

ALSO BY ANDREA J. RITCHIE

*Queer (In)Justice: The Criminalization of LGBT People
in the United States* (with Joey L. Mogul and Kay Whitlock)

Say Her Name: Resisting Police Brutality Against Black Women
(with Kimberlé Williams Crenshaw)

INVISIBLE NO MORE

**POLICE VIOLENCE AGAINST
BLACK WOMEN AND WOMEN OF COLOR**

ANDREA J. RITCHIE

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FOREWORD

Invisible No More: Police Violence Against Black Women and Women of Color is a very important twenty-first-century document. It reminds us how little in the way of material progress has been made during the last century in purging our societies of officially condoned racist violence. At the same time, Andrea Ritchie's multifaceted and unrelenting antiviolence practice over the last decade, to which her book bears witness, reveals extraordinary progress in the way we conceptualize state violence and antiviolence strategies. She does not urge us simply to add women of color to the list of targets of police violence—a list that is already longer than anyone would wish. She asks us to consider what the vast problem of state violence looks like if we acknowledge how gender and sexuality, disability, and nation are intermeshed with race and class. In other words, Ritchie's feminist approach reminds us that the job of purging our worlds of racist violence is far more complicated than advocates of simple police reform would have us believe. It is not only Black women and women of color who are "invisible no more" but also the immensity and complexity of the problem of rooting out the nexus of racist violence.

Reading Ritchie's text, I was immediately reminded of *We Charge Genocide*, the petition presented to the United Nations in 1951 by William L. Patterson and Paul Robeson. *We Charge Genocide* also documented hundreds of cases of racist violence, both legal and extralegal, in order to solidify the argument that if one took seriously the UN definition of genocide, then people of African descent in the United States would certainly be considered the targets of a genocidal strategy. This petition against genocide reflected a broader approach forged by the Civil Rights Congress and anchored in the development of international

solidarities against US racism. Ritchie's work also calls forth Ida B. Wells's 1895 *The Red Record*, which documented countless descriptions of lynchings in the aftermath of slavery. In each of these efforts, the unifying theme is the impossibility of eradicating racist violence without radical transformation of the social, economic, political, and cultural contexts that produce it.

Like its antecedents, this is a difficult book to read. Because we encounter case after case of excessive, traumatic force, including systemic sexual violence, this is a book that dares us not to turn away. It challenges us to acknowledge the human dimension of this violence, which should not be effaced in abstract statistical accounts. A close-up account from the person who litigated many of these cases, has engaged in activist work with various antiviolence organizations and agencies, and authored or coauthored central policy reports, this book is testimony of a life devoted to collective struggle and radical social transformation.

—Angela Y. Davis, Distinguished Professor Emerita
of History of Consciousness and Feminist Studies,
University of California, Santa Cruz

FOREWORD

and I am going to keep writing it down
how they carried her body out of the house
dress torn up around her waist
uncovered
past tenants and the neighborhood children
a mountain of Black Woman

—AUDRE LORDE, "For the Record"

Eleanor Bumpurs's 1984 killing by Officer Stephen Sullivan didn't make a strong impression on me as a thirteen-year-old Black girl growing up in New York City. I know that there was press coverage and some local organizing seeking justice for her death, and that when I was fifteen, Stephen Sullivan was tried and acquitted for killing Bumpurs. The more things stay the same, the more they stay the same.

As I was becoming politicized in my teenage years and began to pay attention to the violence of policing, I understood and interpreted oppressive policing primarily through a Black masculinist lens. All the victims who shaped my consciousness were men—specifically, Black men like Michael Stewart, Edmund Perry, and Mark Davidson, to name a few. At the time, I didn't realize policing also disproportionately negatively impacted Black women. It wasn't until I began working with survivors of rape and domestic violence that I gained a greater understanding of racialized gendered violence (both interpersonal and institutional). Though my personal consciousness was raised over the course of organizing and work, I'm sad to say that more than thirty years since Bumpurs was shot and killed, police violence against Black women remains under-examined and too often invisible in public discourse.

I spent more than two decades living and organizing in Chicago, a city known for one of the most brutal and corrupt police forces in the country. Chicago is, after all, the city where Commander Jon Burge and his fellow officers tortured at least 120 Black people from 1972 to 1991. It is also, as I learned while doing research for a zine, the city where Jessie Mae Robinson, owner of the New South Park Record Store, recounted a story of violence at the hands of Chicago police from her hospital bed in 1959. Mrs. Robinson was arrested, along with nearly fifty others, during a warrantless police raid of a party at a private home. The partygoers were taken to the Englewood police station. The officers helped themselves to some beer during the raid and started drinking when they arrived at the station. Mrs. Robinson said that the eight women among those arrested “were subjected to indignities” including racial epithets and physical assaults, in Mrs. Robinson’s case, severe enough to cause her to be hospitalized. None of the officers who assaulted her and the other partygoers were disciplined. This is by now a familiar outcome to twenty-first-century readers. What historian Sarah Haley has termed “the absence of a normative gendered subject position” for Black women explains (in part) how Chicago police could so cavalierly brutalize Mrs. Robinson.

In Chicago, I spent time organizing with and on behalf of girls and young women of color. Their stories of being “catcalled” and “hassled” by cops on the street, being sexually harassed by police stationed in their middle and high schools, and living in fear that their brothers, fathers, boyfriends, and friends would be shot or killed by law enforcement are seared in my memory. When narratives about police violence are written, though, most often these young women’s voices are still missing.

Yet young women of color have been and are speaking out to pierce the silences around the impact(s) of state violence on their lives. *Invisible No More* mentions, for example, the Young Women’s Empowerment Project, an organization that Andrea Ritchie and I both spent several years supporting as a board members, donors, and allies. YWEP documented, through participatory-action research, girls and gender-nonconforming young people’s encounters with the police in their Bad

Encounter Line report and in zines. In *BEL Zine* #3, YWEP researchers share the following story:

I was walking to the bus when a police officer called out and said, “Hey you come here girl with all of that ass.” I ignored the comment unaware of where it was coming from until he pulled up on the curb to block my path in his undercover cop car. He jumps out and yells “Didn’t you hear me calling you girl?” I replied by simply saying “No, my name isn’t aye girl with all that ass.” He got really mad and slapped me saying that I was very disrespectful and do I know who he is and what he can do to me?

The incident escalated, with the officer sexually assaulting the young woman, then arresting and jailing her when she tried to report him. Collecting and sharing such stories is a critical form of resistance led by marginalized young women of color. We need more such efforts, grounded in our communities, to document police violence against women and girls of color.

In 2011, as Ritchie briefly recounts, I supported a young woman named Tiawanda Moore. Tiawanda, who was twenty at the time, reported that she had been sexually assaulted by a police officer and was then herself charged with two counts of eavesdropping on police after she recorded internal affairs officers discouraging her from filing a complaint. If she had been found guilty at trial she would’ve faced up to fifteen years in prison. After she was—thankfully—acquitted, she filed a lawsuit against the City of Chicago. The fact that Tiawanda was sexually assaulted by a police officer in her own apartment and then found herself on trial and facing prison while the officer was not even reprimanded was a terrible injustice. I’m grateful that more people will learn about Tiawanda’s bravery in standing up to the officer who assaulted her, to the Chicago Police Department, and ultimately to Cook County. To read about how Tiawanda refused to be intimidated and pressed forward to lodge her

complaint is to draw strength from her courageous actions for our own fights. We need more people to center women of color targeted by police in their freedom campaigns.

There are countless stories of other women of color and of gender-nonconforming people who have suffered police violence up to and including death. Yet, writing in the mid-1990s in *Resisting State Violence*, Dr. Joy James explained: “The death of women in police custody by means of law enforcement’s measures to discipline and punish is an issue rarely raised in feminist explorations of women and violence or masculinist explorations of racism and policing.” *Invisible No More* is a long overdue corrective to this neglect and erasure, comprehensively documenting, for the first time, a long history of police violence against women of color.

By centering the experiences of girls and young women of color, *Invisible No More* extends and enlarges the carceral landscape, insisting that we consider the streets, the schools, and the home as sites of oppressive policing. Previously obscured, sexual and reproductive violence also come into view. *Invisible No More* argues that paying attention to these issues expands and transforms how we consider policing. As more people address the ever-expanding prison-industrial complex (PIC), this book finds itself in dialogue with others addressing the history and impacts of mass incarceration on women of color (particularly Black women and girls). After all, the police are the gatekeepers of the PIC. Racialized gender violence doesn’t stop with police but extends to other forms of state violence, including the violence of prisons, the medical-industrial complex, and economic violence, all of which require our attention and organizing.

This book doesn’t just document police violence against women of color, nor does it simply offer policy prescriptions to reduce the harms of oppressive policing. *Invisible No More* is also an invitation to resistance to each of us and will serve as a long overdue and invaluable resource to anchor and inform the efforts of young people organizing today against state violence in all its forms.

I’ve been protesting police since I was a teenager. Back then, I called it anti-police brutality activism. Thirty years later, I’ve retired the term “police brutality.” It is meaningless, as violence is inherent to policing. *Invisible No More* underscores that Black women like Jessie Mae Robinson, as well as women and gender-nonconforming people of color like those whose experiences were documented by YWEP, have never had the benefit of protection by and from the state. In fact, one of the projects I currently play a leadership role in, *Survived and Punished*, challenges the ways women and gender-nonconforming people are punished for survival and self-defense.

Today, my organizing work is focused on abolishing police, prisons, and surveillance. It took a long time for me to embrace abolition as praxis. I bought into the idea that more training, more transparency, better community oversight, and prosecuting killer cops would lead to a more just system of policing. I was wrong. The origin story of modern American policing is slave patrols and union busting. A system created to contain and control me as a Black woman cannot be reformed. *Invisible No More* provides ample evidence about the endemic violence of policing against women of color (particularly those who are Black and Indigenous). Abolitionists can use this information in our campaigns to build new life-giving and life-affirming institutions. For me, abolition is the way forward.

This book has been years in the making, and I know that Andrea Ritchie has lived with many ghosts and spirits during that time. That takes an emotional toll. But I can imagine the ghost of Eleanor Bumpurs watching over her as she wrote this important and critical book, giving her fortitude and maybe some comfort, whispering the names of Eulia, Aiyanna, Duanna, Rekia, Hattie, and so many more in her ear, saying: “Don’t forget us. Tell our stories. Say our names.” And because Audre taught her well, Andrea kept writing it all down. We are all the beneficiaries.

—Mariame Kaba, founder, Project NIA,
and co-organizer, *Survived and Punished*

upon conviction—263 years—BWBP highlighted the limitations of criminal legal responses to police sexual violence after Holtzclaw’s conviction and sentence, issuing a call

for sustainable justice strategies and a call to envision justice for ourselves, survivors, and future generations; a visioning of justice beyond what the prison system and criminal justice system offers. One conviction does not end rape. . . . Historically the criminal justice system has seldom represented a safe space or answer for Black women. . . . Beyond reactionary prison system responses that fail to prevent rape from happening in the first place and don’t stop it from happening again, we ask your response to this question: What would justice really look like to Black women survivors of sexual assault?¹⁰¹

That is the question we are called to answer.

POLICING GENDER LINES*

Although the role of law enforcement in policing lines of race and class is generally recognized, until more recently their role in constructing and enforcing racialized borders of gender has been less visible. When gender has been addressed in the context of policing, discussion has largely focused on the targeting of men of color *by* law enforcement and the role of women *in* law enforcement.¹ Yet, throughout US history, police have consistently targeted women and gender-nonconforming people and used harassment, physical and sexual violence, arrest, lethal force, and denial of protection to produce, maintain, and reify racially constructed gender norms, even as the legal landscape of gender has shifted over time. Gender represents a central axis around which policing takes place, and gender policing is embedded in, operates in conjunction with, and furthers policing of race, class, and nation.

The lines of gender are drawn most literally between a false gender binary that tolerates no deviation in appearance, behavior, or expression from characteristics associated with the gender assigned at birth, leading to suspicion and presumptions of instability, criminality, fraud, and violence in police interactions with transgender and gender-nonconforming people, particularly of color.² Additionally, as feminists of color have taught us, the lines of gender are also drawn around idealized notions of white womanhood developed in service of white supremacy, which implicitly exclude and punish nonwhite women. This is often accomplished through deployment of controlling narratives constructing women of color in opposition to characteristics imputed to pure and innocent white women: chastity, motherhood, domesticity, piety,

* This chapter is based in part on a draft coauthored with Z. Gabriel Arkles in 2010.

and meekness. These narratives, and the structural relations of power they serve, inform daily police interactions and exercises of discretion. Finally, throughout US history, women who departed from chaste and domestic gender roles—for instance, by traveling unaccompanied on the streets at night, being “drunken and disorderly,” or engaging in “lewd and lascivious behavior”—have been criminalized.³ This chapter focuses primarily on the policing of the gender binary, while other forms of racialized gender policing are explored throughout the book.

CLOTHING

Although the terms “trans,” “transgender,” and “gender nonconforming” evolved relatively recently, individuals and societies whose expressions of gender transcend rigid binary constructions have long existed. As described in chapter 1, imposition of a binary gender system was essential to the project of colonization, justifying violence against Indigenous peoples framed as existing beyond European-imposed understandings of gender.⁴ Gary Bowen, a trans man of Native descent, author, and organizer, emphasizes that Native people “have been murdered, burned, beaten, hanged, imprisoned, flogged, stripped, humiliated, and otherwise forced into compliance with dominant standards of gender and sexuality or exterminated when they resisted.”⁵ Coercive enforcement of binary and hierarchical notions of gender has continued throughout US history through punishment of individuals who fail to meet racialized ideals of gender.

Enforcement of sumptuary laws—laws designed to regulate habits on moral or religious grounds—is one of the more recognized forms of gender policing.⁶ Law professor I. Bennett Capers explains that such laws supplemented and replaced laws prohibiting enslaved people and people of lower classes from wearing clothing associated with ruling classes:

Between 1850 and 1870, just as the abolitionist movement, then the Civil War, and then Reconstruction were disrupting the subordinate/superordinate balance between blacks and whites, just as middle class women were demanding social and economic equality, agitating for

the right to vote, and quite literally their right to wear pants, and just as lesbian and gay subcultures were emerging in large cities, jurisdictions began passing sumptuary legislation which had the effect of reifying sex and gender distinctions.⁷

Historian Clare Sears describes the passage of laws prohibiting cross-dressing in San Francisco as a formalized expression of “[state] interest in defining and policing normative gender as part of the work of governance . . . pushing previously tolerated cross-dressing and commercial sex practices to the margins, as acts that no longer belonged in everyday public life.”⁸ Enforcement focused on “feminist dress reformers, ‘fast young women’ who dressed as men for a night on the town, female impersonators, and people whose gender identifications did not match their anatomy in legally accepted ways.” Police drew lines not only between men and women but also around “gender appropriate” behaviors, attempting to neutralize “threats to male dominance posed by dress reform feminists who defied women’s confinement in the private sphere, threats to sexual morality posed by cross-dressing ‘degenerates’ who caroused in bars . . . and threats to the cultural imperative of gender legibility posed by people with a gender identity that diverged from their legal sex.”

Enforcement required police to scrutinize bodies in the public sphere for any “ostensible disjuncture of gendered clothing and sexed body.” San Francisco officers used “the size of a suspect’s hands and feet, the presence or absence of facial hair, the . . . way he or she walked” as markers of gender in the nineteenth century. These means of enforcement have not changed much over the past century and a half: present-day police officers have listed these exact characteristics when I’ve deposed them around how they interpret gender for purposes of arrest processing in litigation challenging unlawful searches of trans and gender-nonconforming people.⁹ “Gender searches”—whether through the “removal of a wig or veil” or “jailhouse medical examination”—were endemic to enforcement of cross-dressing laws in nineteenth-century San Francisco, and remain pervasive today.¹⁰

When enforcing cross-dressing laws, police both produced and reinforced white normative gender.¹¹ In the nineteenth century, the

majority of reported arrests under cross-dressing laws in San Francisco involved white women, presumably because women of color, already excluded from the bounds of “womanhood,” could not transgress them by cross-dressing. Normative gender was thus inscribed as “the exclusive property of whites.”¹²

Nevertheless, people of color, particularly immigrants, were occasionally targeted for the enforcement of sumptuary laws. Geraldine Portica, a light-skinned Mexican who had been raised and lived as a woman all her life, was arrested in 1917 “for wearing women’s clothing on a body the police classed as male.” A police officer inscribed a photograph of her with the caption “This is not a girl, but a boy,” in so doing “reinscribing maleness on her body,” writes Sears.¹³ Portica was deported to Mexico.¹⁴ In 1908 a Chinese youth named So Gitwho was arrested on the belief that, despite a feminine gender expression, So Gitwho was male. Newspapers claimed that So Gitwho was part of a larger criminal enterprise and framed the “Chinese cross-dressing criminal as indicative of an undifferentiated, all-consuming threat.”¹⁵ Across the country, in mid-nineteenth-century New York City, Mary Jones, also known as Peter Sewally, a Black person, was repeatedly arrested for “perambulating the streets in woman’s attire.”¹⁶ Lawrence Jackson, described as a “brazen faced darky,” was arrested in Chicago for “promenading on Clark avenue wearing female attire” in 1881.¹⁷ Such arrests were not confined to urban environments: Babe Bean, a gender-nonconforming Latinx person described as a “passing woman,” was arrested in Stockton, California, in 1897 for cross-dressing.¹⁸

Immigration authorities and the public both projected gender nonconformity wholesale onto Chinese migrants within the broader context of the Chinese Exclusion Act of 1882.¹⁹ Proponents of Chinese exclusion “deployed cross-dressing imagery in their constructions of national belonging, linking Chinese immigrants in particular to gender deviance and deceit.”²⁰ In this context, according to Sears, “masculinizing accounts of Chinese women joined feminizing accounts of Chinese men to produce an image of Chinese gender as utterly illegible,” a kind of “foreign and pathological formation,” deployed “to produce and police the racialized borders of the nation-state,” justifying exclusion and

informing policing of Asian women both as presumed “prostitutes” and as masculinized threats.²¹

For much of the twentieth century, police used sumptuary laws to punish gender nonconformity among drag queens, transgender women, and butch lesbians of color.²² Piri, a self-described “Black stud”—a term used by lesbians of color on the masculine end of the gender spectrum—who experienced police brutality and arrest for wearing men’s clothing in the 1940s and 1950s, said, “At the time, when they pick you up, if you didn’t have two garments that belong to a woman, you could go to jail . . . and the same thing with a man. . . . They call it male impersonation or female impersonation and they’d take you downtown. . . . It would give them the opportunity to whack the shit out of you.”²³ Poet and activist Audre Lorde similarly wrote that “there were always rumors of plainclothes women circulating among us, looking for gay-girls with fewer than three pieces of female attire.”²⁴ Trans women and self-identified drag queens of color were often rounded up and arrested on the basis of cross-dressing laws.²⁵ Sylvia Rivera, a Puerto Rican revolutionary and veteran of the Stonewall Uprising in New York City in 1969, remembers: “When I was growing up, if you walked down Forty-Second Street and even looked like a faggot, you were going to jail. I went to jail a lot of times.”²⁶ At times, perceived violations of cross-dressing laws proved fatal: in 1970, police shot a young Black person in Chicago in the back eight times after seeing the person on the street wearing women’s clothes; the person had previously been arrested and charged with “impersonating the opposite sex.”²⁷

While enforcement continued through the twentieth century, courts began striking down sumptuary laws in the 1970s. Yet formal changes in the law have not translated into an end to policing of perceived violations of gender norms in clothing, particularly for women and trans people of color. For instance, in 2002, a Black lesbian reported that Washington, DC, police officers unbuttoned her trousers during a street search, asking her, “Why are you wearing boys’ underwear? Are you a dyke? Do you eat pussy?”²⁸ Latinx lesbians report increased police harassment when they are “dressed like a guy.” Feminine attire worn by transgender women is pervasively cited by police as grounds

for suspicion that they are engaged in prostitution or “lewd conduct.” Vivianna Hernandez of the Los Angeles LGBT Center told me as I was researching *Stonewalled*, “They used to arrest us for wearing women’s clothing. Now they arrest us for loitering with intent to solicit.”²⁹ The ease with which one charge is substituted for another should come as no surprise: according to Clare Sears, “The emergence of cross-dressing law was intimately bound up with the regulation of prostitution,” as both offenses were prohibited within a broader set of regulations governing what Sears terms “problem bodies.”³⁰

Enforced in the United States until as recently as the 1980s, sumptuary laws left a powerful legacy of presumptions that people whose appearance is deemed gender nonconforming are inherently fraudulent and mentally unstable.³¹ For instance, in the 1950s, a Native person was convicted for “defrauding the government” for living life as a woman, marrying a soldier, and collecting associated entitlements, and was ordered to undergo psychiatric treatment to “bring out . . . masculine qualities.”³² Half a century later, Meagan Taylor, a Black trans woman, checked into a hotel in Des Moines, Iowa, with a friend on their way to a funeral. The hotelkeeper called the police when the gender marker on Meagan’s ID didn’t match her gender expression, assuming on this basis that she was engaged in prostitution. Once police arrived, Meagan says they “were very forceful and disrespectful. They tried to make it seem like we were doing something other than we were. They made my friend take out the stuffing in her bra.” Finding no evidence of prostitution, the police nevertheless arrested Meagan and charged her with using a “fraudulent” ID and for carrying medication without a prescription, something many of us do on a regular basis, yet in her case it was seen as another crime of “fraud.” She and her friend spent eight days in jail because they couldn’t post bail—and missed the funeral they were traveling to attend. Meagan filed a complaint against the hotel before the Iowa Civil Rights Commission, and the case was settled to her satisfaction. Meagan later wrote, “When this all happened, I knew exactly what it was: the racial profiling, the transgender profiling, the harassment, the solitary confinement. I knew why it was happening, and I knew it wasn’t right. I knew something had to change. To experience so many levels of

discrimination makes you feel like less of a person. I want to stand up for myself and other Black and transgender people. And so I did.”³³

A perception of fraud also led to criminal charges for seventeen-year-old Bianca Feliciano, a Latinx trans woman. She was with a Black trans friend in the town of Cicero, just outside of Chicago, when they were stopped for “walking while trans.” According to police, they were in “an area known for a high concentration for prostitution.” There was no evidence that they were there to trade sex. When Bianca produced identification reflecting her legal name and a female gender marker, the officer told her she was not female “because she had a dick in between her legs.” When she protested, he threatened her with physical violence and a fraud charge for misrepresenting her gender on her state ID. The officers then searched Bianca’s purse and found a pack of menthol cigarettes and a sock with a rock in it—not of crack, but a stone for self-defense, presumably against transphobic attacks. Bianca was charged with possession of tobacco as a minor and a phony weapons-related offense. At the precinct, officers referred to her as male both to her face and in reports, mocked her “titties,” and forced her to reveal the male name she was given at birth. To top it off, the police refused to give Bianca back her state ID upon her release. Represented by my *Queer (In) Justice* coauthor Joey Mogul, Bianca successfully sued the City of Cicero and secured an agreement that they would adopt a policy on police interactions with trans people.

According to law professor Gabriel Arkles, cross-dressing continues to be used as evidence in criminal cases and commitment proceedings.³⁴ For instance, in 2006, NYPD officers stopped a person wearing a women’s sweater, eyeliner, an earring, and a ponytail as the person was standing on the street with two friends from a homeless shelter and looking for something in a purse. Claiming the individual was a “man with a purse,” the officers questioned and then arrested the person for theft of the purse. The trial court found no lawful basis for the stop, noting that the person in question was unquestionably of “transgender appearance,” and concluded that under the circumstances merely carrying a purse was not enough to justify the stop. However, the appellate court reversed the decision, determining that the person could not possibly

be transgender because when arrested the person's face had stubble and the person was wearing a dark jacket over a red shirt and jeans. Having, with a stroke of the pen, determined that transgender people do not wear jackets and/or allow facial hair to show (even if homeless and recently arrested), the court ruled police could stop someone they perceived to be "an unshaven male rifling through a woman's purse," thereby explicitly condoning police presumptions of criminality based on arbitrary and unwritten rules of appropriate gender presentation and expression.³⁵

BATHROOM POLICING

Even in the absence of laws explicitly regulating their use, bathrooms and other sex-segregated facilities become intense sites of enforcement of the gender binary, with particularly severe consequences for transgender people of color and women of color perceived to defy gender norms.³⁶ For instance, Mandy Carter, a founder of Southerners on New Ground, reported that following Hurricane Katrina, Sharlie Arpollo Vicks, a Black trans woman from New Orleans, was arrested and held for six days for using the women's shower at a Texas evacuation center.³⁷ Such arrests regularly take place nationwide, even though, with the exception of recently adopted North Carolina Public Facilities Privacy and Security Act, known as House Bill 2, and copycat legislation in other jurisdictions, there are generally no laws requiring individuals to have any particular set of characteristics in order to use a bathroom labeled "men" or "women."³⁸ Nevertheless, police can make arrests on the basis of offenses such as "disorderly conduct," "indecent exposure," or trespassing laws if a property owner or manager complains.

Though transgender people bear the brunt of police abuse in connection with use of gender-segregated bathrooms, nontransgender women of color who do not conform to racialized notions of feminine appearance are also caught in the web of gender policing. For instance, in *Arab American Feminisms*, Huda Jaddallah, a gender-nonconforming Palestinian lesbian, describes being mistaken for a man and being perceived as "violent and dangerous" when she enters a women's restroom.³⁹ Similarly, when I was researching *Stonewalled*, an activist told me about a

nontrans Black woman who plays on a women's football team and was violently arrested after using the women's bathroom in a restaurant in the Washington, DC, area.⁴⁰

"CLASSIFICATION ANXIETY"

Beyond directly policing the lines of gender by enforcing compliance with norms of attire and bathroom use, police enforce racialized gender conformity in myriad ways on a daily basis, in virtually every interaction with women and gender-nonconforming people of color. This includes demanding identification as proof of gender authenticity and imposing genders on individuals taken into police custody, often based on violative and unlawful searches. When officers experience "classification anxiety" in routine daily police interactions, they treat transgender and gender-nonconforming people as threatening because they place in question "identities previously conceived as stable, unchallengeable, grounded and 'known,'" which serve as critical tools of heterosexist culture.⁴¹ As a result, failure to meet individual police officers' subjective expectations of gender appropriate behavior is read as embodying "disorder," giving rise at a minimum to intensified scrutiny that often escalates to verbal and sexual harassment, detention, and citation or arrest.⁴² Ultimately, law enforcement officers imagine and enforce highly racialized and deeply classed social constructions and relations of gender in daily interactions with women and gender-nonconforming people of color. They project narratives rooted in white supremacist heteropatriarchy onto our racially gendered bodies, then act on and enforce them through surveillance and suspicion, violence and violation.⁴³

By providing officers with a plethora of both vague and specific laws and almost unlimited discretion in enforcing them, broken windows policing facilitates the process of racialized gender policing. Take the case of Allen Galbreath, a Black gender-nonconforming former ballet dancer who one day in July of 2010 went to a park in Oklahoma City to perform morning exercises wearing high heels, carrying a red purse and a cane, and wearing lipstick. After receiving a 911 call describing Allen, a police officer accosted, questioned, and arrested Allen for "disorderly conduct," despite the absence of any evidence that

Allen was disturbing anyone's peace. Allen vigorously protested the stop and arrest as motivated by race and by gender nonconformity.⁴⁴ The criminal charges were dismissed, and Allen filed a civil lawsuit challenging the officer's actions as unconstitutional. Unfortunately, Allen's claims were ultimately dismissed after a jury trial endorsing officers' use of vague "quality of life" offenses to police gender expression in public spaces.⁴⁵

In the context of broken windows policing, responses to police demands for identification during stops motivated by racial and other forms of profiling become sites of gender policing, such as when officers demand to see individuals' "real" IDs or know their "real" names when the gender markers on ID don't match the gender individuals are expressing, or what an officer thinks they should be expressing. Trans people face significant barriers to accessing IDs that accurately reflect their gender, facing a web of complex and often conflicting rules that vary widely from jurisdiction to jurisdiction and agency to agency.⁴⁶ This is further complicated by increasingly restrictive rules for obtaining any identification, primarily motivated by anti-immigrant sentiment and post-9/11 fearmongering. Consequently, many trans people have IDs that inaccurately list their gender, or have different gender markers on different pieces of ID. As in Bianca's case, an officer's request for identification can quickly escalate to verbal abuse, physical violence, and arrest.⁴⁷ Additionally, failure to produce ID can, in and of itself, serve as a basis for arrest, regardless of whether an individual has committed a crime.⁴⁸ Even in states that do not require individuals to produce identification on demand, other offenses, such as "disorderly conduct," are deployed to the same end.

Trans people also face criminalization for carrying syringes to administer hormones, whether prescribed or obtained by other means.⁴⁹ This can lead to arrest on the presumption that the presence of syringes signals intravenous drug use, and to physical violence based on perceptions that syringes endanger officers during searches. Additionally, lack of coverage for gender-affirming health care in many states leaves many trans people without health-care options. As a result, some trans people

have formed informal networks of support, which can include giving, taking, buying, selling, and sharing information about hormones, silicone, and other forms of treatment without the intervention of medical authorities. This renders them more vulnerable to criminalization.

HARASSMENT AND PHYSICAL AND SEXUAL VIOLENCE

Police often respond to gender nonconformity with "street justice," administered through verbal harassment and abuse, including slurs such as "faggot," "dyke," "tranny," "he/she," "freak," and "bitch," and often accompanied by physical violence.⁵⁰

Black lesbians frequently report being punched in the chest by officers saying something like, "You want to act like a man, I'll treat you like a man."⁵¹ One woman filed a complaint with the New York City Civilian Complaint Review Board because an officer grabbed her as she was arguing with her girlfriend. When she protested, the officer replied, "I don't give a fuck if you're female, you gay bitch. I will arrest you right now if you think you're a man."⁵²

More than half of transgender participants in the 2015 US Transgender Survey who interacted with officers who knew the participants were transgender reported some form of violence or abuse by police. Native trans women were most likely to report police violence, followed by Black trans women and multiracial trans women.⁵³ Organizations around the country have documented high levels of harassment and violence against trans women by police.⁵⁴ In studies conducted in New York and Los Angeles, more than half to two-thirds of respondents reported verbal or physical abuse.⁵⁵ Studies consistently find that Black, Native, and Latinx trans people are at greatest risk of harassment, physical assault, and sexual violence.⁵⁶ The community-based organization Make the Road New York reports Elena's experience: "The cops stopped her and asked her what she was doing. She replied she was getting coffee. The cops proceeded to take the coffee from her, throw it on the ground and on her feet and told her to 'get on your knees, you fucking faggot.' She was kept on her knees for over thirty minutes until she was finally put in a police van and taken to the local precinct."⁵⁷ Another

trans woman told Human Rights Watch, “They pat-frisk you, they ask if you have fake boobs, take them off right there, if you have a wig, take it off. It’s humiliating.”⁵⁸

Such acts of violence are part of the daily policing of gender taking place in communities across the country. Often acts of police violence are informed by racialized and gendered narratives framing women of color and transgender people of color as inherently devious, mercurially violent, superhumanly strong, and, most of all, deserving of annihilation or disappearance, to be literally stamped out or locked away.

SEARCHES

Law enforcement agents frequently conduct “gender checks”: searches aimed solely or primarily at determining an individual’s physical characteristics for the purposes of assigning a gender, to punish and humiliate trans people, to satisfy their curiosity, or for sexual gratification. From police officers calling out to transgender women on the streets saying, “Show me your tits,” to groping chests and groins during routine searches, police gender checks are a daily reality for gender-nonconforming women and transgender people of color nationwide.⁵⁹

One trans client of mine was ordered to drop her pants and bend over to expose her genital area in a New York City precinct so that an officer could “determine” her gender. Once brought to a booking facility, although she had already been held with women without incident, an officer groped her genitals during a pat search and placed her with men. When she questioned the searching officer about why she was being subjected to a search no other women transported with her experienced, the officer told her that another officer said she was “a guy.” Hers is just one in a series of cases I have litigated or become aware of over the past decade. While there are variations on this theme—from demands that people raise their shirts or drop their pants to often painful and assaultive groping, to invasive and completely unnecessary and unauthorized questioning about anatomical features, surgeries, and medical treatment, to strip searches and visual cavity searches and other forms of discriminatory treatment in police custody—experiences such as this are as common as they are unconstitutional.⁶⁰

RESISTANCE

Resistance to gender policing takes many forms, both individual and collective. The Welfare Warriors Research Collaborative of Queers for Economic Justice emphasized in *A Fabulous Attitude: Low Income LG-BTQNC People Surviving and Thriving on Love and Shelter*:

As we negotiate social spaces, government agencies and our identities on a daily basis, we witness how all people are gendered both institutionally and relationally. In particular, we experience and know how . . . [we] must navigate and resist criminalizing forms of gendering while we powerfully self-determine our own genders . . . gender is a sociopolitical site of both violence and resistance.⁶¹

One of the first cases of resistance to police violence against trans people framed in the context of broader struggles against police brutality that I became aware of involved JaLea Lamot. JaLea was a Puerto Rican trans woman whose case was brought to light by the ALP’s Working Group on Police and State Violence (WGPV), formed in 1997 “in response to a rash of street violence, repressive state violence tactics, an increase of police harassment, and brutality, and the ‘Quality of Life’ policies of the Giuliani administration.”⁶² WGPV was a member of the Coalition Against Police Brutality in New York City.⁶³ When JaLea’s mother couldn’t awaken her after she had taken cold medication, she called the police for assistance. By the time they arrived JaLea was awake, and responding officers began to sexually harass her. Upon discovering that she was transgender, they referred to her using slurs such as “trans-testicle” and beat and pepper-sprayed her and her family. Then they took JaLea to hospital for involuntary psychiatric observation, where she was held for seventy-two hours on the pretense that she was suicidal. Officers also arrested her mother and brother for coming to her defense. JaLea firmly believed that the treatment she and her family received was informed by officers feeling “tricked” by her gender expression—and embarrassed by their sexual attraction to her.⁶⁴

JaLea’s case not only reflects the punishment meted out by officers enforcing the gender binary—and against women who resist their

sexual advances—it also illustrates the deep roots of collaboration between law enforcement and psychiatric authorities to police and punish trans and gender-nonconforming individuals. As Clare Sears notes, “A cross-dressing arrest could trigger an insanity hearing with devastating results” including incarceration in asylums and, for immigrants, deportation.⁶⁵ In many instances, police violence against women and gender-nonconforming people of color is premised on perceptions that gender nonconformity is linked to mental illness, and that mentally ill people are threats who must be punished, confined, and “cured.” Consequently, law enforcement agents have systematically channeled transgender and gender-nonconforming individuals into psychiatric institutions.

The ALP worked with the National Congress of Puerto Rican Rights Justice Committee and other members of the Coalition Against Police Brutality to call attention to JaLea’s case, successfully generating outrage among nonqueer communities. Together they organized to get the charges against JaLea and her family dropped, holding protests, press conferences, and strategy sessions while supporting family members in their quest for accountability. Dayo Gore, a member of the WGPV, later said of the organization’s work on the case that “it has allowed us to both go beyond the ‘gay ghetto’ in our understanding of police violence, have homophobic violence taken seriously by mainstream police brutality activists, and also to raise the level of understanding and commitment to police violence issues within LGBTST [lesbian, gay, bisexual, Two Spirit, and trans] communities at large in New York City.”⁶⁶

Organizers have also fought for systemic changes to how police interact with trans and gender-nonconforming people. For instance, transgender and allied activists in San Francisco, working in concert with communities of color and police accountability groups, were among the first to successfully organize for police policies that protect the rights of trans people in police interactions.⁶⁷ Among other provisions, the standing orders require police officers to refer to trans people by their preferred names, pronouns, and gendered titles and establishes a right of trans people to public space, stating that neither a person’s gender identity nor expression, age, or “disheveled or impoverished” appearance justifies requests for identification or detention.⁶⁸ Several

years later, in 2005, the Washington, DC, police department also yielded to community pressure by trans activists to create policies for interacting with trans people. In addition to provisions similar to San Francisco’s, DC’s policies mandated that officers should not assume that gender identity or expression is evidence of prostitution and strictly prohibited gender searches.⁶⁹ In 2014, a lawsuit filed by Patti Hammond Shaw, a Black trans woman, changed the way that individuals’ gender would be recorded in police databases, and in January 2015, DC’s policy was updated to address organizers’ concerns about police response to intimate partner violence against trans people, policing of sex work, and criminalization of youth.⁷⁰

In 2005, I filed my first lawsuit in New York City, on behalf of a white transgender woman I met while providing legal support to protesters during the 2004 Republican National Convention. When she told me about the violative search she endured while in police custody, we decided to initiate litigation to challenge the long-standing pattern of gender searches identified by local organizations such as SRLP, FIERCE!, and ALP for decades.⁷¹ At least four other transgender women, several of whom I also represented, subsequently sued the NYPD on the same grounds. Ultimately, in the face of litigation and public pressure, the NYPD expressed a willingness to change its policies. A group of advocates researched policies in DC and San Francisco, consulted with trans community members, including incarcerated transgender people and organizers from other cities, and developed a comprehensive set of policy proposals. After eighteen months of negotiations we reached an agreement with the NYPD, and new policies were adopted and announced in June 2012. Despite being the most progressive policies in place at the time, they continue to be violated on a regular basis. As a result, many of the groups involved in securing the changes have continued to call for an independent audit of the policies’ implementation.⁷²

In 2010, the DOJ responded to long-standing community pressure, intensified after egregious police violence following Hurricane Katrina, to conduct an investigation of the New Orleans Police Department (NOPD). That fall, the New Orleans-based organization BreakOUT! organized hearings with other community organizations during which

LGBTQ youth, particularly Black transgender young women, reported pervasive profiling, verbal and sexual harassment by police officers, accusations of falsely identifying themselves when they presenting their IDs, and arrests of queer youth after they had called for help. LGBTQ youth reported that they had been called names and verbally harassed, approached for sex or sexually assaulted by NOPD officers, or had their rights abused in other ways. Ultimately, the DOJ specifically named discriminatory policing practices against LGBTQ youth and transgender women as an area of top concern.

Anchored by the Louisiana Justice Institute, community activists and organizations drafted a “People’s Consent Decree” outlining changes that they wanted to see mandated by the DOJ, including policies related to the policing of LGBTQ people collectively developed by BreakOUT! members. In July 2012, thanks to these efforts, the DOJ and NOPD adopted a consent decree that included unprecedented language prohibiting police profiling and harassment based on sexual orientation and gender identity, and requiring the department to develop a policy governing interactions with LGBTQ people.

BreakOUT! members engaged in a collective process to develop a proposed policy, sifting through policies from San Francisco, Washington, DC, New York, and Portland, and relying on the experiences of its members as the experts on reforms that were needed. The organization mounted a campaign highlighting the common interests of LGBTQTS, youth, racial justice, and immigrant rights groups in fighting discriminatory policing and police profiling, culminating in a rally at the steps of the NOPD headquarters in support of the proposed policy. Ultimately, the NOPD adopted policies including many of the provisions proposed by BreakOUT! youth, although it has been slow to implement them. BreakOUT! continues to work toward ending criminalization of trans and queer youth of color, recognizing that policy change is not enough to protect its members from abusive policing.⁷³

Indeed, the state’s interest in establishing and maintaining clear and immutable racialized gender categorizations as a means of distributing and regulating power and access to social benefits persists, even as

laws explicitly regulating public expressions of gender are struck down, justice is achieved in individual cases, and police policies evolve.⁷⁴ It is therefore essential that we attend to and challenge the ways in which police enforce the borders of the gender binary and regulate and criminalize racialized gender nonconformity in daily interactions within broader analyses of profiling and criminalization.