for men.²² As Sandra Bland’s case illustrates, “driving while Black” is also a phenomenon experienced by

¹⁵ JOEY L. MOGUL, ANDREA J. RITCHIE & KAY WHITLOCK, *QUEER (IN)JUSTICE: THE CRIMINALIZATION OF LGBT PEOPLE IN THE UNITED STATES* (2012).

¹⁶ See NAACP, *THIRTY YEARS OF LYNCHING IN THE UNITED STATES: 1889-1918*, (The Law Book Exch. 2012) (1919); JAMES ALLEN, JOHN LEWIS, LEON F. LITWACK & HILTON ALS, *WITHOUT SANCTUARY: LYNCHING PHOTOGRAPHY IN AMERICA* 14 (2000).

¹⁷ See Andrea J. Ritchie, *Law Enforcement Violence Against Women of Color*, in *COLOR OF VIOLENCE: THE INCITE! ANTHOLOGY* (2006); MOGUL, RITCHIE & WHITLOCK, *supra* note 15.

¹⁸ Fannie Lou Hamer--Biography, PUB. BROAD. SERV., <http://www.pbs.org/wgbh/americanexperience/features/biography/freedomsummer-hamer/> (last visited March 7, 2016); CIVIL RIGHTS CONGRESS, *WE CHARGE GENOCIDE: THE HISTORIC PETITION TO THE UNITED NATIONS FOR RELIEF FROM A CRIME OF THE UNITED STATES GOVERNMENT AGAINST THE NEGRO PEOPLE* (1951).

¹⁹ Ritchie, *supra* note 17, at 147.

²⁰ Ritchie, *supra* note 17, at 154.

²¹ See Michael Roberts, *Jessie Hernandez, Teen Killed by Denver Cops: Protests Over Alleged Police Violence*, WESTWORD (Jan. 27, 2015, 5:44 AM), http://blogs.westword.com/latestword/2015/01/jessie_hernandez_killed_denver_police.php.

²² KIMBERLÉ WILLIAMS CRENSHAW & ANDREA J. RITCHIE, *AFRICAN AM. POLICY FORUM, SAY HER NAME: RESISTING POLICE BRUTALITY AGAINST BLACK WOMEN* (2014), http://static1.squarespace.com/static/53f20d90e4b0b80451158d8c/t/560c068ee4b0af26f72741df/1443628686535/AAPF_SMN_Brief_Full_singles-min.pdf.

Black women. In fact, in the year before Mike Brown was killed, Black women in Ferguson, Missouri had more traffic stops than any other demographic group, including Black men.²³

Traffic stops not only lead to physical violence, they also are sites of unlawful, racialized degrading, and sometimes public strip searches of Black women. This was the case for Brandy Hamilton and Alexandria Randle, who were strip searched by the side of the road by officers claiming to be looking for drugs.²⁴

Sometimes they take the form of unlawful and humiliating “gender searches” which Black women, gender nonconforming and transgender people like Juan Evans are routinely subjected to during traffic or pedestrian stops in order to assign gender based on anatomy.²⁵

Sandra Bland’s death in police custody was also not unique-- four other Black women suffered the same fate that same month.²⁶ They were far from the only ones. Black women like Alesia Thomas,²⁷ who was kicked to death by an officer in a police car, and Natasha McKenna, who was shocked by jail guards with 50,000 Volts of electricity from a TASER multiple times while she was chained to a chair, are subjected to unspeakable and deadly violence in police custody.²⁸

The war on drugs is the context in which people are most familiar with women’s experiences of racial profiling and policing, including strip searches and cavity searches at airports, on street corners, and in jails. Sometimes these experiences turn deadly, as they did for Frankie Perkins and Theresa Henderson, both choked to death

²³ MO. ATT’Y GEN., RACIAL PROFILING DATA at 359 (2013), <http://ago.mo.gov/docs/defaultsource/public-safety/2013agencyreports.pdf?sfvrsn=2>.

²⁴ See, e.g., Kevin Quinn, *Woman Accuses Officer of Going Too Far During Stop*, ABC13.COM (Aug. 5, 2015), <http://abc13.com/news/woman-accuses-officer-of-going-too-far-during-traffic-stop/905180/>; Jacob Sullum, *The War On Drugs Now Features Roadside Sexual Assaults by Cops*, FORBES (May 7, 2015, 5:46 PM), <http://www.forbes.com/sites/jacobsullum/2015/05/07/will-texas-ban-roadside-sexual-assaults-by-drug-warriors/#6fe2ad886b9c>; Michael Zennie & Alex Greig, *Pictured: The two women suing police after they were subjected to humiliating roadside cavity search as they wore only their bikinis*, DAILY MAIL (July 5, 2013, 00:59 AM), <http://www.dailymail.co.uk/news/article-2356618/Pictured-The-women-suing-police-unconstitutional-roadside-cavity-search.html#ixzz42HIXOak>.

²⁵ See Press Release, Racial Justice Action Center, *Victory! East Point Police Department To Adopt Most Progressive Trans Policies in the Nation* (Apr. 9, 2015), <http://www.rjactioncenter.org/EastPointVictory>.

²⁶ See Breanna Edwards, *At Least 5 Black Women Have Died in Police Custody in July, WTF?*, THE ROOT.COM (July 30, 2015, 3:00 AM), http://www.theroot.com/articles/news/2015/07/at_least_5_black_women_have_died_in_police_custody_in_july_wtf.html.

²⁷ CRENSHAW & RITCHIE, *supra* note 22.

²⁸ See generally Tom Jackman & Justin Jouvenal, *Fairfax Jail Inmate in Taser Death Was Shackled*, WASH. POST (Apr. 11, 2015), https://www.washingtonpost.com/local/crime/fairfax-jail-inmate-who-died-was-fully-restrained-when-tasered-four-times/2015/04/11/ede0957c-decd-11e4-be40-566e2653afe5_story.html.

by police who profiled them as having swallowed drugs.²⁹

The feminization of poverty has also placed Black women in the crosshairs of state violence--whether it's Eleanor Bumpurs or Margaret Mitchell, a Black woman shot by LAPD during an interaction around the shopping cart she used to transport her belongings.³⁰

In addition to looking more carefully for Black women's experiences in the context of racial profiling and police brutality, we need to expand our frame beyond physical and fatal police violence. If we include sexual harassment and assault by police, brutality in the context of police responses to violence or calls for help, abuse of pregnant women and mothers, and policing of gender and sexuality, Black women's experiences come into sharper relief.

For instance, sexual harassment and assault by police disproportionately affects Black women and women of color. One study found that two in five young women in New York City report sexual harassment by police,³¹ while another found that a majority of trans women of color surveyed in New Orleans had faced extortion of sex by law enforcement agents.³² Young women of color, homeless and low-income women, lesbian and trans women, and women who are (or are perceived to be) involved in the drug or sex trades are particularly targeted for sexual violence by police.³³ Traffic stops, policing of prostitution, responses to calls for help and "explorer programs" are frequent sites of police sexual misconduct.³⁴ Sexual assault can also take the form of searches in the context of the "war on drugs," such as those experienced by Hamilton and Randle, or the violent strip and cavity searches Diane Bond, a Chicago public housing resident, was subjected to - simply to degrade and dehumanize her-- as yet another weapon of police brutality.³⁵ Yet there is no official

²⁹ CRENSHAW & RITCHIE, *supra* note 22, at 14; Ritchie, *supra* note 17.

³⁰ CRENSHAW & RITCHIE, *supra* note 22, at 14.

³¹ See Michelle Fine, Nick Freudenberg, Yasser Payne, Tiffany Perkins, Kersha Smith & Katya Wanzer, *Anything Can Happen with Police around: Urban Youth Evaluate Strategies of Surveillance in Public Places*, 59 J. SOC. ISSUES 141, 141-58 (2003).

³² See BREAKOUT!, WE DESERVE BETTER (2014), <http://www.youthbreakout.org/sites/g/files/g189161/f/201410/WE%20DESERVE%20BETTER%20REPORT.pdf>.

³³ See, e.g., PHILIP M. STINSON, JOHN LIEDERBACH, STEVEN L. BREWER & BROOKE E. MATHNA, *POLICE SEXUAL MISCONDUCT: A NATIONAL SCALE STUDY OF ARRESTED OFFICERS* (2014); LAMBDA LEGAL, *PROTECTED AND SERVED? SURVEY OF LGBT/HIV CONTACT WITH POLICE, COURTS, PRISONS, AND SECURITY* (2014), www.lambdalegal.org/protectedandserved; JAIME M. GRANT, LISA A. MOTTET & JUSTIN TANIS, *INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY* (2011), http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf; Peter B. Kraska & Victor E. Kappeler, *To serve and pursue: Exploring police sexual violence against women*, 12 JUSTICE QUARTERLY 85, 85-112 (1995).

³⁴ See, e.g., SAMUEL WALKER & IRLBECK DAWN, "DRIVING WHILE FEMALE:" A NATIONAL PROBLEM IN POLICE MISCONDUCT (2002), <http://samuelwalker.net/wp-content/uploads/2010/06/dwf2002.pdf>; SAMUEL WALKER & IRLBECK DAWN, *POLICE SEXUAL ABUSE OF TEENAGE GIRLS: A 2003 UPDATE ON "DRIVING WHILE FEMALE,"* (2003), <http://samuelwalker.net/wp-content/uploads/2010/06/dwf2003.pdf>.

³⁵ Andrea J. Ritchie & Joey Mogul, *In The Shadows of The War On Terror: Persistent Police Brutality And Abuse Of People Of Color In The United States* 1 DEPAUL J. FOR SOC. JUST. 175, 227-28 (2008).

data collection; very few police departments have any policy or offer any training or oversight to prevent police sexual misconduct, and there is rarely any effective accountability.

Racial profiling and police officers' responses to Black women are informed by stereotypes deeply rooted in slavery, such as those framing us as inherently promiscuous and therefore more likely to be engaged in prostitution-related offenses. Accordingly, the policing of prostitution is one of the primary sites of racial disparity in policing of women.

In Louisiana, a particularly egregious law which punished "solicitation of crimes against nature" (offering oral or anal sex for compensation) with five years in prison and mandatory sex offender registration - for fifteen years to life - was used almost exclusively against poor Black women (trans and not trans) and gay men, instead of the general prostitution statute that carries a much lower sentence and doesn't require sex offender registration.³⁶ Eighty percent of Black women--trans and not trans -on the sex offender registry were there as a result of this crime, and had to live with the words "SEX OFFENDER" emblazoned in bright orange letters on their driver's license, and notify their neighbors that they had been convicted of "crimes against nature."³⁷

As the work of scholars like Cathy Cohen and Dorothy Roberts emphasizes, the sexuality of Black women has historically been framed as inherently deviant and to be controlled, and as such is queered in deeply racialized ways. Against this backdrop, and as a result of the unfettered discretion given police officers and prosecutors regarding which offense to charge, Black women - queer and straight, trans and not trans - and gay men were policed under this statute as sexual "deviants" who commit "crimes against nature" and must be harshly punished.

In 2011, I filed a lawsuit with the Center for Constitutional Rights and Loyola University College of Law challenging the discriminatory impacts of the law. On summary judgment the sex offender registration requirement was struck down on Equal Protection grounds, leading to the removal of over 800 people from the sex offender registry. While the Louisiana law was unique, countless prostitution-related laws continue to be used to discriminatorily and disproportionately punish Black women and queer people.³⁸

Beyond policing of prostitution, policing of sexual offenses more broadly similarly

³⁶ LA. REV. STAT. ANN. § 14:82 (2012) (defining a crime against nature as "the unnatural carnal copulation by a human being with another of the same sex or opposite sex or with an animal").

³⁷ Andrea J. Ritchie, *Crimes Against Nature: Challenging Criminalization of Queerness and Black Women's Sexuality*, 14 LOY. J. PUB. INT. L. 355, 355 (2013).

³⁸ Noah Berlatsky, *Black Women Profiled as Prostitutes in New York City*, REASON.COM (Oct. 1, 2014), <http://reason.com/archives/2014/10/01/nypd-profiles-sex-workers-too>; Shana Judge & Mariah Wood, *Racial Disparities in Enforcement of Prostitution Laws*, APPAM.CONFEX.COM (Nov. 6, 2014, 3:05 PM), <https://appam.confex.com/appam/2014/webprogram/Paper11163.html>.

serves as a site of racially discriminatory policing, and sex offender registries represent an ongoing site of discrimination and punishment of sexual and gender non-conformity. For instance, in 2010, a grand jury indicted Antjuaneece Brown, an eighteen-year-old Black lesbian in Portland, Oregon, for sex abuse, luring a minor and transmission of child pornography-- offenses mandating a sentence of six years in prison and registration as a sex offender upon conviction.³⁹ Her crime? Consensually sexting with her girlfriend, who was thirty-seven days shy of turning eighteen. The case came to the attention of police after her girlfriend's mother--who did not approve of their relationship - found the texts and reported them to police. Fearful of the steep prison sentence and lifetime sex offender registration if she were to be convicted, Brown pled guilty to luring a minor and served eighteen months in jail, just for sending her girlfriend the kind of texts which have become mundane in their commonality.

Perceptions of Black women as unworthy and unfit mothers inform police violence against pregnant women like Malaika Brooks, who was shocked multiple times with 50,000 volts of electricity by police TASERS pointed directly at her belly when she was seven months pregnant during a traffic stop.⁴⁰

Indeed, Black women are perceived by police to be both inherently inviolable and inherently violent, no matter what their circumstances. As a result, police response to domestic violence all too often proves deadly to Black women like Janisha Fonville, killed in early 2015 by a Charlotte police officer responding to a call for assistance during a fight with her girlfriend,⁴¹ or Aura Rosser, killed by Ann Arbor police responding to an incident of domestic violence.⁴²

Reliance on police as first responders to people in mental health crises similarly results in police brutality, as was the case for Tanisha Anderson⁴³ and for Kayla Moore - a Black transgender woman killed by Berkeley Police responding to a

³⁹ See Michelle Maher, *Unlawful Justice: The Story of Antjuaneece and Jolene*, YOUTUBE (Jan. 20, 2012), <http://www.youtube.com/watch?v=ig9Y5wcdry8>.

⁴⁰ See, e.g., CRENSHAW & RITCHIE, *supra* note 17; Lisa Loving, *Seattle Settles Out of Court in Malaika Brooks Case*, THE SKANNER.COM (Sept. 11, 2014), <http://www.theskanner.com/news/northwest/21826-seattle-settles-out-of-court-in-malaika-brooks-case>; Bill Meares, *Justices Decline Case of Taser Use on Pregnant Woman*, CNN, <http://www.cnn.com/2012/05/29/justice/scotus-taser-shocks/> (last updated March 29, 2012).

⁴¹ See, e.g., WBTW Web Staff, *Woman Shot, Killed by Charlotte Officer, No Charges Expected*, WAVE3.COM (Mar. 18, 2015, 10:42 AM), <http://www.wave3.com/story/28144141/officer-involved-shooting-in-ne-charlotte-2-injured>; Fred Clasen-Kelly, *Witness: Officer Didn't Have to Shoot*, CHARLOTTE OBSERVER (Feb. 20, 2015, 7:39 PM), <http://www.charlotteobserver.com/news/local/crime/article10783382.html>; Mark Becker, *Girlfriend of Victim in Deadly Police Shooting Speaks Out*, WSOCTV.COM, <http://www.wsoc.tv.com/news/local/girlfriend-victim-deadly-police-shooting-speaks-ou/52843884> (last updated Feb. 20, 2015).

⁴² See Kate Abbey-Lambertz, *No Charges for Officer Who Killed Mentally Ill Woman Who "Confronted" Police with A Knife*, HUFFINGTON POST (Feb. 3, 2015, 12:52 PM), http://www.huffingtonpost.com/2015/02/03/aura-rosser-killed-dave-ried-ann-arbor_n_6604458.html.

⁴³ Blackwell, *supra* note 6.

request for assistance.⁴⁴ Kayla was calm when they arrived, but instead of offering her the help she needed, the officers decided to arrest her on a warrant for a person who bore the male name she was assigned at birth but who was 20 years older. She died as police piled on top of her to place her under arrest until she stopped breathing, and then refused to give her CPR. Kayla's family believes this was because she was trans.

Transgender and gender non-conforming Black women routinely experience profiling, homophobic and transphobic harassment and abuse, as well as physical, sexual and sometimes deadly violence or neglect by police. That was the case for Duanna Johnson, who, like so many Black women, including of course Black trans women, was profiled for prostitution as she was walking down the street in Memphis and arrested.⁴⁵ She was then brutally beaten in the police station because she wouldn't answer to "faggot" when an officer called her over to be fingerprinted. Like Rodney King's, her beating was caught on video--but it didn't spark a national uprising.⁴⁶

Beyond the direct policing of gender lines evidenced by cases like Duanna's, racialized policing of gender and sexuality continues to take place on a daily basis, even as laws that are discriminatory on their face--such as sumptuary laws, common nightwalker laws and sodomy laws - are struck down.⁴⁷ Ultimately, police don't just enforce discriminatory laws which can be challenged, changed or repealed. They make law every single day in the context of countless routine and mundane determinations of what constitutes "reasonable suspicion" to justify a police stop, what constitutes "probable cause" to arrest, who is suspicious and who is credible, who belongs and who doesn't, whose presence signals "disorder" and whose does not, whose conduct to scrutinize and whose to ignore.⁴⁸

These acts of lawmaking hidden within discretionary police functions are deeply informed by controlling narratives dictating how individuals' behavior will be perceived through racialized, gendered and sexuality-based lenses, and operating in service of maintaining systemic relations of power. In *Queer (In)Justice*, we describe these narratives as criminalizing archetypes-- entrenched stories which literally control how we see and understand the same behavior when different people engage in it--whether it's standing on a corner, carrying a condom, or calling for

⁴⁴ See, e.g., Kimberly Veklerov, *Leaked Documents Shed New Light on Kayla Moore's In-Custody Death*, *DAILY CALIFORNIAN* (May 7, 2014), <http://www.dailycal.org/2014/05/07/leaked-documents-shed-new-light-kayla-moore-death/>; Toshio Meronek, *How Did Kayla Moore Die*, *EAST BAY EXPRESS* (Mar. 4, 2013), <http://www.eastbayexpress.com/SevenDays/archives/2013/03/04/how-did-kayla-moore-die>.

⁴⁵ MOGUL, RITCHIE & WHITLOCK, *supra* note 15; see Robbie Brown, *Murder of Transgender Woman Revives Scrutiny*, *N.Y. TIMES* (Nov. 17, 2008), <http://www.nytimes.com/2008/11/18/us/18memphis.html>.

⁴⁶ MOGUL, RITCHIE & WHITLOCK, *supra* note 15.

⁴⁷ MOGUL, RITCHIE & WHITLOCK, *supra* note 15.

⁴⁸ Andrea J. Ritchie, *The Pertinence of Perry to Challenging the Criminalization of LGBT People*, 37 *N.Y.U. J. LAW & SOC. CHANGE* 63, 64-65 (2013).

help.⁴⁹ The kind of discriminatory decision-making the archetypes drive is often invisible to the law and thus not susceptible to challenge in the same ways as other forms of explicit race, gender and sexuality-based discrimination.

The “broken windows” policing paradigm, which originated in New York City and has since spread like wildfire across the country, facilitates this racialized policing of gender and sexuality. “Broken windows” theory is based on the notion that leaving signs of disorder (like broken windows) unattended will inevitably lead entire communities to descend into violence and mayhem.⁵⁰ The theory evolved to also posit that punishing “low level offenders,” such as turnstile jumpers, will prevent these individuals from descending into a life of crime. Perhaps more disturbingly, the article on which the theory is premised explicitly names the public presence of particular types of people--youth, homeless people, people perceived to be engaged in prostitution, and “unattached” adults - as embodied signs of disorder which must be rooted out while reinforcing heteronormative notions of who is a “good citizen.”⁵¹

Implementation of “broken windows” theory is characterized by the proliferation and aggressive and discriminatory enforcement of so-called “quality of life” regulations, which criminalize an ever expanding range of activities in public spaces, including: standing (“loitering”), sitting, lying, sleeping, eating, drinking, urinating, littering, making noise, and approaching strangers, as well as a number of vaguer offenses such as being “disorderly” or “lewd.”⁵² Together, these regulations make it very difficult to exist in public spaces without committing at least a single offense. Despite the fact that the scientific basis of “broken windows” has been repeatedly questioned, this theory of policing has given law enforcement an almost unlimited power to stop, ticket, and arrest youth of color, low-income and homeless people, public housing residents, people engaged in street-based survival economies, street vendors, and anyone else who may be hypervisible in public spaces, including trans and gender nonconforming people.⁵³

In this structural context, police interactions are informed by perceptions of women and queer people of color as literally embodying a racially gendered and sexualized disorder--which often translates directly into a charge of disorderly conduct, unreasonable noise, or loitering for the purposes of prostitution simply for being present in a public space. Archetypes of gender nonconforming people as inherently violent and deviant leads to dangerous, discriminatory profiling. Gender nonconforming young women are profiled as gang members, and gay and gender nonconforming men are profiled as being engaged in lewd conduct in public

⁴⁹ MOGUL, RITCHIE AND WHITLOCK, *supra* note 15.

⁵⁰ Kelling & Wilson, *supra* note 4.

⁵¹ Andrea J. Ritchie, *Black Lives Over Broken Windows*, THE PUBLIC EYE (Spring 2016), http://www.politicalresearch.org/wp-content/uploads/2016/06/PE_Spring16_Ritchie.pdf.

⁵² ANDREW MCARDLE & TANYA ERZEN, ZERO TOLERANCE: QUALITY OF LIFE AND THE NEW POLICE BRUTALITY IN NEW YORK CITY (2001).

⁵³ Ritchie, *supra* note 51.

bathrooms and public parks, based on narratives framing men of color and particularly queer men as hypersexual, uncontrolled manifestations of sexual deviance.⁵⁴

The challenge, then, is to not only identify the laws and policing practices that facilitate this racialized policing of gender and sexuality, but also to surface the ways in which policing produces race, gender, sexuality and poverty-based classifications in the enforcement of facially-neutral statutes.⁵⁵ These often-unconscious classifications are rooted in racialized, gendered, transphobic, and heteronormative understandings of acceptable behavior, presentation, and expression that inform daily police interactions, but are frequently invisible and impervious to Fourth and Fourteenth amendment challenges. Yet they are no less invidious in their impact.

Nevertheless, these impacts are routinely deemed *de minimus* or reasonable under Fourth Amendment jurisprudence, in after-the-fact determinations made by courts that are ultimately informed by the same controlling narratives that produced the misconduct in the first place. And in the absence of *de jure* distinctions or evidence of intentional discrimination, discriminatory decisions about whose conduct is to be punished, and how, are all too often deemed beyond the purview of the Equal Protection Clause. As a result, many of the consequences of broken windows policing--ranging from daily indignities to death--are not cognizable at law.

So what would it mean to center these narratives, experiences, and realities within our movements for police accountability? It might mean different names on t-shirts, different images, different memes, or different subjects of organizing. For instance, a report I co-authored, *Say Her Name: Resisting Police Brutality Against Black Women*, was released on the eve of and in support of the first National Day of Action to End State Violence Against Black Women and Girls called for by Black Youth Project 100, Black Lives Matter, and Ferguson Action.⁵⁶ Over thirty communities across the country responded to this call with vigils, direct actions, and protests. In July of 2015, a number of communities across the country similarly mounted light actions in the wake of Sandra Bland's death in police custody.⁵⁷

Of course, it's not enough to just "say her name." Black women's experiences of profiling and policing must drive our analysis, advocacy agendas and organizing. For example, in early 2015 over seventy-five women's groups, antiviolence organizations, and criminal justice advocates signed on to a submission to the President's Task Force on 21st Century Policing.⁵⁸ This submission highlighted

⁵⁴ MOGUL, RITCHIE & WHITLOCK, *supra* note 15.

⁵⁵ Ritchie, *supra* note 51.

⁵⁶ For more information, see *National Day of Action for Black Women and Girls*, BLACK YOUTH PROJECT 100, <http://byp100.org/justice-for-rekia/> (last visited March 23, 2016).

⁵⁷ See Ashoka Jegroo, *Across the US, Activists Shine Light on Sandra Bland's Mysterious Death*, WAGINGNONVIOLENCE.ORG (July 30, 2015), <http://wagingnonviolence.org/2015/07/across-us-activists-shine-light-sandra-blands-mysterious-death/>.

⁵⁸ ANDREA RITCHIE, SUBMISSION TO PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING, POLICY AND OVERSIGHT | WOMEN OF COLOR'S EXPERIENCES OF POLICING (2015),

women's experiences of policing and outlined an agenda for police reform that is both gender specific and inclusive. Similarly, a group of LGBTQ organizations developed and submitted a shared policy agenda rooted in *A Roadmap for Change: Federal Policy Recommendations to Address the Criminalization of LGBT People and People Living With HIV (PLWH)*.⁵⁹ The Task Force adopted a number of key recommendations that would require adoption of comprehensive profiling bans, as well as policies that ban the use of condoms as evidence, govern police interactions with LGBTQ people, and require documentation and action on police sexual assault.⁶⁰

Ultimately, embodying the principle that Black women and queer and trans people's lives matter requires more than expanding our agenda for criminal justice reform to include policy changes that will address our experiences. Our experiences of punishment and death rather than protection at the hands of the police is not the product of a few bad apples or departmental resistance to reform, but rather bias intrinsic to the system itself. This knowledge requires us to radically reimagine our visions of safety, and to collectively imagine strategies and institutions that will not facilitate the policing of gender and sexuality in service of policing race and poverty, but instead truly promote safety from all forms of violence, including police violence, for all members of our communities. And it requires us to fundamentally shift relations of power in ways that the law, which is set up to reinforce them, ultimately cannot do.

As a result, we are charged not only with utilizing the law to achieve justice, but our imaginations to achieve liberation.

<http://changethenypd.org/sites/default/files/docs/Women's%20Sign%20Letter%20on%20to%20Presidential%20Task%20Force%20-%20Policy%20and%20Oversight%20-%20FINAL.pdf>.

⁵⁹ See SUBMISSION TO PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING, POLICY AND OVERSIGHT | LGBT EXPERIENCES OF POLICING (2015), <http://changethenypd.org/sites/default/files/docs/LGBT%20Submission%20to%20Presidential%20Task%20Force%20-%20Policy%20and%20Oversight%20-%20FINAL.pdf>; see also Catherine Hanssens, Aisha C. Moodie-Mills, Andrea J. Ritchie, Dean Spade & Urvashi Vaid, *A Roadmap for Change: Federal Policy Recommendations for Addressing the Criminalization of LGBT People and People Living with HIV* (2014), https://web.law.columbia.edu/sites/default/files/microsites/gendersexuality/files/roadmap_for_change_full_report.pdf.

⁶⁰ See PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING, FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING (2015), http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.