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## Two Models of the Prison: Accidental Humanity and Hypermasculinity in the L.A. County Jail

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## CRIMINAL LAW

### TWO MODELS OF THE PRISON: ACCIDENTAL HUMANITY AND HYPERMASCULINITY IN THE L.A. COUNTY JAIL

SHARON DOLOVICH\*

*This Article considers what can be learned about humanizing the modern American prison from studying a small and unorthodox unit inside L.A. County's Men's Central Jail. This unit, known as K6G, has an inmate culture that contrasts dramatically with that of the Jail's general*

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\* Professor of Law, UCLA School of Law; Scholar-in-Residence, Center on the Administration of Criminal Law, NYU School of Law. I owe a great debt of thanks to Joe Doherty, Director of the UCLA School of Law's Empirical Research Group, for helping me design the research project on which this Article is based and for guiding me through a lengthy IRB certification process. Thanks are also due to Jamie Binnall, Sam Bray, Ingrid Eagley, Phil Goodman, Juan Haines, Russell Korobkin, Bart Lanni, Rob Mikos, Sasha Natapoff, Cameron Saul, Joanna Schwartz, and Jed Shugerman, and to workshop participants at the University of Chicago, University of Connecticut, Emory, Harvard, Loyola, NYU, UCLA, and San Quentin for very helpful comments and conversation; to Erin Earl, Rebecca Johns, Anne Marie Morris, Brian Priestley, Michael Reiss, Frank Sabatini, Jules Torti, and the reference librarians of the UCLA School of Law Hugh & Hazel Darling Law Library for their research assistance; to the UCLA Academic Senate, UCLA Dean's Office, Georgetown University Law Center, Harvard Law School, NYU School of Law's Center on the Administration of Criminal Law, and the Williams Institute for generous support of this research; to Jody Freeman, for her long support and encouragement of this project; and to several officers of the Los Angeles County Sheriff's Department, including Chief Alex Yim, Deputy Alan Shapiro, and most especially Senior Deputy Randy Bell and Deputy Bart Lanni. Unless otherwise stated, descriptions of the structure and functioning of the L.A. County Jail provided in this Article are drawn from my own research in the Jail. All the views and conclusions presented here are based solely on my own observations and research, and do not represent the views of the L.A. County Sheriff's Department.

population (GP) units. Most notably, whereas life in the Jail's GP is governed by rules created and violently enforced by powerful inmate gangs, K6G is wholly free of gang politics and the threat of violence gang control brings. In addition, unlike residents of GP, who must take care in most instances to perform a hypermasculine identity or risk victimization, residents of K6G face no pressure to "be hard and tough, and [not] show weakness" and thus can just be themselves—a safer and less stressful posture. The K6G unit is also relatively free of sexual assault, no small thing given that K6G exclusively houses gay and transgender prisoners, who would otherwise be among the Jail's most vulnerable residents. This Article draws on original research to provide an in-depth account of life in both K6G and the Jail's GP, with the aim of explaining K6G's distinctive character. The most obvious explanation may seem to lie in the sexual identity of K6G's residents, and this feature does help to account for many positive aspects of the K6G experience. But this Article argues that the primary explanation is far more basic: thanks to a variety of unrelated and almost accidental developments, residents experience K6G as a relatively safe space. They thus feel no need to resort to the self-help of gang membership or hypermasculine posturing and are able to forego the hypervigilance that often defines life in GP. As a consequence, life in K6G is less dehumanizing than life in GP and is even in some key respects affirmatively humanizing, providing space for residents to retain, express, and develop their personal identity and sense of self in a way that is psychologically healthier than the typical carceral experience. Understanding the implications of these differences and how they arose has much to offer those committed to making carceral conditions safer and more humane not only in L.A. County, but in prisons and jails all over the country.

## CONTENTS

I. INTRODUCTION.....	967
II. GP AND K6G: TWO MODELS OF THE PRISON.....	978
A. K6G: The Basics .....	978
B. Life in K6G.....	981
C. (Gang) Life in GP.....	992
D. GP's Hypermasculinity Imperative .....	1002
E. K6G: No Gang Politics, No Hypermasculinity Imperative.....	1013
F. Clarifying the Terms: Violence, Safety, Humanity.....	1021
III. WHAT MAKES K6G K6G? .....	1024
A. Apples to Apples? Levels of Criminality in GP and K6G .....	1026

<i>B. Creating a Safe Space in the L.A. County Jail</i> .....	1032
1. <i>Relatively Impermeable Boundaries</i> .....	1032
2. <i>Trust, Communication, and Mutual Respect Between K6G's Residents and Its Supervising Officers</i> .....	1036
3. <i>Community Creation</i> .....	1046
4. <i>A Possible Fourth Factor: External Attention</i> .....	1053
5. <i>Accidental Humanity?</i> .....	1055
<i>C. Identity Theories: Looking to Sexual Difference</i> .....	1057
1. <i>They Can't</i> .....	1058
2. <i>They Don't Want To</i> .....	1064
3. <i>They Don't Need To</i> .....	1068
4. <i>They Can't and Won't Redux</i> .....	1084
IV. "THEY'VE GOT IT TOO GOOD": THE LAW-AND-ORDER OBJECTION	1087
V. TOWARD INCREASED HUMANITY IN PRISON: LESSONS FROM THE L.A. COUNTY JAIL.....	1099
<i>A. Lessons</i> .....	1100
<i>B. Strategies</i> .....	1107
VI. CONCLUSION.....	1116

## I. INTRODUCTION

The Los Angeles County Jail (the Jail) does not typically spring to mind as a place with lessons to teach about humane prison conditions. For one thing, it is a notoriously volatile and even dangerous institution where severe overcrowding, chronic understaffing, and strict racial divisions rigidly policed by the detainees themselves create conditions ripe for riots and other forms of violence. It is, moreover, massive: on any given day, as many as 19,000 people<sup>1</sup> are held in the eight facilities that make up the Jail

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<sup>1</sup> See Sharon Dolovich, *Strategic Segregation in the Modern Prison*, 48 AM. CRIM. L. REV. 1, 19 n.100 (2011). These numbers are likely to increase as the California prison system, seeking to comply with the population reduction order upheld by the Supreme Court in *Brown v. Plata*, 131 S. Ct. 1910 (2011), shifts a portion of its population back to the counties. See, e.g., CAL. PENAL CODE § 1170(h) (West 2008 & Supp. 2012) (providing that people convicted of nonviolent, nonserious, nonsexual offenses will serve their sentences in county jail rather than state prison); CNTY. OF L.A. CMTY. CORR. P'SHIP AB 109/117 IMPLEMENTATION PLAN 33 (Sept. 2011) ("CDCR statistics and estimates from the District Attorney's Office indicate that approximately 7,000 felons are currently sentenced to state prison from Los Angeles County each year on charges that will no longer qualify for state prison."). But see CNTY. OF L.A. CMTY. CORR. P'SHIP AB 109/117 IMPLEMENTATION PLAN 40 (Sept. 2011) (explaining that if the Jail gets too crowded due to population shifts arising from the Realignment, the Jail will use risk-assessment tools to determine which prisoners may be safely released). Given that fully one-third of the state's prison population comes from L.A. County, the burden of this shift on the L.A. County Jail is likely to be considerable. See *infra* note 113.

system, and every year, over 160,000 people come through its Inmate Reception Center (IRC).<sup>2</sup> This sheer enormity creates almost insurmountable management challenges and makes it difficult to ensure even minimally decent conditions. In some parts of the Jail—especially Men’s Central, the oldest and highest security facility in the L.A. County system—a combination of crowding and a decaying physical plant has created unsanitary conditions in which infections thrive and spread. At the same time, innumerable stresses on the system have greatly diminished the availability of rehabilitative programming,<sup>3</sup> leaving thousands of detainees with no productive pursuits for weeks, months, and even years. Among other effects, these various structural features combine to make life in the L.A. County Jail stressful and scary, even for those individuals fortunate enough to escape physical harm.<sup>4</sup>

This is not a promising place to look for insights on how to make prisons more humane. Yet this Article does exactly that. In particular, it considers what we can learn about humanizing the modern American prison from studying a small and unorthodox unit inside L.A. County’s Men’s Central Jail.<sup>5</sup> As a formal matter, this unit—known as K6G—is the same as

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<sup>2</sup> See E-mail from Sgt. Steve Suzuki, L.A. County Sheriff’s Dep’t, to author (Apr. 15, 2011, 1:42 PM PST) (on file with the author) (providing data indicating that between 2001 and 2010, the average annual admissions rate in the L.A. County Jail was approximately 166,000, and that in 2005, the year with the decade’s highest number of admissions, 182,471 people were admitted to the Jail).

<sup>3</sup> L.A. County Sheriff Leroy Baca has committed to a policy of universal education in the Jail. His stated aim is to have every detainee in the Jail engaged in some sort of rehabilitative educational programming, an agenda known in the Jail as “Education-Based Incarceration” or “EBI.” This initiative is to be applauded, although structural limitations—including crowding, staffing shortages, and insufficient resources—may unfortunately compromise the success of the enterprise.

<sup>4</sup> Not all of the violence is inmate-on-inmate. See ACLU NAT’L PRISON PROJECT & ACLU S. CAL., CRUEL AND USUAL PUNISHMENT: HOW A SAVAGE GANG OF DEPUTIES CONTROLS LA COUNTY JAILS 1 (Sept. 2011), available at <http://www.scribd.com/doc/97165508/Cruel-and-Unusual-Punishment-How-a-Savage-Gang-of-Deputies-Controls-LA-County-Jails> (documenting a culture in which deputies regularly use excessive and unjustified violence against Jail detainees and noting that “[t]o be an inmate in the Los Angeles County jails is to fear deputy attacks”). Following the release of the 2011 ACLU report describing routine, excessive force used by deputies against Jail detainees, see *supra*, Sheriff Baca began to consider the possibility of closing some or all of Men’s Central Jail and shifting the displaced population to other Jail facilities. See, e.g., *Baca May Shut Down Part of Men’s Central Jail, Move Inmates to Lynwood*, CONTRA COSTA TIMES (Mar. 21, 2012), [http://www.contracostatimes.com/california/ci\\_20222152/baca-may-shut-down-part-mens-central-jail](http://www.contracostatimes.com/california/ci_20222152/baca-may-shut-down-part-mens-central-jail).

<sup>5</sup> In corrections, prisons and jails serve distinct purposes. Prisons provide long-term housing, typically for sentenced offenders serving terms of longer than one year, although the precise cutoff can vary by state. See Margo Schlanger, *Inmate Litigation*, 116 HARV. L. REV. 1555, 1579 n.76 (2003). Jails hold sentenced prisoners serving short terms, typically

every other in Men's Central, but for one key difference: its residents are exclusively gay men and transgender women.<sup>6</sup> In reality, however, life in the unit contrasts dramatically with life in the rest of the Jail. Most notably, whereas the Jail's general population (GP) is governed by rules created and violently enforced by racially stratified gangs, K6G is wholly free of so-called gang politics and the threat of collective violence (a.k.a. riots) that gang rule creates. K6G is also relatively free of sexual assault, no small feat given that those housed in this unit would otherwise be among the

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less than one year (although recent shifts in California in the wake of *Plata*, 131 S. Ct. 1910, are projected to increase the number of convicted offenders to be held in California jails, see *supra* note 1; CAL. DEP'T OF CORR. & REHAB., OVERVIEW, AB 109 & AB 117 PUBLIC SAFETY REALIGNMENT OF 2011 (2011); Andy Furillo, *Sacramento Judge Sentences Drug Runners to 13 Years Each in 'County Jail Prison'*, THE SACRAMENTO BEE (Apr. 22, 2012), <http://www.sacbee.com/2012/04/21/4431234/sacramento-judge-sentences-drug.html>). In addition, jails house individuals awaiting trial but denied bail, convicted offenders awaiting sentencing, and prisoners sent from state or federal prison to serve as witnesses in trials, whether their own or those of others. See Schlanger, *supra*, at 1579 n.76. The role of jails in providing housing for detainees with court dates explains why jails are typically situated adjacent to courthouses, although L.A. County is so large that most Jail inmates with court dates have to be bused from the Jail to their respective courthouses.

Given these differences, one might wonder what a study of life in a jail has to teach about life in prison. The answer is that, although there will be some significant differences between prisons and jails in terms of both operation and culture, the aspects of the Jail culture on which this Article focuses are also found to a varying degree in many men's prisons and jails around the country. See *infra* note 29. At the same time, the hypermasculinity imperative, although a staple of prison life, may be at its height in jail, when men who are on their way to prison look to make a reputation as someone not to be "messed with." The high turnover typical of jails also increases the pressure on detainees to maintain a tough-guy image, since people are constantly being thrown into close quarters with new and unknown companions, any one of whom could pose a threat. See *infra* Part II.D. This is especially true in the L.A. County Jail, which admits over 160,000 people a year despite an average daily count as high as 19,000. See *supra* note 2. The massive size of the L.A. County Jail system compels repeat players to forge self-protective alliances with strangers—hence the strong gang culture. See *infra* Part II.C (describing the Jail's gang culture and the role it plays in protecting members against immediate harm at the hands of other prisoners). Thus, although the hypermasculine culture found in the Jail's GP is a standard feature of life in many men's prisons, the pressures are at their sharpest in the jail environment, which makes the jail an ideal context for the study of this phenomenon. One hopes that, with a commitment to meaningful reform and proper institutional design, this toxic culture might be replaced with one more like that of K6G, not only in L.A. County, but in all carceral facilities governed by a hypermasculinity imperative. See Terry A. Kupers, *Toxic Masculinity as a Barrier to Mental Health Treatment in Prison*, 61 J. CLINICAL PSYCHOL. 713, 714 (2005) (describing toxic masculinity as "the constellation of socially regressive male traits that serve to foster domination, the devaluation of women, homophobia, and wanton violence" in male prisons).

<sup>6</sup> The term "transgender" denotes people whose gender identity does not match their birth sex. Throughout this Article, I use the term "trans women" to refer to people who were born biologically male but who self-identify and self-present as women.

Jail's most vulnerable residents.<sup>7</sup> Although very far from ideal, in these and other ways, life in K6G is markedly safer and more humane than elsewhere in the Jail.

A close study of K6G's unusual environment strongly suggests that at least some of the destructive pathologies endemic to the Jail's GP are not inevitable, even in a facility with the deep structural problems that L.A. County confronts. These problems—including overcrowding, violence, gang control, and a “perverse” sexual culture in which the strong prey on the weak<sup>8</sup>—are not unique to L.A. County. To the contrary, many jail and prison administrators nationwide to some degree face the same issues. A clear understanding of how the K6G unit operates, what distinguishes it from GP, and how to explain the differences may thus have much to offer those committed to making life in custody safer and more humane, not only in L.A. County, but in prisons and jails all over the country.<sup>9</sup>

This Article is part ethnography and part policy assessment. First, it provides a textured account—a “thick description”<sup>10</sup>—of life in the K6G unit. This ethnographic account serves as a window into a highly unconventional carceral community and should be of interest to students of contemporary American penology, as well as anyone who wants to know what life is like inside one of the country's largest carceral institutions.<sup>11</sup>

<sup>7</sup> See *infra* text accompanying notes 87–89.

<sup>8</sup> See Wilbert Rideau, *The Sexual Jungle*, in *LIFE SENTENCES* 73, 75 (Wilbert Rideau & Ron Wikberg eds., 1992) (describing the “perverse [sexual] subculture” of Angola prison).

<sup>9</sup> Of course, some realism is appropriate here. Even assuming that humane imprisonment is not an oxymoron—arguably an open question—making the conditions in American prisons and jails truly humane would require at a minimum a wholesale redesign of existing penal institutions and a significant drop in the number of people in custody. In the meantime, there are real people—at present, over 2.3 million of them, see *infra* note 158—being held in prisons and jails around the country. This simple fact creates an imperative to make current carceral conditions, if not wholly humane, then at least as safe and humane as possible.

<sup>10</sup> CLIFFORD GEERTZ, *THE INTERPRETATION OF CULTURES* 9–10 (1973) (“[E]thnography is thick description.”); see *id.* at 17 (“Behavior must be attended to, and with some exactness, because it is through the flow of behavior—or, more precisely, social action—that cultural forms find articulation.”). As Geertz explains:

It is with the kind of material produced by long-term, mainly (though not exclusively) qualitative, highly participative, and almost obsessively fine-comb field study in confined contexts that the mega-concepts [of] social science . . . can be given the sort of sensible actuality that makes it possible to think not only realistically and concretely about them, but, what is more important, creatively and imaginatively with them.

*Id.* at 23.

<sup>11</sup> See Loic Wacquant, *The Curious Eclipse of Prison Ethnography in the Age of Mass Incarceration*, 3 *ETHNOGRAPHY* 371 (2002) (bemoaning the decline of prison ethnography).

Second, as will be seen, a close study of the internal culture of the Jail, and of the K6G unit in particular, yields valuable insight into the appropriate direction for penal reform. What emerges is a portrait of two very different inmate cultures—the “two models” of the Article’s title. The first model, which reigns in the Jail’s GP units and exists to a greater or lesser extent in men’s prisons and jails all over the country, puts pressure on residents to seem “hard and tough, and [not] show weakness.”<sup>12</sup> This pressure, which I call the *hypermasculinity imperative*,<sup>13</sup> can feed a culture of belligerence, posturing, emotional repression, and ready violence that rewards both indifference to others and the willingness of the strong to victimize the weak. In such an environment, gangs flourish and trauma abounds.<sup>14</sup> The second model, found in K6G, is free of any hypermasculinity imperative. In K6G, one instead finds a surprising sense of relative ease, along with open emotional expression, the overt development of mutually supportive friendships and intimate relationships, and demonstrations of creativity and even levity. One also finds in K6G a collective and determined rejection of any efforts to introduce into the unit either the gang code in force in the rest of the Jail or the racial segregation that goes with it.

What explains the difference? This is the puzzle this Article aims to resolve. At first, the answer may seem to lie in the sexual identity<sup>15</sup> of K6G’s residents, who are (or who are pretending to be<sup>16</sup>) uniformly gay men and trans women. And to be sure, the sexual identity of the people in K6G does help to explain the form of life that has emerged, which in turn contributes to the relatively healthy character of the unit.<sup>17</sup> Yet the primary explanation for this character turns out to be much more basic, and not at all contingent on the sexual identity of the people K6G serves. Put simply,

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<sup>12</sup> See Derrick Corley, *Prison Friendships*, in PRISON MASCULINITIES 106 (Don Sabo et al. eds., 2001). For more on this pressure and its physical and psychological effects on detainees, see *infra* Parts II.D–II.F.

<sup>13</sup> See *infra* Part II.D; see also Dolovich, *supra* note 1, at 14–16.

<sup>14</sup> See Craig Haney, *The Perversions of Prison: On the Origins of Hypermasculinity and Sexual Violence in Confinement*, 48 AM. CRIM. L. REV. 121, 128 (2011) (citing Nancy Wolff & Jing Shi, *Trauma in Incarcerated Persons*, in HANDBOOK OF CORRECTIONAL MENTAL HEALTH 277, 293 tbl.11-3 (Charles L. Scott ed., 2d ed. 2010)). For more on this point, see *infra* note 249.

<sup>15</sup> Throughout this Article, I use the term “sexual identity” as shorthand for the sexual orientation and gender identity of K6G’s residents. I do so for brevity’s sake only, and do not intend to suggest that the two are not distinct and very different categories.

<sup>16</sup> There are almost certainly some men in the unit who are neither gay nor trans, but merely pretending to be so. I address this phenomenon below, see *infra* Part III.B.1, and at greater length elsewhere. See also Dolovich, *supra* note 1, at 25–43.

<sup>17</sup> See *infra* Part III.C.



thanks to a variety of unrelated and almost accidental developments, K6G is a place where people feel safe enough to relax and be themselves.

In men's prisons,<sup>18</sup> hypermasculine posturing is a mechanism of self-protection employed by people who feel vulnerable to harm; behind bars, people will only relax and let down their guard when they feel safe from physical or sexual violence. Although GP units vary between—and even within—institutions in the degree to which residents feel at risk, there is nearly always a need for men in GP to band together and to collectively project an image of toughness and implacability in order to ensure their mutual protection.<sup>19</sup> And as a general matter, all men in GP must be vigilant to avoid making missteps in the wrong company that, by making themselves seem weak, could expose them to violence as well as ongoing harassment and abuse. By contrast, the relative ease of life in K6G exists not because K6Gs are gay and trans, but because they do not fear being victimized or violently punished by other prisoners for being themselves.

K6G thus suggests a dramatic possibility about the realities of contemporary American penalty, one that merits further attention and study: that in American prisons and jails, prisoners' hypermasculine posturing and ensuing pathologies arise not from an inherent preference for violence, but from a not-unreasonable belief that nothing else will secure their physical safety. To put the point another way, in many cases, it may not be the prisoners who make the prison, but rather the prison—and in particular the widespread failure of the system to treat those in custody as people deserving of protection—that makes the prisoners. If prisons and jails do sometimes seem to operate as “monster factories,”<sup>20</sup> it may not be because the people the state incarcerates are naturally and essentially monstrous, but because the toxic combination of fear, trauma, and official

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<sup>18</sup> In this Article, I focus on men's prisons, although some of the lessons to be drawn from K6G—most notably the need to keep people in custody safe from harm, to treat them with respect, and to provide access to humanizing pursuits—apply equally to women's prisons.

<sup>19</sup> As Shon Hopwood explains in a memoir of his time in federal prison, not all circles (a.k.a. “cars”) of prisoners are gangs, and some men in custody “eventually find maybe half a dozen friends who seem human—people who share something in the way of goals or attitude” or even just “particular interests.” SHON HOPWOOD, *LAWMAN* 61 (2012). Such connections are crucial because “the other guys in your car are the people who will have your back,” and “[w]hen people know that you have representation, they are less likely to rob, steal, or sucker you.” *Id.* at 63. As Hopwood observes, “[y]ou can try to serve your time outside a circle of protection, but chances are you will be stolen from, beat on, and generally abused.” *Id.*

<sup>20</sup> See SUNNY SCHWARTZ WITH DAVID BOODELL, *DREAMS FROM THE MONSTER FACTORY: A TALE OF PRISON, REDEMPTION AND ONE WOMAN'S FIGHT TO RESTORE JUSTICE TO ALL*, at xi–xii (2009).

disregard that can define daily life in custody makes at least some of them feel compelled at times to act that way.<sup>21</sup>

This Article draws on original research conducted in the Jail over seven weeks in the summer of 2007.<sup>22</sup> During that time, I observed the operation of K6G and the Jail more generally,<sup>23</sup> sat in on K6G classification interviews, spent countless hours in the officer's booth overlooking the K6G dorms, and had many informal conversations with unit residents, custody officers, and other staff.<sup>24</sup> I also conducted one-on-one interviews, structured around a 176-question instrument,<sup>25</sup> with a random sample of K6G's residents.<sup>26</sup> The account of K6G offered here is based on data gathered through this process.

In addition, over the course of my research, I learned much about life in the Jail's GP through the formal interviews, through informal conversations with a range of people with direct experience of the Jail's GP,<sup>27</sup> and through direct observation of the GP dorm that, due to its

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<sup>21</sup> For a powerful and moving account of the process by which this transformation occurs, see Haney, *supra* note 14. See also Yvonne Jewkes, *Men Behind Bars: "Doing" Masculinity as an Adaptation to Imprisonment*, 8 MEN & MASCULINITIES 44, 46, 62 (2005) ("You definitely have to wear a mask in prison—if you don't, you're going to get eaten away. When I came in I was green. I thought I was quite streetwise on the outside, but no. You have to act tough. There's always the threat of violence.") (quoting "Simon," an interview subject in a "Category C prison[] in the English Midlands").

<sup>22</sup> UCLA IRB # G07-01-106-03. For a detailed description of the research protocol, see Dolovich, *supra* note 1, at 92–99.

<sup>23</sup> This enterprise was made possible by Chief Alex Yim, who generously allowed me open access to all parts of the facility.

<sup>24</sup> I took lengthy field notes each day and dictated the notes each night, when what I had seen was still fresh in my mind.

<sup>25</sup> I developed this instrument with the help of my colleague, Joe Doherty. It is published in its entirety in Dolovich, *supra* note 1, at 99–110.

<sup>26</sup> See *id.* at 5 n.21 (explaining the constitution of my sample, including its racial makeup). In all, I interviewed thirty-two residents, almost 10% of the unit's population at the time. Interviewees were assigned random interview numbers. The interviews were recorded and later transcribed. Most interviews encompassed multiple audio files, which were saved—and therefore transcribed—alphabetically, with the sequence restarting each day. Citations to these interview transcripts will be referenced hereinafter in the following manner: Int. # (Interviewee number), at file # (i.e., A–G) page # (transcript page reference); e.g., Int. 46, at C3. The interview process yielded fifty-one hours of audio recordings, which were subsequently transcribed. I thank the UCLA Academic Senate, the UCLA Dean's Office, Harvard Law School, and Georgetown University Law Center for their generous support of this costly enterprise.

<sup>27</sup> This group of informants included custody officers and other staff; then-current GP residents, including trustees and people in the GP unit next to the K6G dorms; and people in K6G who had previously done time in the Jail's GP.

fortuitous proximity to the K6G dorms, served as my control.<sup>28</sup> I also learned about life in the California prisons more generally, both through the formal interviews (since many of my interview subjects had previously spent time in state prison), and through informal conversations with other K6G residents who had also done time in state prison. The account of GP offered here is drawn from what I learned through these various channels, supplemented and reinforced by some of the many studies, articles, and personal testimonials that describe life in general population units in men's prisons and jails around the country.<sup>29</sup> In sum, by contrast with the portrait of K6G, which rests entirely on original research, the picture provided here of life in GP is a composite: in many instances it portrays life in the general population of L.A. County's Men's Central Jail, but in other instances—noted as such—it offers a general account of a culture that the great weight of the quantitative, ethnographic, journalistic, and testimonial evidence strongly indicates pervades, to a greater or lesser degree, many men's carceral institutions around the country.<sup>30</sup>

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<sup>28</sup> See Dolovich, *supra* note 1, at 94.

<sup>29</sup> See, e.g., K.C. CARCERAL, PRISON, INC. (Thomas J. Bernard ed., 2006) (discussing an unnamed, privately operated prison in the American South); T.J. PARSELL, FISH: A MEMOIR OF A BOY IN A MAN'S PRISON (2006) (discussing Michigan prisons); WILBERT RIDEAU, IN THE PLACE OF JUSTICE (2010) (discussing Louisiana's Angola prison); MICHAEL G. SANTOS, INSIDE: LIFE BEHIND BARS IN AMERICA (2006) (discussing federal prisons); Haney, *supra* note 14; Christopher D. Man & John P. Cronan, *Forecasting Sexual Abuse in Prison: The Prison Subculture of Masculinity as a Backdrop for "Deliberate Indifference"*, 92 J. CRIM. L. & CRIMINOLOGY 127, 164–75 (2001).

<sup>30</sup> Although there are obviously differences between prisons, the GP culture I describe in this Article represents the baseline from which positive departures, although welcome, are notable. See Haney, *supra* note 14, at 127 n.22 (noting that although not all jails and prisons are the same in terms of the pathologies they create, it is nonetheless possible to make generalizations that are “normatively correct in many correctional settings” even if not “universally applicable,” and that “the lack of universality does not undermine the capacity of the jail and prison context to generate tremendous psychological pressure that is felt by virtually all inmates, even though it may dramatically transform the behavior of only some”). To illustrate the variance: a person I met at San Quentin State Prison reported a range of experiences during his many decades in the California prison system. He described being at Vacaville State Prison in the early 1980s and found the inmate culture there to “accommodate all types of people,” including “[gang] dropouts, child molesters, [and] gangbangers from all sides.” There was, in Vacaville at the time, a “high level of acceptability.” This was “the only prison [he had] ever seen or heard of that two gays could sit on the yard and kiss, even get caught having sex with no repercussions.” By contrast, in the late 1980s, he was at Folsom State Prison where “there was an average of one stabbing every three days. No transgenders here, some gays, way undercover. No mixing of races in any way. Sometimes the air [was] so thi[ck] with tension that it was hard to breath[e]. A person had to live by the code that their race or gang set, with just survival being the daily goal.” Letter from Jeffrey Scott Long to author (Feb. 2012) (on file with the author). Kenneth Hartman confirms Long's account of Folsom prison in the 1980s. Hartman reports that, on his arrival at Folsom shortly after being sentenced to life without parole (LWOP) in

The remainder of this Article proceeds as follows. Part II describes life in K6G and contrasts it with life in GP. What emerges is a picture of two very different models of prison culture, only one of which—GP—generates a hypermasculinity imperative and is a site of gang control. Through close examination of these two models, this Part helps to clarify the meanings of three terms—violence, safety, and humanity—that prove key to understanding what is at stake in the comparison the Article offers. Although in part, people in GP fear physical violence, they also frequently experience the dehumanizing and psychologically destructive need to be always on guard and, in particular, to avoid saying or doing anything that might expose themselves as weak and therefore available for victimization. In this climate, Part II suggests, humane conditions become those in which people feel safe from the threat of physical harm and free of the psychological pressure to suppress any word or act that might betray ordinary human vulnerability.

Part III develops this Article's central claims. Part III.A addresses the question of whether K6G's population is sufficiently similar to that of the Jail's GP in terms of its criminal history and propensity for violence to permit comparison, and offers reasons for thinking that it is. Part III.B then seeks to explain the dramatic differences between these two models. It argues that the primary reason for K6G's unusual character is that people in this unit, unlike those who live in GP, feel independently safe from physical assault. They therefore have no need to resort to self-help through either hypermasculine posturing or gang allegiance, and feel able to relax and be themselves. Part III.B argues that this collective sense of relative safety and ease is best explained by several aspects of the K6G experience not contingent on the sexual identity of its residents, including the relatively impermeable physical boundaries between K6G and GP (Part III.B.1); the deep reservoir of trust and mutual respect that has existed between K6G's residents and its two supervising officers (Part III.B.2); and the sense of community found in the K6G dorms (Part III.B.3). It also suggests a fourth possible reason: the attention K6G receives from outside organizations with an interest in the unit's population (Part III.B.4). Finally, Part III.B.5 explains why the combined effect of these factors is best understood as "accidental" humanity. In addition to exposing the various institutional arrangements that have come together to make K6G's residents feel

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the early 1980s, he and the other new arrivals were met by a prison official who offered two "admonitions": "If you try to escape, we'll kill you. If you put your hands on one of my guards, we'll kill you. Other than that, we don't give a shit what you do to each other." According to Hartman, "[n]o more accurate description of Folsom [wa]s ever offered." KENNETH E. HARTMAN, *MOTHER CALIFORNIA: A STORY OF REDEMPTION BEHIND BARS* 35 (2009).

relatively safe, Part III.B reveals that the possibility of safe and humane conditions hinges on an institutional commitment not only to identifying and isolating predators, but also to cultivating an institutional culture in which individuals in custody are treated fairly and with respect, as people and not simply as “inmates.”<sup>31</sup>

Part III.C turns to the sexual identity of K6G’s residents<sup>32</sup> and directly addresses the view that, notwithstanding the features explored in Part III.B, it is the sexual identity of K6G’s residents that best explains the unit’s distinctive character. This Part considers several iterations of this argument: that the sexual identity of people in K6G renders them incapable of the hypermasculine performance demanded of men in GP (Part III.C.1); that this sexual identity explains why they would prefer not to participate in the governing culture of GP (Part III.C.2); that, because people in K6G have access to their objects of desire, they do not need the benefits hypermasculine performance provides (Part III.C.3); and finally—turning the perspective around—that the sexual identity of heterosexual-identified men in GP explains why they cannot or will not adopt the comparatively healthy behavioral norms of K6G (Part III.C.4). No version of this objection proves a sufficient explanation on its own, and each turns out to rest on potentially misleading stereotypes. But taking the various forms of this counterargument seriously helps to call attention to several important differences between K6G and GP that might otherwise have gone unremarked. Fortunately, even those differences that at first seem most bound up with the sexual identity of K6G’s residents turn out on closer inspection to reflect humanizing aspects of the K6G experience that may be generalized to units serving a broader constituency.

Part IV responds to a possible objection that might be lodged against any efforts to generalize the lessons of K6G: that the residents of K6G “have it too good,” and that it is therefore K6G and not GP that should be reformed. This Part argues that, to the contrary, the moral and constitutional limits on what the state can legitimately do to prisoners require that the state cease housing people under the stressful and corrosive conditions that too often define life in GP. In closing, Part V identifies several lessons that emerge from the study of K6G and suggests specific

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<sup>31</sup> As will be seen, there is a close connection between keeping people in custody safe and respecting their humanity. This is both because a lack of safety generates persistent fear and trauma that makes the experience deeply corrosive of a person’s sense of self, and because a commitment to keeping people safe is an acknowledgement that those in custody are fellow human beings whose well-being is a matter of institutional concern.

<sup>32</sup> See *supra* note 15.

strategies that might be adopted by prison and jail administrators seeking to replicate some of K6G's positive features.<sup>33</sup>

One final introductory note is in order regarding the enterprise of K6G itself. This unit provides segregated housing for all gay men and trans women<sup>34</sup> detained in the Jail. Before people may be admitted to K6G, classification officers must determine that they meet the standards for admission, meaning that they are found to be either "homosexual"<sup>35</sup> or male-to-female transgender.<sup>36</sup> Once admitted, K6G residents are kept physically separated from the rest of the Jail's population. This program thus entails state-sponsored, identity-based segregation. There are many objections that might be made to such an undertaking, including that it may violate equal protection guarantees, endanger detainees whose nonconforming sexual identities are thereby publicly exposed, and/or entangle state officials in the unseemly project of prying into detainees' private lives to assess whether they meet the official definition of "homosexual."<sup>37</sup> These objections are serious ones and bear careful consideration. In a companion piece, I address them directly and consider at some length whether, in light of its many admittedly troubling aspects, such a unit should even exist.<sup>38</sup> In that piece, I focus on the way the program works, the process by which individual detainees are identified as eligible for admission, and the implications of that gatekeeping exercise both for those detainees admitted to K6G and for those whose requests for admission are refused. For present purposes, I leave to one side any questions regarding the legitimacy of the K6G enterprise and, for the most part, any consideration of the classification process. Instead, I focus here on the ultimately far broader question of K6G's implications for incarceration in general: what life is like in a carceral unit populated exclusively by gay men and trans women,<sup>39</sup> the contrast between life in that

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<sup>33</sup> This project admittedly does little to challenge the overincarceration that currently defines the American penal system. But while we wait (and work) for the emergence of a broad-based societal commitment to radical decarceration, hundreds of thousands of people continue to live behind bars. Making the conditions of confinement relatively more humane is thus not just a worthy interim aim but a moral imperative.

<sup>34</sup> See *supra* note 6.

<sup>35</sup> See Dolovich, *supra* note 1, at 26 (noting that official Jail policy restricts admission to K6G to "male homosexuals").

<sup>36</sup> See *id.* at 23–24 (explaining that the decision was made in the early 1990s to house the male-to-female transgender prisoners in K6G with the gay men).

<sup>37</sup> See *id.* at 25–26 (discussing K6G's admissions standards).

<sup>38</sup> See *id.* at 55–87; *infra* Part V.B.

<sup>39</sup> There are also some people in K6G who do not meet the admissions criteria but pretend to do so in order to stay in the unit. Anyone classified to K6G who is subsequently revealed not to meet its admissions criteria is "declassified"—i.e., declassified from K6G and

unusual unit and life in GP, and what this contrast might teach about making prisons and jails safer and more humane for everyone.<sup>40</sup>

## II. GP AND K6G: TWO MODELS OF THE PRISON<sup>41</sup>

### A. K6G: THE BASICS

K6G was established by consent decree in 1985, the product of a lawsuit filed by the ACLU of Southern California on behalf of all gay men in the Jail. The lawsuit charged Jail administrators with the failure to keep safe the “homosexual inmates” in their custody, and it settled when the Jail agreed to tighter procedures for ensuring the safety of this population. The centerpiece of the settlement agreement was a housing unit designated exclusively for detainees found to be gay. It also contained a series of stipulations intended to keep the unit’s residents wholly separate and apart from GP.<sup>42</sup>

To ensure that only eligible individuals would be admitted—a precaution necessary to guard against predators seeking access to potential victims<sup>43</sup>—the consent decree constructed a two-part classification process. First, as Jail staff had already been doing, “[i]nmates entering [the IRC]”

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reclassified to some other unit. In order not to be moved from K6G, those who are neither gay nor trans but who were nonetheless admitted to the unit will do their best to “pass” as gay in order to remain. The fact that detainees in a high-security carceral facility might fake being gay in order to be housed with gay men and trans women may seem hard to fathom. However, such pretense is a daily occurrence in the K6G classification office. For more on this phenomenon, see *id.* at 33–43.

<sup>40</sup> I recognize that this enterprise may expose me to the charge that, by seeking the means to improve carceral conditions, I may only be further entrenching a fundamentally illegitimate penal system. This is a risk of reform efforts in any context. *Id.* at 10–11. People must make their own calculations as to the right course, and for me, the alleviation of immediate suffering is the greater imperative. *See id.* at 10–11.

<sup>41</sup> I use the term “prison” here in its broader, less technical sense, to refer to custodial facilities in general. *See supra* note 5 (explaining the difference between jails and prisons, and explaining why the study of a jail yields models of custody that are also relevant to prisons).

<sup>42</sup> For more details on the 1982 case and the consent decree, see *id.* at 21–23.

<sup>43</sup> Earlier Jail efforts to protect gay men in custody were hampered by a policy allowing access to the unit to anyone claiming to be gay, thus opening the door to potential predators. *See id.* at 21–22. This same problem also arose at Rikers Island in New York City. There, Jail officials for years operated a segregation unit for gay men and trans women, to which people could gain admittance merely by declaring themselves eligible. *See* Paul von Zielbauer, *City Prepares to Close Rikers Housing for Gays*, N.Y. TIMES, Dec. 30, 2005, at B9. As a consequence, the unit mixed genuinely vulnerable individuals with “violence-prone inmates” who claimed to be gay in order to prey on other residents of the unit. *Id.*

were to be asked “if they are homosexual.”<sup>44</sup> At this point, those “who state that they are homosexual are immediately transferred to segregated housing units for homosexuals.”<sup>45</sup> Then, to make certain that all those people initially classified to K6G told the truth in IRC about their sexuality, the consent decree created a second step. During step two, “classification staff” were to determine whether those individuals who declared themselves homosexual at the IRC stage “[were] suitable for such segregated housing units”<sup>46</sup>—in short, whether those men who claimed to be gay really belonged in a unit reserved exclusively for “homosexual inmates.”

As I have described elsewhere, the measures in place in the Jail to keep K6Gs separate from GPs work reasonably well.<sup>47</sup> For the most part, when K6Gs are out of the dorms, they are kept physically separate from any GPs whose paths they cross.<sup>48</sup> The classification process employed by the two classification officers assigned to K6G also appears to have been largely effective at weeding out those men who, knowing that they do not satisfy K6G’s admissions criteria, nonetheless claim they do<sup>49</sup> when they go

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<sup>44</sup> Stipulation and Request for Dismissal Order at 4, *Robertson v. Block*, No. 82-1442 (C.D. Cal. July 17, 1985) [hereinafter Order].

<sup>45</sup> *Id.* Jail policy restricts admission to K6G to “male homosexuals.” L.A. CNTY. JAIL REG. § 5.02/050.00 (Segregation and Classification of Male Homosexuals). In practice, this directive is interpreted to include only those men who “live a homosexual lifestyle” when not incarcerated. Dolovich, *supra* note 1, at 26. The precise meaning of this standard is a somewhat shifting target, but at base, it reflects a binary, essentializing theory of male sexuality, which supposes that one either is or is not gay and there is no in-between. *See id.* As to each interview, what the classification officers seek to determine is whether interviewees are “really gay,” by which is meant that, when they are free, they seek out men and only men for sexual gratification, for romance, and for emotional intimacy. *See id.* at 26 n.149 (explaining the practical implications of this standard). This standard is deliberately designed to exclude bisexuals, *id.* at 67–69 (discussing this policy), and in particular, men who might be regarded as “situational homosexuals”—those who have sex with men while incarcerated and sex with women when not in custody. *See id.* at 26 n.150 (on situational homosexuality); *see also id.* at 67–69 (considering the reasons for the exclusion of situational homosexuals from K6G).

<sup>46</sup> *Id.*

<sup>47</sup> *See id.* at 24–44. There is certainly room for improvement, especially in the procedures in place to keep K6Gs physically inaccessible to GPs when they are outside their dorms. For more on this issue, *see id.* at 24–25, 57–58. *See also id.* at 60 (describing one notable failure of this system: the rape by a GP inmate of a K6G resident who was waiting in the K6G court-line holding cell in Men’s Central for a transfer back to the unit).

<sup>48</sup> *See supra* note 47.

<sup>49</sup> Deputy Bart Lanni, who has served as one of K6G’s classification officers for over two decades, tells of one such instance that occurred in the early years of the segregation. In that case, a man was classified to “homosexual housing” (as it was then known) despite the officers’ suspicions that he was lying about being gay, because the officers were unable to confirm those suspicions with any tangible evidence. (In such cases, the officers will make an all-things-considered judgment and will generally err on the side of admission. *See*



through IRC.<sup>50</sup> Although there are no doubt people in this category who succeed in getting into K6G, it is well-known among unit residents that anyone found not to belong will be removed from K6G and sent elsewhere in the Jail (most likely to GP). This enforcement strategy appears at a minimum to ensure that those who were wrongly classified to K6G will do their best to stay under the radar and draw no undue attention to themselves by threatening or harming other residents.

Today, K6G has an average population of 350–400 residents and occupies three or four dorms in Men's Central, depending on the daily count and available space.<sup>51</sup> In addition, several specially designated cells in the Twin Towers facility (where the Jail houses all detainees with serious mental illness) house K6Gs also judged to be seriously mentally ill, and a separate row of single cells in Men's Central serves as the unit's disciplinary wing. Until 1996, the trans women were housed separately from the gay men.<sup>52</sup> But this separation sparked vociferous complaints on

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Dolovich, *supra* note 1, at 34.) Eventually, it was discovered that this detainee, who during his interview had denied having a wife, was indeed married and had even taken the precaution, while in the unit, of exchanging letters with his wife through a third party (another detainee in the Jail) to avoid their being read by either Deputy Lanni or Senior Deputy Ernest Cobarrubias, Lanni's partner at the time in the unit's classification office. Once the subterfuge came out, the detainee, who freely admitted the scheme, was declassified from homosexual housing and sent to GP.

<sup>50</sup> This phenomenon of reverse-passing, in which men who know themselves to be straight or bisexual seek to pass as gay, is highly unusual, especially given that men in custody who are believed to be gay generally face an elevated risk of sexual assault. See *infra* text accompanying notes 87–89. Moreover, the obvious privilege attached to heterosexuality in modern society means that reverse-passing is likely to be relatively rare. K6G is thus unusual in this regard. It may, however, not be unique; this phenomenon may also arise in asylum hearings. People seeking asylum in the United States may qualify for admission “if they can demonstrate past persecution or a well-founded fear of future persecution based on membership in a particular social group,” and homosexuals are among the recognized groups covered by this standard. See Dan Bilefsky, *Gays Seeking Asylum in U.S. Encounter A New Hurdle*, N.Y. TIMES, Jan. 29, 2011, at A19. Conceivably, asylum seekers able to convince immigration officers that they are homosexual might be able to take advantage of this provision. At least some experts in the field, however, maintain that it is exceedingly rare for asylum seekers to present themselves falsely to immigration officials as lesbian, gay, bisexual, or transgender in a bid for relief. See Victoria Neilson & Lori Adams, *Gay Asylum Seekers*, N.Y. TIMES (Feb. 6, 2011), <http://www.nytimes.com/2011/02/07/opinion/lweb07gay.html> (letter to the editor from the Legal Director of Immigration Equality and a staff attorney of the Refugee Protection Program of Human Rights First). I thank Allegra McLeod for drawing my attention to this example and for these sources.

<sup>51</sup> When I conducted my research in the summer of 2007, K6G occupied just three dorms. As of March 2012, the unit stood at approximately 390 people and occupied four dorms. Interview with Senior Deputy Randy Bell, L.A. Cnty. Sheriff's Dep't, in L.A., Cal. (Mar. 29, 2012).

<sup>52</sup> The trans women originally lived separately in a unit on the top floor of the old Hall of Justice Jail. In 1993, they were moved to a unit in the North County Correctional Facility

the part of the trans women in particular, and eventually the decision was made to house the two groups together.<sup>53</sup> Although the numbers are constantly shifting, trans women today typically make up anywhere from 10%–20% of the unit's population.

#### B. LIFE IN K6G

In significant ways, life in K6G is no different from life in GP. K6G is still jail, and locking people up inevitably inflicts all sorts of harms—physical, psychological, and emotional—even on those detained under model conditions. And K6Gs, as with people in the Jail more generally, hardly live in model conditions. They occupy noisy, crowded dormitories with as many as 110 men sleeping in fifty-five bunk beds in the drab surroundings of a decrepit building. Dorm residents share six or eight open-plan toilets and showers, with no privacy of any kind. The close quarters and generally unhygienic conditions not only breed ill-health<sup>54</sup> but are also depressing and demoralizing.<sup>55</sup> The food is unappetizing and varies little day-to-day (dried soups are a particularly popular item for canteen purchase or barter,<sup>56</sup> presumably as an alternative to the food provided).<sup>57</sup> And K6Gs, like other residents of Men's Central, have

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(NCCF) that became known as the “witches’ castle.” During this period, the gay men were housed at Wayside, adjacent to NCCF. In 1996, the two units were moved downtown to the Twin Towers facility and merged. Telephone Interview with Bart Lanni, Deputy Sheriff, L.A. Cnty. Sheriff's Dep't (July 27, 2010).

<sup>53</sup> See *id.* This arrangement creates some problems, although it is arguably still the more humane approach. For more on this issue, see Dolovich, *supra* note 1, at 43.

<sup>54</sup> In 2007, a staphylococcus (staph) outbreak in the Jail meant that residents risked infection if their sheets, clothing, or blankets touched the floor or any other infected areas. Yet prisoners were issued clean blankets only once a month and clean sheets and clothes only twice a week (on Tuesdays and Thursdays—leaving one to wonder about the state of items received Thursday by the time of their exchange the following Tuesday). At least two residents of the K6G dorms were hospitalized with staph infections during my time in the Jail.

<sup>55</sup> See Int. 103, at D6 (“[R]ight now, we’ve got maybe three toilets that work, four showers for 108 people that work, and all the sinks work, but . . . we don’t get enough cleaning supplies, we don’t get, like, real bleach or anything, we get ‘powdered bleach.’”); Int. 92, at B5 (“Our restroom is falling apart. It stinks all the time. Our vents are clogged up. Our ceilings are full of toilet paper and old—you can see they haven’t painted for a while. There’s dirt everywhere. It’s just hideous. Hideous.”).

<sup>56</sup> See Int. 47, at B15 (“I’ve seen people [who] slept with somebody [in the K6G dorms] [f]or two soups.”).

<sup>57</sup> To enumerate these features of the Jail is not to condemn the L.A. County Sheriff's Department, which from what I have seen does its best to provide for those in its custody. Nor is it to suggest that prisoners should get gourmet meals in a hotel-quality atmosphere. Here I am simply attempting to provide a picture of what it is like for K6G's residents on a day-to-day basis.

outdoor access for only three hours a week and even that time, given the urban setting of the facility, is spent in a rooftop enclosure with concrete walls and a chicken-wire roof.

Other undesirable aspects of life in K6G also mirror those found in GP. For example, the limited accommodation available in Twin Towers, where the County houses those detainees found to be seriously mentally ill, means that even people with severe mental illness are often placed in the dorms, where they can create problems for other residents<sup>58</sup> as well as for the officers assigned to the floor. During my time in the Jail, I was told of dorm residents who never showered because of mental illness, thus creating an unpleasant atmosphere in the close quarters of the dorm. I also heard of mentally ill residents who depended on other detainees to provide the care that—it was alleged to me—should have been provided by trained professionals.<sup>59</sup> One incident in particular revealed the threat posed by such misclassification. It involved an alleged use of force by several officers against a dorm resident who refused to comply with an order to remain quietly on his bunk during evening count. As the story was related to me, the prisoner who failed to comply with this order—and who was consequently forcibly restrained by several officers—was not being willfully disobedient, but was instead incapable of conforming his behavior to the officers' demand due to mental illness. Had he been properly housed, this detainee would not have been subjected to violent punishment for his behavior.<sup>60</sup> And although this person bore the brunt of his own incapacity, any time officers use force in a custodial setting, it can be scary and traumatizing even for those who are not the targets, but who are just in the vicinity.<sup>61</sup>

Other problems endemic to life in the Jail are also present in K6G. There is a constant danger that other residents will prove violent. As one of my respondents put it:

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<sup>58</sup> See Int. 92, at C5 (reporting that at the time of the interview, there were “two people that are . . . really mentally ill in [his dorm]” that he believed “shouldn’t [be] there”).

<sup>59</sup> People who have been classified to K6G and who are found to have serious mental illness are kept in segregated housing in Twin Towers.

<sup>60</sup> This is not to say that the mental health care this individual would have received had he been housed in Twin Towers would have been adequate. Certainly, if it is anything like that provided by the California prison system to its seriously mentally ill prisoners, it would have been sorely lacking. See *Coleman v. Schwarzenegger*, No. CIV S-90-0520 LKK JFM P, 2009 WL 2430820, at \*22–34 (E.D. Cal. Aug. 4, 2009) (documenting the extremely inadequate and unconstitutional nature of mental health care in the California prison system).

<sup>61</sup> Whether or not the details of this particular story were accurate as related to me, housing people with serious mental illness in population, whether in segregation units like K6G or in GP, will invariably carry the risk of such misunderstandings and thus the possibility of inappropriately forceful responses by officers.

We're dealing with people that are rapists and criminals and carjackers and drug addicts, and people that like to steal, people that are fighting murder cases up in here. And sometimes I don't feel very safe. Sometimes I wake up touching myself, saying, "God, I'm still alive. Thank God."<sup>62</sup>

When I visited the row of single-person cells that functioned at the time as K6G's disciplinary wing, I met a Cuban trans woman<sup>63</sup> who, I was told, had the habit of slicing her enemies with a razor.<sup>64</sup> At least two of my subjects reported seeing blades used in fights in the K6G dorms.<sup>65</sup> In my interviews, I learned of at least one incident of violent rape of one K6G resident by another,<sup>66</sup> suggesting that this danger has not been completely eradicated in the K6G dorms.<sup>67</sup> Deputies also pose a threat to the people in K6G, as they do to detainees in the Jail more generally.<sup>68</sup> For example, in a sworn declaration, one former resident of K6G described an unprovoked beating of a K6G resident by several deputies, during which the victim was struck with a flashlight, tasered, and hurt so badly that he was "screaming in agony and calling for his mother"<sup>69</sup>—an incident corroborated during my formal interviews.<sup>70</sup>

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<sup>62</sup> Int. 92, at C3.

<sup>63</sup> This woman told me she had been in prison in Cuba and had come to the United States via the Mariel boatlift. She reported that she spends most of her time in custody in segregation because of her violent tendencies.

<sup>64</sup> Although it is against the rules for prisoners to have such items, weapons of all kinds can be readily procured in just about every carceral setting if detainees are determined enough.

<sup>65</sup> See *infra* note 243.

<sup>66</sup> I was unable to confirm the fact of the matter, but the story I heard from more than one respondent involved a violent man who forced his lover to remain permanently on his bunk and one evening forcibly raped him. Although awful, if true, the story suggests an abusive relationship of the sort unfortunately seen in society in general—and thus not necessarily the product of carceral pathologies native to the Jail. Perhaps more to the point, the fact that I heard only one such story is remarkable in itself, given that my interviewees had collectively spent many years housed in K6G.

<sup>67</sup> Nor should one expect it to be. After all, many people in K6G, as well as those elsewhere in the Jail, have been accused of violent crimes, and it is not to be wondered if some of them are prone to violence in this way.

<sup>68</sup> See *supra* note 4 (describing the phenomenon of deputy-on-detainee violence in the L.A. County Jail).

<sup>69</sup> Declaration of Cameron Saul, June 22, 2011. This incident is unfortunately consistent with the culture of violence among Jail deputies against detainees in general. See ACLU, *supra* note 4.

<sup>70</sup> This incident took place during the period of my research. The day after it occurred, one of my interview subjects—who had been in the dorm where it occurred—described in detail during a formal interview what had happened. The incident arose during the distribution of meal trays in the unit. Meals are distributed in the dorms by trustees under the supervision of the deputies. Residents of each dorm line up; receive their trays; and then,

In K6G, as in GP, the strong inmates can prey on the weak, sometimes taking “protection” money in exchange for “looking out” for someone. Another iteration of this predatory behavior is the usurious practice known as “two-for-one,” common in K6G and in the Jail as a whole. This practice involves someone with resources buying desirable items from the commissary and making them available to people who lack the necessary funds in their Jail accounts. Commissary items—known in the Jail as “store”—represent a rare treat for those in custody and are awaited with palpable eagerness. The catch of two-for-one is that as the name suggests, the debtor must pay the creditor back double the following week: two candy bars if one was provided, two soups if one was provided, etc. Failing to pay one’s debts in custody is a serious offense, and the debtor may be subject to serious violence in retaliation.<sup>71</sup> Debts can also be paid off with sex, and it

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holding their trays in front of them, line up again in tight formation against the far dorm wall with their backs turned towards the deputies. The rule is that no one is allowed to eat a bite until everyone has received his tray and the deputies and trusties have left the dorm and the door has been locked. According to my interview subject, the incident started when one of the people who had already received his tray took a bite of food before the distribution was complete. When that happened:

A certain deputy walked up to him, he snatched his tray and asked the inmate if it was good. The inmate answered his question, yes it was. The deputy got so mad, he hit the dude with a flat hand in the chest, knocking him back up against the wall. I was up by the TV and I heard that. Then, the inmate said, “You don’t have a right to touch me like that.” And the dude swung on him, connected, dropped him. Dude swung back because he was legitimately right for it, and eight deputies beat this dude and I think snapped his arm. They beat him with flashlights, they beat him with fists, they beat him with—And then they pepper sprayed him outside in the hallway. They had that dude crying for his mother, and he was 40 years old.

Int. 75, at A5. Later in the interview, my subject referred to this incident to explain why he felt safe in K6G from “the [other] inmates,” but was afraid of the deputies. *Id.* at B12.

<sup>71</sup> As one interview subject explained, in the Jail:

[There are] these people that do two-for-one, and you go to them and you get, like, one cookie, you’ve got to pay two back. And sometimes I get like \$60, \$75 in two-for-one, and by the time the store comes I have to shovel out all my store, because you can only spend \$130 bucks. So, if I go to the store and spend \$130 bucks, and \$95 of it or \$100 bucks of it is me getting two-for-one, then I’ve got like \$30 bucks in there for myself. And I run out of that.

Int. 136, at C18.

*What happens if people don’t pay their debts?*

Oh, you can get in trouble. Some of them are very violent to people. Some of them want to whup your butt and they threaten you. I mean, the people that are two-for-one are people who are like drug dealers, actually, and they’re not very nice people. It’s not very good to deal with them, actually. And one of them that I deal with is a very nice guy, I like to pay him, because he gives me two-for-one. And I got myself in a pattern to where it’s like a cycle for me. I have to pay him back, so then I have to go back to him again for more, because I ran out. So it’s like a cycle.

is likely that such exchanges occur in K6G; certainly, there is frequent prostitution in the unit for store items as a matter of upfront exchange.<sup>72</sup>

K6G is thus hardly paradise. There are, however, some notable aspects of life in the unit that make K6G a more appealing prospect than GP. Most obviously, people in K6G feel far safer from physical and sexual violence than they would in GP. This difference was a constant and unmistakable theme in my interviews.<sup>73</sup> I asked subjects several questions that probed the issue of relative safety, and taken together, the answers overwhelmingly indicated the heightened security K6G residents feel in the unit. For example, my respondents almost unanimously reported feeling safe in K6G, and almost all testified to feeling safer—from physical assault,<sup>74</sup> sexual harassment,<sup>75</sup> and sexual assault<sup>76</sup>—than they would in GP.<sup>77</sup> One question asked: *How safe do you feel in K6G*<sup>78</sup>: *very safe, safe, unsafe, or very unsafe*?<sup>79</sup> Of the thirty-one interviewees to answer this question, only two reported feeling anything less than safe.<sup>80</sup> A further set

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*Id.* A number of my interview subjects described one extremely violent incident that had occurred in the K6G dorms, which arose when a debtor could not pay. I was unable to confirm this account, nor am I able to say how often this happens in K6G.

<sup>72</sup> See *supra* note 56.

<sup>73</sup> During my research, I conducted in-depth qualitative interviews with a random sample of approximately 10% of K6G's residents. See *supra* note 26. For a detailed description of the research protocol, see Dolovich, *supra* note 1, at 92–99 (Methodological Appendix); *id.* at 100–10 (reproducing the questionnaire used in my interviews).

<sup>74</sup> See Dolovich, *supra* note 1, at 107 q.121.

<sup>75</sup> *Id.* at 107 q.122.

<sup>76</sup> See *id.* at 105 q.91.

<sup>77</sup> The exceptions here were two interviewees with extremely muscular physiques—one a former boxer—who both said they felt able to protect themselves and therefore felt safe in any environment. However, even the former boxer, a trans woman, said elsewhere in the interview that if she were attacked by a group of men bent on rape, she would “fight and kick and get a couple of them before they [forced her to submit].” Int. 53, at B13.

<sup>78</sup> Although the unit is now officially referred to as K6G, at the time of my interviews, most of my respondents—many of them with a long history of detention in the unit—still referred to it by its previous referent, K11. My interview questions therefore used the term “K11” instead of “K6G.” To avoid confusion, in quoting from my interviews, I have changed all references to K11 to reflect the current designation of K6G.

<sup>79</sup> See Dolovich, *supra* note 1, at 107 q.126.

<sup>80</sup> It bears noting, moreover, that both of the people in that minority of two reported feeling a mix of “safe and unsafe” and offered explanations for their mixed responses not inconsistent with an overall sense of security as compared with GP. As to the first, he made clear that he “feel[s] safe amongst the inmates,” but that he regarded the deputies who came into the dorms as posing a real threat—a feeling he explicitly connected to an incident that had occurred in the K6G dorm the previous evening, in which several officers reportedly used excessive force against a K6G resident. His account of this incident, reproduced verbatim above, see *supra* note 70, was corroborated by others during informal

of questions asked interviewees to consider three different locations—K6G, GP, and “out in the community”—and to rank the three in terms of the interviewees’ feelings of relative safety from physical assault, sexual harassment, and being harmed for “being yourself.”<sup>81</sup> Here too, the results confirm the heightened security K6G residents feel in the unit as compared with GP. In the majority of cases, interviewees felt safest out in the community, followed by K6G, and then finally GP. Remarkably, especially among the trans women, K6G was frequently named as the place they felt safest, followed by out in the community. But apart from two or three respondents whose physical size and long experience in prison made them confident they could handle themselves equally well in any environment,<sup>82</sup> interviewees all named GP as the context in which they felt least safe from physical assault.

Also noteworthy is the range of answers given to the question: *If you had five words to describe life in K6G, what would they be?*<sup>83</sup> As one would expect from a description of life in jail, several of the listed words carried a negative connotation. These included: “noisy” or “loud” (3 respondents),<sup>84</sup> “nasty” (2), “hateful” (2), “sour” (1), and “depressing” or “sad” (7). But of the negative words offered, only two (“anxiety-producing” (1) and “stressful” (1)) suggested anything of the tension, fear, and threat of violence one would expect to hear about from people describing life behind bars.<sup>85</sup> And taking the responses to this question as a whole, even more remarkable is the number of words that suggested a *positive* experience of incarceration in K6G, including “fun” or “wow” (8), “exciting” (1), “easy,” “easier,” or “easy-going” (4), “relax” or “relaxing”

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conversations and by one fellow unit resident in a sworn declaration. See Int. 75, at A5; *supra* text accompanying notes 69 & 70. As for the second, this person told a more particularized story, one that suggests an even more complicated set of gender dynamics in K6G than I was able to unearth in my time in the Jail. See Dolovich, *supra* note 1, at 45 n.223 (describing the substance of this response). But the source of the discomfort, however troubling, did not reflect the fear of sexual or physical violence against which the unit was intended to protect.

<sup>81</sup> See Dolovich, *supra* note 1, at 106–07 qq.119–124.

<sup>82</sup> See *supra* note 77.

<sup>83</sup> See Dolovich, *supra* note 1, at 102 q.35. I then followed up by asking for an explanation of each descriptor offered. These questions, which proved very effective in eliciting a picture of life in K6G, were Joe Doherty’s idea.

<sup>84</sup> The numbers in parentheses refer to the number of respondents who offered each term.

<sup>85</sup> It bears noting that the respondent who offered “anxiety-producing,” along with several other words with negative connotations (“miserable,” “hateful,” and “depressing”), stipulated that he would use the same words to describe “being in jail, period.” Int. 131, at F11.

(2), “nice” or “good” (3), “peaceful” or “calm” (3), “learning experience” (3), and “serene” (1).

That a sizable portion of K6G residents have positive associations with life in the unit may seem hard to credit. Yet the clear implication of these responses—that many people find life in K6G tolerable and even to some extent enjoyable—is entirely consistent with my interviews as a whole, as well as with many casual conversations I had with residents and my observations of life in the dorms. These responses, moreover, offer powerful evidence that this program has succeeded in creating a relatively safe carceral space inside the L.A. County Jail.<sup>86</sup>

This achievement is especially remarkable given the makeup of the unit. As noted, K6G is designed to house gay men and trans women, two groups well known to face an elevated risk of sexual victimization in custody. As Human Rights Watch observed in its 2001 report on male rape in American prisons, “gay inmates are much more likely than other inmates to be victimized in prison.”<sup>87</sup> A 2007 study in the California prison system confirmed this dynamic, finding that “67 percent of inmates who identified as LGBTQ reported having been sexually assaulted by another inmate during their incarceration, a rate that was 15 times higher than for the inmate population overall.”<sup>88</sup> This same team of researchers also found that

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<sup>86</sup> K6G is by no means the only segregation unit in the Jail. Indeed, all Jail housing may be understood as, in a sense, segregated; even the GP units are divided according to security level. And the Jail has many other “special handles”—i.e., groups of detainees requiring separate housing. These include detainees requiring medical attention, housed in the infirmary wing; detainees with serious mental health needs, housed in Twin Towers; gang dropouts, housed in the “green light” unit; as well as detainees who are developmentally disabled, hearing impaired, in custody on sex offense charges, and former members of law enforcement and their families, all of whom are housed separately from GP and from one another. Other segregationist measures ensure that individuals known to have mutual enmities—including, but not limited to, people in warring gangs or factions—are kept apart. Yet judging from what I heard and observed during my time in the Jail, no other housing unit is so widely thought to be as safe or desirable as K6G. The possible exception may be the unit for military veterans. This research did not include a study of that unit, but the experience of other jurisdictions suggests that units for veterans are also relatively humane. See, e.g., Lizette Alvarez, *In Florida, Using Military Discipline to Help Veterans in Prison*, N.Y. TIMES, Dec. 12, 2011, at A14. And, as will be seen, veterans’ units share many of K6G’s positive features, making them more likely to replicate its positive overall character. See *infra* Part III.C.3.

<sup>87</sup> HUMAN RIGHTS WATCH, NO ESCAPE: MALE RAPE IN U.S. PRISONS 52 (2001), available at <http://www.hrw.org/legacy/reports/2001/prison/report.html>. The report goes on to note that “many gay inmates—even those who are openly gay outside of prison—carefully hide their sexual identities while incarcerated . . . because inmates who are perceived as gay by other inmates face a very high risk of sexual abuse.” *Id.* at 57.

<sup>88</sup> JUST DET. INT’L, LGBTQ DETAINEES CHIEF TARGETS FOR SEXUAL ABUSE IN DETENTION 1 (2009) (citing VALERIE JENNESS ET AL., VIOLENCE IN CALIFORNIA



“59% of [California’s] transgender population reported sexual victimization as compared to 4% of the general prison population.”<sup>89</sup>

The acute vulnerability of gay men and trans women to sexual victimization in GP came through clearly in my interviews. After asking whether the subject had ever been forced to do sexual things against their will in K6G<sup>90</sup>—a question unanimously answered in the negative—I asked: *Have you ever [over your whole incarceration history] had to do sexual things against your will with other inmates?*<sup>91</sup> In response to this latter question, one person reported having been raped by a cellmate,<sup>92</sup> another reported being twice forced into oral sex,<sup>93</sup> and a third offered an answer suggesting that he had faced pressure to engage in unwanted sexual conduct.<sup>94</sup> Others shared similar stories at other points during their interviews. One person told of being attacked in state prison when his cellmate “found out that [he] was gay.” His assailant reportedly made clear to him that “the only point you [as a gay inmate] would be here in my cell is to have sex with me . . . . [T]he only point of . . . you being here is to attend to my sexual needs.”<sup>95</sup> Another recounted a harrowing tale of being “the only homosexual” in a four-man GP cell and being told by the others that

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CORRECTIONAL FACILITIES: AN EMPIRICAL EXAMINATION OF SEXUAL ASSAULT (2007)), available at [http://justdetention.org/en/factsheets/JD\\_Fact\\_Sheet\\_LGBTQ\\_vD.pdf](http://justdetention.org/en/factsheets/JD_Fact_Sheet_LGBTQ_vD.pdf). Recent Bureau of Justice Statistics findings suggest similarly disproportionate rates of assault for LGBTQ detainees in juvenile facilities, with “[y]outh with a sexual orientation other than heterosexual” reporting sexual victimization at a rate almost ten times higher (12.5%) than that reported by heterosexual youth (1.3%). BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, SEXUAL VICTIMIZATION IN JUVENILE FACILITIES REPORTED BY YOUTH, 2008–09, at 1 (2010).

<sup>89</sup> VALERIE JENNESS, THE VICTIMIZATION OF TRANSGENDER INMATES, at slide 14 (2006), available at [http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CDUQFjAA&url=http%3A%2F%2Fucicorrections.seweb.uci.edu%2Ffiles%2FVictimization%2520of%2520Transgender%2520Inmates.ppt&ei=LaoT7ziBIqXgwfl2\\_y7CA&usg=AFQjCNFUo6y2yqamhrPg7heq6hev8Yi2IQ](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CDUQFjAA&url=http%3A%2F%2Fucicorrections.seweb.uci.edu%2Ffiles%2FVictimization%2520of%2520Transgender%2520Inmates.ppt&ei=LaoT7ziBIqXgwfl2_y7CA&usg=AFQjCNFUo6y2yqamhrPg7heq6hev8Yi2IQ).

<sup>90</sup> See Dolovich, *supra* note 1, at 105 q.91.

<sup>91</sup> *Id.* at 105 q.94.

<sup>92</sup> Int. 102, at E10.

<sup>93</sup> Int. 140, at C8.

<sup>94</sup> See Int. 101, at A23 (“Not force, they don’t force you at all. They just give you the option that you can choose for your own. So, you force yourself, actually.”).

<sup>95</sup> Int. 68, at G8–9. As this subject explained:

In the general population, whether you’re dressed as a girl or not . . . it would be obvious to anybody if you are gay or not. And if they sense that you’re a homosexual . . . of course, you’re going to become a target to be picked on, . . . you know, sexually.

*Id.* at G12.

he “was going to have sex with all three of them that night.”<sup>96</sup> When this interviewee resisted, he was told: “There is nothing you can do. You can either give it up or we’ll take it.”<sup>97</sup> He was saved from this fate when he got the attention of a sympathetic deputy during the evening meal service. He told this officer of his sexual orientation and was immediately transferred out of the unit.<sup>98</sup>

Still further evidence of the relative security K6G offers is found in a number of comments made by my interviewees over the course of the interviews. One respondent, in explaining why he preferred K6G to GP, said “I didn’t have to hide who I was. I could be myself and not have to worry about . . . being in any kind of danger that was only because of my sexuality.”<sup>99</sup> Another, explaining his preference for K6G, said simply “[b]ecause they’ll kill me in GP.”<sup>100</sup> Another attested that in K6G, he can “get in [his] bed and relax without having someone come and sexually harass[] [him]. [In GP, he] couldn’t relax because you have the guys that want to run in the showers and want to have sexual things done to them.”<sup>101</sup> Another said that “a lot of these guys in [GP] would expect it from us because of the fact that oh well, he likes guys, so might as well fuck him.”<sup>102</sup>

Yet K6G’s appeal, and in particular its promise of relative safety, reaches well beyond its designated population, so that every day, men who are not gay pretend to be so in order to gain access to the unit.<sup>103</sup> Why

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<sup>96</sup> Int. 111, at C20.

<sup>97</sup> *Id.*

<sup>98</sup> This story indicates the importance of having an established policy for dealing with people in custody who are at risk of sexual assault. Absent such a policy, even well-meaning officers might be unsure how to respond to such a plea. They may thus simply take the path of least resistance and send the person back to their cell. (Of course, were this the response, the prisoner would have a strong case for failure to protect under the Eighth Amendment, since the prison official would have had actual knowledge that the prisoner faced a substantial risk of serious harm. *See Farmer v. Brennan*, 511 U.S. 825, 837 (1994).)

<sup>99</sup> Int. 48, at F2.

<sup>100</sup> Int. 92, at B1. This respondent continued: “[In K6G], I won’t have to worry about, you know, when I’m taking a shower, to watch my back. In the general population . . . [y]ou have to watch your back all the time.” Int. 92, at B8.

<sup>101</sup> Int. 102, at D5.

<sup>102</sup> Int. 71, at C5; *see also* Int. 41, at F10 (explaining that in GP, “you can’t tell them no . . . you’re going to have to give up something if they come at you. You’re going to have to do something.”).

<sup>103</sup> To this, some may object that sexuality is more dynamic and complex than the binary gay/not gay would allow, and that even men who may not “seem” gay in the conventional sense of the term may experience same-sex attraction and thus not identify as “straight.” This is no doubt the case. But my assertion in the text that some men lie to get access to K6G is not based on a failure to credit either the complexity of sexual identity or the range of

would anyone lie about being gay in the Jail? Over the course of my research, I sat in on numerous classification interviews and so had several opportunities to see this phenomenon in action.<sup>104</sup> As best I could judge, those seeking access to K6G under false pretenses do so for two main reasons, which are not mutually exclusive. First, those with a long history of institutionalization, who may have become accustomed to having sex with men while incarcerated, know that in K6G, they will find many willing sexual partners. Second—and more disturbing for what it says about the Jail’s GP—was the desire for safe housing. In some cases, after their efforts to pass as gay had been exposed as fraudulent, interviewees proved to have specific reasons to fear placement elsewhere in the Jail. For example, one individual turned out to be a witness in a murder trial that was in process at the time. He himself had been arrested for an unrelated offense and now found himself detained in the same facility that was also holding the two men against whom he was testifying—men he had reason to fear could get at him if he were housed anywhere besides K6G.<sup>105</sup> In another case, the interviewee had served time in a Texas prison, where he had been a member of the Texas Aryan Nation—a status confirmed by his tattoos. He explained that there is “gang warfare in prisons across the country” and that “California doesn’t like Texas.” He was afraid that if anyone (meaning any prisoner) in California saw his Texas tattoos, he would be stabbed.<sup>106</sup>

But by far the most common reason for the pursuit of safety through “reverse-passing” in K6G was the desire for a respite from the gang politics

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ways people might understand and relate to their own sexuality. It is based on the frank admissions by many men whose classification interviews I observed that their claims of being gay, made in their initial sorting interview, had in fact been outright fabrications. Although one’s stated self-understanding can certainly be complicated by fear of the implications of connecting with those parts of oneself that are in conflict with prevailing social norms, it would be a mistake to allow theoretical sophistication to blind us to the possibility that, in many cases, the most accurate explanation is also the most obvious. Sometimes, in other words, a lie is just a lie. And my experience in K6G leaves me confident that the phenomenon of men seeking access to K6G by pretending to be gay is a frequent occurrence. For more extended discussion of this phenomenon and how it plays out during the second stage of the classification process, see Dolovich, *supra* note 1, at 30–43.

<sup>104</sup> In all, I observed approximately fifty classification interviews and took notes on approximately thirty-four. For a more complete description of this component of my research protocol, see *id.* at 92–99 (Methodological Appendix).

<sup>105</sup> See Field Notes, July 4, 2007. When asked why he had not simply requested protective custody in the K10 unit instead of pretending to be gay to get into K6G, he explained that the two defendants in the trial had long arms and that, as he put it, “even in K10, people always seem to run into those guys.” *Id.*

<sup>106</sup> Or, as he put it, he’s “going to get stuck.” Field Notes, July 9, 2007. For a more detailed discussion of this case, see Dolovich, *supra* note 1, at 40–42.

and consequent pressure and danger that define daily life in the Jail's GP.<sup>107</sup> K6G, well known to be the safest place in the Jail, is an attractive prospect for repeat players who just want to do their stints in peace. This explanation—the desire to escape the stress and danger of life in GP—may at first seem hard to fathom. For one thing, life in the K6G dorms is by no means free of danger.<sup>108</sup> As already noted, extortion and usury continue apace in K6G as elsewhere in the Jail, and the fact that at any given time at least some K6Gs are fighting serious charges means there is an ever-present possibility of violence. Moreover, violence by deputies against detainees is an ongoing threat in K6G just as in GP,<sup>109</sup> and the presence in the dorms of people who are mentally ill contributes to a background sense of volatility. As one of my respondents put it, “Regardless of where you’re at, anything can happen to where it causes something to click in someone’s head. You never know what they are capable of doing and you always have to keep yourself aware.”<sup>110</sup> There are, moreover, many more one-on-one physical

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<sup>107</sup> For more on the pressures that gang politics create in the Jail's GP units, see *infra* Part II.C.

<sup>108</sup> One effect of segregating K6G's population is that, when they are outside the dorms, unit residents—who wear color-coded uniforms to distinguish them from the GPs—experience considerable verbal harassment, both from GP inmates they happen to pass in the hallways and from some deputies, who apparently feel no compunction in using homophobic epithets in their interactions with K6Gs. See, e.g., Int. 48, at F3 (“Sometimes [the deputies] call us a name, call us faggots and stuff like that . . . . It's the worst kind of disrespect I've lived with . . . in this kind of environment.”); Int. 71, at A4 (“[In K6G, t]he only thing you need to worry about is discrimination from some of the officers.”). Indeed, a number of my subjects noted that at least some custody officers treat K6Gs more harshly and less respectfully than they treat GPs. As one interviewee explained, “GPs get more respect, I believe, because they feel that . . . because we're gay or transgender, that we don't pose too much of a threat, so they can talk to us any way that they want.” Int. 103, at D3–4; see also Int. 140 at B1 (“They treat us more bullyish. The things they do on K6G, they don't do on the general population. . . . Like just fuck with us in general. Just talking crazy to us. They don't try that on the general population because general population tends to go off on them a little bit.”). Some officers even bring the inclination to verbally harass the K6Gs right into the dorms. See Int. 111, at C5 (“One guard called us faggots on the loudspeaker.”). As I discuss at some length elsewhere, see Dolovich, *supra* note 1, at 55–60, this behavior on the part of sworn officers in the Jail is extremely troubling, and points to the strong need for interventions by the Jail's command staff, as well as more effective training for officers in how to deal respectfully with the people K6G serves. But because my focus in this Article is on what, if anything, can be learned about humane incarceration from the inmate culture of K6G versus that of GP, for present purposes I leave to one side the troubling and inappropriate behavior of deputies vis-à-vis K6G residents.

<sup>109</sup> See *supra* note 4; *supra* text accompanying note 69.

<sup>110</sup> Int 41, at F11. This interview subject explicitly traced the causes of this insecurity to those dorm residents with mental illness. As he (impolitely) put it, “[w]e always get the looney tunes in K6G, . . . the ones that have slight mental problems.” *Id.*

altercations in K6G than in GP.<sup>111</sup> Yet despite the constant potential for violence, the occasional extremely violent episode, and the greater likelihood of spontaneous fighting between two or more individuals, many of my respondents described life in K6G as “easy,” “relaxing,” “peaceful,” and even “serene.”<sup>112</sup> And as a regular matter, people newly admitted to the Jail who do not meet K6G’s admissions standards try to lie their way into the unit.

How can this be? In part, the answer lies in the most immediate and obvious difference between K6G and the Jail’s GP units: the absence in K6G of what is known in the Jail as “gang politics.” As will be seen, making sense of this difference and its implications for the people in custody in the Jail helps to expose some of the most destructive and troubling aspects of the American carceral enterprise—and what it may take to overcome them.

### C. (GANG) LIFE IN GP

The gang culture in the L.A. County Jail directly mirrors that found in the California prisons. Indeed, gang structures and imperatives flow directly from the state prison system into the Jail itself, and vice versa. This connection may seem puzzling. As a formal matter, these are two separate systems; the L.A. County Jail is a municipal institution wholly independent of the state prison system. Culturally speaking, though, the two systems function as a unit. The California prison system is one of the biggest state systems in the country, and fully one-third of its prisoners come through the L.A. County Jail.<sup>113</sup> Every night, busloads of sentenced prisoners are transferred from the Jail to the California Department of Corrections and Rehabilitation (CDCR) reception centers.<sup>114</sup> Moreover, high recidivism rates mean that many people in the Jail on any given day have done time in state prison.<sup>115</sup> There are certainly some institution-specific features of the

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<sup>111</sup> See Int. 47, at D6 (explaining that people in K6G get into fist fights “all the time”). For more on this phenomenon, see *infra* Part II.E.

<sup>112</sup> See *supra* text accompanying note 85.

<sup>113</sup> CAL. DEP’T OF CORR. & REHAB., CORRECTIONS: YEAR AT A GLANCE 18 (Fall 2011) (reporting Institutional Population by County of Commitment; showing that 33.1% of the CDCR population in the previous year came from L.A. County).

<sup>114</sup> These transfers are such a common part of life in the Jail that there is even a slang term for the experience: to be transferred to state prison is to “catch the chain.” For example, if you ask where someone is, you might hear, as I was once told about one of my interview subjects, that he “caught the chain” the previous night.

<sup>115</sup> Indeed, of the three dorms assigned to the K6G unit during the summer of 2007, one predominantly housed detainees who had previously spent extended time in prison. For further discussion of this dorm, see *infra*, Part III.A.

Jail's gang life. But to a great extent, the gang culture that reigns in many California prisons<sup>116</sup>—with its formal authority structure, clearly delineated racial boundaries, rigidly enforced behavioral code, and well-established rules for gang interaction—also governs in Men's Central Jail and in the L.A. County system more generally.

At the very top of this structure are seven prison gangs officially recognized by the CDCR and designated as top-tier "security threat groups" or "STG-I."<sup>117</sup> These include the Mexican Mafia, Black Guerilla Family, Aryan Brotherhood, and Nazi Low Riders.<sup>118</sup> As the names suggest, these gangs are divided along racial lines. Membership is highly restricted; joining is in many cases a matter of "blood in, blood out," i.e., "assaulting or killing an enemy of the gang to join and a promise of lifetime membership, which if violated is punishable by death."<sup>119</sup> But the power of these groups in the prison extends far beyond their official membership. Gang leaders call the shots for virtually all prisoners in the system, with non-members expected to show fealty to the gangs associated with their race—Whites must obey the leadership of the Aryan Brotherhood and the Nazi Low Riders;<sup>120</sup> Blacks, the Black Guerilla Family; etc. These officially recognized prison gangs are not to be confused with street gangs. Although large numbers of California prisoners are members of street gangs, these affiliations are put to one side when a person enters the prison, where racial allegiances trump.

Below this prison gang elite are four broad racial groupings. In each of these four groups, the leadership takes its cues from the prison gang shot callers of their race.<sup>121</sup> It is this second-tier level that coordinates and

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<sup>116</sup> This is especially so in the prisons in the southern and central parts of the state, where the "Sureños" or "Southsiders" dominate. *See infra* note 132.

<sup>117</sup> CAL. DEP'T OF CORR. & REHAB., CORRECTIONS, SECURITY THREAT GROUP PREVENTION, IDENTIFICATION AND MANAGEMENT STRATEGY 12 (2012).

<sup>118</sup> The other gangs classified as "STG-I" are Northern Structure, Nuestra Familia, and Texas Syndicate. *Id.* at 13. The CDCR also classifies several groups as STG II and notes that they "may be subservient to an STG-I." *Id.* Groups in this second category include Crips, Norteños, Bloods, Sureños, and "White Supremacist[s]." *Id.*

<sup>119</sup> David Skarbek, *Governance and Prison Gangs*, 105 AM. POL. SCI. REV. 702, 704 (2011). The main prison gangs are involved in much illegal activity, most notably the business of selling illegal drugs both in prison and on the streets. *See, e.g., id.* at 702–14 (offering a detailed and fascinating account of the tax-collecting powers of the Mexican Mafia as regards "Hispanic" and Sureño street gangs, which pay to the Mexican Mafia a portion of the profits they earn selling drugs in the street).

<sup>120</sup> Some coordination appears to exist among the prison gangs of the same race, although I am unable to describe this process in any detail.

<sup>121</sup> Shot callers of these four racial groupings may or may not be made members of prison gangs.

enforces the behavioral rules that govern daily life for prisoners in custody. The key point is this: Every single person in GP, “made” gang member or not,<sup>122</sup> is expected to affiliate with one of these four racial groupings<sup>123</sup> and to obey the rules they set down.

In L.A. County’s iteration of this system, there are four such groupings into which prisoners are divided<sup>124</sup>: Blacks; Whites; “Sureños” or “Southsiders,” who are native-born Latinos from south of Fresno;<sup>125</sup> and “Paisas,”<sup>126</sup> who are foreign-born Latinos.<sup>127</sup> As these divisions suggest,

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<sup>122</sup> Gang membership being so tightly restricted, the majority of prisoners in the California prison system fall into the former category.

<sup>123</sup> This arrangement creates the potential for terminological confusion. On the one hand, the term “gang” is generally taken to refer to the more exclusive, officially acknowledged prison gangs. On the other hand, reference to “gang politics,” “gang membership,” and “gangbangers” (i.e., enthusiastic participants in gang politics) can also refer to the larger racial groupings. Those familiar with this system sometimes refer to the officially recognized groups as “prison gangs,” and the latter, larger racial groupings as simply “gangs” or “races.” I adopt this usage here.

<sup>124</sup> To say “are divided” rather than “divide themselves” may strike some as a failure to understand the extent to which the prisoners themselves design, operate, and enforce this system. But two factors of the system’s operation make it more appropriate to describe the gang structure as one in which prisoners are assigned their affiliation rather than choosing it for themselves. First, even those who seemingly choose their own affiliation really have little choice in the matter, since even those who would prefer to have no part of this structure are compelled, often under threat of physical reprisal, to participate. Second, in many ways, prison officials actively support and even strengthen gang control over the prison culture, even to the point of assigning individuals to one of the four groups. On this point, Philip Goodman’s ethnographic work in the California prison system’s reception centers is essential reading. See Philip Goodman, “*It’s Just Black, White, or Hispanic*”: *An Observational Study of Racializing Moves in California’s Segregated Prison Reception Centers*, 42 LAW & SOC’Y REV. 735 (2008). As Goodman shows, the assignment of race is often a “negotiated settlement” reached by officers and inmates collaborating together to arrive at a given racial characterization. *Id.* at 737. At least one of my interview subjects suggested that at times, officers make the decision themselves about the “race” to which a given prisoner will be assigned. This subject, an older American-born Latino, described how California state prison officials assigned him to the Paisas. Int. 60, at C7–8. This was a wise choice, since this decision allowed him to avoid having to run with the Southsiders, a more disciplined and demanding operation with strenuous rules with which he might have had a hard time complying.

<sup>125</sup> For an explanation of what becomes of American-born Latinos from north of Fresno or from Fresno itself when they wind up in custody in Southern California, see *infra* note 131.

<sup>126</sup> “Paisa” or “paisano” literally means “fellow countrymen.” See Jennifer Waite, *Prison Slang 104: Chicano Slang*, YAHOO! VOICES (Aug. 12, 2009), <http://voices.yahoo.com/prison-slang-104-chicano-slang-3985278.html?cat=17> (explaining that, in prison, “paisa” is a “slang term for Mexican immigrants who have not yet assimilated,” and that it “[c]an be used derogatorily [sic], but is not necessarily an insult”).

<sup>127</sup> Goodman’s work suggests that in the California prisons, the four designated groups are Blacks, Whites, Southsiders, and “Other[s].” See Goodman, *supra* note 124, at 736. In

the organizing principle is primarily racial, although as with racial categories in general, the meaning of “race” in this system is particular to the cultural context. For example, in this world, Southsiders and Paisas are referred to as two different “races,” although each group is comprised of Latinos. It is, moreover, not unusual to find individuals who “run with” a group defined by a different race. For example, there are whites who identify as Crips or Bloods on the streets and thus affiliate with the Blacks in custody (and are officially designated as such).<sup>128</sup> And anyone who does not identify (or is not identified by others) as white, black, or Latino—say, a person who is Asian, Native American, or Middle Eastern—is known as “other” and is automatically assigned to the Blacks.<sup>129</sup>

In this system, the terms “race” and “gang” are synonymous, and I use them here as such.<sup>130</sup> Both refer to the particular “racial” grouping to which prisoners are assigned (i.e., Blacks, Whites, Southsiders, or Paisas).<sup>131</sup> And

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L.A. County, anyone who does not fit one of these four designated categories (i.e., who qualifies as an “Other”) is expected to “run with” the Blacks, although they may have to pay a tax to do so.

<sup>128</sup> *Id.* at 754–55. Goodman found these cross-racial moves to be “most common among inmates who identified themselves as ‘White.’” *Id.* at 756. During his time studying the classification process at several California prisons, Goodman reports that:

[He] never witnessed an inmate declare his “race” to be “Black” and also claim his membership in a “White” prison gang or other white affiliation. . . . Likewise, those inmates who said they were “Hispanic” never declared themselves to be a member of gangs considered to be “White” gangs or “Black” gangs.

*Id.* From my own experience, however, I know that it is not impossible for people of a race other than white to choose to affiliate with the Whites. During my time in the Jail, I got to know one detainee who fit this description exactly. Although he was born and raised in a Latino family and had a common Latino surname, this individual told me he grew up in an all-white neighborhood and had learned early on to hate all non-whites. He thus fit in well with the white supremacist group with which he affiliated while in custody. It was clear, moreover, that his racial animus toward non-whites ran deep. When I met him, he was fighting an assault charge with a hate-crime enhancement, a charge on which he was eventually convicted.

<sup>129</sup> *See supra* note 127.

<sup>130</sup> *See supra* note 123.

<sup>131</sup> A word about intraracial violence is in order here. For the most part, there is surprisingly little intraracial tension in the California prison system. This contrasts dramatically with life in the streets, where enmity between gangs often pits people of the same race against each other, frequently with lethal consequences. For example, the virulent hostility between the Crips and the Bloods, two predominantly African-American gangs, is well-known. In some neighborhoods, even wearing an item of clothing of the color associated with the rival gang—i.e., wearing red in Crip territory or blue in Blood territory—can be enough to spark a shooting. Yet in custody, whether in the Jail or in prison, Crips and Bloods put aside their mutual enmities and affiliate with (and fight on behalf of) the same group. The same is true of rival Sureño street gangs. In other words, street-gang enmities, although they do not disappear, are generally put on hold while gang members are in



most crucially, it is a person's affiliation with one of these four groupings that defines his "race" for purposes of the "race politics" that define all aspects of life in the Jail's GP. In this culture, strict rules govern individual behavior and interaction.<sup>132</sup> At their most basic, these rules arise from two foundational principles: racial segregation<sup>133</sup> and mutual "respect." The

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custody. As a consequence, it is not uncommon to have people fighting on the same side in custody, despite the fact that they might readily kill one another when free. This subtle point of race politics in the California prisons appears to have eluded Justice Stevens in his opinion in *Johnson v. California*, 543 U.S. 499 (2005). In that opinion, Justice Stevens raised the well-known hostility between Crips and Bloods as evidence that the California prison system's practice of housing people of the same race together could backfire given the propensity of street gangs for intraracial violence. *Id.* at 523. In fact, however, the racial politics in the California prisons means that Crips and Bloods (or, for that matter, two people of warring sects of the same gang) can in many cases be housed together in a single cell without fear of gang violence, notwithstanding the real possibility of violence between those same individuals in the street.

There is, however, one notable exception to the proscription on intraracial violence in custody: the internal divisions among Latinos in the California prisons into three separate groups to which individuals are assigned on the basis of geographic origin. Those who hail from north of Fresno are known as "Norteros" or "Northsiders"; those who hail from south of Fresno, known as "Sureños" or "Southsiders"; and those who come from the Fresno area are known as Fresno Bulldogs. Latinos from the same geographic region form a tight and powerful band. But the hostility between these groups is as extreme as any between rival gangs, and perhaps even more violent than that between racial groups. (However, even here there can be exceptions. I am told that in Soledad prison in 2005, Norteros and Sureños were able to walk the yard together without problems. I thank Juan Haines for this information.) The California prison system, recognizing this hostility, tries to house members of these groups—especially Norteros and Southsiders—at different prisons, since an inmate housed in a prison with a majority of the other grouping (say, a Southsider in a northern California prison) will usually have to be placed in protective custody for the duration of his stay. I cannot say for certain why the rules of California prison culture are this way, although it has been suggested to me that it has something to do with the willingness of Norteros to affiliate with Blacks, against whom the Southsiders have a virulent hostility.

<sup>132</sup> When I presented this paper at San Quentin, many workshop participants—most of whom had experienced life in a range of California prisons—insisted that it is the Southsiders who most vociferously enforce these rules. This was one explanation given for why the GP at San Quentin, a northern California prison with virtually no Southsiders on the yard, was relatively safe compared with southern California prisons. Others I have spoken with who have done time in California prisons emphasize that the racial divisions most strenuously enforced are those between Hispanics and Whites on the one hand, and Blacks and "Others" on the other. *See, e.g.*, Telephone Interview with Cameron Saul, Case Manager, Tarzana Treatment Ctr. (Oct. 27, 2011). Although this feature of the gang code is less important for purposes of the present discussion, a full understanding of this toxic and troubling set of cultural norms, and of the role of race and racism in the prison culture more generally, would require further investigation.

<sup>133</sup> Again, it bears emphasizing that the "racial" segregation so strenuously enforced in this particular social system is governed by a cultural construction of the category of race that is unique to this context.

corollaries of these two principles are the two cardinal sins: racial mixing and interracial disrespect. Behavior is strictly controlled and rigidly policed by the gangs themselves to guard against transgressions, and the commission of any offense may bring swift and violent reprisal, often from the wrongdoer's own gang.<sup>134</sup>

The rules that define life in the Jail's GP reflect this moral universe. First, detailed precepts designed to prevent racial mixing govern everyday conduct.<sup>135</sup> Between individuals of different "races," there can be no touching, no sharing of food or utensils, no overt displays of mutual regard. People of different races can talk to one another and, depending on the dorm, may even be able to play cards or chess with one another. But even in that case, they would not be able to sit on the same bunk to do so: one person would have to play standing up next to the bunk on which the game board or cards are placed.

Bunks, too, are designated by race to ensure that the top and bottom of each bunk are occupied by two people of the same race.<sup>136</sup> Members of different races cannot use the same showers, phones, or toilets;<sup>137</sup> for this

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<sup>134</sup> I am well aware that the cultural system I am describing here is deeply offensive and troubling. The fact of the description should in no way be taken as evidence of endorsement. To understand K6G and the difference it represents, it is necessary that the larger gang culture be understood, which is why I am describing it in such detail here.

<sup>135</sup> *But see supra* note 132 and *infra* note 137 (suggesting that the strongest hostilities may be between Whites and Hispanics on the one hand, and Blacks and "Others" on the other).

<sup>136</sup> This particular practice may have to change in the near future, at least in the California prison system. After the Supreme Court handed down its decision in *Johnson*, 543 U.S. 499, the state agreed to a policy of racial integration in all its facilities. This policy commits the state to racially integrate as much as possible both its cells and its dorms. The experience of such integration in Texas suggests that the racial integration of cells may actually reduce violence between cellmates. *See Dolovich, supra* note 1, at 84 n.382 (discussing findings reported in CHAD R. TRULSON & JAMES W. MARQUART, FIRST AVAILABLE CELL: DESEGREGATION OF THE TEXAS PRISON SYSTEM, 182–83 (2009), and Chad Trulson & James W. Marquart, *The Caged Melting Pot: Toward an Understanding of the Consequences of Desegregation in Prisons*, 36 LAW & SOC'Y REV. 743 (2002)). As to the dorms, however, the public nature of the living quarters, along with intense pressure from the various gangs that currently enforce a strict segregationist code, may mean that even those prisoners who do not object to sharing a bunk bed with someone of another race will feel compelled to perform disgust, anger, and recalcitrance at the integration. This difference may prove to complicate California's integrationist efforts in its prison dorms—efforts that in any case appear as of this writing to have been put on hold while the state grapples with its obligations under *Brown v. Plata*, 131 S. Ct. 1910 (2011).

<sup>137</sup> There was occasional suggestion in some of my conversations that these rules are most strongly enforced against Blacks, so that while Whites, Southsiders, and Paisas may share food, phones, toilets, etc., with one another, members of these three groups would under no circumstances do so with Blacks or the "Others" (i.e., those of a race other than

reason, in the dorms, each shower, phone, and toilet has been designated as “belonging” to one race or another.<sup>138</sup> Compliance with these rules is enforced by the gang leadership in the dorms. In each dorm, each of the four “races” has a “rep,” whose responsibility it is to make sure that his “soldiers” comply with these rules. New arrivals are taken aside and informed of their obligations, and violations are met with intra-gang reprisals ranging from strong rebukes to physical violence.

A second set of rules, designed to guard against any signs of mutual disrespect, provides for a scrupulous equity in the distribution of benefits.<sup>139</sup> What benefits could possibly be had in a jail dormitory? Apart from the much-sought-after commissary items, which are available to anyone who can afford them or who cuts a deal with someone who can,<sup>140</sup> there are two main benefits: being the first to get your meal at chow time and having a say in the channel to which the dorm’s communal television is set. Consistent with the demands of racial equity and the imperative not to be disrespected, the gangs<sup>141</sup> in the Jail have worked out a system. As to both

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white, Latino, or black) who are expected to affiliate with the Blacks. *See* Telephone Interview with Cameron Saul, Case Manager, Tarzana Treatment Ctr. (Oct. 27, 2011).

<sup>138</sup> Goodman describes an analogous phenomenon of racial segregation in the California prisons he studied. While on a tour of one of the facilities, he noticed “three small metal boxes, none bigger than a small residential mailbox. Below each box was carefully printed: ‘Black Barber,’ ‘White Barber,’ and ‘Hispanic Barber.’” Goodman, *supra* note 124, at 746. Goodman reports being informed by the lieutenant leading his tour that:

[I]nmates refuse to use hair clippers that have been used by someone of another “race.” According to this lieutenant, when an inmate wants a haircut, he puts a request in the appropriate box and will then get his hair cut by an inmate barber of “his own” “race” and using tools that have not been used on someone of a different “race.”

*Id.* at 746.

<sup>139</sup> I myself witnessed these rules in action in the GP dorm that served as a (fortuitous) control during my time in the Jail. The dorms in Men’s Central are arranged in groups of four, with a single officer’s booth affording visual access to, and some interaction with, residents of all four dorms. In the summer of 2007, one such grouping included the three K6G dorms and one dorm that served for a time as a GP medium-security dorm. (For some of the time I was there, that same dorm housed people awaiting trial on immigration crimes and also briefly housed accused sex offenders.) I learned a lot about GP from observing that medium-security GP dorm and from informal conversations with some of its residents. I later confirmed what I learned from that vantage point in conversations with custody officials and residents of K6G.

<sup>140</sup> *See* Int. 136, at C18 (discussing “two-for-one”).

<sup>141</sup> After I presented an early draft of this Article at San Quentin State Prison, one workshop participant, Juan Haines, gave me a marked-up copy of the draft. Throughout this section, he had crossed out the word “gang” and replaced it with “race.” Haines did so because, in the prison culture I am describing, these rules are enforced as to all prisoners, whether or not they are “made” members of officially recognized prison gangs. The people living in this environment thus refer to the four main groupings as “races” and not as gangs.

being first in line at mealtimes and choosing what TV show to watch (within the parameters for available programming set by the Jail itself), the prizes rotate. The gangs take turns being the first to line up for chow, and on any given day, the group whose turn it is to go first at mealtimes gets to decide what they will watch on TV that day.<sup>142</sup>

The combination of this culturally contextual form of racial segregation and the rotating privilege of who gets to eat first turns each meal in the GP dorms into a carefully choreographed ritual. In Men's Central, meals are delivered to the dorms by inmate workers (or "trusties") who, under the supervision of custody officials, hand out preloaded trays prepared in the Jail's kitchen. About fifteen minutes before each meal arrives, the booth officer tells each dorm to "line up for chow." In response (typically after several exhortations to get moving), the dorm's residents arrange themselves in preset racial groupings. The group whose turn it is to go first that day goes to the head of the line, followed by the group whose turn it will be to go first the next day, and so on. The pattern is the same every day; in the dorm I observed, it was Blacks, then Whites, then Southsiders, then Paisas. Every day, each group gets closer to the front of the line until, having taken its turn being first, it drops back to last place.

The rigid observation of these rules means that, for the most part, life in the Jail's GP appears remarkably calm. Indeed, this relative calm is arguably what leads Jail officials to tolerate and even facilitate gang control of the internal jail culture, since it generally ensures order and stability. It is, however, crucial to understand that this seeming calm masks the intense stress created for GP residents by the imperative to follow the rules or risk violent reprisal. It also masks the ever-present possibility of collective

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*See supra* text accompanying notes 118–121 (explaining the difference between prison gangs and the gangs or "races" whose behavior I am describing here). For purposes of this Article, however, I am largely interested in the broader racial groupings that claim everyone in custody as members, whether or not they actually belong to a prison gang or street gang. And when people in the Jail talk about gang politics or the gang code, it is the rules governing these comprehensive groupings to which they refer. So for purposes of this paper, I refer to these larger groupings as "gangs" and not "races," notwithstanding that in so doing, I am self-consciously departing from the usage dominant among the prisoners themselves.

<sup>142</sup> Kenneth Hartman reports that a similar set of rules were in force at Lancaster State Prison in early 1996. Here is what he found waiting for him when he arrived:

The six different shower stalls are divided up among the groups. The clothes irons are divided up by race. The television on the black side invariably has black shows, the other one Spanish-language programming. (There are so few whites, we rate low in the television schedule.) The telephones are allotted by race. The separation is so complete that it outstrips any official policy of apartheid that a racist government could design. The saddest thing about it is that we have done this to ourselves, adopted these separatist policies as holy writ.

HARTMAN, *supra* note 30, at 156.

violence. In this highly calibrated system, collective violence—i.e., riots—can break out at any time. They can be prompted by anything from a perceived slight of one person by someone of another race, to long-brewing tensions between different racial groupings, to a decision made by the prison gang leadership—usually far off in Pelican Bay or some other high-security California prison—to launch an all-out war with another gang.<sup>143</sup> Often, the people who fight will not even know why they are fighting, but their knowledge of the reasons is irrelevant. This brings us to the preeminent obligation for all prisoners caught up in this system: the imperative to “jump in” (i.e., join the fight) whenever the signal is given. Those who fail to respond to this signal know that they can expect to be violently punished by their own gangs once the dust has settled.<sup>144</sup>

The system just described, with its rigid code of conduct and violent penalties for violations, is known in the Jail as “gang politics” or just “politics.” These politics make life in GP scary, stressful, and dangerous.<sup>145</sup> As one of my (black) subjects explained:

[Y]ou don’t know when something is going to snap. And if something snaps, even if you don’t have nothing to do with it, you have something to do with it because if it is Southside against Blacks, you Black, so you automatically in it. And if you don’t get in it, when it’s over, then the Blacks beat you up. So you really don’t have any choice.<sup>146</sup>

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<sup>143</sup> The most senior gang leaders in the custody of the California prison system are typically held in “secure housing units” (a.k.a. the SHU). However, they are nonetheless able to reach into the jail dorms through the use of inmate “soldiers” transferred between facilities, otherwise known as the “inmate wire.”

<sup>144</sup> As one of my (black) respondents explained, “[i]f a Mexican and a black fight, and another Mexican jumps on the black and beat on the black, I may be called to where I have to jump in and fight. And if I don’t, then the Blacks may all beat me up later.” Int. 119, at C4.

<sup>145</sup> This effect came through clearly in my interviews, as subjects described their experiences of life in GP. One (white) respondent described it as follows:

I was scared to death. Because where I was [housed], I was with nothing but Mexicans. They were all gangbangers [i.e., someone deeply involved in the gang culture], every one of them were gangbangers. I forget what clique they were from. But in [the overhead light in my cell] we had thirty-two shanks, knives, handmade knives. And then one day somebody disrespected one of the Mexicans, and the Mexicans they all went off on the Whites. The only reason why they didn’t go off on me is because our tank had all those shanks in them. And that’s the only thing that saved me from being jumped on by six other gangbangers.

Int. 123, at E6.

<sup>146</sup> Int. 140, at B3; *see also* Int. 53, at B11 (“In main line, you don’t know when them fools is going to wake up and you enter a riot between the Mexicans and Blacks or the Whites and Blacks or whatever. And you got to be part of that because of your culture, because of your skin.”).

For those with experience of GP, life in K6G offers a dramatic contrast, because in K6G *there are no gang politics*. Anyone can use any phone, any toilet, any shower, without fear of being disciplined. No one prevents people of different races from sitting together, sharing food or utensils, touching, kissing, or otherwise being intimate with one another. As a result, this kind of interracial engagement is routine. At meal times, everyone crowds together and people get their trays on a first-come, first-served basis.

In my interviews, the absence of such politics was raised repeatedly as a welcome feature of life in K6G. Here is just a sampling of these comments:

- There's no politics . . . , and we don't have to worry about . . . talking to the wrong person or saying the wrong thing.<sup>147</sup>
- I can intermingle with everybody. . . . I can sit down and play cards with you if you white, I can sit down and play cards with you if you Hispanic and I can enjoy myself. I don't have to say, well, damn, I can't play with you because you Mexican and I'm black, we can't associate with each other. That's not a problem in [K6G].<sup>148</sup>
- Because we don't play this [way]—the Whites can only talk to the Whites, the Mexicans can only talk to the Mexicans.<sup>149</sup>
- We don't have the politics and stuff like that. You know, you can talk to whoever you want to. You could go and talk on any phone you want to. You could shower at any time you want to, you could use any toilet that you want to. It's not a Black toilet, Mexican toilet, White toilet, other toilet. It's an easygoing program.<sup>150</sup>

To be sure, there are gang members in K6G, and on occasion some of them “tr[y] to turn it into a political thing,” as in one case when “a couple of the inmates [in one of the K6G dorms] . . . tried to segregate it with Blacks, Whites, [etc.].”<sup>151</sup> Or people might “start throwing up these gang signs or wherever they're from.”<sup>152</sup> But these efforts are readily put down by other dorm residents.<sup>153</sup> The effect is a unit free from the constant threat of gang-

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<sup>147</sup> Int. 50, at G2.

<sup>148</sup> Int. 140, at B9–10.

<sup>149</sup> Int. 75, at A11.

<sup>150</sup> Int. 71, at B6.

<sup>151</sup> Int. 71, at A7.

<sup>152</sup> Int. 31, at F4.

<sup>153</sup> See, e.g., Int. 119, at B11 (explaining that gang politics are “not taken seriously in K6G” and “if they was causing too much of a problem, Bloods or Crips, [or] whichever, I'm pretty sure that we would probably whup them . . . to stop problems for everybody”); Int. 53, at C11 (“We don't play [gang politics] up here. We don't play that at all. If they are going

related violence and the stress of having to follow the rules or risk punishment.

People in K6G thus face no pressure to conform to the rigid behavioral code that governs in the Jail's GP and need not worry about being ready to jump in when a fight breaks out.<sup>154</sup> As a consequence, life in K6G is much more relaxed than GP, which in part explains how so many of my respondents could have used words like "easy-going," "relaxing," "nice," and "serene" to describe life locked inside a crowded dorm of the L.A. County Jail.<sup>155</sup> One of my respondents went so far as to call K6Gs "free spirits" compared to the people in GP.<sup>156</sup> That he was describing people who are incarcerated, who have been deprived of all freedom of movement and confined in a carceral facility that is crowded, decrepit, and dirty should give some idea of just how oppressive life can be in the gang-controlled GP units.

#### D. GP'S HYPERMASCULINITY IMPERATIVE

Why are there no gang politics in K6G? The best way to answer this question is by exploring yet another notable difference between GP and K6G: the absence in K6G of any pressure to perform a hypermasculine identity. This hypermasculinity imperative<sup>157</sup> is a staple of life in GP, not only in L.A. County, but in many men's prisons and jails all over the country, in which literally hundreds of thousands of men<sup>158</sup> are spending

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to come up there gangbang . . . you're in the wrong place. I'm one of the ones that lets them know.").

<sup>154</sup> See *infra* note 245 (describing the way people in GP talk of "having to sleep with [their] shoes on" in case they have to wake up fighting).

<sup>155</sup> See *supra* Part II.B.

<sup>156</sup> Int. 71, at A7. This subject lived in a K6G dorm, the entrance to which was right across from the entrance to a GP dorm. He found the men in GP to have "a lot of curiosity" about what goes on in K6G:

They are always on the door, looking out the door, like "what are those guys doing?" And they see us running around laughing and stuff. And I think it is like they are stuck inside that door with these politics and these rules and regulations and we're in there like free spirits. (Sings) *La da da da da*. And it's a lot less stressful in there for us compared to a mainline dorm where there's Blacks, Whites, others.

*Id.*; see also Int. 108, at E9–10 (explaining the "stressful quality" of life in GP compared to that in K6G, where residents "don't have to stress about are we . . . going to have to fight the other race, or am I going to be the next one to have my head split").

<sup>157</sup> See Dolovich, *supra* note 1, at 15–17.

<sup>158</sup> There are at present over 2.3 million people being held in prisons and jails in the United States, see Sharon Dolovich, *Exclusion and Control in the Carceral State*, 16 BERKELEY J. CRIM. L. 259, 307 & n.151 (2011), the vast majority of whom are men. See U.S. DEP'T OF JUSTICE, JAIL INMATES AT MIDYEAR 2010—STATISTICAL TABLES (NCJ 233431) 7 (Apr. 2011); U.S. DEP'T OF JUSTICE, PRISONERS IN 2010 (NCJ 236096) 15–16

their days doing their best to appear “hard and tough, and [not] show weakness.”<sup>159</sup>

There are both internal and external pressures to perform a “hyper” male identity. The more complex of the two is the internally generated pressure, which seems to have two key facets. The first relates to gender identity, and is consistent—in kind, if not degree—with similar pressures at work in other all-male or male-dominated contexts<sup>160</sup> like fraternities,<sup>161</sup> the military,<sup>162</sup> and even investment banks and other financial institutions.<sup>163</sup> In

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(Dec. 2011) (reporting that as of midyear 2010, 656,360 of the 748,728 people being held in local jails were men and that 1,499,573 men but only 112,822 women were under the jurisdiction of state and federal correctional authorities).

<sup>159</sup> Corley, *supra* note 12, at 106; *see also* Jewkes, *supra* note 21, at 53 (“‘Wearing a mask’ is arguably the most common strategy for coping with the rigors of imprisonment, and all prison researchers will be familiar with the sentiment that inmates feel it necessary to adopt a façade while inside.”).

<sup>160</sup> At least one key difference, of course, is that in these non-carcer settings, ongoing physical and sexual victimization is not typically the price of nonconformity, although it might be in the most extreme cases.

<sup>161</sup> *See, e.g.,* E. Timothy Bleecker & Sarah K. Murnen, *Fraternity Membership, the Display of Degrading Sexual Images of Women, and Rape Myth Acceptance*, 53 *SEX ROLES* 487, 492 (2005) (citing research “reveal[ing] differences in attitudes and behaviors between fraternity and non-fraternity men that are reflective of acceptance of hypermasculinity” and finding that “[f]raternity men report a belief in male dominance and the inferiority of women” and “use language and possess pictures of women that are judged as degrading”).

<sup>162</sup> *See, e.g.,* Donald L. Mosher & Silvan S. Tomkins, *Scripting the Macho Man: Hypermasculine Socialization and Enculturation*, 25 *J. SEX RES.* 60, 74 (1988) (describing the “macho ritual” following “boot camp in the military” during which “[t]he recruit, shorn of his civilian dignity [is] hazed as a coward, a faggot, a mama’s boy, and the like, [and] undergoes an ordeal,” after which he “assume[s] his new military identity as a warrior” and celebrates by “go[ing] to the bar, get[ting] drunk, get[ting] laid, get[ting] into a fight with an outgroup member, and do[ing] something daring”); Megan N. Schmid, Comment, *Combating a Different Enemy: Proposals to Change the Culture of Sexual Assault in the Military*, 55 *VILL. L. REV.* 475, 492 (2010) (“[T]he military distances itself from persons perceived as not masculine, such as women and homosexuals, which may explain the restrictions on these groups. . . . As an example, drill instructors at boot camp put down male recruits by feminizing them, calling them ‘pussies,’ ‘sissies,’ or ‘girls,’ to teach them that ‘to be degraded is to be female.’”).

<sup>163</sup> Christine Sgarlata Chung, *From Lily Bart to the Boom-Boom Room: How Wall Street’s Social and Cultural Response to Women has Shaped Securities Regulation*, 33 *HARV. J.L. & GENDER* 175, 180–81 (2010) (“In Wall Street lore, the movers and shakers of the securities markets are almost invariably men—they are the ‘masters of the universe,’ the ‘Big Swinging Dicks,’ the regulators, the decision-makers, and even the scoundrels thought to have shaped the markets and our system of securities regulation. Women, by contrast, are portrayed as social and cultural outsiders . . . presumed to lack the skills and characteristics necessary to navigate Wall Street.”); Valentine M. Moghadam, *Women, Gender, and Economic Crisis Revisited*, 10 *PERSP. ON GLOBAL DEV. & TECH.* 30, 37 (2011) (“The masculinist institution par excellence may be the military, but hyper-masculinity is also a



such environments, men tend to experience “anxieties . . . concerning their masculinity,”<sup>164</sup> which prompt the “competition” among men that is endemic in American culture in general. This competition leads to an exaggeration of the typical features of the identity that Frank Rudy Cooper associates with the “hegemonic patterns of U.S. masculinity,”<sup>165</sup> features that are familiar and destructive both in prison and in society more generally. As Cooper describes it, this hegemonic model of the American male has four distinct features. First, he is “concerned with how other men rate him” as to his own masculinity level.<sup>166</sup> Second, he is “chronically insecure that he has not sufficiently proved that he is as masculine as he should be.”<sup>167</sup> Third, he is driven to compete with other men, “to outdo [them] in collecting indicia of manhood.”<sup>168</sup> Fourth and finally, men in this competition must “[repudiate] that model’s contrast figures,” among them “women [and] gays.”<sup>169</sup> As Cooper explains, the hegemony of this model manifests itself in a compulsion on the part of those who are “denied the stature of the normative man” to project “hypermasculinity.”<sup>170</sup> Displays of hypermasculinity compensate for a failure to “meet the masculine cultural ideal.”<sup>171</sup>

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defining feature of the corporate domain—with its risk-takers, rogue traders, reckless speculators, and manipulative financiers.”).

<sup>164</sup> James E. Robertson, *Cruel and Unusual in United States Prisons: Sexual Harassment Among Male Inmates*, 36 AM. CRIM. L. REV. 1, 13 (1999) (quoting GRESHAM M. SYKES, *THE SOCIETY OF CAPTIVES* 71 (1958)). As Robertson observes, “[i]mprisonment represents more than a loss of freedom; it also diminishes you as an adult male.” *Id.* at 12.

<sup>165</sup> See Frank Rudy Cooper, “Who’s the Man?”: *Masculinities Studies*, *Terry Stops*, and *Police Training*, 18 COLUM. J. GENDER & L. 671, 687 (2009); see also *id.* (discussing MICHAEL KIMMEL, *MANHOOD IN AMERICA: A CULTURAL HISTORY* (1996)).

<sup>166</sup> *Id.* at 687.

<sup>167</sup> *Id.* at 688 (“Manhood is a relentless test of how close you are to the ideal. . . . [M]en are constantly suffering from anxiety that other men will unmask them as insufficiently manly.”).

<sup>168</sup> *Id.*

<sup>169</sup> *Id.* at 689; see also Elijah G. Ward, *Homophobia, Hypermasculinity and the US Black Church*, 7 CULTURE, HEALTH & SEXUALITY 493, 496 (2005) (“[H]ypermasculinity is a value system extolling male physical strength, aggression, violence, competition and dominance that despises the dearth of these characteristics as weak and feminine. . . . Because of the conflation of gender and sexuality, to be seen as masculine requires being heterosexual, prompting the hypermasculinisation of behaviour among males in order to avoid being labeled a ‘fag’ or ‘queer.’”). Cooper observes that “racial minorities” also function as contrast figures for a hegemonic masculinity for which the standard is not only middle-class, “early middle-aged,” and heterosexual, but also white. Cooper, *supra* note 165, at 689.

<sup>170</sup> Cooper, *supra* note 165, at 691.

<sup>171</sup> See *id.*

The archetype of the stoic, weightlifting, muscle-bound prisoner has its origins in this dynamic.<sup>172</sup> But in prison, displays of strength and toughness alone are not always sufficient proof of masculinity for men anxious about others' perceptions of their gender identities. As in society in general, the construction of identity in prison is relational: claims to masculinity are "only meaningful in relation to constructions of femininity."<sup>173</sup> Would-be men must therefore struggle against and ultimately vanquish the seemingly feminine in themselves, and in others.<sup>174</sup> In the absence of other socially productive means to prove their manhood (business, politics, family, "cars and the like"<sup>175</sup>), the domination of women, sexual and otherwise, becomes the method of choice.<sup>176</sup> In society in general, the imperative to conquer and repudiate the feminine frequently motivates rape, sexual harassment, domestic violence, and other forms of violence against women.<sup>177</sup> In the prison, men seeking to prove their masculinity will do their best to "punk" other, weaker inmates—harassing them, humiliating them, stealing their stuff. At its most extreme, this abuse will culminate in the "ownership" of weaker inmates—the "women" in this social system—whose utter subordination, known to include ongoing sexual access, stands as public proof of the abuser's masculine power.<sup>178</sup> In this

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<sup>172</sup> Don Sabo, *Doing Time, Doing Masculinity: Sports and Prison*, in PRISON MASculINITIES, *supra* note 12, at 61, 65. Indeed, in men's prisons, muscles are arguably "the sign of masculinity." *Id.* (quoting BARRY GLASSNER, BODIES: WHY WE LOOK THE WAY WE DO (AND HOW WE FEEL ABOUT IT) 114 (1988)).

<sup>173</sup> SUE LEES, RULING PASSIONS 105 (1997).

<sup>174</sup> See Cooper, *supra* note 165, at 690 ("Most of all, masculinity is the repudiation of femininity.").

<sup>175</sup> James E. Robertson, *A Clean Heart and an Empty Head: The Supreme Court and Sexual Terrorism in Prison*, 81 N.C. L. REV. 433, 441 (2003).

<sup>176</sup> As feminist theorists have argued, in society in general, rape or the threat of rape is a central mechanism by which men—especially those men insecure about their own relative social positions—reaffirm their masculine self-images. See Man & Cronan, *supra* note 29, at 148 (explaining that rape can symbolize "the act of putting women 'back in their place,'" and that "rapists are often men who feel threatened by the fear that women or a particular woman may achieve equality or superiority over them"). In prison, rape or the threat thereof becomes the "premier" means for demonstrating and reaffirming one's "masculinity and strength." Robertson, *supra* note 164, at 14.

<sup>177</sup> See *supra* text accompanying note 176.

<sup>178</sup> A 2001 Human Rights Watch report documented the experience of people in prisons across the United States who had been "forced into this type of sexual slavery, having even been 'sold' or 'rented' out to other inmates." HUMAN RIGHTS WATCH, *supra* note 87, at 13–14; see also *id.* at 93–95. However, the extent to which ownership of other inmates operates to affirm one's manhood varies across prison environments and among groups. At least one informant suggested to me that the Southsiders frown on any kind of sexual activity in custody, even sex with a feminized prisoner, i.e., a "punk." Telephone Interview with Cameron Saul, Case Manager, Tarzana Treatment Ctr. (Oct. 27, 2011). Although it is

culture, the performance of rape—the sexual penetration of another inmate defined as female—is a way to shore up the rapist’s own claim to maleness<sup>179</sup> and, thus, his status and power in the prison hierarchy.

Understanding this set of destructive gender dynamics makes clear the external source of pressure on men to perform a hypermasculine identity: the desire to avoid being victimized by other people who are also trying to prove their own manhood.<sup>180</sup> Displays of physical violence can serve the same purpose as raping someone or “owning” him as a sexual slave. As one of my interviewees put it, “If I’m in GP, and I shank [i.e., stab] someone, it’s just like . . . a strip[e] on my arm.”<sup>181</sup> “[P]eople are going to respect you for it . . . [b]ecause the more respect you have, the less you’re going to have to answer to.”<sup>182</sup> In order to protect himself, a man in prison

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sometimes tolerated in this group if it is kept quiet, once it becomes publicly known, both parties—top and bottom—are forced off the yard and into protective custody to make room for other Southsiders who are expected to be better “soldiers” than those who have consensual sex with other men. *Id.*

<sup>179</sup> That the sexual penetration of one man by another could work to reinforce the masculine image of one of the participants may seem strange given that, generally speaking, men who have sex with other men are regarded in mainstream culture as homosexual—and thus perceived as not “real men.” But this puzzle is resolved once it is recognized that in prison, those who take the passive sexual position or who perform oral sex on other men are not regarded in the prison as men at all. See Man & Cronan, *supra* note 29, at 167–68 (“By raping someone perceived as feminine, an inmate can assert his dominance without thinking of himself as a homosexual and, thereby, securing his male identity. Thus, the inmate redefines seemingly homosexual activity as a heterosexual activity.”). As was explained by Human Rights Watch in its 2001 report about male rape in U.S. prisons, most prison rapists continue to view themselves as heterosexual since the victim is “substituting” for a woman. HUMAN RIGHTS WATCH, *supra* note 87, at 56 (“[T]he crucial point is not that [the aggressor is] having sex with a man; instead it is that they are the aggressor, as opposed to the victim—the person doing the penetration, as opposed to the one being penetrated. Indeed, if they see anyone as gay, it is the victim (even where the victim’s clear sexual preference is for heterosexual activity).”).

<sup>180</sup> See Haney, *supra* note 14, at 128 (explaining that men in this situation can face the ugly choice of “raping or being raped—or, at least, appearing *capable* of raping or risking the increased chance of suffering it yourself”); see also *id.* at 129 (explaining that “the primordial fear” of rape in prison motivates both “hyper-vigilance and preemptive, aggressive posturing”). As one prison official put it:

[S]ex and power go hand-in-hand in prison . . . . Deprived of the normal avenues, there are very few ways in prison for a man to show how powerful he is—and the best way to do so is for [him] to have a [sex] slave, another who is in total submission to him.

Rideau, *supra* note 8, at 75 (quoting C. Paul Phelps, then-secretary of the Louisiana Department of Corrections); see also *supra* note 179 (explaining how it is that men who force themselves sexually on other men in prison are viewed as “real men” and not, as in society in general, as homosexual).

<sup>181</sup> Int. 89, at D2.

<sup>182</sup> *Id.*

may cultivate an image as someone capable of anything, since someone who is feared by others has less chance of being “punked” himself.

In such an environment, any sign of weakness is like blood to sharks; it draws the abusive attention of other (fearful) men trying to avoid being victimized themselves. The imperative not to be seen as weak can dominate the lives of men in custody, especially in high-security facilities. Men cannot be perpetually violent, but they can be—and in the worst prison environments, must be—constantly vigilant lest they convey an impression of vulnerability. Among the qualities explicitly suppressed to this end are any that might be associated with femininity: emotional expression, sensitivity, kindness, etc. In this culture, these behaviors can be code for weakness and signal a person’s availability for victimization. Putting up a hard front is thus a key component of the hypermasculinity imperative.

The imperative of hypermasculine performance sparked by anxiety about gender identity is to a greater or lesser extent a feature of life in virtually all male-dominated environments.<sup>183</sup> But in prison, there is a second source of internal pressure to engage in this performance, one that may be expected to arise in contexts in which participants are systematically regarded with some combination of contempt and indifference and thus routinely made to feel worthless and invisible. To occupy this position—in which prisoners are denied any social standing and treated as if they were of no account—can be a source of constant humiliation and disrespect.<sup>184</sup> It is an experience shared to some extent by many people of low socioeconomic status, whose needs, interests, and concerns are systematically ignored by society at large. This experience appears to ground what Elijah Anderson calls the “code of the streets,” a set of “informal rules of behavior”<sup>185</sup> that is “trace[able] to the profound sense of alienation from mainstream society and its institutions felt by many poor

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<sup>183</sup> See *supra* notes 161–163 and accompanying text.

<sup>184</sup> The craving for respect may even drive some people to criminal activity. As James Gilligan reports in his study of the origins of violence:

[W]hen you sit down and talk with people who repeatedly commit [armed robbery], what you hear is, “I never got so much respect before in my life as I did when I first pointed a gun at somebody,” or “[y]ou wouldn’t believe how much respect you get when you have a gun pointed at some dude’s face.”

JAMES GILLIGAN, *VIOLENCE: REFLECTIONS ON A NATIONAL EPIDEMIC* 109 (1997). As Gilligan observes, “For men who have lived for a lifetime on a diet of contempt and disdain, the temptation to gain instant respect in this way can be worth far more than the cost of going to prison, or even of dying.” *Id.*

<sup>185</sup> ELIJAH ANDERSON, *CODE OF THE STREET: DECENCY, VIOLENCE, AND THE MORAL LIFE OF THE INNER CITY* 10 (1999).

inner-city black people, particularly the young”<sup>186</sup> and is “organized around a desperate search for respect.”<sup>187</sup>

But perhaps no group suffers more collective disdain and indifference than prisoners. The incarcerated population is already comprised of people disproportionately likely to be socially and economically marginalized—those who are indigent, undereducated, unskilled, illiterate, learning disabled, mentally ill, and/or drug-addicted.<sup>188</sup> Taken collectively, these are not only people about whom mainstream society cares very little, but they are also very often people who, even when free, are shown little respect in their interactions with individuals and institutions. Imprisonment seals their status as outside society’s moral circle, and the experience of being incarcerated demonstrates daily in myriad ways how little value they are thought to hold.<sup>189</sup> As Craig Haney puts it:

[V]irtually every man in prison is a failed or fallen man, in some important ways, and they are constantly reminded of their devalued status as an “inmate” by the levels of deprivation they endure, the humiliation and degradation they experience at the hands of their captors, and the stigmatization and other obstacles that they know await them once they are released.<sup>190</sup>

For men in this position, hypermasculine performance can provide a way to garner some power, status, and respect<sup>191</sup> in a climate that offers them few if any other means to do so.<sup>192</sup>

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<sup>186</sup> *Id.* at 34.

<sup>187</sup> *Id.* at 10.

<sup>188</sup> See Dolovich, *supra* note 158, at 276–77 & nn.48–52 (2011). People in custody are also disproportionately people of color. See *id.* at 311 & n.168.

<sup>189</sup> See, e.g., HARTMAN, *supra* note 30, at 13 (recounting an experience in the L.A. County Jail in the early 1980s, when he was ordered by a deputy to stand naked against a wall, and an “older deputy . . . calmly explained to a younger one that [Hartman’s] tattoos were a clear indication [that he] was ‘a piece of shit’”).

<sup>190</sup> Haney, *supra* note 14, at 134–35 (citing Terry A. Kupers, *The Role of Misogyny and Homophobia in Prison Sexual Abuse*, 18 UCLA WOMEN’S L.J. 107, 114 (2010) (“The failed or fallen man is the one who is not ‘manly.’”)).

<sup>191</sup> Again, there is a direct connection here to Anderson’s “code of the street,” which no doubt governs life for many men in custody when they are free. This makes the transition from hypermasculine performance on the streets to hypermasculine performance in prison a seamless one:

At the heart of the code is the issue of respect—loosely defined as being treated “right” or being granted one’s “props” (or proper due) or the deference one deserves. . . . The rules of the code in fact provide a framework for negotiating respect. With the right amount of respect, individuals can avoid being bothered in public. This security is important, for if they are bothered, not only may they face physical danger, but they will have been disgraced or “dissed” (disrespected).

ANDERSON, *supra* note 185, at 33–34.

The link between hypermasculine performance and the craving for respect is evident from the urgency and alacrity with which men in prison may police and punish any displays of “disrespect.”<sup>193</sup> For some men in custody, the craving for respect seems to put them on the offensive; it makes them willing to respond to all perceived slights, however minor, with unhesitating and even pitiless aggression. But even for these men, hypermasculine performance is best understood as a defensive posture against the ever-present threat of being “dissed” and revealed to be weak and therefore a “punk”<sup>194</sup>—i.e., someone to be disrespected and humiliated

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<sup>192</sup> See Haney, *supra* note 14, at 135 (“In many ways, maintaining some semblance of self esteem in prison requires [men in this position] to do whatever they can in order to avoid becoming even *more* ‘failed or fallen.’”). Indeed, for many people in custody, respect of this form may be the only respect they will ever enjoy. See Telephone Interview with Cameron Saul, Case Manager, Tarzana Treatment Ctr. (Oct. 27, 2011) (describing a friend who preferred the gang life in prison to freedom, since “on the streets,” he was “nobody” and “get[s] no respect,” whereas in prison, “[he has] power . . .”).

<sup>193</sup> In a hypermasculine culture, any show of disrespect is a threat to one’s masculine identity. As Cooper explains in a related hypermasculine context:

The reason police officers punish disrespect is that, for them, a challenge to their respect is a challenge to their manhood. . . . [W]ithin the police role there is a distinct connotation of masculinity, virility, aggressiveness, and all the qualities considered worthy of being a man. Hence, to make depreciatory remarks about the police role is to cast aspersion upon the policemen’s conceptions of themselves as men.

Cooper, *supra* note 165, at 697 (internal quotations omitted). Already in a sense emasculated and infantilized by their incarceration, men in prison are prone to react strongly to being “dissed.” The hair-trigger temper; belligerence; and inability to admit error, back down, or compromise—typical accompaniments of hypermasculine performance—suggest a psychologically vulnerable person with a tenuous hold on his sense of self-worth. Yet paradoxically, in the prison context, the exercise of these destructive tendencies to induce fear in others may be the only way a “failed and fallen man” can get any respect. See Haney, *supra* note 14, at 134 (citing Kupers, *supra* note 190).

<sup>194</sup> In his memoir, Hartman describes how he “killed a man in a drunken, drugged-up fistfight,” earning himself an LWOP sentence in the California prisons. The story he tells of his crime conveys just how desperate some men feel to not be regarded as a “punk,” and how conditioned they can become over years in custody to respond with violence to any suggestion that they are one. Hartman spent his early years in and out of juvenile hall—raised, as he puts it, in the Youth Authority (YA) system by “Mother California.” HARTMAN, *supra* note 30, at 1. One night, “fresh out of [his] latest stint” in YA, high on meth and “blind drunk on tequila,” he accosted a man named Thomas Allen Fellowes, who was sleeping on a bench in what Hartman had decided was “his” park. *Id.* at 3, 5. The man jumped up and a “verbal joust” ensued. *Id.* When Hartman threatened him, the man—“prov[ing] he wasn’t state-raised”—came back with “[y]ou aren’t going to do anything, you punk.” *Id.* at 5–6. According to Hartman, this response enraged him, and he wound up beating the man to death. *Id.* For Hartman at that point in his life, it was self-evident that he had to respond to such a sally with violence. But of course, as Hartman notes, in the courtroom, “[m]y attempts to explain how it all started when Mr. Fellowes called me a punk [we]re met with incredulous stares. I’m from a different world, a world without courts and lawyers, a world incomprehensible to those not of it.” *Id.* at 15.

even by fellow prisoners. Here is where the fear of being “unmanned” and the desperate desire for respect come together: in men’s prisons, one path to respect and status is to show how tough you are.<sup>195</sup> The harder and tougher you are, the more respect and status you enjoy, and the less likely you are to be victimized.<sup>196</sup> And the most obvious way to show how hard and tough you are is to reveal someone else to be a “punk.” This dynamic explains the constant pressure men in GP can feel to maintain their places in the pecking order.<sup>197</sup>

What does all this have to do with gangs? Gang culture thrives where people anxious not to be seen as weak and therefore vulnerable are willing to enforce the rules.<sup>198</sup> Recall the rules that govern life in the Jail’s GP. People in GP cannot, under pain of violence, mix with members of another race, or even use objects that someone of another race has used. And at the slightest sign from a shot caller, they must be willing to jump in and

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<sup>195</sup> There are other pathways as well. In men’s carceral facilities, individuals can often over the years gain a reputation as someone who is a “stand up” person who treats others with respect and honors the prison code that expects people to mind their own business and do their own time. It also helps to have a valued skill (for example, to be a tattoo artist or to know one’s way around the law) or to have money and be willing to share one’s largess with a few select friends. See Telephone Interview with Cameron Saul, Case Manager, Tarzana Treatment Ctr. (Oct. 27, 2011). It also helps to have a “posse”—a group of friends or associates who are known by all to stick together and watch each others’ backs. See HOPWOOD, *supra* note 19, at 61. The development of such friendships also proves valuable in another way that guards against the worst effects of the hypermasculine imperative: it creates a safe space in which men in custody are able to let down the mask, express emotions, and be themselves. See E-mail from Jamie Binnall, Adjunct Professor of Law, Georgetown Univ. Law Ctr., to author (Oct. 15, 2012, 6:58 PM EST) (“Prison is about making alliances and then finding a niche where you can be comfortable. The first time I played softball with other cell blocks – I wore the mask – [but] by the time my fourth softball season came around, I would openly discuss my feelings of loneliness and agony with fellow [teammates].”). But depending on the environment, one may need to take care not to broadcast this show of emotions any more broadly, lest one be labeled weak and therefore a potential victim. I thank Jamie Binnall for helpful conversation on this point.

<sup>196</sup> See ANDERSON, *supra* note 185, at 11 (“Possession of respect—and the credible threat of vengeance—is highly valued for shielding the ordinary person from the interpersonal violence of the street.”).

<sup>197</sup> HARTMAN, *supra* note 30, at 2 (“In every jail and juvenile camp I learned the same lesson. No one ever wanted to know what I did for a living; they wanted to see if I was predator or prey. Shoved against a wall, surrounded in a dark alley, looking into the barrel of a battered service revolver, I always got the same message: Will you stand up and fight or will you bow down?”).

<sup>198</sup> As Haney explains, “[g]angs only flourish in a jail or prison society where there is a strong undercurrent of fear and reminders of one’s own vulnerability.” Haney, *supra* note 14, at 136; see also *id.* (explaining that through the “racial gang culture . . . people who live under conditions of scarcity, threat, and alienation often band together to create a sense of security and safety”).

physically attack other people simply because of their race or gang affiliations. Reading between the lines of these explicit directives reveals a further set of unspoken precepts governing life in the Jail's GP: unquestioned loyalty to one's own group; hostility toward members of other groups, even people who under other circumstances might have been your friends or intimates; and lack of ambivalence toward, or even embrace of, this oppressive regime. In a culture governed by gang politics, weakness is despised not only for what it reveals about an individual prisoner's lack of manhood, but also because it reduces the collective power of his gang, thereby making the whole group seem weak and less able to stand and fight. Recognizing the danger any time one race outnumbers another, Jail officials work hard to ensure balance among the races in any given housing unit—a practice that, although necessary, fuels efforts on the part of the gangs to purge weaker links from their own ranks. A Southsider who cannot fight, or whose heart seems not to be in the “game,” will be one less able-bodied “soldier” in the fight if something snaps; by removing him, the other Southsiders will get another person on their side who, it is hoped, will be a more effective fighter.<sup>199</sup>

There is thus a symbiotic relationship in prison between gang politics and the hypermasculinity imperative. The gang code demands overt and persistent displays of toughness, an absence of weakness, and a propensity for violence, all of which are core components of hypermasculinity.<sup>200</sup> At the same time, demonstrated dedication to the rigors of gang life is the perfect way to command respect and protect against aspersions of weakness, cowardice, or being a sissy.<sup>201</sup> For men in custody, gang membership—and especially leadership roles with their attendant power and status—ensures personal security in a climate where the unaffiliated make easy targets.<sup>202</sup>

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<sup>199</sup> The perception that gay men are weaker than heterosexuals was an explanation I heard during my time in the Jail for the “green light” that, during the summer of 2007, Southsiders put on any gay member of the gang. For more on this incident, see *infra* Part III.C.1.

<sup>200</sup> See *supra* note 169.

<sup>201</sup> In environments dominated by gangs, being insufficiently committed to the cultural code is itself a sign of weakness that invites victimization. Thus, for example, failure to jump in when the sign is given may earn a person not only a beating once the dust clears but also a reputation as a “punk,” which will mark him as a victim and may follow him throughout his time in custody and even back into the streets.

<sup>202</sup> See Haney, *supra* note 14, at 136 (“People who live under conditions of scarcity, threat, and alienation often band together to create a sense of security and safety.”); see also *id.* (“Gangs only flourish in a jail or prison society where there is a strong undercurrent of fear and reminders of one’s own vulnerability.”); HOPWOOD, *supra* note 19, at 61.



Equally important, as Craig Haney insightfully observes, gang membership provides a way for prisoners to navigate a “[t]hreatening correctional environment[]” by readily identifying potentially dangerous others as “friend or foe.”<sup>203</sup> As Haney notes, especially in large and crowded facilities, “[i]nmates do not have the luxury of carefully and systematically forming their ‘character assessments’ of the people with whom they are forced to live or gradually size up the trustworthiness or violence potential of the persons who surround them.”<sup>204</sup> Frequently transferred among housing units and even institutions, often thrown together in locked dorms or cells with people they have never seen before, men in custody have to make “rapid judgments” about whom they can count on and whom they should fear “based on very little if any reliable information.”<sup>205</sup> In this uncertain world, “outward racial characteristics and visual or public displays of group allegiance (such as tattoos)” provide a shorthand way to size up the situation and take the measure of others in the room.<sup>206</sup> For people in this situation, the embrace of gang politics and the hypermasculinity imperative has a certain logic. Gang markers such as race, tattoos, and grooming standards<sup>207</sup> signal affiliation, functioning as a calling card of sorts among people who may have never seen each other before but who have been brought together in intimate, high-pressure, and dangerous circumstances. At the same time, displays of hypermasculinity—large muscles, extreme self-control, a cool and inscrutable affect, etc.—assure the strangers with whom the newcomer will now align that he knows the game and can be trusted and relied upon to play his part. A group’s power in any setting turns on the strength and power of its members. In every GP dorm and cell block in the Jail and in the California prison system more generally, people who barely know each other may be called upon to fight or sacrifice for one another and for the sake of the group. The balance of power is carefully calibrated and anyone who is weak or ignorant of the prison code is a serious liability. Men who are “hard and tough, and don’t show weakness” enjoy the security the group provides. Others do not.

There is, moreover, a more subtle connection between the hypermasculinity imperative and the Jail’s gang culture. The need to put up

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<sup>203</sup> Haney, *supra* note 14, at 134.

<sup>204</sup> *Id.* at 136.

<sup>205</sup> *Id.* This is especially true in jails, where high turnover means people have little opportunity to get to know each other as individuals.

<sup>206</sup> *Id.*

<sup>207</sup> In the California prison system, all Southsiders are expected to shave their heads. Among other benefits, this rule allows for easy recognition of loyal new arrivals to any facility, cellblock, or dorm.

a front, to seem hard and tough and not to show weakness, can take a profound emotional toll.<sup>208</sup> Men who have lived under these conditions report corrosive effects on meaningful interpersonal interaction, since “[w]ithout . . . letting someone know at least some of your weaknesses, no strong bonds can develop.”<sup>209</sup> This is certainly not a universal experience; many men in custody forge close friendships with others, friendships that persist even after release.<sup>210</sup> But for many others, the need to maintain emotional barriers can be lonely and alienating. And for those in this latter group, gangs offer not only a sense of security and safety in an unpredictable and dangerous world, but also a way for men in custody “to feel connected and bonded, to belong.”<sup>211</sup> To be sure, the price of this connection is high, but the fact that so many people in the Jail, the California prison system, and elsewhere appear willing to pay it indicates just how desperate and scary the conditions men in these systems confront, and how deeply diminished their options are.

#### E. K6G: NO GANG POLITICS, NO HYPERMASCULINITY IMPERATIVE

In the Jail’s GP, gang politics and the hypermasculinity imperative are mutually reinforcing. On the one hand, the violent enforcement of the gang code elicits hypermasculine behavior by those eager to demonstrate compliance. On the other hand, the imperative to prove one’s toughness and thereby command respect creates a constituency for the regime imposed by the gangs.

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<sup>208</sup> Hartman, currently serving an LWOP sentence in California, describes his younger hypermasculine self, “fresh out of [his] latest stint” in a YA facility, in this way:

Two hundred and twenty pounds, six foot two, a coiled spring of hostility, I had the dead eyes familiar to prison guards and combat veterans. I walked with the studied indifference of the fearless, although my impetus was, on deeper reflection from this distant vantage, undistilled fear: fear of the other, fear that I would be discovered to be weaker than my act. Deeper still, down beyond my casual, bruised comprehension, I was desperately lonely and sad.

HARTMAN, *supra* note 30, at 3.

<sup>209</sup> See, e.g., Corley, *supra* note 12, at 106–07.

<sup>210</sup> See, e.g., HOPWOOD, *supra* note 19, at 61 (explaining that in his experience of federal prison, men in custody “eventually find maybe half a dozen friends who seem human—people who share something in the way of goals or attitude” or even just “particular interests”); see also E-mail from Jamie Binnall, Adjunct Professor of Law, Georgetown Univ. Law Ctr., to author (Oct. 15, 2012, 6:58 PM EST) (“[P]rison . . . can be a place where truly meaningful and healthy friendships are formed. Some of my best, most trusted friends are those with whom I was incarcerated.”).

<sup>211</sup> Haney, *supra* note 14, at 136.

In K6G, neither of these forces is present. As has been seen, there are no gang politics; everybody “intermingle[s] with everybody,”<sup>212</sup> and efforts to organize K6G residents along gang lines get nowhere.<sup>213</sup> But there is also no hypermasculinity imperative. In K6G, there is no premium on seeming hard or tough, on being stoic, on suppressing one’s feelings. As a consequence, the people in K6G are free to have relatively ordinary human reactions and interactions, and to be themselves.<sup>214</sup> This freedom manifests itself in many ways, all of which contrast sharply with life in the Jail’s GP. First, despite being locked up, people in K6G are affirmatively able to have emotional lives. This was in stark contrast to the GP unit that served as my control, where I observed a constant preternatural calm. Men moved slowly, spoke quietly, kept to themselves. What I saw just by turning 180 degrees in the officers’ booth (i.e., towards K6G) was very different. Many residents of K6G also kept to themselves. But many others routinely expressed a range of emotions, including happiness, excitement, delight, irritation, frustration, and anger. At least some of them touched each other, hugged and kissed, laughed out loud,<sup>215</sup> sang or danced to the music on the television when they felt like it, or just lay next to each other in their bunks.<sup>216</sup> They also yelled, complained, and argued.<sup>217</sup> People in K6G fall in love, form relationships, or just have sex (lots of it).<sup>218</sup> They also, in a parallel to what is reported to be the case in women’s prisons, form family

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<sup>212</sup> Int. 140, at B9.

<sup>213</sup> As one of my respondents recalled, “there was a time when a couple of the inmates tried to turn it into a political thing and they tried to segregate it with Blacks, Whites and it didn’t fly. It didn’t fly.” Int. 71, at A7. Another of my respondents explained that active gang members “are not taken seriously in [K6G] . . . [I]f they was causing too much of a problem, Bloods or Crips, [or] whichever, I’m pretty sure that we would probably whup them . . . to stop problems for everybody.” Int. 119, at B11; *see also* Int. 89, at C3 (“K6Gs are usually nicer than people in mainline. You know, you ain’t got nothing to prove. There’s no stripes in the K6G dorm, you know, not a bunch of testosterone . . . unchecked.”).

<sup>214</sup> *See* Int. 119, at B2 (“I don’t have to put up any front [in K6G] . . . I don’t have to alter my attitude or tell kind of a fake jailhouse story. I can just be myself.”); Int. 79, at E1 (“People [in K6G] are more free to be who they are.”).

<sup>215</sup> *See* Int. 79, at E1 (“Every day I laugh and it’s not the worst thing in my situation.”).

<sup>216</sup> *See* Int. 89, at C7 (“In K6G, [there are] people laying on beds together, holding each other . . . . You wouldn’t see that in the regular general population.”).

<sup>217</sup> By no means did everyone participate in these behaviors. But their clear presence indicated that in K6G, the expression of emotion is not prohibited.

<sup>218</sup> *See* Nina T. Harawa et al., *Sex and Condom Use in a Large Unit for Men Who Have Sex with Men (MSM) and Male-to-Female Transgenders*, 21 J. HEALTH FOR POOR & UNDERSERVED 1071, 1076 (2010) (reporting results of a study of K6G that found that “most participants” reported “sex during incarceration (for up to the prior 30 days of their current jail stay)” with “oral sex by two thirds and anal sex reported by slightly over half (53%)”).

groupings, in which members share “store” (i.e. items bought at the canteen), as well as companionship and emotional support.<sup>219</sup>

It is not that none of this ever occurs in GP. But in the Jail’s GP, as in GP units in men’s facilities all over the country, many features of a healthy emotional life are often strongly discouraged and even penalized with violence. Because shows of emotion suggest weakness and vulnerability, men in GP often feel compelled to send “the message that [they are] somebody to contend with, not a pushover, not somebody to ‘fuck’ with.”<sup>220</sup> There is a premium on displays of control: speaking calmly and quietly, acting deliberately, resisting any demonstrative impulses, etc.<sup>221</sup> Again, many men in custody are able to forge meaningful bonds with fellow prisoners.<sup>222</sup> But in GP, genuine, mutually supportive friendships are harder to forge; as Derek Corley observes, pressure on men in GP to “be hard and tough, and [not] show weakness,” combined with the “prison code” that says mind your own business, “makes it hard to develop trust, a necessary ingredient of friendship.”<sup>223</sup> As for the possibility of “sexually

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<sup>219</sup> See *infra* note 342.

<sup>220</sup> Sabo, *supra* note 172, at 64. As Don Sabo explains, in prison:

To be called hard is a compliment. To be labeled soft can be a playful rebuke or a serious putdown. The meanings around hardness and softness also flow from and feed homophobia, which is rampant in prison. The stigma of being labeled a homosexual can make a man more vulnerable to ridicule, attack, ostracism or victimization.

*Id.*

<sup>221</sup> While conducting this research, I myself witnessed a startling display of the determination of men in GP to maintain mastery over their natural impulses. One afternoon in the medium-security GP dorm that served as my control, the pop song *Sweet Dreams Are Made of These* by the Eurythmics was playing on the television. This is a catchy song, and people familiar with it will often find themselves singing along or at least moving to the music. But although many in the dorm were glued to the television, they were all sitting or standing *stock still*. As I wrote in my field notes, “[t]hey were not moving. They were not singing. They were not dancing, they were not swaying to the music.” Field Notes, July 4, 2007. The lone exception was one young man, plainly having difficulty retaining this level of control, who was mouthing the words of the song with an otherwise straight face. Overall, the effect was that of people fiercely willing themselves not to react—an effort that, given the naturalness of responding to music, must have been extremely psychically costly. As I wrote at the time, “this is totally in contrast to [K6G], which is often like a party. If there is music [coming] from the television, people are dancing. They’re strutting around, they’re hugging each other, they’re smiling and laughing and camping it up.” Field Notes, July 4, 2007. I also describe this incident in Sharon Dolovich, *Incarceration American-Style*, 3 HARV. L. & POL’Y REV. 237, 250 n.92 (2009).

<sup>222</sup> See *supra*, note 210.

<sup>223</sup> Corley, *supra* note 12, at 106.

reciprocal” relationships, this certainly happens in GP.<sup>224</sup> But as Stephen Donaldson explains, such relationships are generally regarded as transgressive: “[I]n ongoing sexual relationships, a Man is paired off or ‘hooked up’ with a catcher; no other possibilities, such as a reciprocal gay pair, are tolerated.”<sup>225</sup> Thus, in GP, even those inclined to forge mutual and consensual sexual relationships run a considerable risk in doing so because, if the relationship were discovered, the pair would be labeled as gay and may thus become “fair game” for sexual victimization by others.<sup>226</sup> At best, such liaisons, however mutual, meaningful, and fulfilling, must be conducted covertly.

What is covert in GP is extremely overt in K6G. Again, K6G should not be idealized. Jail is still jail, and the conditions in Men’s Central leave much to be desired.<sup>227</sup> But whatever else may be said about K6G, residents face few if any corresponding pressures to suppress emotions, avoid forging mutually supportive intimate relationships, or resist reciprocated sexual impulses. In this regard, K6G is extremely unusual in the carceral context, if not unique.

This freedom to express emotion yields numerous benefits for K6G residents. It allows for the possibility of forging mutually supportive interpersonal bonds, which can help people cope with the pressures and challenges of imprisonment. It eases the psychological stress of being in custody and allows for emotional as well as sexual release, thus promoting a healthier mental state among unit residents. It opens the way for a sense of community and mutual acceptance without exacting the high and destructive price of gang membership. Consequently, as a day-to-day matter, life in the K6G dorms is much less stressful and much more relaxed, despite its location in the otherwise violent and volatile Men’s Central Jail.

Perhaps most surprisingly, the absence of pressure to suppress emotion and exude a hard and controlled persona frees the residents of K6G to alleviate the boredom of custody with moments of creativity and even levity. Over the course of my research, from the vantage point of the officers’ booth, I witnessed: a spontaneous dance competition performed to

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<sup>224</sup> “There is even consensual sex in prison. Many men may find partners, have sex as a sexual outlet in an all-male world. . . . There is even affection—sometimes great affection.” Terry A. Kupers, *Rape and the Prison Code*, in PRISON MASCULINITIES, *supra* note 12, at 111, 115.

<sup>225</sup> Stephen “Donny” Donaldson, *A Million Jockers, Punks, and Queens*, in PRISON MASCULINITIES, *supra* note 12, at 118, 120.

<sup>226</sup> See *supra* Part II.D; see also WAYNE S. WOODEN & JAY PARKER, MEN BEHIND BARS 22 (1982).

<sup>227</sup> See *supra* Part II.B (describing the many ways in which life in K6G is still demoralizing and dangerous).

a beat pounded out with spoons on the bunks; an improvised runway down which residents, having devised new looks out of prison issue (light) blues, strutted like fashion models; and crowds of residents in front of the television dancing and singing along to whatever music video was playing, while others in various places around the dorm watched or joined in. And most memorably, one night I watched a wedding performed in one of the dorms, complete with bride, groom, bridesmaids, mother of the bride, justice of the peace, wedding dress, wedding rings, and a three-layer cake made from items bought from the commissary. Among the most notable features of this event was the astonishingly high style and sophistication of the outfits that had been improvised out of county-issue sheets and clothing. Virtually every person in the dorm joined in, either as a central participant, a “guest” in the crowd, or simply an onlooker. This was a collective enterprise, in anticipation of which the dorm was—there is no other way to describe this—buzzing with excitement from 7:30 p.m., when the people with roles to play in the drama began fashioning their outfits and preening over hair and makeup at the bathroom mirror, until 12:30 a.m., when the ceremony was completed, the cake was eaten, and the bride and bridegroom had been ushered into a private “tent” made by draping sheets over a bottom bunk.<sup>228</sup> It is events like this, and the psychological and emotional relief they provide from the otherwise depressing and oppressive experience of being in jail, that help to explain several of the surprisingly positive words—including “fun” or “wow,” “wild,” “crazy,” or “crazy fun,” “creative,” and “party-like”—used by my subjects to describe life in the dorms.<sup>229</sup>

The absence of any hypermasculinity imperative in K6G distinguishes the unit from GP in other notable ways. For example, K6G residents do not hesitate to voice complaints to jail officials about their treatment in custody, whether by jail staff or other detainees—or to provide details to back up their complaints.<sup>230</sup> This feature represents a dramatic difference between

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<sup>228</sup> This marital bliss did not last long. Less than a week later, the “groom” was in the hospital wing having contracted a staph infection and the “bride” was flirting with a trustie who was distributing food at meal times.

<sup>229</sup> See *supra* Part II.B; see also *supra* Part IV (arguing against the notion that K6Gs “have it too good”).

<sup>230</sup> A further difference: although plenty of people in K6G have sex for “store”—i.e., goods from the canteen—there are no pimps in K6G. Everyone keeps all they get for themselves. This is very different from what is found in many men’s prisons, where those who “own” weaker inmates will often pimp them out for their own personal benefit. In my interviews, I asked interviewees about prostitution and pimping in K6G. Specifically, I asked: *How often do K6Gs trade sex for money . . . or other things?* See Dolovich, *supra* note 1, at 104 qq.71–72. I also asked: *When K6Gs trade sex for money or other things, how often do they keep the money or other things for themselves . . . and how often do they give*

K6G and GP. In carceral settings generally, complaining about one's circumstances can be regarded as a sign of weakness. Consistent with this norm, jail officials assigned to the officers' booths overlooking GP dorms can pass an eight-hour shift with almost no one asking them for anything. By contrast, K6Gs show no hesitation about asking for things.<sup>231</sup> Because there is no premium in K6G on seeming "hard or tough," residents have no reason to keep silent when they are unhappy—and, from what I observed, many do not.<sup>232</sup> This same lack of reticence applies to making formal complaints. During one of my visits, the two classification officers in charge of K6G received a stack of "kites" (notes sent out from the dorm to the classification office) formally complaining about the behavior of an officer on the floor where K6G is located. According to the complaints, this officer had for some time been verbally abusive to unit residents, frequently referring to them using derogatory terms ("you faggots," etc.). The kites were clearly the coordinated action of people who were tired of this treatment, and they eventually resulted in the removal of the abusive deputy.<sup>233</sup>

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*the money or other things to someone else?* See *id.* at 104 qq.74–75. My respondents were unanimous in reporting that in K6G, although there is plenty of prostitution (the unfortunate term "store ho" is in widespread use), there is no pimping. People who trade sex for store do it on their own initiative and keep 100% of the proceeds.

<sup>231</sup> As one deputy put it, "the GP will go for an entire shift, eight hours, and almost no one will ask for anything. [K6Gs], on the other hand, every 10 minutes are asking me for this or that. Can I have a pass? Can I have pill call, can I have my mail?" Field Notes, July 4, 2007.

<sup>232</sup> This readiness of K6Gs to voice their needs and to file complaints represents a startling difference between K6G and GP. It further confirms that the prison culture of hypermasculinity is absent from K6G—and that this absence gives rise to a living environment that, despite the discomfort attending life in the Jail, is an easier, psychologically healthier one than that experienced in GP.

<sup>233</sup> This appropriate official reaction was in part due to the identity of the officers who received the kites. Other officers may well have ignored the complaints. But the two officers who run the unit, Senior Deputy Randy Bell and Deputy Bart Lanni, routinely treat the people in K6G with respect, a disposition that includes taking their complaints seriously. For a more extended discussion of the significance of these two officers and their respectful attitude toward K6G's residents, see *infra* Part III.B.3. As one of my respondents described the incident:

We got [the officer] out. That was another one of our little collective things. He came in one day and said, "All you faggots get on your bed." We wrote a complaint form, we all wrote complaint forms. The next day, he was off. The next day he came back and he said—Got on the microphone, he said, "All you mother fuckers want to write complaints against me? I'm here, I'm going to make your life a living hell."

Int. 75, at A7. Instead, the kites prompted unannounced observation by senior Jail officials of this staff member while he was on duty, and when the inappropriate behavior was confirmed, he was removed from his post and reassigned. Other official steps may have also been taken in response to the revelation of this misconduct—and arguably ought to have

In K6G, in other words, there is no “anti-snitching” norm—a norm that in GP arises from the fear of seeming weak, and from the knowledge that violations of the norm may be punished with violence.<sup>234</sup> In addition, somewhat counterintuitively, K6G’s freedom from gang politics and the pressure to perform a hypermasculine identity has the effect of making one-on-one physical altercations between dorm residents far more common in K6G than in GP. In GP, there are few if any spontaneous one-on-one displays of mutual aggression. This is because, in the Jail’s GP units, as in the California prisons, the gangs have a monopoly on inmate-on-inmate violence. If a prisoner in GP has a personal score to settle, he approaches the senior representative (“rep”) of his gang in the unit.<sup>235</sup> If the object of his anger is a fellow gang member, he must ask permission to engage that person in single hand-to-hand combat. If the score is with someone in another gang, the rep will meet with the rep of the other person’s gang. Typically, at this point, “there is some type of adjudication of the complaint, then the guilty party gets a beat-down by his own race.”<sup>236</sup> The reason why ad hoc fighting is so tightly controlled lies in the cardinal rule of the Jail’s GP: any unauthorized physical aggression must be met with an instant violent response by all fellow members of the victim’s “race”

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been, given what this incident revealed about the officer’s attitude toward people detained in the Jail. Unfortunately, I am unable to say whether any further disciplinary steps were taken in this case.

<sup>234</sup> As one of my subjects explained:

[The K6Gs] will tell on you in a heartbeat . . . when somebody gets mad at them [and] hit them, they run to the [officers’] booth [to report it] . . . . [T]hat’s the norm down there. But in general population, you would be in real trouble. And if you was in prison, you’d have to leave the yard or . . . go into a protective housing unit because you couldn’t be out there.

Int. 140, at A5. There do, however, seem to be some limits on snitching enforced in K6G. One of my subjects told of an experience he had while he was in the Twin Towers pod reserved for the K6Gs found to have serious mental illness, where he was beaten up by a fellow resident who suspected him of telling the deputies about alcohol and contraband hidden in the cells, thus precipitating a search of the pod. *See* Int. 118, at H19–20 (“One of the inmates accused me that I was the one who called the deputies . . . I got beat up real bad.”). In addition, another subject described the way dorm residents will collude to prevent a fistfight between residents from coming to the attention of the officers. As he explained, people in the dorm will watch two “people start arguing and watch a fight escalate until it becomes a fistfight . . . [then] we’ll all start clapping or something to make it seem like we were celebrating something instead of someone fighting, to cover it up.” Int. 50, at G3. In such cases, however, there is an instrumental reason for the subterfuge: if “two people get in a fight, the whole dorm suffers” by losing privileges like phones or television. *Id.*

<sup>235</sup> *See supra* Part II.C.

<sup>236</sup> Notes from Juan Haines, San Quentin State Prison, to author (Jan. 12, 2012) (on file with the author). On rare occasions, the gang reps may decide to let the two individuals fight it out.



against all members of the race of the assailant. In short, unauthorized assaults across gang lines spark race riots, since the duty to jump in the fight on the side of your own race is the paramount obligation of everyone in GP.<sup>237</sup>

By contrast, aggression in K6G is much looser. No universal code binds all residents. At the same time, the absence of strictures on emotional expression releases the people in K6G to manifest a host of negative feelings—irritability, annoyance, anger, resentment, hostility, etc.—which can lead to open antagonism and aggression. What in GP would be perceived as a dangerous and risky lack of self-control does not raise an eyebrow in K6G. And the absence of the imperative to jump in when someone of a person's own race happens to be fighting someone of another race means that others in the dorm have no stake in whether other people fight or not—just as long as they can stay out of it.<sup>238</sup> Perhaps counterintuitively, this set of differences makes for a much more relaxed environment. As one of my subjects explained it, “in K6G, I only have to worry about me fighting with another person, [over] . . . a personal issue.”<sup>239</sup> By contrast, “[in] general population, if they jump, if the others jump, I have to jump too.”<sup>240</sup>

True, in some ways, this freedom to fight makes for a more rancorous living environment, as small irritations are more readily allowed to escalate into yelling<sup>241</sup> or physical altercations<sup>242</sup> that in some cases involve serious

<sup>237</sup> The absence of this imperative was a feature of K6G frequently mentioned with appreciation and relief by my respondents.

<sup>238</sup> Although depending on the circumstances, others may try to keep the officers from seeing what is going on. *See supra* note 234.

<sup>239</sup> Int. 47, at D7–8.

<sup>240</sup> *Id.* at D8.

<sup>241</sup> As one of my subjects described it, “Someone will wake someone up and they’ll be like, ‘Get the F out of my area,’ or ‘shut the F up.’ You know, and the person will be like, ‘No, you shut the —.’ And then it starts like that. Really over nothing.” Int. 50, at G4.

<sup>242</sup> Int. 123, at F19 (“I just disrespected somebody or said the wrong thing to somebody and they just socked me one time. Knocked a tooth out, too, I remember that.”); Int. 140, at B10 (“Yeah. I’ve been in a lot of fights in K6G. I don’t think I’ve ever lost one, but I’ve been in them.”); Int. 119, at C3 (“They didn’t actually bite my leg. That wasn’t the first move. We argued, we argued, and, you know, it was like a cat fight, kind of like. . . . They went for a punch. So, we instantly started fighting, and they bit me in the face above the eyebrow and broke the skin there, and then they bit me in the leg, because I was beating them up, basically. So, when I was beating them up, you know, that was their only option. And they fight dirty in jail regardless of where you are.”); Int. 53, at A1 (“I was punched playing cards. . . . There was a gangbanger out there. So, we started arguing over cards, and you, when you don’t expect it, it just happen. He just hit my ass. . . . I broke his nose.”); Int. 45, at B3 (“[I]t was a fight. . . . The person that hit the other person got put in the hole. And it was just because the certain individual didn’t like, you know, queens. And, so, you know,

violence.<sup>243</sup> As a result, on the surface, the Jail's GP can look much calmer and more relaxed than K6G.<sup>244</sup> But the responses of my subjects, together with the clear desire of many non-K6Gs to get into the unit to escape the pressures and politics of GP, indicate that this superficial assessment belies the reality. The trade-offs were succinctly stated by one of my subjects:

I would rather go through the drama of the K[6G] dorm. I'd rather be woken up . . . in the middle of the night with two people arguing . . . than go back to the mainline and have to keep my shoes on, have to put my back against the wall.<sup>245</sup>

#### F. CLARIFYING THE TERMS: VIOLENCE, SAFETY, HUMANITY

The foregoing discussion seems to raise a paradox: although K6G dorms are more overtly antagonistic than GP, more chaotic, and more likely to be the site of physical altercations, K6G's residents—many of whom have previously done time in GP, either in the Jail or in state prison or both—uniformly feel safer and more able to relax in K6G than they would in GP. That this situation seems paradoxical, however, only indicates the need for a more precise description of the violence GP inflicts, the safety K6G provides, and the relative humanity K6G represents.<sup>246</sup>

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the gay boy beat up the queen and she got all scarred up and she had a bad bruise on her face.”).

<sup>243</sup> Int. 101, at A21 (“[T]his guy got sliced up—he was my homeboy—by this girl named Ray-Ray, who’s a queen. And she just sliced him up and went to the hole and she got an added charge . . . . They will hurt [you with] razors. I’ve seen a lot of razors.” *In K6G?* “Yeah, the little razors. I don’t know how they give those to us, but, I mean, we all need shaving. But they’ll hurt you with the razors.”); Int. 111, at D4 (“I’ve seen people pull out razors and use them to cut people in the face and all that before. I mean, people have broken razors and used them.”); Int. 89, at D12 (“[I’ve seen] someone get his face bashed in with a lock in a sock. You know, a big old can of roast beef inside a sock.”); Int. 89, at C14 (“I was in [one of the K6G dorms], and these two, a couple, got into a fight. And she pulled out a blade and just whoom, whoom, whoom, whoom, whoom, whoom—cut a hole right here in his mouth. You could see right through. It was just horrible. There was blood everywhere.”).

<sup>244</sup> *See* Int. 89, at C6 (“[M]ore people are running their heads against the wall in K[6G] than GP. Now, I say it like that because in GP, you may get your head ran against the wall . . . . But in the K[6G] tank, you’re running your own head against the wall.”).

<sup>245</sup> Int. 89, at C19. People who have done time in the Jail’s GP will speak of having to “sleep with [their] shoes on” because they never knew when something would snap and they would have to wake up fighting. *Id.* at D13. No one wanted to be caught in the middle of an outbreak of collective violence without shoes. Hartman found a similar imperative in force on his arrival at CSP Lancaster in the mid-1990s, where he learned that, among other “bizarre and inane rules that most of [his] fellow prisoners regard[ed] as nearly sacrosanct, . . . you aren’t supposed to walk out of the shower before putting your boots back on. This is, ostensibly, because we all have to be prepared to fight at any time.” *See* HARTMAN, *supra* note 30, at 156.

<sup>246</sup> I thank Aziz Huq for pushing me on this point.

As has been seen, K6Gs know they still face an ongoing threat of physical violence in the K6G dorms. They might be the target of a random assault by someone who is mentally ill. They might be hurt by someone to whom they owe a debt. They might get into a brawl with someone whom they provoked or who provoked them. At the same time, they do *not* fear being the victim of sexual or physical predation because they are gay or trans or do not otherwise fit the model of the tough alpha male. And they do not fear being forced at a moment's notice to engage in physical violence against people with whom they have no issue—indeed, whom they may affirmatively like and respect—in order to avoid either being physically disciplined later on for failing to jump in, or seeming weak in the eyes of men looking for ready victims.

Thus, as might be expected, to some extent the violence from which K6Gs feel protected is physical violence: being raped, stabbed, beaten, or otherwise harmed by fellow inmates who are policing compliance with the gang code<sup>247</sup> or otherwise looking to shore up their own images. But there is another crucial dimension to the safety K6G provides—again, despite the real possibility of bodily assault from a number of quarters—that is largely separate from the threat of physical violence. I am referring here to the *psychological* violence of life in GP, and the psychological *relief* to be had from living in an environment where people need not be constantly on their guard against saying or doing anything that might violate the culture's strict behavioral norms or otherwise expose themselves as weak and thus a target.

At its most extreme, the hypermasculinity imperative demands constant vigilance by people who are continually being sized up by their fellows for signs of weakness and vulnerability. This scrutiny can be exhausting, and the demands it makes—that one be forever checking oneself, suppressing natural instincts, and even looking for ways to exhibit unprovoked aggression and hostility—may over time corrode one's sense of self and compromise one's ability to connect with the best parts of one's own humanity. Some men in GP no doubt thrive on this culture: one can, for example, imagine young men who have spent much of their lives moving between the streets and juvenile facilities, and who know no other way of being. But it seems fair to assume that most people in GP find this brutalizing dynamic unwelcome and oppressive, and would prefer to live in

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<sup>247</sup> One long-term prisoner in the California prison system told me of "Cowboy," a friend of his at Folsom Prison in the late 1980s. Cowboy was a white man who one day received a visit from a black woman. At the end of that visit, they "kissed goodbye." For that transgression of the racial divide, gang soldiers policing the color line "cut his neck open." Letter from Jeffrey Scott Long, San Quentin State Prison, to author (Feb. 2012) (on file with the author).

an environment where they could relax, drop the mask, and do their time in peace.

K6G offers such an environment. In K6G, there is no hypermasculinity imperative, because there is no one in the unit with either an investment in having other people behave a certain way or the broad support required to implement a regime in which people are always being watched and judged. When, on occasion, a newcomer tries to “start something,” he is quickly shot down.<sup>248</sup> This freedom from scrutiny and the need to be on one’s guard is a large part of what makes the place feel so safe. The sense of safety it confers is partly physical, because an environment where hypervigilance is required is one in which a person may be physically victimized if he fails to keep the mask in place. But again, it is also psychological, because once people are able to relax the vigilance and self-constraint, it becomes possible for them to stay connected to who they are and to the essential aspects of their personhood. It is the possible sundering of this connection that is part of what can make life in GP so scary and degrading: scary because, where this pressure is the greatest, one can lose a sense of who one is and become something frightening even to oneself, and degrading because this demeaning posture—at best denying one’s own humanity and at worst being the agent by which others lose theirs—may sometimes be the only realistic option, given the conditions in which people are held. That some men who are not gay will nonetheless pretend to be gay to try to get into K6G and away from the Jail’s GP gives some idea of how oppressive the experience of GP can be when this pressure is at its height.

All this raises a question: if this is what violence and safety mean for the people in K6G—and arguably, by extension, for many people in the Jail’s GP—what would humane carceral conditions look like? The experience of K6G suggests at least a partial answer to this question. Humane conditions are those in which people feel safe both from the threat of physical harm and from the need to be constantly on their guard, lest they say or do anything that might suggest human vulnerability. Humane conditions allow people to maintain and develop a connection to their own identities and senses of self. In the sections that follow, I identify several factors that have—almost accidentally—come together to make K6G a relatively safe and humane environment in these three important respects (i.e., protecting people from physical harm; affording them psychological relief from the need for constant vigilance; and creating mechanisms by

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<sup>248</sup> K6G’s “easy-going program” is a big part of what makes it so appealing to many men with a long history of time in GP, who feel the need for a break from the gang life that governs in the rest of the Jail.

which they can remain connected to—and develop—who they are as people). As will be seen, this account suggests that the possibility of genuinely humane conditions requires an institutional commitment, not only to ensuring the physical safety of those in custody, but also to treating them with fairness and respect, as *people* and not simply as inmates. To regard those the state has incarcerated as somehow outside society's moral circle, as no longer entitled to the respect and consideration owed fellow human beings, is the essence of dehumanization. A careful study of the factors that explain the relative humanity of K6G begins to suggest what a shift away from dehumanizing practices toward humane and humanizing ones might require as a practical matter.

### III. WHAT MAKES K6G K6G?

In the Jail's GP, gang culture and the hypermasculinity imperative are mutually reinforcing. The resulting environment is both scary and stressful, even for those who manage to keep the mask from slipping.<sup>249</sup> In K6G, by contrast, not only are there no gang politics, but there is no hypermasculinity imperative. Residents are free to be themselves.<sup>250</sup> The unit is consequently much more relaxed and, though not without its dangers, much safer and more humane than GP.<sup>251</sup>

What explains this dramatic difference, the absence in K6G of destructive dynamics that are found not only in the Jail's GP but to a greater

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<sup>249</sup> In such a climate, almost anyone can be a target. As Craig Haney reports, "one study of a large and representative sample of prisoners found that fully one third of male prisoners reported having been victimized through some form of physical harm" in the preceding six months of their incarceration, and among those suffering from "mental disorders, the rate was nearly half" of the sampled prisoners. Haney, *supra* note 14, at 128 (citing Nancy Wolff and Jing Shi, *Trauma in Incarcerated Persons*, in HANDBOOK OF CORRECTIONAL MENTAL HEALTH 277, 283 (Charles Scott ed., 2010)). In those facilities where the pressure for hypermasculine performance is at its most intense, life in custody can be a daily hell for those people most readily seen as weak. For example, Roderick Johnson, "a black gay man with a gentle manner," spent eighteen months in a Texas prison as a sex slave to the Gangster Disciples prison gang. Adam Liptak, *Ex-Inmate's Suit Offers View into Sexual Slavery in Prisons*, N.Y. TIMES, Oct. 16, 2004, at A1. Renamed "Coco" by the gang, Johnson was "forced into oral sex and anal sex on a daily basis," "bought and sold," and "rented" out for sex for the benefit of the gang. *Id.* During this period, Johnson was repeatedly gang raped in the prison's cells, stairwells, and showers. *Id.* A 2001 Human Rights Watch report documented similar cases of sexual slavery in prisons in Illinois, Michigan, California, and Arkansas, as well as Texas, where, according to prisoners' reports, sexual slavery is "commonplace in the system's more dangerous prison units." HUMAN RIGHTS WATCH, *supra* note 87, at 14.

<sup>250</sup> See *supra* note 214.

<sup>251</sup> I use these terms in the sense just explored. See *supra* Part II.F.

or lesser degree in many men's carceral facilities around the country?<sup>252</sup> It is tempting to try to explain the unusual climate of K6G by the sexual identity of its residents. Later in this Part, I consider the various forms such an argument might take, and assess their respective explanatory powers. As will be seen,<sup>253</sup> sexual identity is not irrelevant here. But it would be misguided to look no further than this factor to explain K6G's distinctive environment. K6G is full of people well acquainted with the GP code. Many have spent years in GP units in the Jail or California prisons or both, pretending to be straight to avoid being victimized or escaping the worst effects of this cultural system by hooking up with a stronger prisoner, exchanging regular sexual access and obedience for protection from assault by others.<sup>254</sup> For people with direct experience of GP suddenly to relax and engage openly in the very behaviors that they know would endanger them elsewhere in the Jail, something more has to be true about their new environment besides simply close proximity to other gay men.

That "something more" is simple: unlike the men in the Jail's GP, people in K6G independently feel sufficiently safe and protected that they do not have to posture or look to the gangs for protection. The puzzle then becomes: how, in a facility as violent and dangerous as Men's Central, have the people in K6G come to feel secure enough to abandon many of the artifices on which men in GP routinely rely for self-protection? Why do K6Gs feel largely able to be themselves while men in GP often feel compelled to work hard to deny the very things—the emotions, the needs, the vulnerabilities—that make them human? There is no single answer to this puzzle. Instead, my research suggests several factors that have come together to help create the conditions in which the people in K6G feel safe enough to relax and be themselves—factors that are only contingently connected to the sexual identity of people in the unit. These factors include: (1) an institutional commitment to rigorous implementation of the consent decree that first established K6G; (2) the fact that for almost its entire history, the unit has been run by the same two officers, who have treated unit residents with respect, evenhandedness, and concern for their well-being; and (3) the small size of the unit, which, together with a high recidivism rate and the automatic reclassification to K6G of former unit residents who return to the Jail, has fostered over time a sense of community and personal connection among those in K6G.<sup>255</sup> There is also

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<sup>252</sup> See *supra* notes 30, 197.

<sup>253</sup> See *infra* Part III.C.

<sup>254</sup> See Dolovich, *supra* note 1, at 11–19 (explaining the process by which weaker prisoners may "hook up" with more powerful prisoners in a protective pairing).

<sup>255</sup> See *infra* Parts III.B.1–3.

a possible fourth factor: the degree of attention K6G has received from outside organizations, media outlets, and even researchers like me.

Arguably, none of these factors alone would have been enough to make K6G's relative humanity possible. None, moreover, was the intended result of deliberate efforts to reduce the appeal of gang politics or hypermasculine performance. Instead, each emerged almost accidentally in the wake of the 1985 court order that created K6G.<sup>256</sup> Together, they have helped create a relatively safe space in which hypermasculine performance is unnecessary. This safe space represents the primary background condition without which, I argue, no humane carceral environment can emerge. At the same time, the K6G experience demonstrates that, once the conditions of safety are in place, the resulting culture can have its own positive second-order effects, enabling the subsequent emergence of multiple avenues for healthy self-expression, which can in turn help to mitigate the destructive and dehumanizing effects of imprisonment and further promote a relatively healthy climate for the people inside.<sup>257</sup> In short, to a significant extent, K6G is a case of accidental humanity begetting a virtuous circle of desirable effects, a vivid contrast to the too frequent inhumanity of incarceration in American prisons and jails and the vicious circle of violence and abuse it can yield.

The sections that follow explore the four distinct factors just noted, which inadvertently have helped make K6G what it is.<sup>258</sup> First, however, I address a question that the contrasting accounts of GP and K6G are likely to raise: whether K6G's population is sufficiently similar to GP's to warrant comparative judgments.

#### A. APPLES TO APPLES? LEVELS OF CRIMINALITY IN GP AND K6G

Above, I describe two very different carceral environments. GP is governed by gang politics and full of men striving for successful hypermasculine performance. K6G, although less overtly calm, is a safer, more relaxed, and less scary place to be. One obvious question thus arises: to what extent are the populations sufficiently similar to allow meaningful comparison? If it turned out that everyone in the Jail's GP is awaiting trial for murder and other violent crimes, whereas people in K6G are uniformly

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<sup>256</sup> For a discussion of what makes the implementation of a court-ordered consent decree "accidental," see *infra* Part III.B.5.

<sup>257</sup> If the specifics of that emergent culture reflect in some way the sexual identity of its residents, they are still best understood, not as the *cause* of the collective feeling of safety and security in the unit, but as its *effects*. For more on this point, see *infra* Part III.C.4.

<sup>258</sup> See *infra* Part III.B.5.

facing charges for drug use, prostitution, and petty theft, the relatively safe and humane character of K6G might be far less puzzling.

An ideal response to this inquiry would cite data concerning the criminal history and current charges of the people in GP and K6G at the time I conducted my research, demonstrating parity in these regards. Unfortunately, such data is unavailable. The Jail does not collect and maintain such information, and the size of the institution (a daily average population of 19,000 people<sup>259</sup>), combined with the scale of the operation (an average of 166,000 people cycle through the Jail every year<sup>260</sup>) and the lengthy criminal histories of many of the people in custody at any one time,<sup>261</sup> make it difficult to draw conclusions about the character of a given housing unit at a particular moment. Indeed, given the scale and turnover, what is striking about life in the Jail is the seeming continuity of the cultural character and social dynamics of the two environments I describe.<sup>262</sup>

I can thus offer no comprehensive quantitative data to confirm that the two populations are sufficiently alike as to either criminal histories or violent propensities to warrant comparison. Still, there are grounds for thinking that K6G's relatively humane character cannot be explained solely by the comparatively nonviolent nature of those who wind up in the unit. To some extent, the validity of the comparison can be seen by considering the security profiles of the respective populations. Like all carceral facilities, the Jail has a classification system that sorts detainees into security levels. In this case, available levels range from 1 to 9. During the time of my research, levels 1, 2, and 3 roughly corresponded to minimum/low security; 4, 5, and 6 to medium security; and 7, 8, and 9 to maximum/high security. (This allocation has since shifted slightly, so that

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<sup>259</sup> See *supra* note 1; Dolovich, *supra* note 1, at 19 & n.100.

<sup>260</sup> See *id.* at 19 & n.101.

<sup>261</sup> In my sample alone, six people—just under 20% of the total—reported having been in jail or prison more than twenty times.

<sup>262</sup> Although the bulk of my research was conducted during one concentrated period, many of my subjects had a lengthy institutional history, both at the Jail and elsewhere. The interviews strongly suggested that the character of the K6G unit has been consistent over time. Moreover, the impressions of the unit conveyed during my interviews and observations are consistent with what I saw and heard from dorm residents during visits to the unit both before and after the summer of 2007. As for the character of GP, what I learned during the period of my research regarding the character of the Jail's GP units is entirely consistent with descriptions of life in the Jail—and in the California prisons more broadly—as reported by others familiar with the experience as well as with written accounts of life in men's carceral facilities more generally from the 1970s, see Rideau, *supra* note 8, right up to the present day. See, e.g., sources cited *supra* note 29.



4s are now considered as low security and 7s as medium.<sup>263</sup>) The security level to which a given individual is assigned depends on a variety of factors, including criminal charge, criminal history, escape risk, and previous behavior in jail or prison.

K6Gs are assigned security classifications with the same intake instrument and thus on the same basis as those housed in GP. The ratios are always shifting in a facility that turns over its population almost nine times every year,<sup>264</sup> but data gathered on two random days comparing the average security level of K6G and GP suggests that although GP has a relatively higher percentage of 7s and 8s,<sup>265</sup> K6G still has a fairly sizeable percentage of 7s and 8s,<sup>266</sup> as well as a higher percentage of 5s and 6s than GP.<sup>267</sup> Moreover, it may be that too much should not be made of the relatively higher proportion of 7s and 8s in GP as compared with K6G, given that K6G, in direct contrast to GP, houses their highest security residents in the same open plan (i.e., dorm) environment as everybody else.<sup>268</sup>

This is a telling difference. A person's security level reflects the relative danger he is perceived to represent. The higher the security level, the greater the threat a person is thought to pose and the greater the expectation that he will be violent, predatory, or otherwise act out or put others at risk. For this reason, high-security prisoners are viewed as most in need of a restrictive housing environment. In GP, those classified as low

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<sup>263</sup> See Telephone Interview with Randy Bell, Senior Deputy, L.A. Cnty. Sheriff's Dep't (Mar. 29, 2012). This move seems more likely driven by a need for greater flexibility in housing than by an affirmative determination that 7s are no longer as serious a security threat as previously supposed.

<sup>264</sup> Over the past several years, L.A. County has had an average daily count of 19,000, see *supra* note 1, and an average annual admission rate of approximately 166,000. See Dolovich, *supra* note 1, at 19 n.101. These numbers have dipped somewhat recently, but are expected to increase significantly with the implementation of the Realignment. See *supra* note 1.

<sup>265</sup> E-mail from Bart Lanni, Deputy, L.A. Cnty. Sheriff's Dep't, to author (June 9, 2012, 9:39 PM PST) (reporting a breakdown of 30% 7s and 6.4% 8s in K6G as compared with 39% 7s and 14% 8s in the Jail more generally); E-mail from Bart Lanni, Deputy, L.A. Cnty. Sheriff's Dep't, to author (Apr. 5, 2012, 9:13 AM PST) (reporting a breakdown of 31% 7s and 6.7% 8s in K6G as compared with 40% 7s and 14% 8s in the Jail more generally).

<sup>266</sup> See *supra* note 265.

<sup>267</sup> E-mail from Deputy Bart Lanni, Deputy, L.A. Cnty. Sheriff's Dep't, to author (June 9, 2012, 9:39 PM PST) (reporting a breakdown of 8.8% 5s and 42.9% 6s in K6G as compared with 5.9% 5s and 32.5% 6s in the Jail more generally); E-mail from Deputy Bart Lanni, Deputy, L.A. Cnty. Sheriff's Dep't, to author (April 5, 2012, 9:13 AM PST) (reporting a breakdown of 7.8% 5s, and 38% 6s in K6G as compared with 6% 5s and 30% 6s in the Jail more generally).

<sup>268</sup> The exception is the 9s, who are automatically classified as K10s and housed in solitary confinement (a.k.a. ad seg) whatever their sexual identity.

and medium security may be housed in a dorm setting (i.e., the least restrictive housing environment). However, this less restrictive housing is generally thought inappropriate for the high-security prisoners, who are housed only under conditions of administrative segregation (the level 9s) or in two- or four-man cells (formerly the level 7s and 8s; today, just the level 8s).<sup>269</sup>

As in GP, the security levels in K6G run the full range from 1 to 9. Yet in K6G at the time of my research in 2007, the 7s and 8s—who if they had been in GP would have been regarded as ineligible for dorm living—were placed in the K6G dorms like everyone else.<sup>270</sup> In 2007, the size of K6G was around 350 people, and the unit occupied three dorms. At that time, the officers in charge of the unit allocated residents to the three dorms roughly according to security level, with 1s, 2s, and 3s in one dorm; 4s, 5s, and 6s, in another; and 7s and 8s in the third.<sup>271</sup> These divisions were not always precise, since the population was not always evenly split between the three groups. Indeed, at times, when the daily count is high enough, the unit takes over a fourth dorm, which in the summer of 2007 necessarily meant the mixing of security levels even when there was an effort at separation. Moreover, the inevitable emergence of interpersonal enmities, a problem in any carceral environment, meant that the officers would often need to house two people with the same security level in different dorms, thus requiring the dorms to be integrated by security level to some degree. Still, as a day-to-day matter, K6G did feature three dorms, one of which—call it Dorm A—was made up of primarily 7s and 8s. Because of the way these classifications are made, this meant that there was a dorm in K6G housing a group of ninety people or more, many of whom had done serious prison time and were found at intake to require a highly restrictive custodial setting. Yet in K6G, this group of people routinely lived in the least restrictive housing option available in Men's Central—and today the 7s and 8s are mixed in with everyone else. That the unit as a whole is nonetheless widely regarded as safe and secure suggests that it is not the security level

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<sup>269</sup> Depending on what housing is available, people classified to medium security might be housed in dorms or cells, but people classified as high security will never be housed in dorms. *See* Telephone Interview with Bart Lanni, Deputy, L.A. Cnty. Sheriff's Dep't (Mar. 29, 2012).

<sup>270</sup> Even in K6G, level 9s have always been placed in solitary confinement, and thus have the same housing as they would if they were in GP.

<sup>271</sup> Bell and Lanni have since discontinued this practice, which means that people of all security levels are integrated in the K6G dorms, with the exception of the 9s, who are automatically placed in ad seg. *See* Telephone Interview with Bart Lanni, Deputy, L.A. Cnty. Sheriff's Dep't (Mar. 29, 2012).

of the people in K6G as compared with those in GP that explains K6G's relatively humane character.

The previous K6G strategy of concentrating people with high security classifications in Dorm A did yield a more aggressive environment than the other K6G dorms;<sup>272</sup> it was, for example, clear from observation that Dorm A was the site of more one-on-one physical altercations than the other two dorms. This feature of Dorm A appeared to be well-known among unit residents: my interview subjects reported that Dorm A was known among K6Gs as the "Thunderdorm." However—and here is the key point for our purposes—the view of K6G's relative safety and security was no different in Dorm A than in the other dorms. Instead, the assessment of the K6G experience was fairly uniform,<sup>273</sup> suggesting that the relatively relaxed character of K6G more generally was enjoyed by residents of Dorm A as well as those of Dorms B and C, despite the fact that they were living in a dorm setting among many and even a majority of people classified by the Jail as maximum security.

It thus seems mistaken to think that the differences between GP and K6G may be wholly explained by the relatively non-violent or low-security character of the people in K6G. Nor are the K6Gs unfamiliar with life in GP. Of my sample, over half had previously done time in GP, whether in L.A. County, state prison, or elsewhere. K6G also has its share of gang members, some of whom demonstrated to me how easily they are able to switch from their natural demeanor into the self-presentation of hard-core gangster when the occasion required. It even appeared, from his answers to interview questions and from things others told me, that at least one of my

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<sup>272</sup> It would be interesting to know how the integration of K6G's dorms by security level—implemented after the period of my research—affected life in the unit.

<sup>273</sup> One piece of data indicating this relative uniformity came from answers to a particular question: *If you had to give five words to describe life in K6G, what would they be?* See Dolovich, *supra* note 1, at 102 q.35. The answers given were classified into "positive," "negative," and "neutral." My interview sample fortuitously turned out to divide roughly equally between the three dorms. I interviewed twelve people from Dorm A, ten people from Dorm B (the mostly medium-security dorm), and eleven people from Dorm C (the mostly minimum-security dorm). The results were as follows:

	Positive Words	Negative Words	Neutral Words
Dorm A	25	18	12
Dorm B	24	12	13
Dorm C	21	22	7

And perhaps even more notable were some of the positive words offered by residents of Dorm A. Despite living in the "Thunderdorm," some of my interview subjects used words like "relaxing," "peaceful," "happ[y]," "friendly," "less stressful," "fun," "delightful," "enjoyable most of the time," "comfortable," "easy," "safe," "respectful," and "more relaxed" to describe life in Dorm A.

subjects was a “shot caller,” i.e., a high-ranking gang member, for one of the prison gangs. At least one of my subjects had served twenty-two years for murder. Eleven of the thirty-three people I interviewed had served more than five years in prison, and five had served at least twelve years in prison—and in the California state prisons, it bears noting, there is no K6G, which means that when my subjects were in prison, they were not segregated from GP as they are in the Jail.

Admittedly, these features of K6G’s population do not establish a perfect match with GP in terms of criminal history, carceral exposure, or violent tendencies. And as will be seen in Part III.C, it does seem reasonable to assume that K6G has a higher proportion of residents who are unlikely to be successful at performing a hypermasculine identity, and thus more likely to be victims of the GP culture than its promoters. But to motivate a meaningful comparison, it is not necessary that K6G and GP be identical as to their populations’ collective tendencies to aggression and predation. It is only necessary that the populations be sufficiently similar as to criminal and carceral histories and violent tendencies that the unique character of K6G demands an explanation. And the foregoing discussion at a minimum makes clear that K6G houses plenty of people who are familiar with “the game”—i.e., life in GP—and have profiles that would ordinarily have landed them in high-security settings.

Some may point to other features of K6G as evidence that the two contexts do not bear comparison. For example, in K6G, once people are identified as predators, they are immediately removed from the unit and placed in administrative segregation or its equivalent, whereas in GP, it is the victims who are more likely to be removed after an incident. This difference means that GP is likely to have a higher ongoing concentration of predators than K6G. Or it might be argued the comparison is inapt because the Jail plainly invests more in keeping K6G safe than it does for GP. But to invoke these distinctions here is to confuse features of the institutional commitment to keeping K6G safe—i.e., the program’s design—with the question of whether the populations are comparable as an initial matter. If there are fewer predators in K6G because the Jail removes them as soon as they emerge, or because the Jail invests more in preventing predation in K6G, this welcome feature does not reflect an essential difference in the population characteristics of the two units, but a *programmatic* difference in the way the Jail chooses to respond to predatory behavior.<sup>274</sup> Indeed, the fact that predators are immediately removed from K6G only reinforces my claim that the populations are sufficiently similar

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<sup>274</sup> I thank Jed Shugerman for helpful conversation on this point.

to bear comparison, since it shows that, absent external intervention, each unit is prone to be a site of predation against weaker inmates.

There are certainly plenty of people in K6G without lengthy criminal histories, who are facing charges for non-violent or other relatively non-serious crimes or do not have extensive experience behind bars.<sup>275</sup> But the same is also true of GP. The difference is that those first- or second-timers who get sent to GP find themselves in a scary, stressful, potentially dangerous environment in which a lack of experience and an ignorance of cultural norms can be a serious liability, while those newcomers who end up in K6G will do their time in an environment that, although in many ways “nasty” and “horrible” (as one K6G first-timer put it<sup>276</sup>), is nonetheless, in the words of two other K6G first-timers, “peaceful,” “controlled,”<sup>277</sup> and even “fun.”<sup>278</sup>

The question is how to explain the difference. In what follows, I explore the main factors that have come together to make K6G’s residents feel sufficiently safe and secure not to have to resort to the self-protective mechanisms of hypermasculine posturing and gang involvement—factors that, as will be seen, are only contingently connected to the sexual identity of the people in the unit.

## B. CREATING A SAFE SPACE IN THE L.A. COUNTY JAIL

### 1. *Relatively Impermeable Boundaries*

The lawsuit that produced K6G arose as a challenge to the procedures then in place for housing gay men in the Jail. Prior to 1985, there was some effort to keep homosexual prisoners segregated from the general population, with one housing module in the Jail set aside for their exclusive use. However, this early program suffered from profound design flaws. On the one hand, no efforts were made to keep gay detainees separate from GP detainees when they were outside the dorms. This meant that gay prisoners were still vulnerable to predation during the admissions process; in the court-line holding cells; and in transit to and from court, the infirmary, pill call, the visiting room, or elsewhere in the facility.<sup>279</sup> On the other hand,

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<sup>275</sup> Although it is worth noting that only six people out of the thirty-three I interviewed had been in Jail only once or twice before, and only three were in Jail for the first time.

<sup>276</sup> Int. 49, at E4.

<sup>277</sup> Int. 93, at D5.

<sup>278</sup> Int. 88, at A8.

<sup>279</sup> See First Amended Complaint for Declaratory and Injunctive Relief at 7–8, *Robertson v. Block*, No. 82 1442 WPG (Px) (C.D. Cal. Apr. 12, 1982); Dolovich, *supra* note 1, at 21–23 (explaining the origins of K6G).

the program lacked controls for ensuring that only homosexuals<sup>280</sup> were admitted to the unit.<sup>281</sup> As a consequence, all a would-be predator needed to do to gain access to potential victims was to aver his homosexuality on entrance to the Jail.<sup>282</sup>

The consent decree that settled the case addressed both these concerns. It committed the Jail to adopting practices that would keep K6Gs physically separate from GPs when moving through the facility. And it created a two-stage classification process that required classification officers to interview every person who claimed to be gay on admission to the Jail, to assess the veracity of that claim.<sup>283</sup> Both these components are still in place today and are key to the success of the enterprise. First, policies have been implemented to manage the risk of detainee movement whenever K6Gs are outside the dorms. When in the visiting room, for example, K6Gs are seated in the first row of booths,<sup>284</sup> directly in the sight line of the deputies.<sup>285</sup> In the court-processing line, K6Gs are kept in a specifically designated holding cell, and en route to the courthouses, they sit in the front seat of the vans, protected where possible by wire cages.<sup>286</sup> Until recently,

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<sup>280</sup> I realize that using terms like “homosexual” and “gay” in the way I do risks implying that it is possible both to determine who is “really” gay and to separate out those who “are” gay from those who are not. The formulations employed here thus court charges of both essentializing and oversimplifying the inherently fluid and even mercurial character of same-sex attraction. Even as to those men who self-identify as gay, there is a danger inherent in any effort to distinguish on the basis of sexual identity: that of equating characteristics stereotypically associated with a given identity with the identity itself, thereby making invisible those who, although they do self-identify, lack those characteristics conventionally associated with gay men. See Russell Robinson, *Masculinity as Prison: Sexual Identity, Race, and Incarceration*, 99 CALIF. L. REV. 1309, 1345, 1359 (2011). I address these concerns in more detail elsewhere. See Dolovich, *supra* note 1, at 64–81. Here, I adopt the construction employed by the Jail, by the ACLU lawyers who eventually brought suit challenging the conditions I describe, and by the consent decree discussed in the text.

<sup>281</sup> See Dolovich, *supra* note 1, at 21–22 (describing the design flaws of the Jail’s pre-K6G housing program for gay detainees).

<sup>282</sup> Interview with Bart Lanni, Deputy Sheriff, L.A. Cnty. Sheriff’s Dep’t, in L.A., Cal. (Feb. 11, 2010).

<sup>283</sup> For a detailed account of this process, see Dolovich, *supra* note 1, at 25–43.

<sup>284</sup> In Men’s Central, all visits are non-contact. Detainees sit on stools facing a glass wall and speak via handsets with their visitors, who are seated on the other side of the glass. The absence of contact visits was challenged by the ACLU of Southern California, but the constitutionality of the practice was ultimately upheld by the Supreme Court. See *Block v. Rutherford*, 468 U.S. 576 (1984).

<sup>285</sup> The L.A. County Jail is administered by the L.A. County Sheriff’s Department. Most custodial staff at the Jail are deputy sheriffs, who rotate between staffing the Jail and patrolling the County.

<sup>286</sup> Several of these procedures, including segregation in the Men’s Central court line and en route to the courthouses, were provided for in the original court decree. That decree also

before medications began to be distributed in the dorms themselves, K6Gs were brought to pill call as a group, one dorm at a time, and monitored by deputies as they waited in the hallway to see the nurse. And whenever K6Gs move through the facility for any reason—to the classroom,<sup>287</sup> the infirmary, the visiting room, or the court line—they must be escorted by a deputy.

This last measure is particularly significant. The combination of extreme crowding and chronic understaffing in the Jail means that in most cases, when detainees are moving between their housing units and other parts of the facility, they are unescorted. It is standard when walking through the halls of the Jail to pass lines of unescorted detainees en route from one part of the facility to another.<sup>288</sup> There are only two exceptions to this rule. The first is the K10s, the facility's highest security inmates, who are always escorted (in shackles) when out of their cells. The other is the K6Gs.<sup>289</sup>

Even with deputies as escorts, when K6Gs are outside the dorms, they are frequently subjected to verbal harassment of various sorts—catcalls, whistling, explicitly homophobic epithets, etc.—by the GP inmates whose paths they cross, and even by some deputies.<sup>290</sup> But the rule that K6Gs may not be outside the dorms unescorted by an officer is strictly observed. As a consequence, for the most part, K6Gs are kept from physical contact with GPs and thus protected from physical assault by them.<sup>291</sup> Although there

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provided for the segregation of “homosexual inmates” while they are at “the court facilities for which the Sheriff is responsible and are visually checked for their well-being as often as court routine permits.” Consent Decree at 7, *Robertson v. Block*, No. 82 1442 WPG (Px) (C.D. Cal. July 22, 1985) (on file with the author). Unfortunately, I was not able to establish whether and to what extent this segregation and regular monitoring is actually effected in the various courtrooms to which L.A. County detainees may be sent.

<sup>287</sup> There is a classroom allocated for the exclusive use of K6G. It is through this classroom that Senior Deputy Randy Bell and Deputy Bart Lanni, K6G's classification officers, run what they call the SMART program (for Social Mentoring and Academic Rehabilitative Training), which features an array of programming exclusively for the K6Gs. For further discussion of this program and consideration of the objection that such programming is only a way to paper over the violence of incarceration with empty reforms, see Dolovich, *supra* note 1, at 24 n.139.

<sup>288</sup> It bears noting that in all my time in the Jail, I never felt the slightest bit of unease when encountering unescorted detainees.

<sup>289</sup> See Dolovich, *supra* note 1, at 25 n.142 (discussing the views of Jail deputies regarding this perceived special treatment).

<sup>290</sup> See *supra* note 108; Dolovich, *supra* note 1, at 57–60 (discussing the routine verbal harassment of K6Gs by GPs and custodial staff when they are outside the dorms).

<sup>291</sup> Although they are, unfortunately, sometimes spit at by GPs.

are exceptions,<sup>292</sup> the relative impermeability of the physical boundaries between K6Gs and GPs means that, despite the inmate code that defines gay men and trans women as available for victimization, Jail procedure largely keeps at bay any would-be GP predators.

Alongside the policies for keeping K6Gs safe from harm when outside the dorms, the two-stage K6G classification process also keeps the unit relatively free from internal predators.<sup>293</sup> Anyone who succeeds in being classified to K6G who proves to pose a serious threat of physical harm to others is immediately removed from the dorms and housed in one of the single cells that serve as K6G's disciplinary wing—or, in the case of someone found to be extremely dangerous, sent to K10, the Jail's highest security designation, and subjected to single-celling and other security measures.<sup>294</sup>

The two-step classification process enhances the physical safety of the people in K6G. The scrutiny given those who claim to qualify for admission helps to screen out would-be predators seeking access to potential victims.<sup>295</sup> And any prisoners in K6G who are tempted to take advantage of their proximity to people who would be prone to victimization in GP know that they risk immediate removal, whether to GP if their behavior calls into question the veracity of their initial claims to be gay, or, if not, to the unit's disciplinary wing. Taken together with the measures that maintain the physical boundary between K6Gs and GPs when K6Gs are out of the dorms, these efforts contribute to a strong feeling of physical

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<sup>292</sup> I learned of one such exception during my time in the Jail, from an interview subject who reported being raped in the K6G court-line holding cell in Men's Central by a GP inmate who threatened him with a razor. This assault was made possible by two flaws in the design of the court-line area. First, the holding cells have revolving entrances with horizontal metal bars like those one might see in a subway station, which allow someone to enter simply by pushing the bars. As in a subway, the rotation is one-way. Once someone has entered the cell, there is no exit without the assistance of an officer with the key. And second, the cell designated for K6Gs is not in the direct sight-line of the officers, which creates the opportunity for GPs or other non-K6G prisoners to enter the cell freely if they choose without being seen by a deputy. The problem with this layout, in other words, is that it makes K6Gs accessible to enterprising GP inmates without any deputies necessarily keeping watch. It is therefore crucial that this configuration be changed.

<sup>293</sup> See *supra* Part II.A.

<sup>294</sup> The original consent decree stipulated that no one properly classified to K6G may be removed from the unit as punishment for disciplinary infractions. See Stipulation and Request for Dismissal Order at 5, *Robertson v. Block*, No. 82 1442 WPG (Px) (C.D. Cal. July 17, 1985) ("Under no circumstances is the classification process to be used as a disciplinary tool.").

<sup>295</sup> As noted, this problem plagued earlier efforts by Jail administrators to segregate gay detainees from predatory GPs. It also compromised similar efforts in New York City's Rikers Island facility. See *supra* note 43.



security among K6G residents—and have unexpectedly helped to create a space in which K6Gs have felt free to abandon the hypermasculine posturing that is a staple of life in the Jail's GP.<sup>296</sup>

*2. Trust, Communication, and Mutual Respect Between K6G's Residents and Its Supervising Officers*

The hypermasculinity imperative prevails in contexts where men who seem weak are at risk of victimization. That this imperative should govern where men live day and night under the control and authority of “guards” responsible for their well being<sup>297</sup> may at first seem curious: is it not the job of correctional officers (COs) to keep prisoners safe, thereby making it unnecessary for the people in custody to take responsibility for their own protection? Unfortunately, the state routinely fails to fulfill this obligation, forcing prisoners to fall back on their own resources.<sup>298</sup> Where there ought to be channels of trust and open communication between COs and prisoners through which officers could hear of potential dangers and take steps to avert them, there is instead in too many carceral institutions a wall of silence and mistrust.

Many men in custody have learned from experience that COs are often neither willing nor able to ensure prisoners' safety.<sup>299</sup> Efforts to enlist official aid frequently bear little fruit in terms of increased protection, and indeed may only earn those seeking help a reputation as a “snitch” and therefore as weak and contemptible—a recipe for victimization. As a result, even those officials who might be inclined to take protective

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<sup>296</sup> It might be wondered why, given that this program was implemented pursuant to a court order, the features just described should be considered “accidental.” I address this issue below. *See infra* Part III.B.5.

<sup>297</sup> This responsibility is both a constitutional imperative and a moral one. *See, e.g.,* Farmer v. Brennan, 511 U.S. 825, 833 (1994) (“Having incarcerated persons with demonstrated proclivities for anti-social criminal, and often violent, conduct, having stripped them of virtually every means of self-protection and foreclosed their access to outside aid, the government and its officials are not free to let the state of nature take its course.” (internal citations omitted)); Sharon Dolovich, *Cruelty, Prison Conditions, and the Eighth Amendment*, 84 N.Y.U. L. REV. 881, 921–22 (2009) (arguing that when the state opts to incarcerate convicted offenders as punishment, it is committing itself to providing for prisoners' basic needs in an ongoing way while they are in custody).

<sup>298</sup> *See, e.g.,* John J. Gibbons & Nicholas de B. Katzenbach, *Confronting Confinement: A Report of the Commission on Safety and Abuse in America's Prisons*, 22 WASH U. J.L. & POL'Y 385 (2006) (describing routine violence in prisons and jails).

<sup>299</sup> Prisoners at risk of rape who seek protection from correctional officers report being advised to “fight or fuck”—that is, to fight their aggressors or suffer the consequences. Robertson, *supra* note 164, at 33; *see also* James E. Robertson, “Fight or F . . .” and Constitutional Liberty: An Inmate's Right To Self-Defense When Targeted By Aggressors, 29 IND. L. REV. 339 (1995).

measures to keep vulnerable prisoners safe will often hear nothing even from those individuals who are most at risk, and will thus be unable to intervene. Under these circumstances, it is unsurprising that many people in custody rarely feel sufficiently secure to relax their own vigilance.

If this unhealthy dynamic is to be overcome in any carceral context, responsible COs must be committed to ensuring the safety and well-being of the people in their custody, and the people in custody must in turn trust COs' ability to do so. This latter requirement may be especially difficult to meet. The adversarial "us" versus "them" mentality that often exists between officers and detainees in carceral facilities, combined with high recidivism rates, means that many people in custody will have learned over time to regard COs with distrust and even scorn. They are thus not likely to see custody staff as allies.

Yet remarkably, in K6G, the wall of mistrust and hostility between COs and detainees has been breached, at least as to the two classification officers assigned to the unit. This welcome development arose partly by luck. For almost its entire history, K6G has been administered by the same two officers, Senior Deputy Randy Bell and Deputy Bart Lanni, who have committed themselves to making K6G as humane an environment as possible.<sup>300</sup> The resulting dynamics between these two officers and K6G's residents is a further important factor contributing to the general sense of safety and security in K6G. The primary responsibility of these officers is classification: it is their job to conduct in-depth interviews of each person who at intake answered the question *are you homosexual?* in the affirmative, in order to determine which of those people in fact satisfy K6G's admissions criteria. But Officers Bell and Lanni also wear many other hats. Among other things, they run the SMART program, an educational program of their own devising, exclusively for K6Gs;<sup>301</sup> manage the many providers who serve the K6G population;<sup>302</sup> maintain

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<sup>300</sup> Perhaps the strongest evidence of this ongoing commitment is that both officers chose not to try to promote within the Sheriff's Department, since promotion usually brings a transfer within the Department, and neither Bell nor Lanni wanted to leave the unit.

<sup>301</sup> For more on the SMART program, see *supra* note 287; Dolovich, *supra* note 1, at 24 n.138.

<sup>302</sup> These providers include the L.A. Department of Health, whose staff, permanently assigned to K6G, provide testing for sexually transmitted infections, including syphilis, hepatitis C, and HIV, see Dolovich *supra* note 1, at 92 n.406 (explaining the reason for the presence at K6G's secondary classification stage of the city's health department); caseworkers from Tarzana Treatment Center, which provides reentry services and drug treatment for HIV-positive detainees on their release; an on-site psychiatric technician; teachers from the Hacienda LaPuente School District, who have in the past held the contract to provide GED classes in the Jail; and staff from the Center for Health Justice, who provide

security in the classroom, holding cell, and hallway outside their office; monitor goings-on in the dorms (although they are somewhat hampered in doing so by the physical separation between their office and the dorms, which are on different floors); mediate disputes between dorm residents; and provide general assistance and even counseling for those dorm residents who seek them out.

In all these capacities, these two officers unfailingly treat K6G's residents with respect and without judgment or prejudice, which is especially notable given the extreme discomfort many other deputies plainly feel at interacting with gay or trans detainees. In return, Bell and Lanni have earned the trust and respect of many people in the unit, who will not hesitate to bring to their attention problems needing resolution.

Several structural features of K6G have come together to enable the mutual trust between these two officers and the populations K6G serves. First and foremost, no one gets into K6G without first having an extended conversation with Bell or Lanni or both officers together. This exchange and the detailed file it yields form a foundation for future interactions. Second, the unfortunately high recidivism rates and the fact that anyone previously classified to K6G will be automatically sent straight to K6G on return trips to the Jail means that these two officers will interact on a fairly regular basis with people in the unit. Although people who have previously been classified to K6G are not reinterviewed on return trips, Bell and Lanni will generally talk to them (and often express unhappiness at seeing them back in jail), thus reestablishing some connection. This means that, at any given time, everyone in K6G will have personally interacted with one or both of these officers on their way into the unit. Everyone knows this, and many people in the unit have experienced directly the evenhandedness with which Bell and Lanni treat K6G's residents. The effect is a collective sense that these two officers are on the side of the residents. If not everyone shares the general appreciation for Bell and Lanni felt in K6G, that a majority seems to do so appears enough to create a bond of trust and mutual respect and a channel of communication that enhances the quality of life for unit residents.

These structural features have laid the groundwork for a positive relationship. But the crucial element in forging this bond—the “x factor”—has been the fair, humane, and respectful way Officers Bell and Lanni have interacted with K6G residents over their years with the unit. During my time in the Jail, I spent many hours in the classification office with these two officers and watched them handle any number of problems and

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HIV counseling and preventive education to K6Gs and who distribute condoms in the dorms once a week.

conflicts. Bell and Lanni are no pushovers. They know when they are being played. But I was continually struck by the mixture of savvy, wisdom, and evenhandedness they brought to each incident.

For example, one day, the GED instructor came across the hall to the office and showed Bell and Lanni the sign-in sheet for the class that had just commenced, on which someone had signed in as “Killa Hoe” and also provided a fake inmate number.<sup>303</sup> Identifying the responsible party was easy enough; underneath “Killa Hoe,” in the same handwriting and written with the same pen, was a real name and valid inmate number. In itself, this infraction was hardly serious. But the imperative of keeping order in a setting in which one civilian teacher and one (unarmed) custody assistant were outnumbered by what may have been as many as twenty students meant that even this seemingly minor show of disrespect demanded some official response. Given the adversarial nature of the Jail culture,<sup>304</sup> it is very possible that had this incident occurred elsewhere in Men’s Central, custodial staff may have responded by storming into the classroom, pulling out the responsible party, and sending him to disciplinary segregation, thereby disrupting the class and imposing unnecessary stress and even trauma on all parties. But Bell and Lanni responded very differently. Instead, they called the culprit—call him Andres—into the office and began chatting with him in a perfectly friendly way. Having checked out his criminal record in the Jail’s computer system, Bell knew that Andres had a past conviction for forgery. In a conversational tone, Bell asked, “When you were a forger, did you ever do any handwriting analysis?” Andres answered in the negative, and the two then engaged in a brief chat about how Andres had accomplished his forgery. Then Bell said:

[W]hen I was first in the [Sheriff’s] [D]epartment, I did some handwriting analysis, and it was really interesting . . . . You wouldn’t believe what we learned . . . . [D]id you know that you can tell the neighborhood that a guy is from by the way he makes his letters? . . . [Y]ou can tell just about anything from somebody’s handwriting.

As he was saying all this, Bell was busy fixing himself a coffee. When he was done, he sat down in a chair across from Andres and the following exchange ensued:

Bell: Tell me something. Do you ever go by the name Killa Hoe?

Andres: [Pause.] Yeah, I guess I do.

Bell: That was pretty stupid, right?

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<sup>303</sup> The following account of this incident is drawn from Field Notes, July 6, 2007, at E1–2.

<sup>304</sup> See ACLU, *supra* note 4, at 1 (“To be an inmate in the Los Angeles County Jails is to fear deputy attacks.”).

Andres: Yeah, I guess.

Bell: Well, just don't do it again, okay?

With that, Bell sent him back to the classroom. Afterwards, Bell explained to me that Andres was a good student and he did not want to kick him out of the class or discipline him for something so minor. If he had not been such a good student or had been known as a troublemaker, Bell may not have given him the same break, but may instead have sent him back to the dorms and perhaps denied him access to the classroom for a time.<sup>305</sup>

Another day, a unit resident—call him Ben—came upstairs to the office<sup>306</sup> and told Bell and Lanni that someone in his dorm had threatened to punch him and knock out his teeth. As a result, Ben reported, he was afraid to remain downstairs.<sup>307</sup> The person he named as having issued the threat—call him Charles—was someone the two officers had known for years and viewed as a good and truthful person who did not generally cause problems or threaten others. Bell sent a pass for Charles, and when he got upstairs, Lanni questioned the pair to get each side of the story. What emerged was that Ben had been sitting on Charles's bunk giving a third person—call him Diego—a foot massage. When Ben was done, Diego reached into the bag holding Charles's belongings, fished out a packet of dried soup, and gave it to Ben.<sup>308</sup> Charles, seeing this, asked Ben to return his property. Ben refused and, according to Charles, acted like Charles was in the wrong. In response, Charles threatened Ben. What emerged, in other words, was that Diego had given Ben something that was not his to give, and Ben, on learning this, did not want to return his prize to its rightful owner. Charles issued threats in reply, and Ben responded by coming upstairs to complain

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<sup>305</sup> Notice that to make this judgment, Bell had to have a sense of Andres's character. This individualized knowledge of the people in the unit is a key component of these officers' ability to deal wisely with the issues that arise.

<sup>306</sup> Ordinarily, movement outside the dorms requires a pass issued by an officer, which prevents detainees from simply leaving the dorms when they choose. But there is a regular schedule of classes for K6Gs, which are held in a room right across a narrow hallway from the classification office. People wishing to attend class do not need a pass; they simply line up when called and are escorted upstairs. Residents who want to speak to Bell and Lanni often tag along in this way in order to get upstairs. As a result, at intervals throughout the day, unit residents appear at the door wanting to put a question or present an issue to the two officers.

<sup>307</sup> The following account of this incident is drawn from Field Notes, July 9, 2007, at A12–13.

<sup>308</sup> The generally poor quality of the food that detainees receive at mealtimes means that dried soups are a particularly popular canteen item and are often used as currency. *See supra* notes 56–57. For example, several of my interviewees reported that the condoms distributed weekly in the dorms by the Center for Health Justice are often traded for soups. The going rate appeared to vary between one and two soups per condom.

to Bell and Lanni.<sup>309</sup> During the discussion with Lanni, Charles made clear that the threat was an empty one, and that, as he explained, he had never laid his hands on anyone and would never do so. In the end, Bell and Lanni told Ben to return Charles's soup and sent them both back to the dorms.<sup>310</sup>

This incident, like the Killa Hoe example, illustrates several aspects of the managerial style of these two officers. First, they do not treat every incident involving detainee misbehavior as demanding a forceful response. Certainly, when the situation demands it, they will use force.<sup>311</sup> But whenever possible, they resolve issues through discussion and conversation.

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<sup>309</sup> See *supra* notes 231–233 (explaining that, unlike GP, where the strong premium on seeming stoic means that few if any complaints regarding the behavior of fellow detainees are lodged with officials, people in K6G do not hesitate to report others' perceived bad behavior).

<sup>310</sup> Those familiar with the culture of prisons in general may view this as a disastrous response, and were these detainees housed in GP, it may well have been. In a culture governed by the hypermasculinity imperative, there is an enormous premium placed on not being "disrespected." This is because any show of disrespect that is not answered with force can make a person look weak and tempt others to test him with ever more extreme shows of disrespect, each of which would have to be answered accordingly if he wished to avoid being considered a "punk." See *supra* notes 194–197. Thus, any show of disrespect, however minor, is treated very seriously and will frequently be met with violence. To outsiders, this may seem extreme, but to the person on the receiving end of the disrespect, it is necessary, since any other response might expose him to serious victimization.

Were an analogous incident between Ben, Charles, and Diego to have taken place in GP, Charles would have had to respond to Ben's refusal to return the property with a credible threat of violence or risk being publicly exposed as a "punk." Had Ben persisted in his refusal, Charles would have had to follow through on that threat. For his part, Ben would have had to stand his ground and be ready to fight rather than return the property even if he knew himself to be in the wrong. To complicate matters further, the only possible scenario on which the same facts—that is, involving the foot massage—could have occurred in GP would have been if Ben had been Diego's "punk" (i.e., the subordinate party in a protective pairing with Diego as the stronger party protecting him from assault by others). And in such a case, it would have been Diego, as Ben's protector, who would have had to answer, either with violence or the credible threat of it, Charles's demand that his property be returned. But either way, the equities that may seem to lie as to the proper disposition of Charles's property (i.e., that wrongfully appropriated property should be returned to its rightful owner, perhaps with an apology) would be irrelevant to how the parties would respond to the incident—or how anyone witnessing it would assess the situation.

In K6G, however, there is no hypermasculinity imperative. And although this particular incident made its way to Bell and Lanni, many conflicts of this sort are daily resolved among the unit residents themselves, often with the involvement of the house mouse (the elected leader of the dorm) or one of the other authority figures in the unit. In K6G, the equities govern in such cases. If Bell and Lanni hadn't told Ben to return the soup, others in the dorm would have done so.

<sup>311</sup> Although I should say that the most I ever saw from these two officers was some yelling, the physical separation of people fighting, and the forceful removal of a K6G resident from the classroom.

Second, as this approach implies, Bell and Lanni deal respectfully and humanely with everyone with whom they come into contact, detainees included. One might be tempted to dismiss the misappropriation of one packet of dried soup as minor, and likewise dismiss Charles's explanation as insufficient to justify issuing a threat of physical violence, even one he claimed to have no intention of carrying out. But these two officers understood the significance of such an item to people in the dorms, and acknowledged as legitimate Charles's feeling of being wronged. Third and finally, Bell and Lanni make an effort to know personally the people who come through the unit—an effort that allows them to form judgments that, being more individualized, have a greater chance of being fair and thus respected by those involved.

One final incident illustrates the respectful approach these officers take towards people in the unit. One Friday afternoon, one of the residents—call him Ezra—came to the office and asked to be moved to protective custody. When Bell asked why, Ezra showed his wristband and said, “This thing is causing me a lot of trouble.”<sup>312</sup> According to his wristband, Ezra was a “288,” which meant that he was in on charges of child molestation.<sup>313</sup> This category of inmate is known to be at great risk of violent assault in GP and as a result is typically held in protective custody. For identification purposes within the institution, a “Y” is placed on the wristbands people with 288s receive on admission to the Jail. Because the other detainees know full well what a Y means, people in the Jail on a 288 are never housed in general population.

K6Gs in the Jail on 288s are treated differently. The “special handle” of K6G overrides a Y, which means that K6Gs charged with 288s are housed in the K6G dorms with everyone else. This practice is followed, it was explained to me, because in K6G, people are generally left alone to do their time in peace, and this includes 288s. For some reason, Ezra was being hassled in the K6G dorm, treatment he attributed to the Y on his wristband. He was especially unhappy about this because, he insisted, although he had once been in jail on a 288, his current charge was something else altogether.

After hearing him out, Bell and Lanni looked up Ezra in the system and learned that what he said was true; he had once been in Jail on a 288, but this time he was not. Due to overcrowding, demand for single-person protective custody cells always outstrips supply. The same is true of the few cells on the administrative segregation row assigned to K6G. Bell was

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<sup>312</sup> The following account is drawn from Field Notes, July 6, 2007.

<sup>313</sup> The term “288” refers to the provision of the California Penal Code under which the crime appears. See CAL. PENAL CODE § 288 (West 2008) (lewd acts with a minor).

therefore not willing to move Ezra to protective custody, but promised him a new wristband. Ezra met this commitment with palpable relief, which suggested that, although in GP a new wristband would not be enough to protect a suspected 288 from abuse, Ezra himself appeared to regard the change as sufficient to keep him safe in K6G.

To some, this incident may seem so minor as to be scarcely worth repeating. Here is a detainee seemingly put at risk of harm through a clerical error made by Jail staff at intake, and two Jail employees offering to fix that error. Surely, one might reasonably think, this is the least that could be expected under the circumstances. But, as those familiar with the culture of carceral facilities will know, the “us” versus “them” mentality that often defines relations between COs and the people in custody means that even detainees in real danger can have trouble getting the attention of officers willing to hear them out or take even simple steps to help them. Even valid claims of official error may be dismissed outright by officers who share the view—common among prison staff—that all prisoners are liars.<sup>314</sup>

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<sup>314</sup> Such refusals to take prisoners’ claims seriously can often result in serious harms to prisoners. It is not uncommon for prison officials faced with Eighth Amendment claims of failure to protect to assert that they did not actually know of the risk, even where the prisoner directly reported the threat, because prisoners so often lie (and thus the officer receiving the report did not believe it). Were such assertions of disbelief credited by a jury, they would negate constitutional liability, since prison officials may not be held liable under the Eighth Amendment for the failure to protect prisoners even from serious harms when they can show that they did not actually know of the risk of harm. And if the officer genuinely disbelieved the report, he would not have had actual knowledge of the risk. *See* MODEL PENAL CODE § 2.02(7) (“When knowledge of the existence of a particular fact is an element of the offense, such knowledge is established if a person is aware of a high probability of its existence, unless he actually believes that it does not exist.”); *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). In cases where officers claim to have disbelieved prisoners’ assertions of danger, it is a jury question whether the officer’s claims of disbelief were credible under the circumstances. *See, e.g., Estate of Carter v. City of Detroit*, 408 F.3d 305, 310, 313 (6th Cir. 2005) (holding that where the defendant said he didn’t really believe the plaintiff was ill despite her symptoms, the jury “would be entitled to discount that explanation”); *Foelker v. Outagamie Cnty.*, 394 F.3d 510, 513–14 (7th Cir. 2005) (holding a jury could find that nurses who had observed the plaintiff’s condition and the fact that he had defecated in his cell could be found to have known that he was going through drug withdrawal and to have failed to respond appropriately, despite the claim of one defendant that he believed the plaintiff was “playing the system”); *Walker v. Benjamin*, 293 F.3d 1030, 1039–40 (7th Cir. 2002) (holding that claims that a doctor and nurse withheld prescribed pain medication because they thought the prisoner was malingering and trying to get high presented a jury question of deliberate indifference); *Hollenbaugh v. Maurer*, 397 F. Supp. 2d 894, 904 (N.D. Ohio 2005), *aff’d*, 221 F. App’x 409 (6th Cir. 2007) (holding defendants who said they believed the prisoner who died of a heart attack was drunk and faking illness could be held liable based on evidence that they heard his statements that he was not feeling well, had the flu or food poisoning, was having chest pains, and wanted to go to the hospital); *see also Greeno v. Daley*, 414 F.3d 645, 655 (7th Cir. 2005) (holding absence of “objective” evidence of pain and suffering did not excuse refusal to treat it, since “self-reporting is often



Unfortunately, in this culture, COs who treat detainees with basic decency are often the exception rather than the rule. This is especially so when the detainee in question is a 288, since in prison it is not uncommon for correctional officers to absorb the norms of the inmate culture,<sup>315</sup> including the collective reviling of anyone charged with a sex crime involving a child. Detainees in this category may thus find it even harder than other people to find an officer willing to hear them out. Against this cultural backdrop, it is unusual, to say the least, that Bell and Lanni did not hesitate to give Ezra a hearing, took the time to investigate his claims, and acknowledged the error.<sup>316</sup> Yet it is consistent with what I saw of these officers throughout my research. Not only do they treat detainees as fellow human beings, but their interactions are entirely nonjudgmental—which is itself noteworthy, given the frequent homophobia and transphobia that often inform interactions between K6Gs and other custody officers in the Jail.<sup>317</sup>

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the only indicator a doctor has of a patient's condition"). I owe these citations to John Boston.

<sup>315</sup> See, e.g., Ian Lovett, *California: Six Deputies Face Firing for Fight*, N.Y. TIMES, Mar. 24, 2011, at A20 (reporting that deputies "that used a ganglike hand gesture to signal that they worked on the third floor at the [L.A. County] Men's Central Jail" were fired after retaliating against other deputies who had "heckled [them] about slow work in moving inmates" by attacking the hecklers in the parking lot).

<sup>316</sup> In this case, it must be acknowledged, the fix was not as quick as might have been wished. Ezra had reached Bell and Lanni just as they were leaving for the weekend, and rather than getting the new wristband right then, they told Ezra they would take care of it first thing Monday morning. This delay surprised me. When Ezra first explained his problem, he had said things like "I'm really going to hurt someone if you don't move me. I'm at the end of my rope. I don't want a new charge [a statement implying that he might resort to physical violence, which could earn him a further criminal charge]. But I'm really going to hurt someone." Yet Bell and Lanni were sending him right back to the dorms for three more days. When I asked why, Bell said that he "knows this guy" and didn't believe he was going to hurt anyone." He also "knew [Ezra] could handle himself and retain control" for a few days. Although this confidence may seem insufficient given the high risk of harm people in the Jail on 288s routinely face in L.A. County, Bell and Lanni explained that in their experience, 288s are generally left alone in K6G. For this reason, they felt that if Ezra was having problems it was likely for some other reason, and that their confidence that he could handle himself led them to view the delay as not of great concern. Of course, even if true, this answer might well be regarded as insufficient. Surely, it might be thought, they should not have taken the chance. Was ensuring Ezra's safety not worth delaying the start of their weekend? These critiques are reasonable. In fairness, however, from what I observed, Bell and Lanni routinely worked past the end of their shift dealing with problems of various sorts. Every day, when they leave, there are innumerable things left undone, some of which are certain to concern detainee safety. As much as one might wish it were otherwise, perhaps the more appropriate objection would be to a system in which, when two officers reasonably leave at the end of their shift, people like Ezra believe—very likely rightly—that there is no one else left on duty who would help them. See *supra* note 312.

<sup>317</sup> See *supra* note 108; Dolovich, *supra* note 1, at 67–69 (describing the verbal harassment to which many custody officers in the Jail frequently subject K6G residents).

It was obvious from both my formal interviews and other more informal conversations with K6G residents that Bell and Lanni make a significant positive difference to the custodial experience of people in the unit. As one person explained:

Lanni and Bell, they're pretty good about keeping mess down. If they see a potential problem, they'll delete it. They'll figure some kind of way to get rid of it. And if they can't, they'll just K-10 them<sup>318</sup> . . . they're pretty good about that. They listen . . . They just cool. They don't look at you as gay, they look at you as human beings . . . Whatever situation come up, they don't just jump to one side, they'll hear both sides.<sup>319</sup>

Another subject put it more succinctly: "Thank God for Bell and Lanni."<sup>320</sup>

There is, of course, only so much Bell and Lanni can do. They are only two people. They only work the day shift. Their office is on a different floor than the K6G dorms. They spend most of their day in the office dealing with classification and programmatic issues and only occasionally go down to the dorms. But between the two of them, they have spent over forty years in K6G and, during that time, they have become—and become known as—advocates for K6G within the system. They regularly take issues and concerns regarding the unit to the Jail's command staff, and just as readily address problems with their peer deputies, including credible allegations of abusive behavior. This practice has not endeared them to their colleagues. That they do it anyway is a testament to their commitment to the well-being of the people in the unit. And this commitment is not lost on K6G's residents, who know that if a problem arises, Bell and Lanni will take it seriously and try to address it. These officers thus provide the people in K6G a level of official protection that both enhances residents' feelings of personal security and reduces their need for self-help.<sup>321</sup>

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<sup>318</sup> K10 is the Jail term for those detainees deemed too violent or dangerous to be housed safely with others. K10s are kept in single cells and are locked down most of the time. In those cases where someone in K6G seems sufficiently violent or dangerous, Bell and Lanni will send them to K10, where they will be kept under high-security conditions and never let out of their cells without an escort and shackles. In less extreme cases, Bell and Lanni will house people who cause problems in the dorms in K6G's own disciplinary wing.

<sup>319</sup> Int. 140, at B8.

<sup>320</sup> Int. 101, at A3.

<sup>321</sup> The question thus arises: What will happen to K6G when Bell and Lanni retire, which they are both scheduled to do in the fall of 2012? In the short term, any risk to K6G from their retirement may be alleviated by plans currently in the works to rehire them both as contractors and keep them in the unit longer. As a longer-term measure, Bell and Lanni have been training a number of officers whom they hope will serve as their replacements. The hope is that the attitude Bell and Lanni bring to the K6G enterprise will have been sufficiently modeled for their replacements that those officers will adopt it themselves when they assume full responsibility for the unit. Sheriff Baca has also come to recognize the

### 3. Community Creation

The L.A. County Jail is enormous, housing as many as 19,000 people at any one time,<sup>322</sup> the vast majority of them men.<sup>323</sup> Male detainees who are classified to GP may be sent to any housing unit corresponding to their security level (i.e., low, medium, or high) at any of seven facilities.<sup>324</sup> The sheer size of the system means that most people newly arrived in their assigned housing units will know few if any individuals there. They will, in other words, be locked up night and day in close quarters for extended periods with strangers. This experience can be a scary one, especially given the (deserved) reputation of the Jail for volatility and violence.<sup>325</sup> In these circumstances, convincing hypermasculine performance is an effective means of self-protection, as is gang affiliation.<sup>326</sup>

By contrast, people classified to K6G have no need for these self-protective measures to feel immediately safe on arrival in the dorms. K6G is small, with an average of 350 to 400 people in three or four dorms<sup>327</sup> at any given time.<sup>328</sup> Once classified to the unit, K6Gs are automatically returned to it on subsequent stints in the Jail. Thus, unlike GPs, who upon admission to the Jail could be sent anywhere in the system, K6Gs who land

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value of what Bell and Lanni bring to the Jail and has begun deploying them to train incoming deputies in more respectful and humane custodial attitudes. One hopes this deployment will continue and will have a positive effect not only on K6G's new classification officers, but on officers throughout the Jail.

<sup>322</sup> See *supra* note 1.

<sup>323</sup> As of March 2010, there were 1,900 women in the Jail, housed in the Central Regional Detention Facility (CRDF). See Dolovich, *supra* note 1, at 68 n.318.

<sup>324</sup> The Jail system is made up of eight different facilities. One of these, CRDF, is designated exclusively for women. The other seven house men.

<sup>325</sup> See HARTMAN, *supra* note 30, at 9 ("Within the California penal system, Los Angeles County Jail is held in high esteem for its capacity to induce terror."); Notes from Juan Haines, San Quentin State Prison, to author (Jan. 12, 2012) ("If you can make it through L.A. County, you can make it anywhere.").

<sup>326</sup> Of course, as Craig Haney aptly notes, participation in this social system can come at a serious cost—not only possible injury from fighting for the gang, but also additional prison time should violence behind bars at the behest of the gang's shot callers lead to further criminal charges. As he puts it, "the strong undercurrent of fear and reminders of one's own vulnerability [that] abound" in men's prisons and jails create "a high degree of urgency that induces so many inmates to join [the gangs]" and "pressures strong enough to convince or compel young men to bargain away years of their future freedom in exchange for the guarantee of momentary safety." Haney, *supra* note 14, at 136.

<sup>327</sup> During the summer of 2007 when I conducted my research, K6G occupied only three dorms.

<sup>328</sup> There is also a pod in Twin Towers reserved for those K6Gs found to have serious mental health issues, and a row of single cells elsewhere in the Jail for K6Gs who commit serious disciplinary infractions.

in the Jail know exactly where they will end up. There are always some first-timers. But K6G's extremely high recidivism rate means that most of the people admitted to K6G will have been there before, likely more than once.<sup>329</sup> At the same time, as with the Jail in general, there is relatively high turnover.<sup>330</sup> The combination of these several factors—high recidivism rate, high turnover, and automatic reassignment to K6G on return bids in the Jail—means that when K6Gs come into the Jail, not only are they not frightened or anxious as to what awaits them (since they know exactly where they will end up), but chances are they will be met by many familiar and even friendly faces when they get to the dorms. As a consequence, K6G has, almost by accident, become a comfortable and even welcoming community for many of its residents.

Prior to the start of my research, both observation and casual conversations with residents suggested this community aspect of the unit. I therefore decided to probe the issue in my interviews. Two questions sought to determine the extent of the web of personal acquaintance that binds people in the unit. The first asked: *When you got to K6G [for the first time], was there anyone you already knew?*<sup>331</sup> Of the twenty-four subjects to respond to this question, fifteen answered in the affirmative.<sup>332</sup> The second question was directed at those who had been in K6G before, and asked: *Do you hang out with your fellow K6Gs on the outside?* Of the twenty-four subjects to answer this question, thirteen answered in the affirmative.<sup>333</sup>

A further question asked interviewees to characterize their experience of coming back to K6G on a return stint. Specifically, the inquiry was framed as follows: *Some people who have been in K6G more than once say that coming back to K6G is like coming back to a summer camp or a clubhouse, and others say it is just like any other jail. What do you*

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<sup>329</sup> L.A. County has an overall annual recidivism rate (defined as anyone who is readmitted to the Jail within three years of release) of somewhere around 65%. But Bell and Lanni report that in K6G, the number is even higher, with a lifetime recidivism rate of 90%–95%. For speculation as to the reasons for these elevated rates, see Dolovich, *supra* note 1, at 30 n.166.

<sup>330</sup> See Harawa et al., *supra* note 218, at 1073 (explaining that “[t]he average length of Jail stay is 42–45 days, but ranges widely”).

<sup>331</sup> See Dolovich, *supra* note 1, at 102 q.49.

<sup>332</sup> A follow-up question asked: *If yes, how many people did you already know?* *Id.* at 102 q.50. Respondents offered a number between one and ten, with most naming a number less than five.

<sup>333</sup> “[M]ost of us are with our friends up here anyway. . . . Like, I know about four dozen people in these [K6G] tanks. They’ve all been to my house, we’ve had dinner with each other.” Int. 75, at A15; see also Int. 50, at F10 (“A lot of these people seem to know each other on the street . . . . And they’re like, ‘Oh, here’s so-and-so.’”).

*think?*<sup>334</sup> In response, a small minority took the view that “jail is jail.” As one person put it, “it’s just coming to jail. I know half these people [but] I don’t want to see them.”<sup>335</sup> But the majority of respondents provided answers suggesting a very different picture—and keep in mind that what is being described here is a return to incarceration.

- A lot of times when a person comes in, they’re off the streets . . . . Everybody says “new fish.” Zoom, everybody is at the front door, who is it, who is it? Is it somebody I know? And then when they walk in and some of them, they’re all getting hugs like it’s a big old family reunion.<sup>336</sup>
- [S]ome people come back and they feel like it’s home, I mean . . . [i]t’s not like any other jail. Why? Because any other jail they don’t have [K6Gs]. [In other jails,] [t]hey do put us aside, you know what I mean, sometimes. Sometimes they don’t. But in here, you come back to people that you know out there in the streets, and it’s like coming back to your own people, to your own family.<sup>337</sup>
- Some come in there and it’s like Christmas to them . . . . I’m not from here, and I’ve noticed a lot of them come in here, they all know each other. They know each other from being incarcerated so many times, and from going into [K6G]. So, it’s like, hey, they come in and they all cry because they haven’t seen each other in a long time, or they cry when they go home.<sup>338</sup>
- They say it’s a big slumber party. Like, some people will start crying when it’s time to go.<sup>339</sup>

The sense of K6G as a secure and welcoming community for many unit residents came through in other ways in my interviews. One frequent theme was that of “family.” In many cases, the word was used to capture a general feeling of fellowship. As one person put it, “we try to be there . . . for each other . . . [N]o matter if we hate each other in the street,<sup>340</sup> but, in

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<sup>334</sup> See Dolovich, *supra* note 1, at 102 q.45.

<sup>335</sup> Int. 131, at G1. Even this response, it bears noting, attests to the web of personal acquaintance that connects the people in K6G. This subject may not have liked the people he found waiting for him in K6G when he arrived, but he *knew* them. And however unhappy he might have been to see them, because he knew them, he was less likely to fear what he would find waiting for him than he would have had he been bound for GP.

<sup>336</sup> Int. 123, at F2.

<sup>337</sup> Int. 92, at B9.

<sup>338</sup> Int. 93, at D6.

<sup>339</sup> Int. 49, at E6. It is true that often, when people leave K6G, they are heading not to freedom but to state prison, frequently with lengthy prison terms. Still, I have witnessed some of these partings, and the emotion at leaving friends and loved ones is palpable.

<sup>340</sup> There is a notable parallel here with the gang politics that govern in GP. In the streets, it is not unusual for two sets (i.e., local chapters) of the same gang to be at war with one another or for gangs of the same race to be sworn enemies. Perhaps the most widely known example of this phenomenon is the Crips and the Bloods, two African-American street gangs. However, the gang code at work in both the Jail and the California prison

here, it's just one big family.”<sup>341</sup> Over the course of my research, however, it became clear that the word was also being used to describe actual groupings of residents organized into specific familial relationships.<sup>342</sup> These groupings, apparently forged over years of mutual engagement in custody, and even in some cases on the streets, could be quite extensive, with mothers and fathers, daughters and sons, aunts and uncles, nieces, nephews, and cousins. As some of my subjects explained:

- So, sometimes we have a mother and a father figure. And then you have sisters and brothers. Most of my sisters that I call my sisters or my brothers, we are friends on the street.<sup>343</sup>
- [She's] my gay jailhouse niece. So, the respect is there. I have a lot of . . . sisters, nephews . . . I have three gay kids that I call my kids. . . . And they're very respectful where I am concerned . . . . [W]hen I come to jail, no matter which one of the three dorms I go into, it's at least five or more in there that calls me Auntie.<sup>344</sup>

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system more broadly requires that any street enmities be put on hold while people are in custody. This means that two people who on the outside may have readily killed one another will fight on the same side in detention. All blacks, whatever their street gang affiliation, are just Blacks in prison. All native-born Latinos in the Jail are Southsiders, whatever their street gang affiliations. See Skarbek, *supra* note 119, at 704 (explaining that there are “approximately 21,000 Sureño gang members composing 400 different gangs in Los Angeles County”). This abandonment of outside enmities in favor of mutual allegiance while in custody appears from the remarks of this interviewee to have been adapted for life in K6G, to allow mutual support even among people who may dislike one another on the outside.

<sup>341</sup> Int. 92, at B6; see also Int. 111, at C11 (“[I]t’s just like one big happy family, except . . . [the transgender prisoners] clash a little bit . . . . But other than that, I think that they’re just like one big happy family.”); Int 102, at E4 (“[E]veryone gets along real good, cooking and throwing spreads [buffets of pooled food bought from the canteen] together. It’s like being on the streets with a family.”).

<sup>342</sup> These familial arrangements, which Joycelyn Pollock calls “pseudofamilies,” are reported to be a staple phenomenon in women’s prisons. JOYCELYN M. POLLOCK, *WOMEN, PRISON, & CRIME* 138 (2d ed. 2002). As Pollock explains, in women’s prisons, these relationships may or may not involve sex. “Most of the relationships are familial, including parent–child, sibling–sibling, and even extended family relationships, such as grandparents, aunts, and uncles. Each relationship is a reflection of the stereotypical one in society. ‘Fathers’ are authoritarian and guiding; ‘mothers’ are nurturing and comforting. Siblings fight; parents control.” *Id.*; see also *id.* at 129 (“Instead of grouping in pseudopolitical organizations such as gangs, clubs, and associations, women are more likely to group in familial units, cliques, or dyads. Their allegiances are emotional and personal; their loyalty is to a few rather than to the many.”).

<sup>343</sup> Int. 48, at F9.

<sup>344</sup> Int. 53, at B13.

- [I]n a dorm you have people that you call your family . . . we have pow-wows. We cook together. We eat. You know, we all go to store.<sup>345</sup> When you go to store you get food and bag of chips and soups and cookies and pastries and stuff like that. So, we all sit, eat, and we just talk. Fall over the bed and lay on the beds and just talk. And it reminds me of my family, because that's how we do.<sup>346</sup>

By no means does everyone participate in these family groupings.<sup>347</sup> Still, their presence and overtly emotive framework signal to all present that, by contrast with GP, mutual support in K6G is not contingent on hypermasculine posturing.

The picture just painted of people in custody engaging in public displays of emotion (as at the arrival of “new fish”), mutual concern, and feelings of family or fellowship (expressed, for example, between members of “jailhouse families”) indicates that we are very far from the enforced stoicism and calm that reigns in the Jail’s GP. With its echoes of life in women’s prisons,<sup>348</sup> this account may appear to have nothing to do with the culture of men’s prisons, and thus nothing to teach about how to make prisons in general more humane. But this conclusion would be too hasty. The key distinction here is between, on the one hand, conditions that allow people in custody to feel safe and secure enough to relax and be themselves, and, on the other hand, the particular way of life that emerges once those feelings of safety take hold. It does seem highly unlikely that majority-heterosexual units would reproduce to any significant degree K6G’s particular cultural norms and modes of interaction.<sup>349</sup> The aim, however, is not to make all housing units look just like K6G. It is instead to create conditions in which people feel independently safe enough to be who they are, and to pursue whatever interests and projects are most important to them, without being forced to participate in pathological and destructive behaviors or feeling compelled to force others to do so. In the end, what is most important about K6G is not the specific ways of life that have emerged in the unit, but the model K6G offers of a comparatively safe carceral space where people feel able to do their time in relative peace.

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<sup>345</sup> In Jail parlance, the term “store” refers both to the commissary and the items bought from the commissary. Thus people talk both about “store night,” which is when their commissary items are delivered, and the “store” they have left over the next day.

<sup>346</sup> Int. 41, at E9.

<sup>347</sup> Indeed, at least one interview subject expressed an aversion to the people he sees when he comes back to Jail. Int. 131, at G1. But a fair number do appear to affiliate with others in this way. One of my subjects estimated that 30% of dorm residents are in “families.” See Int. 41, at E11.

<sup>348</sup> See *supra* note 342.

<sup>349</sup> For further discussion of this issue, see *infra* Part III.C.4.

The key point is this: thanks to a variety of structural features that emerged from the implementation of the consent decree—the small size of the unit, the high rates of turnover and recidivism, the automatic reassignment to K6G for any new arrivals previously classified to the unit—K6G has evolved into a place to which many people do not feel afraid to go. This is at least in part because, when they arrive, they expect to be greeted, not by a room full of hostile and threatening strangers, but by people they recognize and maybe even know and like.<sup>350</sup> In the absence of any such fear, the gang politics and hypermasculine posturing that define life in the rest of the Jail seem unnecessary and even absurd.

To be sure, the common identity shared by unit residents, who are all either gay or trans (or, if they are not, are passing as such), helps to create a default sense of community and mutual sympathy in K6G,<sup>351</sup> even among those without prior personal knowledge of, or connection to, others in the dorms.<sup>352</sup> But without the various structures just noted, which have made it possible for the same people to come together repeatedly in the same living quarters, that mutual affinity would have had no opportunity to grow into the sense of community that currently exists. And of course, without the confidence felt by K6Gs that anyone in the unit who behaves in a predatory or abusive manner will be immediately removed, the resulting fear and trauma likely would have impeded the emergence of any community feeling, regardless of how much unit residents might have had in common.

At the same time, having been allowed to take root, the feeling of community now found in K6G appears to have had a positive unexpected effect: helping to reinforce the unit's collective sense of security. How might this welcome development have come about? The structural features canvassed here, combined with the sense of shared identity, have further fostered the interpersonal connections that counter the alienation people often feel in custody. Because people in K6G do not feel it necessary to put

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<sup>350</sup> Of course, this feeling of security is only possible because K6Gs know that anyone in the unit who behaved in a predatory fashion would be immediately removed, and thus that the people who remain will pose no threat.

<sup>351</sup> See, e.g., Int. 41, at F2 (“[K6G] is like another community.”). In Part III.C, I consider in more depth the issue of sexual identity and the implications of this factor for the prospects of replicating K6G's comparative success beyond its present narrow context. And as will be seen, even those benefits that appear to stem exclusively from a shared sexual identity among unit residents turn out to offer generalizable lessons—in this case, the value of identifying affinity groups and fostering common projects that might connect even heterosexual-identified men in ways that displace the current modes of association.

<sup>352</sup> To the extent that this sense of shared identity has reinforced the level of comfort K6Gs feel with one another, it suggests the value of identifying a range of affinity groups that may, if housed together, enjoy the same positive benefits. For further discussion of this strategy, see *infra* Part V.B.



on a front of toughness or invulnerability, they are able to form emotional attachments and even families. They look out for one another, share their belongings, and even nurse those who are sick.<sup>353</sup> In these and other ways,<sup>354</sup> K6G residents are able “to feel connected and bonded, to belong,”<sup>355</sup> without paying the high price of gang membership. And as these healthy, prosocial norms have arisen, they seem to have crowded out the twisted notion, a constant undercurrent in GP, that displays of honest mutual engagement should be met with victimization and abuse.

Again, these positive behavioral norms only emerged in the first place because people in K6G felt safe enough to decide for themselves how they wanted to behave in custody. But having emerged, these norms have in turn fostered and reinforced positive humanizing dynamics in the unit. This “virtuous circle” suggests a remarkable possibility for a custodial setting: just as a carceral environment can at its worst generate a vicious circle, on which fear begets the impulse to violence, which begets more fear and thus more violence, so too may humane treatment—keeping people safe, making them feel respected and affirmed as human beings, enabling them to remain connected to their core sense of self and build positive connections with others—beget mutually respectful and prosocial behavior. This prosocial behavior can in turn reinforce collective feelings of relative security and ease, thus enhancing the healthy and prosocial aspects of the unit. In other words, the example of K6G suggests that features of life that emerge first as the positive effects of humane and respectful treatment may themselves become conduits through which an environment’s humane aspects develop and deepen.<sup>356</sup>

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<sup>353</sup> One of my interview subjects recalled an experience when he was sick in the dorms. As he recounted:

Everybody was concerned enough—[t]hey brought me soup, they helped me get around. When I shit my bed, they changed it, they got me clean again. They sat with me, they talked with me, all that, because I couldn’t get down to the doctor and I was hacking up my lungs. Um, they got me antibiotics, they got me everything that they could until I was better. And most of them I didn’t even know. I mean, acquaintance, or I met them, hi, bye, but most of them [I] didn’t even know.

Int. 75, at A16; *see also* Int. 57, at A5 (“We look out after each other.”); Int. 41, at F2 (“It’s like another community. Like, that’s what K[6G] is.”); Int. 92, at B6 (“Say you have a headache, say you feel bad or you feel sad, they’ll come in and comfort you and try to give you some sort of relief. We try to be there for one [another].”).

<sup>354</sup> *See infra* Part III.C.3.

<sup>355</sup> Haney, *supra* note 14, at 136.

<sup>356</sup> It is all the more remarkable that this chain reaction seems to have occurred in a unit that in many respects is far from ideal: a decaying and decrepit physical plant, crowded and unhygienic living conditions, a not inconsiderable number of one-on-one physical altercations, etc. *See supra* Part II.B. That K6G, despite its relative humanity and safety as compared with GP, is still a highly compromised living environment indicates that L.A.

#### 4. *A Possible Fourth Factor: External Attention*

There is one further factor suggested by my research that may also contribute to K6G's relatively relaxed atmosphere: the increased security K6Gs feel knowing that outsiders, including community activists, advocacy organizations (LGBT and otherwise), researchers, and even the media<sup>357</sup> are paying attention to what happens in the unit. Over the course of my research in the unit, for example, Bell and Lanni conducted at least two tours for advocacy organizations, including a Bay Area transgender rights group. During these tours, visitors were brought to the officers' booth overlooking the dorms and were thus in full view of the residents. This experience was nothing new for K6Gs, who are used to being observed from that vantage point by interested outside parties. The exposure also appeared to generate a feeling, even among those in the unit who resent the invasion of privacy, that free-world people are invested in the well-being of the people in K6G.

The outside attention K6G receives has meant that unit residents enjoy a range of specially tailored services not available to people in the Jail's GP, which constitutes a benefit in itself.<sup>358</sup> Perhaps even more significant, the combination of the original consent decree, still in force, and the attention K6G receives from outside organizations as well as the media<sup>359</sup> has seemed to ensure that the Jail's command staff remains committed to

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County still has much more to do to ensure genuinely humane conditions even in K6G. It also reveals that, although doing away with the need for hypermasculine posturing and gang involvement is necessary for a humane environment, reforms achieving this crucial goal are not sufficient. Those interested in what problems can remain even after these toxic features of life in GP are eliminated might learn much from studying the pathologies that continue to exist in K6G despite its relative humanity. For a catalogue of such problems, see *supra* Part II.B.

<sup>357</sup> See, e.g., James Ricci, *Gay Jail Inmates Get Chance to Learn*, L.A. TIMES, Apr. 7, 2004, at B1 (reporting on a graduation ceremony that took place in K6G and the success of K6G's educational and rehabilitative programming); Beth Shuster, *Sheriff Approves Handout of Condoms to Gay Inmates*, L.A. TIMES, Nov. 30, 2001, at A38 (describing launch of K6G's condom-distribution program); Terry LeGrand, *The Alternative: Behind Gay Bars* (L.A. Talk Radio broadcast Aug. 1, 2010) (talk radio program featuring Senior Deputy Randy Bell and Deputy Bart Lanni); Lisa Baertlein, *For L.A. AIDS Group Prison Health is Public Health*, REUTERS (April 23, 2007, 5:11 PM), <http://www.reuters.com/article/2007/04/23/us-prison-hiv-idUSN4M19957720070423> (describing K6G's condom distribution program, administered by the Center for Health Justice).

<sup>358</sup> For example, staff from the Center for Health Justice distribute condoms in the dorms once a week and also provide regular HIV prevention education and one-on-one counseling. And the Tarzana Treatment Center, which offers transitional services to formerly incarcerated people with HIV, conducts regular counseling and planning sessions for people in the unit.

<sup>359</sup> See *supra* note 357.

K6G's success. As a result, when problems arise, some institutional attention and resources will be devoted to their resolution.<sup>360</sup>

At least some of K6G's residents appear to be aware of this outside interest and involvement. And to some degree, this awareness has seemed to foster a sense that people in the unit continue to matter and have not been abandoned by the outside world. As one of my interview subjects put it:

[Not that] we're so special, but it's a lot of attention has been drawn away from us in the world. You know what I'm saying? Outside world. So, *we come here to have people look at us like you guys are better than what you guys are doing on the streets*, then that's like something that is—I don't know, I can't even put it into words. It's like—It mean a lot to me. I don't know how every other K6G feel about it, but it means a lot to me.<sup>361</sup>

I am unable to say to what extent this factor contributes to the overall sense of security and well-being in the unit.<sup>362</sup> But it seems reasonable to think that such outside attention, to all appearances motivated by concern for the particular populations K6G serves, would only reinforce this sense.

Taken together, the several factors just canvassed point to a striking conclusion: getting between potential predators and their victims is only part of what will keep people in custody safe. Equally important is an institutional commitment to treating prisoners with respect, as people—

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<sup>360</sup> Likely as a consequence of this outside attention, Jail officials are also willing to consider requests arising from the particular needs of K6G's residents, which might otherwise be dismissed as inappropriate for a men's facility. For example, in the latter half of 2009, Lanni worked with Commander Robert Olmstead and Captain Buddy Goldman to get permission for trans women in K6G to have cosmetics in the dorms on the same terms as detainees in the women's facility. Lanni also worked with Dr. Keith Markley, supervising psychiatrist at Men's Central Mental Health Service, to ensure access to hormone therapy for a number of the trans women in the unit. I consider the alacrity with which Chief Alex Yim (then Acting Chief) agreed to grant me access to the Jail to conduct the research on which this Article is based as further evidence of the Jail's willingness to address the needs of K6G. Other prison researchers have written of the lengthy delays that can attend official consideration of requests for access to study prisoners, and the strong resistance to granting access those making these requests can encounter. See, e.g., Kathleen Fox, Katheryn Zambrana & Jodi Lane, *Getting In (and Staying In) When Everyone Else Wants Out: 10 Lessons Learned from Conducting Research with Inmates*, 22 J. CRIM. JUST. EDUC. 304 (2011); Chad R. Trulson, James W. Marquart & Janet L. Mullings, *Breaking In: Gaining Entry to Prisons and Other Hard-to-Access Criminal Justice Organizations*, 15 J. CRIM. JUST. EDUC. 451 (2004). By contrast, at our first meeting, Chief Yim readily agreed to provide whatever access, assistance, and other support I needed to carry out this project. Other researchers focusing on K6G have found Chief Yim similarly open. See, e.g., Harawa et al., *supra* note 218. It may be that Chief Yim's willingness stemmed in part from his sense that K6G is a relative success and thus something in the Jail's interests to publicize. But this interpretation does not explain why he afforded me access to all parts of the facility over the course of my research, not just to K6G.

<sup>361</sup> Int. 41, at D2 (emphasis added).

<sup>362</sup> This question seems ripe for further study.

seeing them, and thus making them feel, not like inmates but like individuals who “are better than what you guys are doing in the streets.”<sup>363</sup>

The explicit institutional acknowledgment that unit residents are particularly vulnerable because of their sexual orientation or gender identity in turn allows organizations outside the Jail to make connections with and offer aid to members of these populations, thereby affirming people in the unit as people who matter, regardless of their imprisonment. Bell and Lanni deal with K6G’s residents this same way, thereby creating bonds of trust and communication that in turn help to keep the unit safe. Indeed, the Jail’s efforts to identify gay men and trans women in order to comply with the consent decree have meant that the institution itself has had to engage with K6G’s residents first and foremost as people in need of protection. This enterprise has altered the dominant institutional framework for dealing with the people in K6G; they are seen as potentially vulnerable people and not merely as inmates. As a result, even those deputies inclined to be aggressive and hostile toward detainees in the Jail—and those who are deeply uncomfortable with the sexual identity of K6Gs—are obliged to make sure that unit residents are safe when they are out of their dorms. In this way, even otherwise hostile officers are enlisted in the project of attending to the basic human need for physical safety of members of this group.

It is impossible to know to what extent these aspects of the K6G experience explain the relatively humane character of the unit. But the foregoing account, together with a common sense understanding of what humane conditions must involve, should be sufficient to indicate that treating people with respect and affirming their status as more than just inmates is a necessary part of the story.

### 5. *Accidental Humanity?*

The above sections identify several factors that have come together to allow people in K6G to feel sufficiently safe and secure to forego the self-protective mechanisms of hypermasculine posturing and gang affiliation. The subtitle of this Article refers to “accidental humanity” because, as I have suggested, this confluence of features emerged not by design, but rather by a series of fortuities that together created the possibility of a more humane alternative to life in the Jail’s GP units.

For some, however, this characterization may seem inapt, at least to some extent. Certainly, it seems a happy accident that the two officers assigned to K6G turned out to be so compassionate, broad-minded, and committed to the safety and well-being of unit residents. Yes, these

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<sup>363</sup> See Int. 41, at D2; *supra* text accompanying note 361.

qualities were likely the same ones that led Bell and Lanni to be selected for this position and that led them to accept it—even knowing, as they surely must have, that taking on the assignment would set them apart from their peers and open them up to harassment by colleagues uncomfortable with the populations K6G serves. But the fact that these men worked in the Jail in the first place, the way they proved even more steely in their dedication to the project than could have ever been expected, the depth of their determination to make the carceral experience as safe and productive as possible for the people in the unit—all this could not have been anticipated. Considered in light of all the good Bell and Lanni have done over the past three decades and how badly the experiment could have gone in different hands, their longstanding presence in the classification office seems fortunate in the extreme.<sup>364</sup> And although it may seem obvious in retrospect that a sense of community and a web of personal connection would arise in a small unit housing people with high recidivism rates and a common identity and life experience, there is no reason to think this result was even contemplated at the time the unit was established, much less that it was a motivating aim of the program. In this way, too, these humanizing effects have been fortuitous—and the same might be said of any positive effects to have emerged from the attention the unit has received from interested outside parties.

However, as to the first factor—the institutional commitment to keeping the people in K6G separate and apart from GP—the notion of fortuity may be thought by some to be misplaced. The procedures that govern the housing and movement of people in K6G did not emerge by accident; to the contrary, they were established pursuant to a court order mandating their implementation. That Jail officials continue to follow the rules laid down in that judicial directive, it might be thought, is not a lucky break, but simply their ongoing legal obligation.

This perspective reflects an appealing faith in the power of the law to generate needed structural change. On this view, lawsuits are filed, liability is found, courts order institutional reforms, and those reforms ensue—end of story. But as Joel Handler observed more than thirty years ago, structural injunctions are not self-executing.<sup>365</sup> Institutional change does not come easily, especially to complex bureaucracies, and even more so where, as here, reform depends on “lower-level [behavioral] changes” that “supervisors [can] even experience great difficulty” in implementing.<sup>366</sup>

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<sup>364</sup> Int. 101, at A13 (“Thank God for Bell and Lanni.”).

<sup>365</sup> See JOEL F. HANDLER, *SOCIAL MOVEMENTS AND THE LEGAL SYSTEM* 24 (1978).

<sup>366</sup> *Id.*; see also Scott Cummings, *Litigation at Work: Defending Day Labor in Los Angeles*, 58 UCLA L. REV. 1617, 1622 (2011) (noting the “impediments to enforcement” of

This may be especially so in the carceral context. The Supreme Court's landmark 2011 decision in *Brown v. Plata*<sup>367</sup> came only after twenty years of litigation and more than seventy federal court orders mandating institutional reform failed to generate anything like constitutional conditions in the California prison system's medical and mental health delivery systems.<sup>368</sup>

That the procedures ensuring a boundary between K6G and GP have become such a seamless feature of life in the Jail is a tribute both to the commitment of the Jail's command staff to the safety of some of its most vulnerable prisoners, and to the ongoing attention the ACLU of Southern California continues to pay to conditions in the Jail. It does not take away from this accomplishment to suggest that it could well have been otherwise, that monitoring and compliance might have been less comprehensive and less lasting than has been the case. Quite the opposite: it suggests that both institutions—the Jail and the ACLU—deserve credit for their continued commitment to the terms of the order and to the K6G program in general.

Even if the Jail's compliance with the consent decree could not be fairly thought fortuitous, it would still be accurate to regard life in K6G as an instance of accidental humanity. K6G was originally conceived as a space where its target populations could be free from rape and other forms of sexual assault. No one could have predicted what actually emerged: a unit free not only from sexual violence but from the whole edifice of gang politics and hypermasculine performance that too often combine to make life in the Jail's GP a daily hell for so many people. The comparative humanity of K6G stems from this broader difference, which is the happy byproduct of a set of constitutive features that were as contingent as they are welcome.

### C. IDENTITY THEORIES: LOOKING TO SEXUAL DIFFERENCE

Thus far, the sexual identity<sup>369</sup> of K6G's residents has been kept as much as possible on the sidelines so that the outsized salience of this factor would not obscure the other consequential differences between the two models. It would be folly to suggest that K6G's unusual character has nothing to do with the sexual identity of unit residents. To the contrary, this

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court-driven institutional reform efforts, "including neglect and/or resistance by agencies charged with implementing a legal right [and] the lack of resources for effective implementation").

<sup>367</sup> 131 S. Ct. 1910, 1923 (2011) (upholding an order by a three-judge panel of the Ninth Circuit requiring the California prison system to reduce its prison population to 137.5% of capacity).

<sup>368</sup> *Id.* at 1930–31.

<sup>369</sup> *See supra* note 15.

factor appears to have shaped to a considerable degree the dominant behavioral norms in the unit.<sup>370</sup> But this, I have argued, is a second-order influence, informing the norms that have been able to emerge once people felt safe enough to relax and be themselves. What, however, of first-order influence? In what follows, I explore four possible ways that the sexual identity of K6G's residents might be thought to explain as a first-order matter the absence of gang politics and hypermasculine posturing in the unit: (1) that K6G's residents, gay men and trans women, are not capable of hypermasculinity performance; (2) that the people in K6G simply prefer the relatively safe and relaxed atmosphere of the unit and so choose not to play the game that defines life in the Jail's GP; (3) that, given the free access to willing sexual partners K6Gs enjoy, they do not need to victimize others or use force to mask their sexual desire for other men in order to fulfill their own sexual needs; and finally, turning the first and second suggestions around (4) that it is the *men in GP* who, because of their sexual orientation, can't or won't conform to the norms of life in K6G.

As will be seen, these claims rest to some extent on stereotypical characterizations, with the unfortunate effect of obscuring relevant commonalities among all people in custody, regardless of sexual orientation or gender identity. At the same time, as to each, more careful examination of the underlying premises turns out to deepen in significant ways our understanding of K6G's relatively safe and humane character. More significant still, pushing past the stereotypical thinking reveals how features that may seem exclusively derived from the sexual identity of K6G's residents can be made to yield insights with broader application. To some extent, K6G's unusual character *is* a first-order product of unit residents' sexual identity. But as I aim to show, even where the case for this view seems strongest, it is still possible to derive valuable generalizable lessons for making carceral conditions safer and more humane, not just for gay men and trans women, but for all people in custody.

### 1. *They Can't*

The question on the table is a simple one: how is it that K6G is free of gang control and any hypermasculinity imperative? One possible explanation is that K6G's residents, being gay or trans, are unable to perform a hypermasculine identity and thus to conform to the dictates of the gangs, which demand self-presentation as hard, tough, and potentially violent. There are obvious flaws in this explanation. For one thing, as Jeannie Suk rightly notes, heterosexuals have no monopoly on masculine

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<sup>370</sup> See *supra* Part II.B, Part III.B.3.

performance.<sup>371</sup> To the contrary, “the phenomenon of gay masculinity is well known.”<sup>372</sup> Even more to the point, every day in prisons and jails around the country, gay men housed in GP units successfully conform their behavior to the hypermasculinity imperative to the degree demanded by their respective institutional environments. Indeed, for gay men in some GP units, one effective way to protect themselves from being exposed as homosexuals and thus becoming “fair game” for predators<sup>373</sup> is to become predators themselves, dominating weaker prisoners to ward off any suggestions that they themselves are insufficiently masculine.<sup>374</sup> And even those gay men in GP who do not resort to victimizing others will be driven to perform a hypermasculine identity as best they can to protect themselves from exposure as gay. Certainly, being gay does not preclude gang membership, as was evident from the (temporarily inactive) gang members in K6G.<sup>375</sup> Indeed, more than once during my research, I was treated to a demonstration of just how easily some men—even those who, given the choice, would prefer to perform something of a stereotypical gay identity—can switch into hard-core gangster mode. In one such case, my informant explained that if he was sent to the Jail’s GP and forced to assume a gangster persona, it would be no different for him than life in the streets, since as a member of a local “set” of a well-known national gang, he perpetually performed this identity with his “homeboys” when he was free.<sup>376</sup> In this culture, everyone, regardless of sexual orientation, faces

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<sup>371</sup> See Jeannie Suk, *Redistributing Rape*, 48 AM. CRIM. L. REV. 111, 116 (2011).

<sup>372</sup> *Id.*

<sup>373</sup> As Stephen Donaldson explains:

There is no niche in the prisoner structure for a sexually reciprocal or masculine-identified gay man such as we see in our androphilic communities. In a rural jail or minimum-security prison, he may succeed in fending off [the pressure to take the passive sexual role], but in any other confinement environment, the entire institution would be against him and he would have to survive repeated combat.

Donaldson, *supra* note 225, at 120.

<sup>374</sup> Ironically, in such a case, this predatory inmate would be regarded as a “real man” and thus by definition not homosexual, while his victim, having been forced to submit, will be seen as emasculated and thus redefined as female “even where the victim’s clear sexual preference is for heterosexual activity.” HUMAN RIGHTS WATCH, *supra* note 87, at 70 (“[T]he crucial point is not that [the aggressor is] having sex with a man; instead it is that they are the aggressor, as opposed to the victim—the person doing the penetration, as opposed to the one being penetrated. Indeed, if they see anyone as gay, it is the victim.”).

<sup>375</sup> In my interviews, I asked two related questions: *Are there any gang members in K6G?* and *Are there any gang politics in K6G?* See Dolovich, *supra* note 1, at 106 qq.105–06. My subjects unanimously answered the former question in the affirmative and the latter in the negative.

<sup>376</sup> For this individual, K6G was the only environment in which he felt free to act consistently with his most authentic self. See Int. 71, at C6 (“If you’re a Southsider and



pressure to perform an exaggerated version of the hegemonic masculine ideal<sup>377</sup> to avoid the aspersions of weakness that can lead to victimization.

The success of many gay men at obscuring their sexual orientation with hypermasculine performance in GP is evident from the fallout from an event that occurred in the California prison system in the summer of 2007, when the leadership of the Southsiders put out a “green light” on all gay men in their ranks—meaning that any Southsider could attack gay members of their own gang with impunity and even earn “stripes” for doing so.<sup>378</sup> This move, apparently intended to purge the gang of potential “weak links” in anticipation of an all-out “war” with the Blacks, had the effect of driving many gay Southsiders—who for good reason wished to avoid requesting protective custody<sup>379</sup>—even more firmly into the closet. That in many cases it was not obvious which Southsiders were in fact gay indicates that being gay in GP does not necessarily preclude successful hypermasculine performance.

It is thus a mistake to imagine that only men who identify as heterosexual can achieve successful hypermasculine performance in prison. As for trans women, although those who present as women are unable to conceal their gender identity through hypermasculine posturing, one of my interview subjects made clear that at least some aspects of hypermasculinity are available to members of this group. Despite her overt presentation as female, this subject reported having relatively little trouble on the mainline during her four prison terms. She attributed this success to her well-known status as an ex-boxer and the extremely muscular physique she still possessed.<sup>380</sup>

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you’re gay, it’s really a hard thing. That’s why when I go [to prison], I act totally straight. I don’t act gay at all . . . I don’t act myself, I act . . . like I’m a heterosexual male.”). Jeannie Suk nicely captures this phenomenon when she observes that prisoners in this culture are “Butlerians,” after gender theorist Judith Butler, who “theoriz[es] gender as performative, constituted through repeated acts.” See Suk, *supra* note 371, at 112 n.16 (citing JUDITH BUTLER, *GENDER TROUBLE* (1990)).

<sup>377</sup> See Cooper, *supra* note 165, at 686 (defining “hegemonic masculinity”).

<sup>378</sup> In addition, this “green light” allowed members of other gangs to attack gay Southsiders without fear of retaliation by the gang.

<sup>379</sup> People who request protective custody publicly signal their inability to protect themselves on the mainline and thus their inherent weakness. For this reason, when a person has once requested protective custody, he cannot go back to the general population, since, being someone who will henceforth be perceived as weak, a return to GP would mean exposure to certain victimization. In many cases, a person’s decision to “go PC” will also follow him back into the streets, where he will be equally vulnerable to victimization on account of his perceived weakness.

<sup>380</sup> See Int. 53, at B9.

Still, it seems fair to say that, for a not-insignificant number of K6Gs, successful hypermasculine performance would be a hard thing to pull off. My ex-boxer notwithstanding, most trans women are unable to secure the status and respect—and thus the security—that accrues to men in GP who can effectively manifest a hypermasculine identity. This is why, as Human Rights Watch noted in its report on male rape in U.S. prisons, trans women in custody “nearly always have an inmate ‘husband,’ someone powerful enough in the inmate hierarchy to keep the other inmates away.”<sup>381</sup> Nor will all gay men be as adept at presenting a tough guy image as those of my subjects who were able to switch their self-presentation instantly from “gay boy” to “gangbanger.”<sup>382</sup>

The same, of course, is also true of GP, since any GP unit is also likely to have a mix of people, all of whom lie along a spectrum as to their capacity for hypermasculine performance, with some perfectly able, others wholly unable, and others landing somewhere in the middle. Given that gay men and trans women are known to be at heightened risk of victimization in custody, it does seem likely that K6G houses a higher proportion of people<sup>383</sup> who are less able to successfully perform a hypermasculine identity.<sup>384</sup> Yet if K6G contains a disproportionate number

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<sup>381</sup> HUMAN RIGHTS WATCH, *supra* note 87, at 57.

<sup>382</sup> Those able to exhibit this skill generally had a history of gang membership and immersion in the gang culture, whether in custody or on the streets or both. This is likely why first offenders and non-violent offenders tend to be at greater risk of victimization in custody, since they are unfamiliar with “the game” and less skilled at playing it. See Man & Cronan, *supra* note 29, at 169–71, 173–75. Imagining what life is like for those less able to pass as hard and tough in GP helps to reveal the particular kind of hell that the carceral experience promises the uninitiated—although, as Craig Haney makes clear in his powerful essay on the origins of the hypermasculinity imperative, life in this environment can also be hellish—albeit in different ways—even for those who are more adept at hypermasculine performance. See Haney, *supra* note 14, at 124–37.

<sup>383</sup> Again, for the reasons provided above, it is mistaken to imagine that no one in K6G is able to do so. To the contrary, as I have discussed elsewhere, the nature of the unit’s admissions criteria, which focus on sexual identity rather than one’s ability to handle oneself on the mainline, makes the program very likely to be overinclusive as to its protective purposes. See Dolovich, *supra* note 1, at 39.

<sup>384</sup> Moreover, given the stigma attached to being gay in prison and in the hypermasculine culture of the gangs in particular, it may be that the gang members one finds in K6G are less able to enforce the behavioral code of GP since they may have less “juice” within the gang structure as a whole and thus may be—or believed to be—weaker than their straight colleagues. This relative weakness, whether real or simply perceived, may thus undermine from the get-go any efforts by gang members in K6G to rule the dorms. On the other hand, even if there is something to this notion, given the gangs’ desire to enlarge their sphere of influence, they may yet be inclined to stand up for their colleagues in K6G, notwithstanding the averred homosexuality of the gang members in K6G. Were it indeed the case that gang members in K6G suffer the equivalent of being cut loose or diminished in status and support

of people likely to be victimized in GP, it also contains a sizable number of people who could—and have—successfully engaged in hypermasculine performance in GP. Those in this group know the game, can play the game, and have experienced firsthand the way that failing to do so in certain circumstances can put one at risk.

In short, what exists in K6G is best understood as a difference, not of kind, but of degree. The question is whether the presence of a relatively greater proportion of people who are less adept at hypermasculine performance explains K6G's relatively safe and humane character. Perhaps, for example, there is a tipping point in the collective capacity to perform hypermasculinity, beyond which a given custodial environment is more likely to organize itself along the lines currently found in the Jail's GP. Or perhaps a sufficiently sizable minority of non-participants is enough to shift the cultural norms in a healthier, more prosocial direction.

These possibilities certainly merit further consideration. It does, however, seem hard to credit the notion that, absent other contributing factors, the people in K6G—many of them repeat players with a long history of confinement in the Jail, in state prison, or both—would put aside all they know about how to survive in custody just because others in the unit are weaker than they are. This is especially implausible since in the usual case, the presence of weaker people in one's housing unit is generally not a reason to leave off hypermasculine posturing, but a welcome relief, since it means that one may not have to work as hard to avoid becoming a target. Even more to the point, to so conclude would require that we dismiss as irrelevant the many external factors that have together helped people in K6G feel independently safe and thus able to forgo hypermasculine performance and gang involvement.

To put the point another way, the puzzle K6G presents is only secondarily why those people who would have been likely targets in GP feel so relatively safe in K6G. The primary question is why people otherwise capable of passing in GP's hypermasculine environment do not feel compelled to behave in an aggressive or predatory manner toward weaker people in the K6G dorms. And to resolve this puzzle, it cannot be enough simply to point to the relative number of weaker people, since, again, under other circumstances, this ratio would only make it easier for people otherwise on the borderline to escape victimization. Other factors must also be at work, factors that influence, not the ratio of those relatively

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because of their sexual identity, and were this process to contribute appreciably to the difference between K6G and GP, it would suggest that prison and jail administrators committed to increasing the safety of their GP units should redouble their efforts to disrupt coordinated gang activity. I am grateful to Justin Levitt for raising this fascinating issue, which merits further inquiry.

able to engage in successful hypermasculine performance versus those relatively *unable* to do so, but what those men who *could* be aggressively hypermasculine make of this ratio—whether they see the presence of weaker men as a guarantee of their own safety or a matter of indifference. And as has been seen, in K6G, a host of structural conditions only contingently related to the sexual identity of unit residents have come together to make those men otherwise able to successfully perform a hypermasculine identity feel sufficiently safe and secure not to have to bother doing so, however many potential victims may be in the vicinity.

Still, the relatively high population of otherwise vulnerable individuals in K6G serves as a valuable reminder of the need to identify *all* prisoners who, because of demeanor or personal characteristics, are unable to avoid coming across as weak in the hypermasculine culture of GP. This imperative informed the approach recommended pursuant to the Prison Rape Elimination Act (PREA)<sup>385</sup> by the National Prison Rape Elimination Commission (the Commission) in its draft national standards submitted for consideration to the United States Attorney General in June 2009 and adopted by the United States Department of Justice in its final PREA standards in 2012.<sup>386</sup> Specifically, the Commission proposed that all inmates be “screened during . . . the initial classification process, and at all subsequent classification reviews to assess their risk of being sexually abused by inmates.”<sup>387</sup> The Commission provided, at “a minimum,” that prison officials:

[Should] use the following criteria to screen male inmates for risk of victimization: mental or physical disability, young age, slight build, first incarceration in prison or jail, nonviolent history, prior convictions for sex offenses against an adult or child,

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<sup>385</sup> Prison Rape Elimination Act (PREA) of 2003, 42 U.S.C. §§ 15601–09 (2003). Among other things, Congress directed the Commission to “carry out a comprehensive legal and factual study of the penalogical [sic], physical, mental, medical, social, and economic impacts of prison rape in the United States,” 42 U.S.C. § 15606(d)(1); hold public hearings on these issues, 42 U.S.C. § 15606(g); and submit a report to the Attorney General and the Secretary of Health and Human Services containing “recommended national standards for enhancing the detection, prevention, reduction, and punishment of prison rape.” 42 U.S.C. § 15606(e)(1). The Commission submitted its final report in June 2009. *See* NAT’L PRISON RAPE ELIMINATION COMM’N REPORT 217 (June 2009) [hereinafter COMMISSION REPORT]. PREA also directed the Attorney General to promulgate a “final rule adopting national standards for the detection, prevention, reduction, and punishment of prison rape.” 42 U.S.C. § 15607(a)(1). These final rules were officially issued in June 2012. *See* 28 C.F.R. Part 115 (2012) (National Standards to Prevent, Detect, and Respond to Prison Rape).

<sup>386</sup> *See* 28 C.F.R. Part 115; *see also* 28 C.F.R. § 115.41 (screening for risk of victimization and abusiveness); 28 C.F.R. § 115.42 (use of screening information).

<sup>387</sup> *See* COMMISSION REPORT, *supra* note 385, at 217.

sexual orientation of gay or bisexual, gender nonconformance (e.g., transgender or intersex identity), [and] prior sexual victimization . . . .<sup>388</sup>

As has already been seen, a person's risk of sexual abuse in custody is inversely proportionate to his ability to successfully perform a hypermasculine identity. The Commission's proposal thus amounts to a strategy for identifying those least able to bring off this performance and keeping them away from those prisoners likely to be more effective in this regard. The Commission's findings indicate that the difficulty of measuring up to the demands of the hypermasculine imperative is not unique to the populations K6G serves. To the contrary, any number of people in custody—many with the qualities identified in the Commission's recommendations as to screening—are likely to fall short in this regard. To the extent that this inability puts a person at risk, it seems clear that the state has an obligation to provide necessary protection, whatever a person's sexual orientation or gender identity.

## 2. *They Don't Want To*

The evident appeal of K6G's less pressured environment suggests a second explanation hinging on the sexual identity of K6G's residents for the differences between GP and K6G: considering the relative ease of life in K6G, with the room it creates for emotional expression, meaningful interpersonal engagement, creativity, and even levity, unit residents would simply prefer not to play the game. But this explanation, too, trades on stereotypes. It suggests that gay men and trans women, being "soft," would prefer a space like K6G; whereas heterosexual men would prefer to live in a context defined by hypermasculine performance. This way of construing the matter is problematic in two related respects: (1) it frames the undoubted preferences of people in K6G for a less pressured environment as somehow a function of insufficient toughness, and (2) it frames a preference for the culture of GP as the mark of a "real man."

No doubt, there *are* men in custody who would choose the high-stakes, high-pressure atmosphere of a hypermasculine culture over the relatively relaxed and comfortable environment of K6G. For some people, most notably those who are young and still immersed in the gang life on the streets, that life, with its norms and values, is all they know. For those at the top of the pecking order of their respective gang structures, the culture of GP offers a direct and familiar path to status, power, and respect—

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<sup>388</sup> *Id.* The Commission also recommended that prison officials "use information from the risk screening" in making decisions as to "housing, bed, work, education and program assignments with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive." *Id.*

resources that would otherwise be unavailable to someone who has lived no other life.<sup>389</sup>

But this disposition is the exception, not the rule. It flows not from a heterosexual orientation, but from a highly circumscribed life experience and a highly constrained set of options. Gay men as well as straight men may come up under these circumstances. There is thus no reason to think that only straight men would exhibit this tragic preference for a hypermasculine culture and gang life.<sup>390</sup> More importantly, the fact that, given the choice, some men would prefer GP to K6G does not mean that this is true of all or even most men in custody. To imagine otherwise is to fundamentally misunderstand the experience of life in GP. Most of the men who perform a hypermasculine identity in the Jail's GP or in other GP units where this imperative governs do so not by choice, but because they feel they *have* no choice, given the awful consequences—including ongoing harassment and abuse and even serial rape—of letting down their guard and thereby seeming weak.<sup>391</sup> Just because people play the game does not mean they do so willingly. To the contrary, given the stakes of unsuccessful hypermasculine performance in many men's carceral facilities, it seems more likely that, in most cases, participation in this “desperate and dehumanized context”<sup>392</sup> is driven far more by an understandable desire to avoid victimization than by enthusiasm for what the culture demands.<sup>393</sup>

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<sup>389</sup> As someone with extensive experience in both GP and K6G explained it to me, for some men in GP, living the gang life in the California prisons is preferable even to freedom, since “on the streets, [they] are nobody,” and “get no respect,” whereas in prison, they have power and enjoy the respect that comes of it. Telephone Interview with Cameron Saul, Case Manager, Tarzana Treatment Ctr. (Oct. 27, 2011); *see also* Haney, *supra* note 14, at 133 (“In the freeworld outside of jail and prison, many . . . men have long been structurally marginalized and emasculated and will be again when they return to it, even though the fearsomeness with which they display their masculinity in prison is designed to mask this fact.”).

<sup>390</sup> The hypermasculine culture of street gangs has much in common with the hypermasculine environment of the men's carceral institution, and it is dangerous in both environments for men to be found to be (or even suspected of being) gay. Yet as my interviews made clear, there are plenty of (inactive) gang members in K6G, which indicates that being gay does not preclude the sort of life experience described in the text.

<sup>391</sup> *See* Dolovich, *supra* note 1, at 11–19 (describing the culture of hypermasculinity in GP and the stakes of unsuccessful hypermasculine performance).

<sup>392</sup> Haney, *supra* note 14, at 124.

<sup>393</sup> As Haney recounts:

My experiences studying jail and prison environments over the last several decades have taught me never to underestimate their potential to destructively transform and psychically disfigure the persons who are kept inside them. I have seen many frightened young men enter these places in terror only to eventually become fearsome predators themselves.

The steady stream of men who come through the K6G classification office pretending to be gay is powerful evidence of the oppressiveness of the Jail's GP. Given the heightened risk of victimization in custody faced by men perceived to be gay, the fact that some men are willing to "don the light blue uniforms" of K6G in order to get away from GP, even temporarily,<sup>394</sup> indicates just how badly they want to escape the pressure of life in GP and how much they are willing to risk to do so.<sup>395</sup> This phenomenon exposes the limits of the "personal preference" explanation for K6G's character. These men would plainly prefer to live free of the hypermasculinity imperative. Yet once back in the Jail's GP, they conform to the same cultural demands they were so desperate to escape—in company with many other men who no doubt feel the same way.

At this point, some readers may start considering how to calculate the proportion of dissenters required to shift the dynamics of a hypermasculine culture to one in which people would feel freer to relax and be themselves.<sup>396</sup> This is a crucial and potentially very fruitful inquiry, as is clear from the fact that the GP culture I describe, although widespread, varies in intensity among institutions.<sup>397</sup> Yet any calculations of this sort would have to reckon with the price of dissent or withdrawal in a climate in which failing to conform to the dictates of the hypermasculinity imperative

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*Id.* at 126.

<sup>394</sup> Even those who succeed in getting classified to K6G will have to rejoin GP if they wind up in state prison, where there is no corresponding K6G unit.

<sup>395</sup> See Haney, *supra* note 14, at 141 (explaining that those men who falsely claim to be gay to try to get access to K6G do so despite "risking long-term stigmatization and even grave danger in their future incarcerations, hoping to don light blue uniforms that will announce their stigmatized status to the rest of the jail," all "in the hope of garnering an added measure of safety and survive the experience just this one time").

<sup>396</sup> Frameworks for approaching this puzzle suggested by readers of earlier drafts include game theory (and specifically the "stag hunt" game, see Robert van Rooij, Book Note, 85 *STUDIA LOGICA* 133, 133–36 (2007) (reviewing BRIAN SKYRMS, *THE STAG HUNT AND THE EVALUATION OF SOCIAL STRUCTURE* (2003))), social network theory, social capital theory, and social ecology. I thank Alex Stremitzer, Joe Doherty, and Daria Roithmayr for these suggestions. My sense is that each of these frameworks has something interesting to offer efforts to make sense of the dynamics I describe, and I hope others will be moved to undertake such analyses. Whatever perspective one adopts, it will be impossible to understand the persistence of GP's culture of hypermasculinity without recognizing the deep collective fear of nonconformity that exists among prisoners, and the relationship between this fear and the institutional failure to ensure the physical safety and security of the people in custody. My goal in this Article is to illuminate that connection, which, as I have sought to show, must rely more on ethnography than on abstract theoretical frameworks, at least in the first instance.

<sup>397</sup> See *supra* note 30 (comparing the inmate culture of Vacaville State Prison in the early 1980s with the inmate culture of Folsom State Prison in the late 1980s).

can expose one to serious ongoing victimization.<sup>398</sup> In an environment where the price of nonconformity may be abuse, humiliation, and physical harm, the pressure to conform is considerable. As a consequence, we can expect even people who would strongly prefer not to have to participate in this culture to continue to do so unless they are fairly certain they can safely abandon the posture.<sup>399</sup>

This is the reality of life in the general population of many men's prisons and jails. What drives behavior is not personal preference, but fear. To the extent that the intensity of the hypermasculine imperative is mitigated, it is because men feel to some extent safe where they are. To the degree that they do not feel safe—that they are instead afraid—hypermasculine posturing will be perceived as necessary. So long as this fear persists, we can expect to see no change in culture. The central distinguishing feature of K6G as compared with the Jail's GP is thus not that the gay men and trans women in K6G would prefer not to play the game, but that in K6G, for a variety of reasons, people feel independently safe from physical harm. They are not driven by fear, and so feel safe leaving off the hypermasculine posturing.

At the same time, there *is* something to the notion that K6G is the way it is at least in part because people in the dorms want it that way. The K6G experience strongly suggests that people in custody will only willingly abandon the self-protective mechanisms of hypermasculine performance and gang involvement once they feel independently safe doing so. But it also reveals the way a safe atmosphere, once established, can in turn foster a collective determination to keep destructive patterns at bay. When, as occasionally happens, new arrivals try to introduce gang norms, dorm residents quickly indicate that in K6G those behaviors do not “fly.”<sup>400</sup> In other words, people in K6G cooperate to maintain a relatively healthy carceral environment. This is K6G's virtuous circle at work,<sup>401</sup> reflecting

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<sup>398</sup> For example, a person who is perceived to be weak in the hypermasculine culture of GP “might just have [their] store stolen, or be forced to do laundry or shine shoes,” or they might be “stabbed to get [them] off the yard” to make way for a soldier perceived as more reliable, or they might be forced by a more powerful prisoner “to go into [his] cell and be his bitch.” Telephone Interview with Cameron Saul, Case Manager, Tarzana Treatment Ctr. (Oct. 27, 2011).

<sup>399</sup> I say “fairly certain” and not “absolutely certain” because there are always men desperate or determined enough to break with the gang life that they will attempt withdrawal even absent a guarantee of safety. In some cases, this effort will be made by someone in the last stages of his sentence and anxious to get through the remainder of his time without catching another criminal charge or a disciplinary report, either of which could delay his release.

<sup>400</sup> Int. 71, at A7; *see also supra* notes 153, 213.

<sup>401</sup> *See supra* Part III.B.3.



the way that, once people feel safe enough to allow an alternative culture to emerge, that alternative culture may in turn give rise to collective norms that help to foster a more congenial environment. In K6G, these desirable second-order effects would not have been possible without the background conditions that have ensured the physical safety of unit residents. At the same time, the K6G experience indicates the way that, under the right conditions, people in custody can themselves contribute to a positive living environment, which they can choose to work to maintain.

### 3. *They Don't Need To*

There is yet a third possible explanation for the K6G difference grounded in the sexual identity of K6G's residents: that the people in K6G eschew the hypermasculine culture of GP because they do not need what it provides. This is a more promising direction, which recognizes that men who conform to the dictates of GP's prison culture do so not because they prefer it but because they feel compelled. But what need is it that hypermasculine performance fulfills? In her provocative piece, *Redistributing Rape*, Jeannie Suk considers one key distinction between K6G and GP—the relative absence of rape in K6G—and looks to the sexual identity of K6G's residents to explain that difference. In particular, she notes that people in K6G, unlike those in GP, have ready access to their “objects of desire.”<sup>402</sup> As she puts it, “because the[ir] objects of desire” are present to them, people in K6G “are able to retain this core aspect of sexual freedom” in a way that men in GP, “who sexually desire women, are not.”<sup>403</sup> Instead, “[f]or heterosexual prisoners, the basic expression of their sexual orientation is an aspect of human experience that incarceration inevitably denies in imposing a single-sex environment.”<sup>404</sup> In order for such men “to have sex in a way that may attempt to gratify their sexual desire, some of them [must forcibly] turn some men into women.”<sup>405</sup>

The aspect of GP Suk identifies is an inevitable feature of a penal system that segregates by gender. As Gresham Sykes famously observed, lack of access to preferred sexual partners is one of the “pains of imprisonment” most people suffer in custody.<sup>406</sup> And it is certainly true that, unlike many men in GP,<sup>407</sup> people in K6G have ready access to their

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<sup>402</sup> See Suk, *supra* note 371, at 117.

<sup>403</sup> *Id.*

<sup>404</sup> *Id.*

<sup>405</sup> *Id.*

<sup>406</sup> See SYKES, *supra* note 164, at 70–72.

<sup>407</sup> It can be assumed that in all GP units, there are men who are gay or bisexual, or who, despite having had a heterosexual orientation before being incarcerated, have come over

objects of desire.<sup>408</sup> The question is what significance this fact has for the comparatively safe and humane character of life in K6G and the absence in the unit of any hypermasculine imperative or gang politics.

One possible implication is the one Suk suggests: rape is not an issue in K6G because there are plenty of willing sexual partners for those who want one. Sykes assumed this connection. In his 1958 study of a New Jersey men's maximum-security prison, he reported that those people he called "habitual homosexuals," i.e., "men who were homosexuals before their arrival [in prison]," were "only too apt to be victimized or raped by aggressive prisoners who . . . turned to homosexuality as a temporary means of relieving their frustration."<sup>409</sup> This explanation for the virtual absence of rape in K6G was echoed by many people I spoke to in the unit. As one of my interview subjects pithily put it, "[in K6G] we just don't do that to each other . . . [since] it's too many people willing."<sup>410</sup>

This account, which regards sexual deprivation as the primary driver for rape in custody,<sup>411</sup> has an intuitive logic. Sexual desire is a natural, vital, and powerful human impulse; and it seems plausible that men who had access to sexual outlets of their own choosing would be less likely to force sexual contact on unwilling others. Taken alone, however, sexual frustration seems an insufficient explanation for the role rape (or the threat of rape) plays in the sexual culture of GP. For one thing, there are plenty of men in the free world for whom frustrated sexual desire does not prompt perpetually aggressive behavior, and the objects-of-desire account seems

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years in custody to be sexually attracted to other men. See Dolovich, *supra* note 1, at 26 n.150. It is thus to be expected that there are at least some—and perhaps many—men in custody who *do* have access to their objects of desire despite living in a gender-segregated environment.

<sup>408</sup> The exceptions are those people who are not in fact gay but only pretended to be so in order to get into the unit, and, at least in theory, trans women who are not sexually attracted to men.

<sup>409</sup> SYKES, *supra* note 164, at 71.

<sup>410</sup> Int. 100, at E13. Or, as I frequently heard it put in informal conversation, "why take it by force when there are so many people willing to give it up for free?"

<sup>411</sup> Suk is hardly alone in this view. See, e.g., Craig T. Palmer et al., *Is It Sex Yet? Theoretical and Practical Implications of the Debate over Rapists' Motives*, 39 JURIMETRICS J. 271, 271–72 (1999) (criticizing the claim that rape is "not sex" and arguing that "while numerous motives may be involved in any given rape, sexual motivation is necessary and in some cases sufficient for a rape to occur") (cited in Alice Ristorph, *Sexual Punishments*, 15 COLUM. J. GENDER & L. 139, 139–40 n.3 (2006)). The sexual deprivation view contrasts with the view, informed by feminist theorizing and frequently found in the prison literature, that rape is an "expression of dominance and power that has little to do with desire," Ristorph, *supra*, at 139—more a play for "power gratification" than "sexual gratification." Gordon James Knowles, *Male Prison Rape: A Search for Causation and Prevention*, 38 HOW. J. CRIM. JUST. 267, 279 (1999).

inadequate to explain why the same would not be true of men in custody. This view also leaves unanswered the question of why even those men who *do* have access in GP to their objects of desire—those who are gay, bisexual, or “situational homosexuals”<sup>412</sup>—may force themselves sexually upon weaker inmates rather than finding and engaging in consensual sex with other willing participants. And perhaps most significantly, it fails to account for any relationship between sexual violence in prison and the culture of hypermasculine aggression more broadly, a culture that, as we have seen, is traceable in part to efforts by men who are anxious about their gender identity and humiliated by the prison experience to shore up their self-image and gain status in the eyes of others. In an environment with few if any healthy and prosocial avenues for the expression of one’s masculinity, dominating weaker people (a.k.a. “punks,” the “contrast figures” of hypermasculinity in prison<sup>413</sup>) can become a method of choice—and fear of being “punked” may spur even people not otherwise prone to violence to become preemptively hypermasculine themselves.

This domination of weaker people can take many forms. Men branded as punks may find themselves harassed, publicly humiliated, or forced to perform menial services for stronger inmates. At its most extreme, this abuse will culminate in rape<sup>414</sup> and even in “ownership” of victims relabeled as female, whose subjugated status stands as public proof of the victimizers’ power—balm for an ego humiliated by the conditions of their incarceration on a daily basis.

Four benefits in particular appear to accrue from such hypermasculine performance: (1) *sexual satisfaction*, at least for those men prepared to “punk” or “turn out”—both euphemisms for rape—the weakest of their fellow prisoners, thereby reframing them as “female” and thus as desirable sexual partners;<sup>415</sup> (2) *proof of manhood*; (3) *safety* from men looking for

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<sup>412</sup> See Dolovich, *supra* note 1, at 26 n.150 (explaining that “situational homosexuals” are men who, although preferring women as sexual partners, will have sex with men while incarcerated).

<sup>413</sup> See Cooper, *supra* note 165, at 689.

<sup>414</sup> See REBECCA TRAMMELL, ENFORCING THE CONVICT CODE: VIOLENCE AND PRISON CULTURE 71–72 (2012). Trammel interviewed former California prisoners and reports that all her interview subjects denied the presence of rape in the California prisons. See *id.* Yet as Trammel delved further, she found that this denial had less to do with an absence of forced or coerced sex in the prisons than with the fact that her subjects seemed to reframe these incidents—even those preceded by extreme physical violence or threats of violence—as not rape. See *id.* In their view, it appeared, anyone who “gives it up” to another man in custody, however intense the physical pressure to do so, must be gay and therefore must have wanted (or deserved) it. See *id.*

<sup>415</sup> See Dolovich, *supra* note 1, at 15–17 (explaining the relationship between this process and the hypermasculine culture of GP); Rideau, *supra* note 8, at 75 (explaining that,

weaker people to victimize; and (4) *respect*. The possibility under consideration is that K6G is free from any hypermasculinity imperative (and from the gang politics that come with it) because people in the unit already enjoy or have no need for these goods and thus need not resort to hypermasculine posturing to try to get them. This account is close to the mark. The question then becomes: how is it that people in K6G can get these benefits without hypermasculine performance, but men in the Jail's GP cannot? And to what extent is the reason grounded in the sexual identity of unit residents? If sexual identity proves the whole of it, this would certainly seem to negate the possibility of drawing generalizable lessons from the K6G experience. As we will see, however, sexual identity is *not* the whole of it. And it turns out that even where this factor does in part explain the K6G difference, it is still possible to distill generalizable insights from the reasons why.

Consider the first two benefits hypermasculine posturing provides men in GP: sexual satisfaction and proof of manhood. As to sexual satisfaction, as Suk points out, the sexual identity of K6G's residents does mean that people in the unit can access this good simply by being themselves.<sup>416</sup> As for proof of manhood, sexual identity also seems to explain why unit residents have no need for hypermasculine performance, although the reason is not, as might be thought, that people in the unit have no stake in maintaining masculine self-images. As to at least some men in K6G, this notion is surely incorrect; as has been seen, heterosexual men have no monopoly on masculinity.<sup>417</sup> It is undeniable that there are many people in K6G, most notably the trans women and self-described "gay boys," who self-consciously perform more stereotypical female identities. Although for these individuals, incarceration is certainly demeaning in a host of ways, they are at least unlikely to feel the sting of incarceration as a threat to their "manhood." But there *are* men in K6G who would experience incarceration as such a threat, and who thus might well feel this sting—or at least, they would if they were in GP. That they do not feel it in K6G is not because they do not self-identify as male, but because by virtue of their placement in K6G, they have available to them an obvious and powerful

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in the Louisiana prison system, rape is generally referred to as "turning out," a nonsexual description that reveals the nonsexual ritualistic nature of what is really an act of conquest and emasculation, stripping the male victim of his status as a 'man' [and] redefines him as a 'female' in this perverse subculture").

<sup>416</sup> See Suk, *supra* note 371, at 117.

<sup>417</sup> See *id.* at 116 ("The phenomenon of gay masculinity is well known."); see also *id.* ("The rising legal awareness of phenomena like domestic violence, sexual assault, and sexual harassment among gay men would seem to bring gay masculinity within the ambit of the reigning feminist theory of those forms of violence.").

mechanism through which to preserve and even affirm their gender identity: relations, sexual or otherwise, with their objects of desire.

The open sexuality in K6G means that, as Suk puts it, people will be able to satisfy their “sexual orientation within the confines of the prison experience.”<sup>418</sup> In particular, those men in K6G whose gender identity is in part informed by being sexually dominant will be able to express that identity through consensual sexual liaisons with other K6G residents who prefer to take a sexually subordinate role. Indeed, the presence in K6G of people with a range of gender identities means that even nonsexual interactions will regularly affirm the masculinity of male-identified residents of the unit. This is by contrast to GP, in which “prisoners [who] have very little communication with women . . . feel as if they have lost certain attributes of their masculine identity.”<sup>419</sup>

But even assuming that sexual identity explains the sexual fulfillment and affirmation of gender identity enjoyed by people in K6G, the K6G example still has crucial lessons to teach about humanizing carceral conditions more broadly. Most obviously, K6G powerfully illustrates the humanizing effects of sexual expression,<sup>420</sup> both in terms of the sexual satisfaction it affords and as a means for reinforcing and affirming gender identity, i.e., the first two benefits of hypermasculine performance on our list. Realistically, for a variety of reasons—most obviously, the need for gender segregation in custody<sup>421</sup> and the fact that, even assuming gender

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<sup>418</sup> *Id.* at 117.

<sup>419</sup> Rachel Wyatt, *Male Rape in U.S. Prisons: Are Conjugal Visits the Answer?*, 37 CASE W. RES. J. INT’L L. 579, 594 (2006). As Sykes observed:

Like most men, the inmate must search for his identity not simply within himself but also in the picture of himself which he finds reflected in the eyes of others; and since a significant half of his audience is denied him, the inmate’s self-image is in danger of becoming half complete, fractured, a monochrome without the hues of reality.

SYKES, *supra* note 164, at 71–72 (quoted in Robertson, *supra* note 164, at 13).

<sup>420</sup> See Brenda V. Smith, *Rethinking Prison Sex: Self-Expression and Safety*, 15 COLUM. J. GENDER & L. 185 (2006).

<sup>421</sup> Coed prisons were originally endorsed by proponents as a means to improve rehabilitative opportunities for incarcerated women, who were generally afforded fewer such options than their male counterparts. See, e.g., Dean Spade, *Documenting Gender*, 59 HASTINGS L.J. 731, 811 (2008) (“The motivation for these projects and the general push toward ‘co-corrections’ in the 1970s was inequality between men’s and women’s prisons.”). There were even some claims to the effect that in coed facilities, sexual assault decreased. See, e.g., *id.* at 811 (“The results of the experiment [with co-corrections at DCI Fort Worth], according to researchers, were successful. . . . Violence within the facility, especially among men and including sexual assault, was significantly reduced.”). But by the late 1980s, the general consensus was that this project had not been a success. See Stephen J. Schulhofer, *The Feminist Challenge in Criminal Law*, 143 U. PA. L. REV. 2151, 2204–05 (1995). Indeed, according to some, coed prisons had been “a disaster for women”; since women

integration of some sort, the men would still greatly outnumber the women<sup>422</sup>—the lack of access to women will continue to be among the “pains of imprisonment” for most men in custody for the foreseeable future.<sup>423</sup> Still, the K6G example underscores the importance for all prisoners of “conjugal visits” by spouses or lovers; of family visits that allow people in custody extended time with children outside the limiting and often oppressive environment of the visiting room; of weekend furloughs; and of any other programs that afford the opportunity for people to perform their preferred gender roles in a socially productive and personally affirming way. These programs would allow for sexual release, a valuable benefit in itself. More importantly still, “[m]aintaining healthy bonds with their children and spouses helps [male] inmates reaffirm their masculinity, and reduces their need to establish a manly self-image by victimizing other inmates.”<sup>424</sup>

The second generalizable lesson to emerge from recognizing the importance of the sexual satisfaction and secure gender identities K6Gs enjoy is entwined with the third benefit hypermasculine performance provides men in GP: physical safety. Assurance of physical protection, as has been seen, is a vital component of humane carceral conditions: without it, people may wind up living in constant fear of victimization, a psychologically traumatizing experience even for those who are never physically harmed. Without that assurance, there would *be* no open sexuality in K6G. There is, in other words, a necessary connection between the independent feelings of safety and security K6Gs enjoy and the sexual fulfillment and affirmation of gender identity that access to their preferred sexual partners provides. Simply being housed with their objects of desire is not enough to ensure these latter benefits; people also have to feel safe

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were “vastly outnumbered by the men at each site,” they wound up “neglected, even more than before,” while “bear[ing] the brunt of tight security measures” as correctional officers found it “much harder to restrict and supervise the movements of 500 men than to guard closely forty or fifty women.” *Id.* at 2204.

<sup>422</sup> Given the fact that the vast majority of people in custody are men, coed prisons would not ensure broad access for all heterosexual men in prison to their objects of desire, since even assuming all women in custody were also interested in sexual or otherwise intimate liaisons, there would not, to put it crudely, be enough women to go around. See U.S. DEP’T OF JUSTICE, JAIL INMATES AT MIDYEAR 2010—STATISTICAL TABLES, *supra* note 158, at 7 (reporting that as of midyear 2010, there were 649,284 adult men in jail as compared with 91,884 adult women); U.S. DEP’T OF JUSTICE, PRISONERS IN 2010, *supra* note 158 (showing that there were 943 men in state and federal prisons per 100,000 U.S. residents, as compared with 67 women per 100,000 U.S. residents).

<sup>423</sup> SYKES, *supra* note 164, at 71.

<sup>424</sup> Wyatt, *supra* note 419, at 597; see also *id.* at 598 (“There is also evidence that prison systems in other countries successfully use conjugal visits to lower rates of inmate sexual assault.”).

enough to act on their sexual desires. Even in GP, there will be many men who are gay, bisexual, or situational homosexuals and who are thus, like people in K6G, housed in proximity to their objects of desire. The difference is that, in most cases, these men do not feel able to act openly on their desires for fear of the consequences. Taking steps to ensure the safety of all men in GP may thus make the “objects-of-desire” advantages K6Gs enjoy available to at least some men in other units.

The relative safety that K6Gs enjoy, a benefit only contingently related to the sexual identity of unit residents, is the main reason that people in the unit feel no need for hypermasculine posturing or gang involvement. But even assuming Suk is right that the pathologies found in GP arise to a large degree because heterosexual-identified men in custody lack access to their objects of desire, the K6G example is still instructive for the broader humanizing project, since it offers a model for protecting vulnerable prisoners from the pathological effects of this deprivation. In other words, even absent any possibility of wholly resolving the problem of sexual frustration in prison, the foregoing account of K6G at the very least offers insight into how to keep safe those people at risk of being victimized as a result.

Specifically, the K6G model suggests the wisdom of (1) identifying and separating out likely victims from likely predators for housing purposes;<sup>425</sup> (2) maintaining a strict boundary between likely victims and likely predators; (3) monitoring units in an ongoing way to identify emergent predators; (4) automatically removing predatory individuals as soon as they become known; (5) ensuring continuity of staffing as much as possible to allow staff to get to know the people in their custody as individuals; and (6) fostering a culture of respect toward people in custody as a way of, among other things, creating channels of communication between staff and prisoners that may help staff to identify threats and resolve problems when they arise. Admittedly, to the extent that GP’s worst aspects do stem from sexual deprivation, it may not be possible to erase the threat of predation entirely, since even were all possible steps taken to protect victims and deter predatory behavior, some men may still be driven by their sexual needs to seek to “feminize” other prisoners, by force if necessary, to transform them into desirable sexual partners.<sup>426</sup> Still,

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<sup>425</sup> This is the approach recommended by the National Prison Rape Elimination Commission, *see supra* Part III.C.1, and adopted by the U.S. Department of Justice in the National PREA Standards. *See* 28 C.F.R. §§ 115.41–42 (2012).

<sup>426</sup> I am grateful to Doug NeJaime for pushing me to recognize this point.

deploying these strategies would surely mitigate whatever harm might result from this situation<sup>427</sup>—an undeniably positive result.

There is, however, one final, urgent need that hypermasculine posturing provides men in GP that bears consideration here, and that is *respect*. For men in prison, the experience of incarceration does not only “besiege” their masculinity, but it can also systematically demean and humiliate them.<sup>428</sup> Many men in custody have already been subjected—often for their whole lives—to society’s indifference and scorn. They now find themselves living under conditions that demean them still further on a daily basis. For at least some of these men, hypermasculine performance may be the only way they have to assure themselves (and others) that they matter. The harder and more dangerous a person can seem, the more others will be forced to pay heed. To be sure, any respect and status earned this way will stem largely from fear. But for those with no other means to gain others’ regard, a fear-based respect is better than no respect at all.<sup>429</sup>

On this score, too, K6Gs turn out to be less dependent on hypermasculine performance to get what they need. And here again, the reason why is only contingently related to the sexual identity of K6G’s residents. Unfortunately, men in custody are often treated like “a breed

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<sup>427</sup> Recognizing the pathological effects of widespread sexual deprivation might also spur broader efforts to address this issue, whether through expansion of conjugal visit programs (which are currently available to relatively few people in custody) or even, where possible, through broader use of alternatives to incarceration, to reduce the number of people who are caught up in a fundamentally and unavoidably corrosive situation.

<sup>428</sup> See Carolyn Newton, *Gender Theory and Prison Sociology: Using Theories of Masculinities to Interpret the Sociology of Prisons for Men*, 33 *HOW. J. CRIM. JUST.* 193, 197 (1993) (quoted in Robertson, *supra* note 164, at 12).

<sup>429</sup> Consider this excerpt from an interview conducted by criminologist Lonnie Athens, with a boy in his mid-teens who had recently been convicted of armed robbery:

After I busted that dude’s head open, the principal kick me out of school for the rest of the year. . . . Everybody, my people and close friends, thought I had gone too far on the dude. . . .

But nobody in the school or around my neighborhood would fuck with me after that. People said, “James is crazy. Don’t go heads up at the dude like that because he will fuck you up.” Most people made sure that they gave me plenty of space and stayed mellow around me. They paid me more respect and said “Hi” to me when I walk by.

People may have thought I went too far on that dude, but I later knew what I did was right. It must’ve been right because nobody was giving me shit anymore.

The way people acted made me come alive. It swelled up my head.

RICHARD RHODES, *WHY THEY KILL: THE DISCOVERIES OF A MAVERICK CRIMINOLOGIST* 134 (1999) (quoting LONNIE ATHENS, *THE CREATION OF DANGEROUS VIOLENT CRIMINALS* 78–79 (1992)); *id.* at 135 (observing that people in the late stages of becoming a dangerous violent criminal may find themselves “‘a welcome and desired companion among malevolent groups for whom having violent repute is a social requirement’”) (quoting ATHENS, *supra*).



apart, . . . the scum of the earth.”<sup>430</sup> By contrast, in a variety of ways, the people in K6G are made to feel like human beings who matter. The most obvious way is through the explicit institutional commitment to keeping people in K6G safe from physical harm—perhaps the ultimate form of respect. But there are other features of K6G that are also affirmatively humanizing in this sense. K6G is a place where the officers in charge of the unit know everyone personally and are thus able to some extent to interact with them as *people* and not just as “inmates.” As has been seen,<sup>431</sup> Bell and Lanni treat unit residents with an evenhandedness and lack of judgment that allows people to be recognized for their own individual traits and behaviors and not merely for their status as prisoners. In the incident involving Ben and Charles,<sup>432</sup> for example, Bell and Lanni gave both men a hearing, and assessed the situation based on the equities and their personal knowledge of Charles’s character. That they knew Charles to be a truthful, nonthreatening person allowed them to put into context the threat he had issued against Ben, and also affirmed Charles as a full moral subject, who, although having done wrong (by threatening Ben), had earned the benefit of the doubt by dint of his acknowledged personal virtues and generally good conduct. As for Ben, although he did not get the result he sought, his complaints were taken seriously and he was given reasons on the merits for the ultimate disposition. As this example suggests, by contrast to how people in custody are generally treated by correctional officers,<sup>433</sup> people interacting with Bell and Lanni are apt, regardless of the outcome, to come away feeling respected and affirmed rather than angry or aggressive.<sup>434</sup>

In addition, thanks in large part to the commitment of the unit’s supervising officers, the Jail has come to provide a range of services tailored to the specific needs of K6G’s population, including condom distribution, HIV counseling and prevention education, STD testing, and even hormone therapy. Furthermore, and again thanks to Bell and Lanni, people in the unit have access to a wide range of programs, including GED classes, computer classes, drug treatment programs, and job skills training. Not everyone in the unit participates in these classes and programs; indeed, based on my observations, it appears that most do not. But the mere fact that these options exist signals an institution concerned with the well-being

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<sup>430</sup> See, e.g., Dolovich, *supra* note 297, at 932–34 (2009) (quoting KELSEY KAUFFMAN, PRISON OFFICERS AND THEIR WORLD 231 (1988)) (describing the way the culture of the prison teaches prison officials to see prisoners).

<sup>431</sup> See *supra* Part III.B.2.

<sup>432</sup> See *id.*

<sup>433</sup> See Dolovich, *supra* note 297, at 932–34.

<sup>434</sup> For more on the commitment of these two officers to the well-being of people in K6G, see *supra* Part III.B.2.

of the people in the unit, and thus one that, at least to a degree, regards them as more than just inmates. And it is not just the institution that affirms K6G's residents as worthy in this way. The high visibility of the unit among outside organizations, media outlets, and even researchers also gives unit residents a sense of being considered and attended to by people concerned with their well-being.<sup>435</sup>

There is arguably even something respectful and affirming in the Jail's efforts to identify at intake which individuals are "homosexual"<sup>436</sup> and therefore belong in K6G. The notion that there might be something humanity-affirming about an official inquiry into people's sexual orientation—for purposes of identity-based segregation, no less—is admittedly counterintuitive.<sup>437</sup> But K6G's high recidivism rate means that, at any given time, most people in the unit have been there before, likely many times. This feature, combined with the fact that the benefits of K6G are common knowledge among people familiar with the Jail, means that most people who answer "yes" at intake to the question *Are you homosexual?*<sup>438</sup> (and indeed, many people who answer in the negative) know full well that an affirmative answer offers the prize of classification to K6G. In other words, most people who answer "yes" to this question at intake are glad to be able to do so, and experience the inquiry as evidence of the Jail's commitment to making sure that they will be kept relatively safe while in custody. Given how dehumanizing the carceral experience can be, it would be a mistake to underestimate either the value of the peace of mind this process affords, or the value of conveying to people in custody that the institution is committed to their well-being. We should not, in other words, overlook the humanizing power of simply acknowledging that people are worthy of official protection.

Of course, one should not overstate the validation and respect enjoyed by K6G's residents. People in K6G are still incarcerated, and still treated in many ways just like inmates. Indeed, in some ways they are treated even worse than other people in the Jail, since their status as K6Gs—publicly announced through their distinctive light blue uniforms—frequently exposes them to verbal harassment when they are out of the dorms, both by

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<sup>435</sup> See *supra* Part III.B.4.

<sup>436</sup> See Dolovich, *supra* note 1, at 26 (explaining how K6G's classification officers interpret the requirement that people classified to K6G be "homosexual"); see also *supra* text accompanying note 44.

<sup>437</sup> For further discussion of this feature of K6G, and responses to objections that might be raised to the program on this basis, see Dolovich, *supra* note 1, at 54–87.

<sup>438</sup> For detailed discussion of the Jail intake process of which this question forms a part, see *id.* at 27–29.

GPs and by homophobic deputies.<sup>439</sup> But it nonetheless appears that, despite the many demoralizing and even humiliating aspects of life in the unit,<sup>440</sup> K6G's residents are made in various ways to feel that their safety and well-being are issues of institutional concern. They thus have a sense that they are regarded as people who matter, despite their being incarcerated.

In this aspect of the K6G experience is a crucial lesson that is both eminently generalizable and self-evidently valid: people in custody should be treated as much as possible like human beings. Just as violence begets violence and chronic insecurity begets behaviors that instill fear in others, treating people with respect and consideration seems far more likely to spark a virtuous circle, promoting behaviors that will further promote humane, and humanizing, carceral conditions.

In sum, it seems accurate to say that people in K6G do not need to resort to hypermasculine posturing to secure the goods it may provide men in GP. It also appears that Suk's objects-of-desire account, although only part of the explanation, sheds some light on the factors—in particular, sexual satisfaction and proof of manhood—that hypermasculine posturing otherwise provides. It would, though, be premature to end the inquiry here, because closer consideration of Suk's insight as to the humanizing effects of sexual fulfillment helps to identify yet another important piece of the K6G story, which implicates not only the open sexuality seen in K6G but several other behaviors as well. To get at this point requires considering more closely the phenomenon of K6G's virtuous circle.

As we have seen, thanks to a set of background conditions that have fostered a collective sense of safety from physical harm, residents of K6G have felt able to relax and be themselves. What has emerged from this freedom to behave as they choose, with no one monitoring them for signs of "weakness" or human vulnerability? Some people keep to themselves, doing the sorts of things one also finds in the Jail's GP; they read, sleep, pray, write letters, play cards, watch TV, etc. More importantly for our purposes, many others engage in a host of behaviors *not* generally seen in GP. As Suk observes, residents have overt sexual liaisons with their objects of desire.<sup>441</sup> But they do other things as well: They express a range of

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<sup>439</sup> See *id.* at 57–58 (describing the verbal harassment to which K6Gs are often subjected when they are outside their dorms, both by fellow prisoners and by deputies). For discussion of the color-coded uniforms, and an explanation as to why, despite their obvious drawbacks, it is in the best interests of people in the unit that their uniforms remain distinctive, see *id.* at 61–62.

<sup>440</sup> See *supra* Part II.B (describing the many ways that life in K6G is as bad as life in other parts of the jail).

<sup>441</sup> See Suk, *supra* note 371, at 117.

emotions, both positive and negative. They develop mutually supportive relationships of all kinds. They engage in open displays of levity. And they express themselves creatively in a number of ways—through singing, dancing, and even fashion design and exhibition.<sup>442</sup>

From the objects-of-desire perspective, the only significant item on this list is the open sexuality, and it is the possibility of genuine sexual fulfillment alone that makes life in K6G so comparatively humane. But one of the key benefits sexual satisfaction brings people in K6G is also provided by these other essentially humane behaviors. Perhaps the most destructive and dehumanizing aspect of life in the Jail's GP—and in other GP units where the hypermasculine imperative governs—is the way it can require people to work hard to suppress, and in some cases even to destroy, the most vulnerable and essential parts of themselves. By contrast, people in K6G not only do not need to suppress (and thus alienate themselves from) their core humanity; but they can engage in behaviors that allow them to connect to, nourish, and even develop their own personal identities and senses of self. They do this through sex and romantic relationships, yes, but they also do it through other forms of personal expression and interpersonal connection. When people in the unit laugh, sing, or dance, and even when they complain, argue, or express unhappiness or irritation or jealousy, they are being human, manifesting natural human reactions that connect them to their authentic selves.<sup>443</sup> Life in K6G, like life in the Jail more generally, offers few socially productive channels for self-development.<sup>444</sup> Yet in the free space it creates for open emotional expression and honest interpersonal engagement, K6G allows unit residents the ability—all too rare in custody—to remember and to realize who they are. This may be K6G's most humane feature,<sup>445</sup> affording unit residents a sense of psychic ease and

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<sup>442</sup> See *infra* note 528 (describing fashion shows in K6G).

<sup>443</sup> This is not to celebrate those who indulge every impulse to complain, to argue, or to pick fights with others in the unit. But these are normal human behaviors, and it is through dealing with the costs of violating collective norms of mutual respect—as happens when people in K6G treat others badly and are criticized for it by others in the dorms—that one grows as a moral subject. These interactions are relatively rare in GP, where the reigning moral code is very different than that which governs in the free world. But this is the stuff of real life—learning through interactions with others how one should behave in the world. And this is as it should be in a community of human beings who must learn to get along with one another.

<sup>444</sup> Bell and Lanni do their best to provide stimulating and challenging programming for the K6Gs. But even they cannot overcome the fact that available opportunities for people in the unit—most of whom rarely leave the dorms—are necessarily deeply diminished.

<sup>445</sup> Perhaps the key moment in this humanizing process is when people realize that in K6G they *can* relax and be themselves. To readers unfamiliar with prison life, this permission may seem unremarkable, but for men in custody, it is impossible to overstate its significance. Even in carceral environments in which men have managed to carve out

the potential for self-development, while men in the Jail's GP experience psychic *disease* and an alienation from self generated by the demands of hypermasculine performance.<sup>446</sup> Although the humanizing aspects of life in K6G could not arise without a background sense of safety, once they do arise, they may well help to strengthen both the inclination and the ability of residents to reject the dehumanizing demands of the GP culture.

If there is something to this account, it suggests the value of creating channels for men in GP to (re)connect to their core selves and, for those who need it, of providing a way to develop a sense of themselves as something other than tough guy or gang member. It is possible that some of the specific humanizing behaviors already seen in K6G might also be seen in GP; assuming they felt safe to do so, men in GP might well build mutually supportive personal relationships and openly express a range of natural human emotions. Indeed, this already occurs in some men's facilities around the country, especially in prisons where residents stay for extended periods.<sup>447</sup> But it seems unlikely that even under conditions of safety, we would see heterosexual-identified men in GP developing intimate relationships or engaging in emotional expression to the same degree as in K6G. And realistically, given that GP units will generally be majority heterosexual, sexually fulfilling relationships are unlikely to provide humanizing effects to the same degree in GP units as in K6G.

Fortunately, however, other possibilities exist for personal expression and healthy self-development for men in custody, which, once pursued, may help people resist and even escape altogether the toxic hypermasculine culture. One such possibility is genuinely challenging and meaningful programming. I presented an early draft of this paper at San Quentin to a group of prisoners—mostly lifers—enrolled in college-level classes through Patten University in Oakland.<sup>448</sup> Most members of the group had spent

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relatively safe spaces for the expression of natural instincts and behaviors, these spaces must be carefully cultivated and constantly monitored; further, they are a striking contrast with the baseline expectation that men in custody must wear a mask.

<sup>446</sup> "Wearing a mask" is arguably the most common strategy for coping with the rigors of imprisonment. . . . But equally . . . the presentation of a heavily managed "front" is impossible to sustain for prolonged periods inside prison. Indeed, it is arguable that the facility to discard the mask and "be oneself" is not only desirable but is absolutely necessary if a prisoner is to "get through" their sentence with their self-esteem reasonably [intact].

See Jewkes, *supra* note 21, at 53.

<sup>447</sup> See *supra* note 210.

<sup>448</sup> See PRISON UNIV. PROJECT, <http://www.prisonuniversityproject.org/index.html> (last visited Nov. 26, 2012). According to its website, "[t]he mission of the Prison University Project is to provide excellent higher education programs to people incarcerated at San Quentin State Prison; to create a replicable model for such programs; and to stimulate public

many years at other California prisons and recognized my description of GP from those other experiences. They insisted, however, that my portrait did not accurately describe San Quentin's GP. When pressed, they offered a number of explanations for the differences, including the low security levels of people in San Quentin's GP<sup>449</sup> and the high proportion of lifers,<sup>450</sup> who tend to be more mature,<sup>451</sup> less interested in playing the game, and largely respected by the younger prisoners.<sup>452</sup> But the reason they emphasized was that San Quentin is a "programming prison," in which a large proportion of prisoners are enrolled in educational programs.<sup>453</sup> As students, these men

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awareness and meaningful dialogue about higher education and criminal justice in California." *Id.* I thank Jody Lewen for the invitation to present this work to her students, and workshop participants for their warm reception and illuminating feedback.

<sup>449</sup> San Quentin houses three different populations, including the state's death row (housing over 700 people), an administrative segregation unit of 330 or so, a reception center holding approximately 600 people and a general population of around 2,200. See E-mail from Samuel Robinson, Lieutenant, Cal. Dep't of Corr. & Rehab., to author (Nov. 15, 2012, 6:54 PM EST). The people in San Quentin's GP are almost exclusively Level 2s, i.e., medium-security prisoners. See *id.* On the current population of San Quentin's death row, see CAL. DEP'T OF CORR. AND REHAB. DIV. OF ADULT OPERATIONS, DEATH ROW TRACKING SYSTEM CONDEMNED INMATE SUMMARY LIST (2012).

<sup>450</sup> Of 2,100 men in San Quentin's GP, approximately 1,000 are lifers. See E-mail from Samuel Robinson, Lieutenant, Cal. Dep't of Corr. & Rehab., to author (Nov. 15, 2012, 6:54 PM EST). One further factor that was not mentioned, but which may explain some of San Quentin's relatively humane character, is the continued influence of the vision Jeanne Woodford brought to the facility during the five years (1999–2004) when she was warden. In that position, Woodford was known for her humane approach and commitment to rehabilitative programming. Among other things, over her time there, Woodford "created programs at San Quentin by relying almost entirely on nonprofit agencies and about 3,000 volunteers a month—a number unsurpassed in any other U.S. prison." David Sheff, *The Good Jailer*, N.Y. TIMES, March 14, 2004, at A44.

<sup>451</sup> See, e.g., Ashley Nellis, *Throwing Away the Key: The Expansion of Life Without Parole Sentences in the United States*, 23 FED. SENT'G REP. 27, 29 (2010) (noting that lifers tend to mature in custody and are "frequently lauded by correctional administrators as easy to manage").

<sup>452</sup> There was a further, revealing reason given: that, being a northern prison, San Quentin has no Southsiders, who, I was told, tend to be the most aggressive in their enforcement of the gang code and most dedicated to the use of violence to impose their will. The students explained that just a few Southsiders on a yard can be enough to reintroduce the violent GP code. When I asked why a majority committed to rejecting that code could not make clear to a small minority that their gangbanging was not welcome, they just laughed and said that that would not work, and that they would be forced to meet violence with violence. This exchange suggested that the role of the Southsider culture in particular in promoting the gang politics of the California prisons would be a fruitful object of study, and might shed light on what sounded from the San Quentin students like a tragic race to the bottom. It also makes the collective determination in K6G to keep out any gang politics even more noteworthy.

<sup>453</sup> In 2011, 330 people out of a total GP of approximately 2,200 were enrolled in on-site college-level courses at San Quentin through the Prison University Project, see PRISON UNIV.

have a different and more productive focus, one that allows for personal growth and development—a much more appealing prospect than the destructive gang culture that reigns at other California prisons. And perhaps even more importantly, from what I saw, being in school has given the students at San Quentin a sense of self-respect and self-worth—effective antidotes against the need to pump oneself up with hypermasculine posturing.

The San Quentin experience affirms that carceral facilities vary in terms of the extent of gang control and the grip of the hypermasculine imperative. Certainly, structural factors have played a role in making San Quentin's GP a relatively safe and relaxed place: the lower the security level and the higher the proportion of lifers, the less appeal gang politics and hypermasculine posturing are likely to have.<sup>454</sup> But San Quentin also suggests that providing opportunities for individual self-development—and for cultivating a solid foundation of self-esteem<sup>455</sup>—may enable individuals to see the hypermasculine imperative for the destructive force it is and to disengage from gang culture as much as the environment allows.

Another programming strategy emerging in facilities around the country also suggests that helping people in custody to express and develop a healthy self-regard may counter prison's dehumanizing effects. In Florida, California, Illinois, and elsewhere, prison systems are creating veterans' units, housing men who served in the military prior to their incarceration.<sup>456</sup> For many people in this group, their military service is the period in their lives of which they are most proud. Being in a dedicated veterans' unit allows them to reconnect to the feelings of self-respect generated by this experience and gives them a more positive and productive focus for their time in custody.<sup>457</sup> Housing veterans together also helps to

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PROJECT, *supra* note 448, with “another much larger number . . . enrolled in distance learning college programs,” *see* E-mail from Jody Lewen, Executive Director, Prison Univ. Project/Patten Univ. at San Quentin State Prison, to author (Nov. 15, 2012, 7:00 PM EST)—in other words, a considerable proportion of the prison's general population.

<sup>454</sup> *But see supra* note 132 (suggesting that even a few determined gangbangers could shift the relatively easy San Quentin culture towards the more rigid and oppressive model of the more “active” prisons).

<sup>455</sup> *See* Jewkes, *supra* note 21, at 53 (observing that, in prison, “the facility to discard the mask and ‘be oneself’ is not only desirable but is absolutely necessary if a prisoner is to ‘get through’ their sentence with their self-esteem reasonably [intact]”).

<sup>456</sup> *See* Lizette Alvarez, *In Florida, Using Military Discipline to Help Veterans in Prison*, N.Y. TIMES, Dec. 12, 2011, at A14. The L.A. County Jail also has such a unit.

<sup>457</sup> *See id.* (“‘It’s re-instilling some of the values I once had that I hope to have again,’ said Mr. White, 58, who served from 1974 to 1978 as a Marine gunnery sergeant. He has been in prison since 1996 for robbery. The dorm and its rituals ‘are bringing up these old memories, of being an upstanding citizen.’”).

forge a sense of connection and shared identity much like that found in K6G, and encourages mutual respect and tolerance instead of hostility and friction.<sup>458</sup> Perhaps most notably, in such environments, men report that they feel no need to be constantly on their guard.<sup>459</sup> Although most prisoners are not vets, the success of this model ought to prompt officials to look for other potential points of commonality among prisoners that might allow for the fostering of self-respect and mutual connection and the development of other positive aspects of prisoners' personal identities.

These examples represent possible avenues for the humanization of carceral conditions. They also suggest that helping people in custody to grow as people and to cultivate self-respect might help to counter incarceration's most dehumanizing effects. Indeed, for those with positive self-images—as, for example, students, veterans, skilled tradesmen, husbands,<sup>460</sup> or fathers—hypermasculine posturing by fellow prisoners may well seem not only unnecessary but affirmatively absurd, a lot of foolish bluster. In K6G, people certainly appear to regard hypermasculine performance this way. As we have seen, this view stems in large part from the fact that people in K6G feel safe and thus have no need to engage in such destructive behavior. But it may also be because, in K6G, people do not depend for their sense of self-worth on instilling fear in others. Instead, people in the unit have other prosocial channels available for developing healthy and grounded senses of self—sexual relationships, openly supportive friendships, emotional expression, etc. These channels, moreover, are only open in the first place because of the way the institution relates to the people in K6G, i.e., as people and not merely as inmates. This institutional posture of respect also seems likely to reinforce prosocial norms and to dispose the people in K6G to reject the dominant GP culture.

Being forced to engage in hypermasculine posturing creates its own vicious circle; by severing people from a sense of their own humanity and forcing them into behaviors more likely to prompt self-loathing than self-

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<sup>458</sup> *See id.* (“The men’s ties to the military foster the kind of camaraderie that rarely exists outside the dorm. It is not perfect, but even on the worst days, it is civil, which is why everybody is careful with the rules. . . . The fact that many of the officers who watch over the men are military veterans too contributes to the esprit de corps.”).

<sup>459</sup> Alvarez quotes to this effect one man in Florida’s veterans’ unit, “who served as a sergeant and a machinist in the Army for 20 years” and “wound up in prison in 2002 after he killed three people in a trucking crash.” As he put it, “[t]here is no more stress in here. . . . Generally, we all get along very well. We help each other out. . . . There is honesty, responsibility. It’s like you have teamwork.” *See id.*

<sup>460</sup> *See, e.g.,* HARTMAN, *supra* note 30, at 72–75 (describing how the possibility of being closer to the woman he loved, and who eventually became his wife, inspired him to leave behind the thug life he had found in Folsom prison and to pursue a psychologically healthier path).



respect, it makes them even more dependent on the status and (fear-based) respect that successful hypermasculine performance can generate. The K6G experience, by contrast, suggests a crucial connection between being treated as human, the ability to feel and act human, and the refusal to adopt behavioral codes that only dehumanize both self and other. This may be the most important lesson K6G has to teach, and it has no necessary connection to the sexual orientation or gender identity of the people in the unit.

#### 4. *They Can't and Won't Redux*

To this point, the arguments based on sexual identity have focused on the particular characteristics of the people in K6G. There is, however, one final form of the argument, which rests on the sexual identity of those in GP. On this version, the claim is not that, by virtue of their sexual orientation and gender identity, those in K6G could not conform their behavior to the demands of the Jail's GP. It is that, given the heterosexual identity of most men in GP—forged in many cases over years in hypermasculine environments both in custody and on the streets<sup>461</sup>—it is impossible to imagine that the culture of K6G could ever be generalized beyond its current boundaries.

It is certainly true that many aspects of life in K6G seem to be products of the particular sexual identity of its residents: the open emotional expression; the kissing, hugging, dancing, and singing; the overt engagement in consensual sex; the fashion shows, the wedding, the footrubs. One must, of course, be mindful of the danger of trading in stereotypes. To suggest a connection between these behaviors and the sexual identity of K6G's residents is not to say that heterosexual men could not also do these things. To the contrary, it is reasonable to think that at least some men in a standard GP unit might well openly express emotion, sing, and dance if they felt like it; freely have sex with others in the unit; or even give someone else a footrub, if they felt they could do so without putting themselves at risk.<sup>462</sup>

But having spent many hours observing life in the K6G dorms, I feel safe in saying that many aspects of life in K6G would not likely be seen in a dorm full of heterosexual-identified men, even men who over the course of their lives have willingly had sex with other men in custody.<sup>463</sup> To a great

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<sup>461</sup> See *supra* notes 185, 191, 196 (discussing Anderson's "code of the streets").

<sup>462</sup> Indeed, to some extent, these behaviors are already present in GP. The difference is that in GP, engaging in them openly invites aspersions of weakness and thus possible victimization.

<sup>463</sup> See Dolovich, *supra* note 1, at 26 n.151 (discussing the concept of "situational homosexuality").

extent, the daily life of K6G is shaped by the presence of trans women, who, although typically comprising no more than twenty percent of K6G's population, tend as a general matter to be more vocal and performative than other residents and thus to have an outsized influence on the character of the unit. There are also many self-identified "gay boys," who self-consciously adopt what can best be described as stereotypically gay behaviors and mannerisms (flamboyance, a swaying walk, particular speech patterns,<sup>464</sup> etc.).<sup>465</sup> These residents too have a palpable influence on the tenor of daily life in K6G.

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<sup>464</sup> See, e.g., Int. 92, at B7 (performing an imaginary dialogue between two people reuniting in K6G, in which participants greet each other with "[o]h my God, girl. I haven't seen you for a long time, bitch.").

<sup>465</sup> As these descriptions suggest, K6G has turned out to be an environment that is more accepting of nonconformist gender performance than even society in general. Despite an increased level of public acceptance of male homosexuality, many if not most of the people K6G serves will have experienced marginalization and possibly rejection by mainstream society. Most notably, many people in the dorms, especially among the trans women and the older gay men, report having been rejected by their families. For many of these individuals, K6G provides a level of tolerance and even acceptance of their personal gender identities that they have enjoyed nowhere else. Everyone in the unit has male genitalia; this is the basis on which incoming detainees are classified to male housing. See Dolovich, *supra* note 1, at 3 n.7. But see Prison Rape Elimination Act National Standards, 28 C.F.R. § 115.42(c) (2012) ("In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems."). But on any given day, one can see people in K6G performing a broad range of gender identities. There are men who could readily pass as straight. There are those known in the dorm as "gay boys," who present in the manner described in the text. And there are many people who to varying degrees present as women. Not everyone is kind towards those whose efforts in the latter direction are relatively unsuccessful. See, e.g., Int. 140, at B4 ("[Y]ou got some ugly-ass men that try to be women. And they look like they should be playing for the Lakers or they should be playing for the Rams or something, a football team or something. They got big-ass feet, they got big-ass ears with five o'clock shadows. And they walk around and say, I'm a lady. You can't be."). Nor are all dorm residents personally accepting of this gender performance. As one of my trans interviewees explained, many gay men in the dorms:

[D]on't agree with our lifestyle. They're trying to tell us that we're still men and it's offensive for them to call me a man, especially when I went through the process within my transition to get my identification changed to female, to change my life over to—everything in my life is completely changed over to female, except the fact that I still have a penis. That's why I'm here.

Int. 111, at C3. But the general attitude is one of *laissez-faire*, which means that K6G is a remarkably safe space for gender experimentation that in GP would almost certainly invite abuse and victimization. What came through in my interviews and over hours of observation of life in the dorms was that in K6G, a wide range of gender expression was permitted and even supported, so that those wishing to cross the line from male to female did not put themselves at risk by doing so. I did get some hint of a collective disciplining of the gender

It would, however, be a mistake to regard K6G's distinctive character as an indication that residents' sexual identity explains its relative humanity. It seems fair to assume that a unit filled with heterosexual men free to behave as they choose would look very different than K6G. But this likely difference is not the reason for K6G's relative freedom. It merely reaffirms the fact that, left to their own devices, different kinds of people will create different kinds of environments. To take just one example, the frequent sexual liaisons among many K6G residents—for whom multiple partners over short periods is not unusual—is simply one particular form of life that has emerged in K6G in the space freed up by the absence of gang politics and the imperative of hypermasculine performance in which few other positive or productive channels for self-expression exist.<sup>466</sup> In other words, those aspects of life in the K6G dorms that appear to derive from the sexual identity of its residents are best understood not as the *cause* of K6G's relatively humane environment, but rather the *effects* of that environment. They are what has been able to develop in an otherwise constrained atmosphere in which people feel safe enough to be themselves.

It is impossible to know in advance what forms of life might materialize in a given GP unit freed from the strictures of hypermasculinity and gang involvement, in which men felt able to drop their masks and be themselves. Ideally, as with K6G, we would see some positive and healthful behaviors that would in turn become conduits for reinforcing the unit's safe and humane character. Indeed, this phenomenon of emerging healthful behavior is already seen in San Quentin's GP units and in veterans' units around the country, to name just two examples. It is also possible that the only difference would be an easing of pressure and a measure of freedom from the fear and anxiety that attend life in many men's general population units. Even this would be a notable improvement. Admittedly, much would have to change in terms of the public perception

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line during one of my final interviews, when the subject reported feeling intense pressure in the dorms to choose one gender identity and stick to it. For further discussion of this account, see Dolovich, *supra* note 1, at 45, n.222. But the fact remains that, to a remarkable degree, K6G has become for many of its residents a welcoming community, where they feel at home and reasonably comfortable being themselves in the dorms—in some cases, even more comfortable than they feel in the free world.

<sup>466</sup> It would be a mistake to draw any conclusions from this feature of K6G about the inherently promiscuous nature of gay men or trans women. Despite the relative advantages the unit offers, K6Gs exist in a context with very few meaningful options. As with other detainees in the Jail, the people in K6G still have relatively scant opportunities for self-expression or personal growth. Their access to productive activities is extremely limited, and indeed, many people scarcely leave the dorms at all while in the Jail. It should therefore be no wonder if, given these highly limited options, people turn to sex as an outlet and as a way to connect with others, remember who they are, relieve stress, feel good, forget themselves, or just pass the time.

of prisons and prison conditions before a collective commitment to ensuring even prisoners' basic safety might reasonably be expected to emerge. Still, it is important not to let defeatist thinking occlude our sense of what might yet be possible. The K6G experience strongly suggests that an institutional commitment to safe and humane carceral conditions may offer a pathway for the mitigation, if not the elimination, of some of the worst pathologies that incarceration yields. This possibility merits the serious consideration of those committed to humane incarceration, regardless of whether any other unit will ever, as a daily matter, look quite like K6G.

#### IV. "THEY'VE GOT IT TOO GOOD": THE LAW-AND-ORDER OBJECTION

The foregoing parts of this Article have painted a picture of two very different models of the custodial environment found inside the L.A. County Jail. Given the differences described, the obvious question is how the K6G model might be generalized beyond its present narrow confines. This inquiry informs the final part of this Article. But first, it is necessary to respond to an objection that the foregoing account may well invite: that any efforts to make the prison environment less like the Jail's GP and more like K6G would be inappropriate, and may even defeat the whole purpose of incarceration. Some observers, in other words, may well hold the view that the purpose of imprisonment is punishment<sup>467</sup> and that an environment free from the stresses, deprivations, and terrors often found in GP units will simply be too pleasant to serve that purpose.

A version of what may be called the "law-and-order" objection was not infrequently voiced by custodial staff during my field work at the Jail. At its heart was the notion that the K6Gs "have it too good"—or, as I often heard it put, that K6Gs "have too much fun." It bears keeping in mind here that the people housed in K6G are still in Jail, having been deprived of their liberty by the state. Moreover, conditions in K6G, as in Men's Central as a whole, are crowded, chaotic, unhygienic, and generally extremely unpleasant.<sup>468</sup> Movement is highly circumscribed, and unless people have court dates, they almost never get outside for the duration of their confinement. K6Gs are also regularly subjected to verbal abuse from GP inmates whose paths they cross and even from custodial staff.<sup>469</sup> It is, however, nonetheless true that, in many ways, life in K6G is much better than life in GP.

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<sup>467</sup> See, e.g., CAL. PENAL CODE § 1170(a)(1) (2004) ("The Legislature finds and declares that the purpose of imprisonment for crime is punishment.").

<sup>468</sup> See *supra* note 466 and accompanying text.

<sup>469</sup> See Dolovich, *supra* note 1, at 57–58.

But do K6Gs have it “too good?” It is tempting to rebut this notion, which seems to rest on an implicit commitment to harsh punishment for criminal offenders, with the observation that many of K6G’s residents are pretrial detainees and thus have not yet been convicted of any crime. But this dodge will not suffice. For one thing, a good portion of people in the Jail at any given time are sentenced offenders, who are either awaiting transfer to state prison or serving out their sentences in the Jail.<sup>470</sup> Furthermore, my argument throughout has been that, to the extent that K6G provides more humane custodial conditions than are typically found in GP, the lessons it teaches ought to be generalized, not only to other units in the L.A. County Jail, but also to as many other custodial facilities as possible—including prisons, where everyone in custody is serving time as punishment for criminal activity. The question then becomes: are there any legitimate grounds for condemning the K6G model as insufficiently punitive? The stakes are significant, since an affirmative answer to this inquiry would not only derail efforts to apply the lessons of this model to other carceral environments, but could even justify an assault on K6G itself.

Fortunately, this question is appropriately answered in the negative. The notion that the K6G model is illegitimate because residents “have it too good” implicitly suggests that the standard hypermasculinity model is itself legitimate. But this way of regarding the matter has it backwards, since there are strong grounds for thinking it is the standard model that is illegitimate. There are limits on what the state may legitimately do to its citizens in liberal democratic societies, even as punishment for crimes.<sup>471</sup> For example, the state may not, as criminal punishment, leave an offender to starve or waste away for want of food or potable water; nor may it fail to provide prisoners with necessary medical care, so that, for example, a broken bone remains unset, a gaping wound unstitched, or obvious physical distress ignored. Nor, in the same way, may the state force prisoners to live in constant fear of violent assaults in a climate in which such assaults are

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<sup>470</sup> For example, on March 30, 2012, 7,253 people out of a total count of 17,215 were fully sentenced. *See* SECURITY LEVEL—SENTENCE STATUS SUMMARY ALL CUSTODY FACILITIES (NOT IRC OR LCMC) (Mar. 30, 2012) (on file with the author). By June of 2012, the number of sentenced offenders housed in the Jail had increased by almost 1,000 people, to 8,182 people. *See* SECURITY LEVEL—SENTENCE STATUS SUMMARY ALL CUSTODY FACILITIES (NOT IRC OR LCMC) (June 6, 2012) (on file with the author) (reporting that, of the 18,428 people in the Jail on June 6, 2012, 8,182 were fully sentenced offenders). The reason for the increase was the influx of “non-non-non” (nonserious, nonviolent, nonsexual) offenders, who ordinarily would have been sent to state prison, but who, under the “Realignment” of AB 109, will now serve their time in county jail. CNTY. OF L.A. CMTY. CORR., *supra* note 1.

<sup>471</sup> The remainder of this paragraph and the six that follow draw on Dolovich, *supra* note 297, at 914–16.

commonplace, since this would inflict a form of physical and psychological suffering akin to torture. It is plainly cruel to punish criminal offenders with the strap,<sup>472</sup> with rape,<sup>473</sup> or with any other form of brutal corporal treatment.<sup>474</sup> And for the same reason, the state may not legitimately place incarcerated offenders in a position of ongoing vulnerability to assault by predatory prisoners,<sup>475</sup> thus creating conditions that would amount to the same thing.<sup>476</sup>

These limits on the state's power to punish are not simply moral constraints. The prohibition on what amounts to the infliction of gratuitous suffering is also a basic constitutional principle, incorporated directly into the Eighth Amendment's prohibition on "cruel and unusual punishment," which has been rightly read to prohibit the "unnecessary and wanton infliction of pain."<sup>477</sup> And when prisoners are deprived of basic needs such that they suffer serious physical or psychological trauma, it is irrelevant whether the state affirmatively inflicted the deprivation as an explicit part of the punishment or merely caused the deprivation by a failure to take protective measures. Where there is a duty to protect, an omission is as culpable as an affirmative act.<sup>478</sup>

As a doctrinal matter, prison conditions violate the Eighth Amendment when they subject people in custody to a substantial risk of serious harm of which prison officials are aware and yet disregard.<sup>479</sup> And, as Justice

<sup>472</sup> See *Jackson v. Bishop*, 404 F.2d 571, 579 (8th Cir. 1968) (finding that the use of the strap "runs afoul of the Eighth Amendment; that the strap's use . . . offends contemporary concepts of decency and human dignity and precepts of civilization which we profess to possess").

<sup>473</sup> See *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (explaining that rape is "not part of the penalty" imposed on incarcerated offenders as punishment for their crimes (internal quotation omitted)).

<sup>474</sup> See *Wilkinson v. Utah*, 99 U.S. 130, 136 (1879) ("It is safe to affirm that punishments of torture . . . and all others in the same line of unnecessary cruelty, are forbidden by [the Eighth] Amendment.").

<sup>475</sup> See JAMES GILLIGAN, *VIOLENCE* 166 (1996) (arguing that "[prison] authorities tacitly and knowingly tolerate" sexual violence by some prisoners against others "so that the rapists in this situation are acting as the vicarious enforcers of a form of punishment that the legal system does not itself enforce formally or directly").

<sup>476</sup> Indeed, allowing the danger to passively exist may be even worse, as it creates on the part of the victim a constant expectation and terror of assault that ultimately may be even more psychologically damaging than if the same treatment were administered by the state at a specified time and place.

<sup>477</sup> *Estelle v. Gamble*, 429 U.S. 97, 103 (1976) (quoting *Gregg v. Georgia*, 428 U.S. 153, 173 (1976) (plurality opinion)).

<sup>478</sup> See MODEL PENAL CODE § 2.01(3) (1962) (providing criteria for omission liability).

<sup>479</sup> See *Farmer v. Brennan*, 511 U.S. 825, 837 (1994) (holding that prison officials are "liable under the Eighth Amendment for denying an inmate humane conditions of

Blackmun pointed out in his concurrence in *Hudson v. McMillian*, such harm may be psychological as well as physical, since “[i]t is not hard to imagine inflictions of psychological harm . . . that might prove to be cruel and unusual punishment.”<sup>480</sup> It is thus arguable that, both morally and constitutionally, the model of imprisonment the standard GP unit embodies is illegitimate. In the worst iterations of this environment, people may find themselves living with constant stress and fear under an ever-present threat of physical violence and sexual victimization.<sup>481</sup> They can never relax, never let down their guard. That so many men would pretend to be gay, especially in an environment well known as dangerous to homosexuals, in order to escape the regime awaiting them in the Jail’s GP gives some indication of how oppressive and harmful this experience can be.

The patent inhumanity of prison conditions on the hypermasculinity model indicates the misguided nature of the law-and-order critique of K6G. To some, however, the foregoing may seem to have missed a key point: Offenders are sent to prison because they have committed a crime, perhaps a very serious one. And if while in prison they experience serious physical or psychological pain, it is not because the state is cruel but because prisoners deserve it. To be cruel, the infliction of harm must be not only severe but also “unjustified or excessive.”<sup>482</sup> On this view, if prisoners suffer serious harm, it may be unpleasant, but, being justified by the offense of conviction, it cannot be cruel—and thus is neither morally nor constitutionally problematic.

There are, however, two problems with this objection, one practical and one normative. First, as a practical matter, when people in custody are subjected to the physically and psychologically damaging conditions of the hypermasculinity model, the extent of the burden will generally be

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confinement” when they “know[ ] of and disregard[ ] an excessive risk to inmate health or safety”); *see also* *Brown v. Plata*, 131 S. Ct. 1910, 1926 n.3 (2011) (reaffirming that prisoners can recover under the Eighth Amendment when they face prison conditions posing “a substantial risk of serious harm,” as when “systemwide deficiencies [exist] in the provision of medical and mental health care”).

<sup>480</sup> *Hudson v. McMillian*, 503 U.S. 1, 16 (1992) (Blackmun, J., concurring) (citing in support of the proposition the case of *Wisniewski v. Kennard*, 901 F.2d 1276, 1277 (5th Cir. 1990), in which “[a] guard plac[ed] a revolver in [an] inmate’s mouth and threaten[ed] to blow [the] prisoner’s head off”).

<sup>481</sup> *See* Haney, *supra* note 14, at 129 (“Over the years, countless prisoners have told [him] that they can ‘feel’ the threat of rape ‘in the air’ around them, or have heard frightening accounts of it having taken place, even if they have not seen it themselves or been directly victimized.”).

<sup>482</sup> John Kekes, *Cruelty and Liberalism*, 106 *ETHICS* 834, 838 (1996). As Kekes puts it in his study of cruelty, “The victim does not deserve the pain, or that much of it, and there is no morally acceptable reason for its infliction.” *Id.*

unrelated to the offense of conviction.<sup>483</sup> To suggest that this treatment is deserved on account of the victim's prior crime presumes that the harm inflicted bears some relationship to that prior offense, so that someone who committed a heinous murder is subject to greater trauma, and thus greater harm than, say, an identity thief. But this is not the case; instead, the harms suffered in custody are inflicted across the board, with no necessary correlation to victims' offenses of conviction.<sup>484</sup> Moreover, the notion that men in custody deserve to suffer the effects of the hypermasculinity model does not square with the fact that these effects are the product not of deliberate and calibrated state action, but of a general failure on the part of the state to alleviate incarceration's worst effects. It is thus implausible to regard the infliction of these harms as prompted by the crime that justified the original sentence.

Second, as a normative matter, when prisoners are incarcerated as punishment, it is the length of the prison term that is supposed to reflect society's collective judgment as to the seriousness of the crime and thus the degree of the offender's blameworthiness. Although this assertion may seem to beg the question, it in fact reflects a critical difference between private judgments of moral desert and the necessarily constrained expressions of societal condemnation embodied in the state's decision to incarcerate. The deliberate infliction of corporal harm was long ago rejected in the United States as a legitimate form of punishment.<sup>485</sup> Although the death penalty persists, the decision to incarcerate rather than to execute reflects an affirmative choice not to destroy the offender but merely to banish him or her from society for the specified term. In a given case, the choice to banish and not to destroy may fail to satisfy those private

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<sup>483</sup> See, e.g., *Farmer*, 511 U.S. at 825 (considering the Eighth Amendment claim of a plaintiff who was raped and beaten while serving a twenty-year sentence for credit-card fraud).

<sup>484</sup> If a prisoner's offense does have any bearing on the extent of the harm suffered in a hypermasculine environment, it is likely to have the opposite effect to that imagined by this objection, since it is typically the prisoners who have committed the most violent crimes who command the most respect on the inside—by fellow prisoners and correctional officers alike—and are thus least likely to be victimized.

<sup>485</sup> *Wilkerson v. Utah*, 99 U.S. 130, 135–36 (1878) (“Difficulty would attend the effort to define with exactness the extent of the constitutional provision which provides that cruel and unusual punishments shall not be inflicted; but it is safe to affirm that punishments of torture . . . are forbidden by that amendment to the Constitution.”); see also *Furman v. Georgia*, 408 U.S. 238, 272 (1972) (Brennan, J., concurring) (quoting *O’Neil v. Vermont*, 144 U.S. 323, 339 (1892) (Field, J., dissenting)) (explaining that the Eighth Amendment has been held to prohibit “the barbaric punishments condemned by history, ‘punishments which inflict torture, such as the rack, the thumbscrew, the iron boot, the stretching of limbs and the like’”); *Jackson v. Bishop*, 404 F.2d 571, 579 (8th Cir. 1968) (discussing the unconstitutionality of the strap).



citizens who feel the offender merited greater suffering than the state has determined to inflict. But the use of incarceration as punishment represents a collective commitment to constrain the nature of the harm to be inflicted, notwithstanding that the target may deserve worse.

One might prefer another system in which, say, prison sentences would specify not just the duration of the confinement but also the nature of the conditions under which the offender would be kept, calibrated to the degree of the perceived wrongfulness of the offense. Were our system to operate this way, a separate inquiry into the cruelty and thus the constitutionality of the punishments thereby authorized would be necessary.<sup>486</sup> But this is not the system we have. In our system, when an offender sentenced to prison time is subjected to serious physical or psychological harm, that harm is by definition unjustified, since whatever price she may be required to pay for her crime has already been fixed by the state in terms of a more legitimate currency—the time to be served.

The above-canvassed arguments emphasize the state's moral and constitutional obligations to those it incarcerates and the limits of a retributive theory of prison conditions. Taken together, they strongly suggest that it is the standard hypermasculinity model of incarceration and not K6G that ought to be reconsidered and abandoned. Still, there remain two concerns with the K6G model that bear consideration, each of which appeared to some extent to motivate the complaints about the unit that deputies voiced to me during my time in the Jail. The first concerns the open sexuality in the K6G dorms. As has been noted, there is a considerable amount of consensual sex in K6G. The range of such interactions is much like that on the outside. Mutually attracted consenting parties have sex. People form relationships, cheat, break up. Those without the resources for "store"<sup>487</sup> will exchange sex for goods<sup>488</sup> or to pay off a debt.

From a policy perspective, the implications of this situation are mixed. On the one hand, the ready availability of willing sexual partners and the absence of any pressure to pretend ambivalence about sex with other men makes for an atmosphere that is far more emotionally healthy and physically safe than is generally the case behind bars. On the other hand, there are costs to such open promiscuity. For one thing, HIV rates are

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<sup>486</sup> The problem with such a system, of course, would be that, to the extent that the prescribed conditions would affirmatively call for the deliberate infliction of serious physical or psychological harm, it would be authorizing treatment arguably amounting to torture, thus violating the prohibition on cruel punishment.

<sup>487</sup> "Store" is Jail slang for anything bought from the commissary.

<sup>488</sup> See *supra* note 230 (discussing prostitution in K6G, although noting that there is no pimping).

extremely high in the dorm, far higher than in GP.<sup>489</sup> Some K6G residents reported finding it unpleasant to be exposed to the sexual lives of others. The openness about love and sex feeds jealousy and tension that often motivate physical altercations. And as was pointed out to me frequently by custody officers, it is a felony in California to have sex in prison. Signs to this effect are prominently displayed in each K6G dorm, but the law goes entirely unenforced. Many officers find it particularly galling that below the signs attesting to the illegality of sex in prison are metal boxes into which K6Gs deposit the condoms distributed to them each week after they have been used.

These officers have a point. As agents of law enforcement, they are sworn to uphold the law, and they dedicate their working lives to identifying lawbreakers and bringing them to justice, even at the risk of harm to themselves. It is thus understandable that they would resent this apparent official nonchalance as to widespread illegality—under their noses, no less. The answer, however, is not to ban condom distribution, which would only deprive those who want to protect themselves from HIV or other STDs from the ability to do so.<sup>490</sup> Given, moreover, the utter impossibility of actually enforcing any prohibition on consensual sex, not to mention the bizarre unwillingness implied by such a ban to acknowledge the basic human need for sexual expression and sexual release,<sup>491</sup> the far more appropriate course would be a repeal of the ban. This move would remedy the hypocrisy that so galls the officers and would also allow an

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<sup>489</sup> As to the rates of HIV, steps are being taken to address the issue: HIV education is available to any resident who wants it, and condoms are distributed weekly through a process designed to remind the sexually active of the risks of unprotected sex. But it is clear that more needs to be done. A number of my respondents, particularly the older ones, lamented that many of the young people seem not to know or care about the risk of HIV transmission from unprotected sex. This alone is a strong argument for a review of the educational programs in place in K6G and for efforts to understand and counter the casual attitude toward infection that has reportedly taken hold in the dorms. Still, the Jail can only do so much. For those who, like many of the unit's "frequent fliers," live on the street and hustle for a living, the fear of HIV may be insufficiently immediate to have much impact on behavior. And the casual attitude towards infection that many respondents describe is consistent with the same attitude in many young people and even society in general, which seems to have arisen from the availability of pharmaceuticals that help many people who are HIV-positive stave off the onset of AIDS. In recent years, AIDS educators and activists have grown concerned that the existence of antiretrovirals and the fact that HIV infection is no longer a death sentence for many in the United States may have led a younger generation of gay men to cease fearing infection and thus to engage more readily in unsafe sex and other risky behaviors.

<sup>490</sup> Indeed, this distribution should be stepped up, since at present, residents are only entitled to one condom a week, leaving some of the more sexually active residents without sufficient means to engage in safe sex.

<sup>491</sup> See Smith, *supra* note 420, at 185.

open discussion of how best to channel the normal, healthy sexual instincts not only of the people in K6G, but of all people in custody.<sup>492</sup>

The second concern motivating some officers' condemnation of K6G was that the relative comfort, ease, and even enjoyment that await repeat offenders on their return to K6G may defeat the essential deterrent purpose of incarceration. The worry here, in other words, is that far from representing a punishment that one would strive to avoid, the conditions in K6G are so good that they incentivize K6Gs to commit crimes just to go there. To get at this issue, in my interviews, I asked two questions: *Do you think anyone commits a crime just so they can go to K6G?*<sup>493</sup> and *Is K6G better than the outside world for some people?*<sup>494</sup> The answers were extremely consistent<sup>495</sup> and to some extent confirmed the worry, strongly suggesting that some people may well commit crimes just so they can get to K6G.

However, respondents unanimously affirmed that no serious crimes are committed in efforts to get back to the unit. This makes sense. Convictions for serious felonies would lead offenders directly to state prison, with only a temporary stopover in K6G. And even were there an analogous unit in the California prison system, the prospect of a multi-year stay in prison, even in a unit like K6G, would be unlikely to hold any allure even for those who would prefer K6G to GP while in custody. Instead, what seem to appeal to those K6Gs who seek arrest are the immediate, short-term benefits of admission to the Jail. Although I have no quantitative data in this regard, my interviews suggested that the specific motivations of those angling for a bid in K6G fall into what may appear at first to be two distinct categories. First, as with the misdemeanor in O. Henry's memorable story, *The Cop and the Anthem*, many people who have been in K6G live on the streets and will occasionally need a respite from

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<sup>492</sup> Some might argue that this course would not really answer the officers' objection, which is likely motivated not by an aversion to official hypocrisy, but to discomfort with the idea of consensual sex between men. This may be. But it was the apparent hypocrisy of an institution that insists on the illegality of sex while distributing condoms that most frequently grounded the objection as it was put to me. And whatever actually lay behind the articulation of this objection, the strategy suggested here does seem the best way to address the concern as expressed.

<sup>493</sup> Dolovich, *supra* note 1, at 102 q.37.

<sup>494</sup> *Id.* at q.38.

<sup>495</sup> Of the 32 people asked the first question, 20 (or 62.5%), answered in the affirmative, 4 allowed the possibility ("perhaps," "possibly," "maybe," "probably"), and 2 said they did not know. Only 6 answered the first question in the negative. Of the 29 people asked the second question, 23 (79.3%) answered in the affirmative, 1 allowed the possibility ("probably"), and 1 did not know. Only 4 answered the second question in the negative.

the relentless demands of that hard life.<sup>496</sup> A bid in the Jail brings access to showers, a bed, three meals a day, and the opportunity to rest weary bones. Jail admittance also brings medical attention, which can include simple first aid as well as medication for chronic conditions, which for a homeless person will otherwise be out of reach.<sup>497</sup> As my subjects explained:

- [T]here's a few people in [K6G] that are homeless, you know, they live on the streets. And . . . here you get fed . . . three times a day. . . . [Y]ou got a little bit of hygiene, whatever, once in a while. . . . You get uniforms. I think for certain people it's better . . . for them than being on the streets.<sup>498</sup>
- [T]hey have showers in here and they have hot meals, like I said, and that they're well taken care of in here, like say medications. If they're having kind of problems out there going to see the doctor, because of whatever illness they have, but there's something stopping them, which is drugs. Right here they'll get the medications and they feel more better.<sup>499</sup>
- [K6G] is better [than the outside world] for people that don't have homes and don't have nowhere like they don't have a family . . . . If I was homeless I would come here. I would do something to make me come here just so that I know I'm safe and I'm going to live for a long time.<sup>500</sup>
- A lot of people come in tore up . . . . I mean skinny, sucked up, tore up, beards, hair all nappy and stuff and crazy. And then they're here for a couple of weeks and you start seeing them get better and better and healthier and healthier.<sup>501</sup>

The prospect jail offers of having one's basic needs met, even briefly, may appeal to any number of homeless people, K6Gs or not. However, the major downsides of the Jail's GP—the danger, the tension, the prospect of violence and abuse—are strong disincentives to affirmatively seeking arrest and confinement for people who might otherwise be desperate enough for the minimal benefits jail promises.<sup>502</sup> Those destined for K6G, however, know where they are going when they get arrested and know too that their time in the Jail will be free from the worst aspects of life in GP. Thus, depending on their circumstances, the deprivations of life on the streets may well drive them to seek the benefits of at least temporary incarceration.

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<sup>496</sup> O. Henry, *The Cop and the Anthem*, in *THE RANSOM OF RED CHIEF AND OTHER O. HENRY STORIES FOR BOYS* 143 (Franklin K. Mathiews ed., 1918).

<sup>497</sup> In IRC, one can often see men with the gaunt, wasted look of homeless people, sitting with bandaged feet, after an initial medical exam revealed the sores and infections of the feet to which people are prone when they live on the streets.

<sup>498</sup> Int. 45, at B6.

<sup>499</sup> Int. 92, at B8.

<sup>500</sup> Int. 55, at 19.

<sup>501</sup> Int. 123, at F1.

<sup>502</sup> However, research into this issue may disprove this somewhat optimistic prediction.

Second, there are allegedly some K6Gs who will get themselves arrested in order to follow a lover back to the unit.<sup>503</sup> Although no respondents admitted to doing such a thing themselves, several ascribed this behavior to others. As one explained, “I’ve heard stories where these two people were lovers, or were together on the streets. One of them gets arrested, winds up in jail, then the other one would do something to get arrested to be back with that person.”<sup>504</sup>

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<sup>503</sup> Another explained:

Some [K6Gs] do [commit crimes to get back to the unit], because either their family, or street family, is in there, or a boyfriend is in there. . . . And they say, “Well, I’m going to go out here and get high, . . . and if I get caught I know my boyfriend is in [there].”

Int. 101, at A9.

<sup>504</sup> Int. 123, at E10. There is also a third motive suggested by my interviews for people trying to get into the Jail, which is independent of conditions in K6G. That is, some of my respondents suggested that people will sometimes be paid to be “mules”: i.e., to get themselves arrested in order to bring contraband into the jail. Every person is strip-searched on admission to the jail. See Dolovich, *supra* note 1, at 27 (describing the Jail’s intake process). But I am told that people determined to sneak contraband of a relatively small size into the Jail will often find the rectal cavity to suffice. As one person put it:

[T]here are people who come back to jail because they’re paid . . . [t]o bring in drugs, tobacco, lighters, cell phones, whatever. And the person on the street pays them to be a mule, bring stuff in on a weak ass charge and they come up to the dorms, distribute what they need to distribute, and then . . . they go.

Int. 75, at A16–17. I asked one of my respondents to explain how this might happen. He gave me an example of someone who was “put on Prop 36,” meaning he was a first- or second-time drug offender given the diversionary option approved by California voters as Proposition 36 in the 2004 election cycle. According to this interviewee, people who have been found to violate the terms of their Prop 36 sentence will often be sent to the Jail for a week or so, and are routinely given several chances before a violation leads to removal from the Prop 36 program and a ticket to criminal court. See Int. 103, at D9 (reporting that he personally “violated [his Prop 36 agreement] four times,” and was sent to the Jail for a week and then released). Our exchange went like this:

*Who would pay them to come to K6G?*

I would pay them. It depends on what I wanted.

*Okay, so, give me an example. . . .*

Say . . . you’re on Prop 36, and you’re getting ready to leave. I tell you, “You know what? How would you like to make \$1,000 in one week?” “I’d like to make \$1,000 in one week.” “Okay, well, I have a job for you to do. As soon as you get out, I need you to go to this address. I’ll call you when you get there. You have to be there at five o’clock, though.” “Okay.” “So, you get there, I explain everything to you on the phone. This is what’s going to happen. I need you to bring such and such and such and such back inside jail. Bam, here’s \$500. Whoever I call, give them \$500. Give them \$500 and whatever it is that I need him to bring in.” He goes outside, gets caught drinking, violates his Prop 36, and he comes up. I get what I want. When he gets out, he gets his other \$500.

Int. 103, at D9–10.

At first glance, these two motivations seem distinct. And for some readers, perhaps the second in particular will seem reason enough to condemn a unit in which gay men or trans women know they need only to commit a crime to find some measure of comfort in the company of their loved ones. Whatever else jail may be, it should not be a reward for law breaking. But delving further into the issue reveals a closer relationship between these two groups of instrumental misdemeanants than may at first appear. Indeed, in many cases, the major difference may be the labeling.<sup>505</sup> Those in the first group are homeless, with all that this label currently connotes. Those in the second group are hustlers, prostitutes, and addicts who get by on the money they can bring in day-to-day. If it is only members of the second group who might be inclined to commit crimes to join a lover in K6G, in both cases, the alternative to jail is living on the streets and facing another day just trying to survive.

At any given time in K6G, there is a critical mass of people, many of them relatively young, who know each other from Santa Monica Boulevard, the Hollywood strip, or other red-light districts in L.A. County. These individuals can spend years cycling in and out of K6G on charges of prostitution, small-time drug offenses, and vagrancy. Out in the streets, they may support each other, pool their earnings, and, when lucky, spend the night together in a day-rate motel. These are people who have nothing to lose from another stint in the county jail, and who, as one resident of K6G explained, “have no family support” and are “out there selling their bodies for \$40 so they can have a room that night.”<sup>506</sup> The people they live with day to day, with whom they eke out a bare existence on the street, *are* their family. If this is your life and your daily companions are arrested, it may well be more appealing to get arrested yourself and join them on the inside than to try to make it out on the streets alone.<sup>507</sup>

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Again, this motivation is less relevant for our purposes, since it presumably also extends to people in GP—although perhaps this scheme is more easily accomplished in K6G, as people classified to K6G know that they will be sent directly to that unit on admission to the Jail. By contrast, GPs could be sent anywhere, which may complicate the delivery of the contraband to its intended recipient. Still, the gang control of the inmate population means that such complexities are likely easily overcome, at least in some cases.

<sup>505</sup> There are some exceptions. For example, Lanni reports hearing a different explanation for this phenomenon from one recent K6G resident: this person got himself arrested on a minor charge because his lover at the time was about to be transferred from the Jail to state prison, and he wanted to say goodbye. Personal Communication with Bart Lanni, Deputy Sheriff, L.A. Cnty. Sheriff's Dep't (Apr. 17, 2012).

<sup>506</sup> Int. 47, at C4.

<sup>507</sup> Rather than being “out there selling their bodies” for a room, they “can instead come to [K6G] and get a roof over their head.” *Id.*

Ultimately, what may most distinguish the first group from the second is their age and the spirit to keep trying. Eventually, for most of the population under discussion, those in the second group will invariably join the first. As one respondent eloquently explained:

[S]ome people don't have homes. They're homeless. They're doing what they've got to do whether it involves prostituting or stealing or selling themselves short or whatever. And especially out there on the Boulevard, you know, always leads to violence and it always leads to low self-esteem and people belittling themselves and they don't realize it until they're like some 30 or 40-year-old washed up drag queen and they finally realize it. You know what I mean? . . . Most of them get HIV or they get some kind of illness. And then where are they at? . . . So for some, sure. Come in here and they have a bed, three meals, a shower. All their friends are here.<sup>508</sup>

That K6G is sufficiently alluring that some people might prefer it to being free may for some readers be proof enough that the unit's residents "have it too good." But given the profile of those for whom this may be true, it seems that what most merits condemnation is not the bearable conditions of K6G but the fact that, for some portion of society, life is so desperate and the means for basic survival so elusive that it is preferable to accept the label of convicted criminal offender and surrender one's liberty to life in a high-security carceral facility, simply to secure the absolute bare minimum to make it one more day. If K6G appeals for the protection and community it offers some gay men and trans women, this appeal is a measure of the general hopelessness of life for many people living on the margins of society and the particular hardships faced by some members of certain sexual minorities.

Many gay men in K6G, especially the older ones, were long ago rejected by their families and left to fend for themselves. This experience may be a generational one, as several younger gay men in the unit reported enjoying the support of their families. But the growing acceptance of homosexuality from which younger gay men have benefited is not yet the norm for transgenders. In the Jail, trans women of all ages told the same story of being disowned and abandoned by their birth families because of their transgender status. K6G testifies to the hard truths of life for trans women—especially those with minimal education, for whom prostitution offers the most readily available employment prospect. K6G guarantees all sexual minorities protection from violence and abuse while they are incarcerated. If it also generates as an unanticipated byproduct a small measure of relative comfort for a group so routinely abused by society at large that incarceration is preferable to freedom, then this effect, although no cause for self-congratulation, should at least be viewed with equanimity.

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<sup>508</sup> Int. 131, at F15.

There may well be heterosexual homeless men who regard a stint in the Jail as a way to have basic needs met, and who might, like O'Henry's vagrant, look to get arrested even to wind up in GP. But there is no question that the relatively relaxed environment of K6G explains the readiness of some gay men or trans women to seek another bid in the Jail.<sup>509</sup> Still, this fact alone is insufficient to condemn the K6G model. For one thing, the circumstances of such efforts are highly circumscribed, and say more about what might be thought of as the social services function of the American criminal justice system than they do about the affirmative desirability of life in K6G. This system does not exist in a vacuum, and if things get hard enough in the free world for society's most vulnerable and marginalized members, it should be no wonder if the most desperate among them seek out the only remaining source of help. Moreover, as has been seen, there are limits—both moral and constitutional—on what the state may do to convicted offenders as punishment. Unless there is some way besides changing K6G to look more like GP to make the threat of jail sufficiently effective to deter even the most desperate individuals from looking to get back inside, the state will have to look outside the penal system for ways to make sure that no one is driven to commit a crime just to get his basic needs met.

V. TOWARD INCREASED HUMANITY IN PRISON: LESSONS FROM THE L.A. COUNTY JAIL

The K6G experience suggests that current conditions on the mainline are not inevitable, and that alternatives exist. Cultural change can be hard to achieve, and the culture of the prison is no exception. As noted, the intensity of the hypermasculinity imperative varies among men's carceral institutions. But even still, too many aspects of this culture shape the experience of too many men in custody. We would therefore be remiss if we did not try to distill the possible lessons suggested by the K6G

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<sup>509</sup> I asked my interviewees the following question: *Do you think that people who have been in K6G would be less likely to commit a crime if they knew they had to go into GP and not back to K6G?* See Dolovich, *supra* note 1, at 102 q.42. Of those respondents who answered this question, two-thirds (11/17) answered in the affirmative, i.e., that K6Gs otherwise motivated to get back into the Jail would be less inclined to try it if they knew they would have to go to mainline. In the words of one respondent:

[I]f they had to go on main line, I don't think that they would be as comfortable with it. They wouldn't make this place, like "Oh, well, I'm going to get arrested today," because some people come to [K6G], you know, some people fall in love and come back because they know that the person that they're with wouldn't go home for another three months, so they may do a three-month crime like breaking a bottle in a grocery store or something.

Int. 119, at A8.



experience for facilities elsewhere, and to identify potential strategies for reform. What follows are initial efforts in this direction.

#### A. LESSONS

1. *Many of the worst pathologies seen in men's prisons and jails might well be mitigated or even eliminated if the people in custody felt independently safe and secure.* This is perhaps the single most important lesson of K6G. K6G demonstrates the value of creating a climate in which people do not feel that their own safety depends on successfully performing a hypermasculine identity. There is no magic bullet that can transform a prison environment from one governed by the hypermasculinity imperative into one like K6G. But one thing is clear: hypermasculine performance and gang affiliation offer scared people in dangerous environments ways to protect themselves from harm. It is thus not reasonable to expect individuals in this situation to abandon either strategy unless they feel it is safe to do so. To the extent that the hypermasculinity imperative lies at the root of much of the inhumanity of life in contemporary men's prisons and jails—and my sense is that it does so to a very great extent—the single greatest priority on the part of prison administrators and others with an interest in making life in prison as humane as possible must be that of ensuring conditions under which people in custody feel safe from physical harm.

2. *The “gladiator school” environment<sup>510</sup> found in many men's prisons and jails is to a considerable degree a product not of the inherently violent nature of the people locked inside but of the system itself.* It may be comforting for people on the outside to blame the prisoners themselves for the worst aspects of their confinement: the violence, the danger, the fear. Those living in these environments must be animals—or worse, monsters—or why else would they be behaving this way?<sup>511</sup> As the foregoing demonstrates, however, the notion that prisons are sites of predation and abuse because prisoners are inherently violent lets the institutions themselves off the hook too easily.<sup>512</sup> If it were true that prisoners make the prisons, K6G should look more like other dorms in the Jail. It is not as if the residents of K6G are unfamiliar with the hypermasculine posturing and

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<sup>510</sup> See PARSELL, *supra* note 29, at 62.

<sup>511</sup> See Dolovich, *supra* note 158, at 288–91 (exploring the way the ideological conception of criminals as monsters both justifies and reinforces the arguably inhumane treatment imposed on people in prison).

<sup>512</sup> See Dolovich, *supra* note 221, at 240–41 (“American-style incarceration, through the conditions it inflicts, *produces* the very conduct society claims to abhor, and thereby guarantees a steady supply of offenders whose incarceration the public will continue to demand.”).

other consequent pathologies that are endemic in the Jail's GP. To the contrary, many people in the unit have lived by that destructive code in other custodial situations, sometimes for years. Nor may K6G's relatively safe and humane character be explained exclusively by the sexual identity of its residents: as has been seen, many gay men can manifest when necessary the violence, belligerence, and insensitivity to others that the hypermasculinity imperative demands. People in K6G are able to abandon that behavioral code while in the unit only because they are confident that doing so will not put them in danger. This confidence arises from several key features of the particular institutional framework that created K6G and has been sustained over time: the procedures that have together ensured relatively impermeable boundaries around the unit; the commitment of Officers Bell and Lanni to the well-being of unit residents and the trust and open communication this commitment has inspired; and the emergence in K6G of a community of people sufficiently interconnected to allow for an appreciable level of mutual trust. In short, K6G strongly suggests that the prison makes the prisoners and not the other way around.<sup>513</sup>

3. *Classification is an ongoing process, requiring continuous monitoring to ensure the removal of potential predators from housing units.* The people in K6G know that anyone who threatens violence against others will be removed from the unit and placed in administrative segregation. The willingness of unit residents to report such malefactors facilitates this process and enhances feelings of personal security and safety in the dorms.<sup>514</sup> Other jurisdictions are implementing policies to achieve a similar effect. In San Francisco County, for example, jail policy is to house people in smaller units with others of like size and strength and to reshuffle housing assignments should any residents emerge as victims or victimizers. To facilitate this method, classification officers in San Francisco can spend up to forty-five minutes interviewing each new admit, to determine not only whether he might be vulnerable or predatory, but also his relative strength and where he might fall in the pecking order of the unit to which he is assigned (i.e., might he emerge as a victim in a standard GP unit? a predator

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<sup>513</sup> There are obvious parallels here to Thomas Hobbes' central insight in his classic work, *Leviathan*: "[D]uring the time men live without a common Power to keep them all in awe, they are in that condition which is called Warre; and such a warre, as is of every man, against every man." THOMAS HOBBS, *LEVIATHAN* 62 (E.P. Dutton & Co. 1914) (1651).

<sup>514</sup> This is a further aspect of K6G's virtuous circle: the readiness of K6Gs—for whom there is no premium on seeming hard and tough—to voice complaints about their treatment means that Jail officials are likely to hear about abuse in the unit, which only further reinforces the feelings of safety among people who might otherwise hesitate to report any victimization out of fear of being "disciplined" for doing so.

in a unit of vulnerable inmates?).<sup>515</sup> Classification officers then keep tabs on units, reassigning people where necessary. San Francisco's more closely calibrated approach is enabled both by its relatively small population—in recent years, its annual admissions rate has been between 30,000 and 37,000,<sup>516</sup> as compared with L.A. County's 166,000<sup>517</sup>—and by the modern podular design of its new facility, which allows for smaller and more readily monitored housing units. The positive value of San Francisco's approach is on display in K6G, which shows that ongoing attention to unit dynamics arising after the initial classification can promote safety, even in a facility with old-style dormitory housing, and even in a mega-jail like Men's Central.

4. *Continuity of supervision may increase trust between officers and the people in custody, thus promoting a safer and more secure environment for all.* In corrections circles, it is well recognized that "direct supervision" increases the safety and security of housing units. In contrast to the external surveillance of the "panopticon" model famously promoted by Jeremy Bentham, direct supervision places correctional officers inside the cell blocks and dormitories along with the residents. This strategy has obvious benefits. For one thing, it gives officers access to all corners of the unit, eliminating the phenomenon of blind spots, which in most facilities exist whenever officers remain stationed in an overlook booth.<sup>518</sup> Equally valuable, direct supervision allows extended personal interaction between officers and unit residents, giving all parties the chance to know one another as people. In units that operate on a direct supervision model, violence and disorder tend to drop. This approach, moreover, works best when there is continuity among the staff. Frequent rotation of staff between units has its advantages; it gives officers experience throughout a facility and limits the possibility of corruption by officers, who may develop close relationships with prisoners involved in illegal activities only to be gradually enlisted in criminal schemes. But frequent rotation also disrupts the forging of bonds of trust and familiarity between officers and residents—bonds that, when present, can contribute to a positive and orderly atmosphere.

Direct supervision, however, is resource-intensive. This model requires that correctional officers be unarmed, since weapons can easily change hands. And today's fiscal realities have resulted in a generally high

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<sup>515</sup> Interview with Jan Dempsey, Undersheriff, S.F. Sheriff's Dep't, in S.F., Cal. (May 29, 2008).

<sup>516</sup> E-mail from Joan Scannell, Sgt., S.F. Sheriff's Dep't, to author (May 9, 2011, 9:15 AM PST) (on file with the author).

<sup>517</sup> See *supra* note 2.

<sup>518</sup> Such blind spots effectively function as free zones in which prisoners can perpetuate any abuses as long as they remain out of the officers' sightlines.

prisoner-to-officer ratio, which makes it difficult to implement direct supervision. The reason is simple: as both residents and officers will attest, however calm a unit may seem, things can explode in an instant, and no officer wants to be alone, unarmed, and surrounded by 150 prisoners when something snaps. For this reason, like many overcrowded facilities nationwide, L.A. County keeps its supervising officers in the booths overlooking the units.<sup>519</sup> Deputies rarely enter the dorms, except to supervise the distribution of food and clothing exchange and to conduct count.<sup>520</sup> Officers and unit residents thus remain strangers to one another.

Even Bell and Lanni, who have generally positive relationships with K6G's residents, rarely go into the dorms. They spend most of their days upstairs in the office and the classroom, dealing with classification and programmatic issues. Although residents often seek them out to resolve conflicts, there is inevitably much that goes on in the dorms of which they remain unaware. Yet despite this constraint, these officers have managed in other ways to get to know a great many of the people who come through K6G, and vice versa.<sup>521</sup> They have thus built up a reservoir of mutual trust that they regularly draw on to improve the lives of unit residents while keeping disorder to a minimum.

This mutual understanding and respect can only come from regular interpersonal interactions over the long term, which will arise most readily from a policy of direct supervision with minimal rotation of officers between positions. Ideally, every detainee in the jail would live in a unit under the supervision of officers committed to creating humane conditions of confinement. It would also benefit K6G if a policy of direct supervision were implemented in that unit, provided the officers tapped to work inside the dorms were disposed to treat unit residents with respect. But somewhat counterintuitively, the K6G experience—in which two officers who rarely go to the dorms have nonetheless been able to build the bonds of trust and personal respect with unit residents—reinforces the value of a direct supervision model of policing in prisons, and of any other strategies that allow for the development of mutual and respectful personal connections between officers and the people in custody.

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<sup>519</sup> In Men's Central, the Jail has even built transparent "tubes" inside some of the cell blocks that allow officers to walk the line while remaining beyond the reach of the men in the cells. Although this strategy may keep officers safe from "throwing" (a.k.a. "gassing") and other unwelcome assaults, visibility is much more restricted in the tubes, increasing the blind spots problem and greatly limiting the effectiveness of the rounds.

<sup>520</sup> Twice a week, detainees in the Jail are issued new shorts, shirts, pants, and overshirts, as well as fresh sheets for their bunks. This exchange is done in the dorms by inmate trustees with officers looking on.

<sup>521</sup> See *supra* III.B.3.

5. *Given a meaningful alternative, men in custody may reject the behavioral code that defines the hypermasculinity model.* No doubt, many men in prisons—especially young men who have known no other life—will unfortunately welcome the chance to continue their gang activity in custody. But many others will not, and, given the chance, would readily leave behind the stress, fear, and danger that accompany a carceral culture of hypermasculinity and gang politics. The daily parade of men who pretend to be gay to try to get into K6G is proof positive of this claim. The key to this willing abandonment is a credible promise of personal security. As Craig Haney importantly reminds us, “[g]angs only flourish in a jail or prison society where there is a strong undercurrent of fear and reminders of one’s own vulnerability.”<sup>522</sup> The same may be said of the hypermasculine posturing that keeps the gangs’ soldiers in line and promotes victimization of the weak. People who believe that letting down their guard will put them at risk will keep the mask firmly in place. But K6G, by providing safety without the need for posturing, allows K6G’s residents to choose for themselves how to behave, and in the majority of cases, the masks come down. The K6G experience suggests that, given the opportunity, many other men in custody would make the same choice—a suggestion reinforced by the experience of San Quentin’s GP and the veterans’ units described earlier.

6. *Men in custodial environments free of the hypermasculinity imperative may collectively cooperate to prevent its (re)emergence.* Residents of K6G are well aware of the advantages of a unit free from the gang politics that govern the rest of the Jail. They are, moreover, determined to retain them. Efforts to introduce gang politics into the unit are met with immediate hostility and a clear message that such behavior is unwelcome.<sup>523</sup> Even behaviors that merely indicate sympathy with the gang culture—such as when people “start throwing up those gang signs or where they’re from”<sup>524</sup>—are not tolerated in K6G. The absence in K6G of both gang politics and the hypermasculinity imperative was only made possible in the first instance because institutional forces came together to assure people in the unit that they could safely reject the demands of that destructive model. But my research also indicates that many of K6G’s residents have forged a collective commitment to keeping it that way. It is hard to know to what extent these efforts explain the continued absence of gang politics. At the very least, they surely serve to acculturate new arrivals to K6G’s anti-gang norms, thereby teaching those people

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<sup>522</sup> See Haney, *supra* note 14, at 136.

<sup>523</sup> See *supra* note 153.

<sup>524</sup> Int. 131, at F4.

unfamiliar with K6G that it is safe to leave off the tough-guy posturing that would be required of them in the Jail's GP. The evident willingness of unit residents to play this simultaneously educative and (non-violent) disciplinary role suggests that administrators seeking to break the hold of the hypermasculinity model of prison life may want to consider ways to enlist the assistance of those men who stand both to benefit from the success of the effort and to pay the price of its failure.

*7. The availability of alternative means of self-expression and identity formation may in turn undercut the appeal of hypermasculine performance and gang activity.* K6G teaches that, in a carceral environment where people are not punished for being themselves or pursuing their own interests, they will engage in healthy and natural forms of self-expression.<sup>525</sup> Certainly, the avenues for self-expression in K6G are highly constrained by the conditions of confinement.<sup>526</sup> Still, as has been seen, unit residents are free to engage in a number of expressive pursuits not typically available to people in GP. Although many residents prefer to keep to themselves, many others take advantage of this freedom to forge interpersonal bonds of friendship, kinship,<sup>527</sup> and even love. They have sex. They sing and dance. Some even find creative outlets in designing clothes made from county-issue uniforms and bedding, and organizing fashion shows.<sup>528</sup>

That dorm residents value their access to increased avenues for self-expression came through clearly in my interviews. This relative freedom is a big part of the unit's appeal, and its enjoyment seems to bolster the collective determination to reject any efforts to introduce GP norms into K6G. To see why this might be, consider K6G's fashion designers.

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<sup>525</sup> Admittedly, not all these forms are necessarily positive or desirable. In K6G, for example, the freedom to act on feelings of anger, instability, frustration, resentment, etc. means that there is more frequent one-on-one fighting in K6G than in GP. But the apparent calm of GP does not indicate the absence of those negative emotions. It only means that people are working extremely hard to suppress them, an effort that is certain to be psychologically, emotionally, and even physically costly. Ideally, there would be fewer fights in K6G. But the way to achieve that goal is to reduce crowding, improve facilities, and provide alternative means for people to engage in meaningful and productive endeavors, not to create a climate in which people swallow ordinary human reactions they are too afraid to express.

<sup>526</sup> See *supra* Part II.B (describing the many unpleasant and demoralizing features of life in K6G).

<sup>527</sup> See *supra* note 342.

<sup>528</sup> See Int. 41, at E2 ("They get done up . . . and just walk around with, you know, dresses that they had made. Nice dresses, but I mean they like they came off a rack."); Int. 53, at B7 ("It's a lot of horse playing in there, lot of fun, you know, things going on. We have fashion shows and all that stuff, you know.").

Members of this group are only able freely and openly to indulge their interest in (and in some cases I observed, considerable talent for) creative design because they wound up in a unit free from the hypermasculinity imperative and its pathologies. But equally, having found this outlet, these designers and their models have no need for the identity, purpose, or sense of belonging gang membership can confer. They have found their own identity, set their own priorities, and forged their own community. Gang culture has nothing to offer them, and indeed would be extremely costly for them. Not only would it require that they pay the usual price of hypermasculine performance—emotional repression, fear of a misstep, the willingness to use violence, the risk of further criminal charges, etc.—but any public display of their genuine personal interest in fashion would very likely expose them to victimization.<sup>529</sup> The members of this K6G subculture thus have much to gain from continued freedom from the hypermasculinity imperative and much to lose from its resurgence. They may therefore be expected to resist any efforts to reintroduce it into the unit.

The same is true of many others in K6G who, despite the relatively limited number of meaningful pursuits available to residents of the unit, have found meaning and identity in other ways. This is K6G's virtuous circle at work, in which an absence of any hypermasculinity imperative has created space for individual pursuits that, being highly valued by residents, may in turn reinforce the collective rejection of that imperative. One can only imagine how much stronger the resistance would be among people who enjoyed access to a wide range of productive pursuits, allowing manifestation of a broad set of interests. Among corrections professionals, it is well known that people in custody with access to college courses, arts and crafts lessons and supplies, theater arts, vocational training, and meaningful and challenging work of all kinds—as writers, journalists, librarians, paralegals, electricians, teachers, gardeners, etc.—are much less inclined to participate in hypermasculine performance or to embrace the values and norms of gang life. It is, moreover, well known that in prison, men with privileges on the line will be better behaved than men who have nothing left to lose. This is the principle of honor yards, where men who have proved their ability to live safely with others enjoy more privileges than other prisoners, thus creating even greater incentives to good behavior. The experience of K6G suggests there may yet be another turn of the wheel, in that creating avenues for self-expression and identity formation may in

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<sup>529</sup> That is, unless they accepted a subordinate role in protective pairing with a “Daddy” who permitted such pursuits. See Donaldson, *supra* note 225. In some cases, such overt displays of “femininity” may even be demanded by the more powerful party in a protective pairing, who may want their subordinates to self-present as much like women as possible. See, e.g., RIDEAU, *supra* note 8 (describing this phenomenon).

the right environment encourage a collective refusal to participate in hypermasculine performance.

8. *For people in custody to express a full range of human emotions is both healthy and normal.* The people housed in K6G feel relatively safe and thus able to relax and be themselves. As a consequence, they feel free to express a range of human emotions and engage in a host of behaviors not often seen in men's carceral facilities. Although many unit residents choose to keep to themselves, it is also not unusual—as has already been noted—to see people in K6G laughing, singing, dancing, hugging, and even walking around displaying clothes they have personally designed. That prisoners could create such a climate in the bowels of Men's Central Jail should not in itself be cause for wonder. People behind bars are still people, and it is only human to try to *be* human, to make the best of a bad situation, and to form bonds of fellowship with others in the same predicament.<sup>530</sup> The example of K6G suggests that it is the general absence of any levity in the Jail's general population, the absence of any show of emotion or display of productive joint enterprise, which should surprise and disturb.<sup>531</sup> If, as this Article has argued, it is the pressure to seem hard and tough—to conform with the hypermasculine ideal—that too often keeps GP units in men's carceral facilities so controlled and subdued, then perhaps K6G and not GP should set our expectations as to normal and appropriate behavior in prison.

## B. STRATEGIES

One final question remains: assuming prison officials commit to the project of applying the lessons of K6G to their own facilities, what specific strategies ought they to adopt? Certainly, prisons are complex institutions, and what works in one context may not work in another. That said, there are some strategies suggested by the K6G experience that seem likely at

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<sup>530</sup> One respondent used the term “happiness” to describe life in K6G. When asked why, he said:

[S]eeing the other gays . . . enjoying [themselves]. . . . It's not no threats towards no one else. Everyone have their ups and downs, but you work through it. Every day and every night, somebody always comes by, tapping on your bed, smile, it's going to be all right. You know? And that's what makes me feel good.

Int. 102, at E2. Another respondent, who had used the word “lovable” to describe K6G, explained that:

[E]very time you come back,—I know that I'm going to either be in a holding cell with somebody I know and I can just cut up and relax with. . . . In GP you have to be more . . . by yourself, and you can't hug your homeboys.

Int. 101, at A7.

<sup>531</sup> See *supra* part III.B.3.



least to mitigate the worst aspects of those GP units where the hypermasculinity imperative governs.

A number of these strategies have already been identified,<sup>532</sup> and include:

(1) identifying and separating out likely victims from likely predators for housing purposes;<sup>533</sup>

(2) maintaining a strict boundary between likely victims and likely predators;

(3) monitoring units in an ongoing way to identify emergent predators;

(4) automatically removing predatory individuals as soon as they become known;

(5) ensuring continuity of staffing as much as possible, to allow staff to get to know the people in their custody as individuals;<sup>534</sup> and

(6) fostering a culture of respect toward people in custody as a way of, among other things, creating channels of communication between staff and prisoners to identify threats and resolve problems when they arise, and to counter the demeaning effects of incarceration generally.

These strategies are first and foremost about safety—about creating a culture in which people feel independently safe and secure and thus feel able to resist the hypermasculinity imperative and let down their guard. They are also likely to mitigate in positive ways the degrading aspects of the carceral experience in general. This end is not only tied to the possibility of increased safety, but is itself crucial to the humanizing project, and ought to motivate a further, broad-based strategy:

(7) bringing about institutional change at all levels to ensure that people in custody are treated with the respect and consideration due all human beings just by virtue of their humanity.

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<sup>532</sup> See *supra* Part III.C.3.

<sup>533</sup> See *supra* note 425.

<sup>534</sup> This particular aim might, in part, be achieved through a strategy that would also leverage the advantage of K6G's small size and the sense of community fostered by the automatic reclassification to the unit of repeat players. That is, jails in particular—which tend to have high turnover—could assign people in the system to specific units to which they would always return on subsequent bids. Assuming a relatively stable assignment of officers to each unit, this approach would both make possible ongoing relationships between staff and detainees and eliminate the fear that typically attends arrival in jail on the part of people who do not know where they are going. (An apt analogy is the “house” system in place at Hogwarts, the school in the *Harry Potter* book series.) Of course, this system would only make a positive difference if pursued in conjunction with the other listed strategies. If a unit is not safe and predator-free, it will still be a scary place, even for those who know where they are headed, and if officers are not committed to respectful treatment, continuity of staffing will not necessarily enhance a unit's humanity.

But the example of K6G suggests that, for conditions to be affirmatively humanizing, channels should also be established through which people can remain connected to who they are, engage in meaningful self-development, and thereby foster a positive self-image. These latter effects may be partly achieved by adopting the seven strategies just listed, which would simultaneously demonstrate respect for the people in custody and free them up to relax and be themselves. In addition, however, the K6G experience suggests two further strategies for affirmatively humanizing prison conditions:

(8) carving off groups of people whose common identities or interests might provide a basis for mutual affinity, and housing them separately from GP; and

(9) providing as many people as possible with the means to remain connected to who they are and to learn and grow as people.

Once the background precondition of safety is established, these remaining suggestions may trigger the sort of virtuous circle seen in K6G. Although the first of the two has the potential for yielding positive effects in particular cases, it also raises complicated questions that indicate the need for careful handling if this approach is to be pursued. By contrast, the second of the two carries few, if any, risks and indeed, represents an approach that, although having fallen off in an era of mass incarceration, budget cuts and “penal harm,”<sup>535</sup> is well recognized to reduce the “pains of imprisonment” and enhance post-custody success.<sup>536</sup>

As to the carving off of possible affinity groups and housing them separately from GP, the question is which groups ought to be separated out in this way. One obvious such group is veterans. As we have seen, the strategy of housing vets separately from GP has already been implemented with positive results in many jurisdictions. Ideally, the officers assigned to such units would also have military backgrounds, as a common formative experience might allow relations between officers and prisoners to transcend the stark “us” versus “them” dynamic that too often prevails in custody. Such profound shared experience might also form the basis for genuine mutual respect—a key ingredient in humanizing carceral conditions.

Another possible group that might be carved off for separate housing is men who are committed fathers to their children or who wish to be. Not only is the identity of “father” humanizing in itself, but it could also provide the basis for healthier and more respectful interactions among men who

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<sup>535</sup> TODD CLEAR, *HARM IN AMERICAN PENOLOGY: OFFENDERS, VICTIMS, AND THEIR COMMUNITIES*, at xiii–xiv (1994) (coining the term “penal harm”).

<sup>536</sup> See SYKES, *supra* note 164, at 70–72.

know themselves to share a common motivation and a crucial life experience. Such a unit might also benefit from being staffed by officers who are themselves devoted fathers. As an added advantage, bringing such men together would also facilitate programming oriented towards enhancing parenting skills and family connections more generally.

Equally promising and with the potential for much broader reach are programming dorms of a more general sort, housing people with a demonstrated commitment to educational or other prosocial pursuits (scholastic, artistic, vocational, etc.). Such dorms already exist in many facilities, often operating as “honor” units, in which people with a greater range of privileges have an incentive to behave well.<sup>537</sup>

A further possibility, though one that would require careful design and attention, is to house people of faith in a separate unit. Were this possibility pursued, ongoing monitoring would be necessary to avert any proselytizing or sectarianism, either of which might prompt aggressive responses. Still, there may be facilities where this strategy might yield a comparatively safe and humane environment, and thus might be worth trying, notwithstanding the risks.

As this last example indicates, however, the “affinity group” strategy is not risk-free. For one thing, separating out from GP those groups of people most likely to help foster a healthy, prosocial environment—say, people of faith or people pursuing their education—may strip the general population of its potentially most positive influences.<sup>538</sup> More importantly,

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<sup>537</sup> Even the experience of being invited by the institution to identify one’s personal interests in order to find a congenial housing assignment could have the sort of humanizing effect that, I have suggested, arises from the initial IRC inquiry that aims to identify those people who belong in K6G. See *supra* Part III.C.3. An institution that asks if one is (most) interested in higher education, cultivating a trade, remaining connected to one’s family, engaging in creative arts, etc., is already relating to people in detention in a more respectful, humanizing way. I am grateful to Kathy Trisolini for this point.

<sup>538</sup> This concern is analogous to one arising in the public school context, where, some have argued, placing “gifted” children in separate classrooms, although enhancing the educational experiences of the students chosen for this treatment, risks putting downward pressure on the quality of the educational experience of those students left behind. See, e.g., David N. Figlio & Marianne E. Page, *School Choice and the Distributional Effects of Ability Tracking: Does Separation Increase Equality?* 28 (Nat’l Bureau of Econ. Research, Working Paper No. 8055, 2000) (“The current trend away from ability tracking results largely from the perception that tracking is harmful to low-ability students. . . . [However,] our estimates provide no evidence that tracking harms low ability students.”); see also Sharon Dolovich, *State Punishment and Private Prisons*, 55 DUKE L.J. 437, 505–07 (2005) (noting that private prison providers tend to take “the cream of the crop,” which leaves the relatively more violent and otherwise difficult prisoner populations in public hands). Of course, depending on the context, not creating a specialized unit may simply leave everyone worse off. And where, as in K6G, the cost of failing to segregate leaves vulnerable people unprotected, segregation seems self-evidently appropriate. The issue raised in the text only

depending on the group tagged for separate housing, this strategy raises all the concerns that attend any program of state-sponsored segregation on the basis of membership in a suspect class. Even a nonsectarian faith-based unit, for example, might reasonably raise valid fears of discrimination if, say, officers were inclined to favor those prisoners who shared their personal beliefs. It could also invite discrimination against nonbelievers, especially if, as anticipated, a unit for people of faith turned out to be comparatively safe and humane.<sup>539</sup>

The K6G unit itself already triggers concerns over state-sponsored identity-based segregation. Although the history of race discrimination in the United States has left a legacy of suspicion as to segregation by race in particular, this suspicion is arguably appropriate as to the segregation of any minority group that has been subjected to discrimination and collective animus. In the case of sexual minorities, this concern is only magnified in the carceral setting, where correctional officers too can feel compelled to perform a hypermasculine identity that takes gay men as a key contrast figure.

What does this concern mean for jurisdictions persuaded by K6G's relatively humane environment and wishing to reproduce it with their own gay and trans populations? In a companion piece to this Article, I explore at length the reasons why, given the potential dangers of an official policy of identifying and segregating sexual minorities, we might reasonably hesitate to endorse the broader adoption of K6G despite its comparative success in L.A. County.<sup>540</sup> In other words, perhaps ironically, efforts to implement the lessons of K6G for humanizing prison conditions in general ought not in most cases to involve the reproduction of K6G elsewhere. Certainly, it would be a mistake for L.A. County to dismantle a program widely acknowledged as a success.<sup>541</sup> A K6G-style segregation unit for gay men and trans women should also remain an available tool in the toolkit of

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bears consideration where the candidate groups for "affinity" housing are not necessarily likely victims but may simply benefit from a dedicated living space.

<sup>539</sup> On the constitutional, empirical, and other normative issues raised by faith-based prisons in general, see Alexander Volokh, *Do Faith-Based Prisons Work?* 63 ALA. L. REV. 43 (2011); Alexander Volokh, *The Constitutional Possibilities of Prison Vouchers*, 72 OHIO ST. L.J. 983 (2011).

<sup>540</sup> See Dolovich, *supra* note 1, at 54–87.

<sup>541</sup> As I have explained elsewhere, *see id.* at 78–79, prisons are complex institutions that can be very difficult to manage. Programs succeed or fail for all kinds of reasons particular to a given institution, reasons that may be entirely independent of the theoretical wisdom of the program design. To dismantle a relatively successful program in the hope of improving on what already exists could wind up leaving everyone worse off. And if the consequence for policymakers would be professional disappointment or perhaps wounded pride, the effect on the prisoners could be unspeakable harm. In my view, that is not a risk worth taking.

prison administrators who conclude that it is the best way for their institution to keep safe members of these vulnerable groups.<sup>542</sup> At the same time, however, my own view is that prison officials looking for ways to protect vulnerable people in custody would be better advised to follow the recommendation of the National Prison Rape Elimination Commission and seek to identify and house together all likely victims without trying to distinguish among them based on sexual orientation or gender identity.<sup>543</sup> This mixed view—a presumption against segregation on the basis of sexual orientation or gender identity, with an exception for those jurisdictions where affirmative grounds exist for implementing such a program—has largely been incorporated into the National PREA standards adopted in 2012 by the United States Department of Justice.<sup>544</sup> I continue to subscribe

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<sup>542</sup> Although K6G itself may seem to invite an Equal Protection challenge, the unit in its current form would and should survive any challenge on Equal Protection grounds. *See id.* at 82–87.

<sup>543</sup> COMMISSION REPORT, *supra* note 387, at 217. This recommendation has now been officially adopted by the U.S. Department of Justice in its National PREA Standards. *See* 28 C.F.R. §§ 115.41–42 (2012).

<sup>544</sup> *See* 28 C.F.R. §§ 115.41–42. The relevant standard largely prohibits segregation on the basis of sexual orientation and gender identity, but retains an exception where “such placement is in a dedicated facility, unit, or wing established in connection with a consent degree, legal settlement, or legal judgment for the purpose of protecting such inmates.” *Id.* at § 115.42(g). This means that, in jurisdictions where LGBT advocates conclude that such a unit is necessary to protect those they represent, those advocates may seek the establishment of such a unit through the courts. Crafting the exception in this way was intended to ensure that custody units segregating on the basis of sexual identity are only established when there is sufficient community support for the enterprise, thus avoiding instances in which, whether from ignorance or animus, prison officials house sexual minorities separately under conditions that only make them more vulnerable—as happened, for example, in 2009, when authorities at Fluvanna Correctional Institution in Virginia removed women from the general population who identified as or were perceived to be lesbian or otherwise gender nonconforming and housed them together in what became known as the “butch ward,” where they were subject to ongoing harassment by staff along with other punitive conditions. In that case, rather than being protected by segregation (as occurs in K6G), targeted women were placed at risk of abuse. *Fluvanna Women’s Prison Segregated Lesbians, Others*, THE DAILY PROGRESS (June 11, 2009), [http://www2.dailyprogress.com/news/cdp-news-local/jun/11/fluvanna\\_womens\\_prison\\_segregated\\_lesbians\\_others-ar-84002/](http://www2.dailyprogress.com/news/cdp-news-local/jun/11/fluvanna_womens_prison_segregated_lesbians_others-ar-84002/). At the same time, the PREA exception leaves open the possibility that other K6G-style units might be adopted elsewhere, assuming sufficient community approval and support.

This exception, as the comments to the rule acknowledge, was “designed to encompass the Los Angeles County Jail.” *See* National Standards to Prevent, Detect, and Respond to Prison Rape, 77 Fed. Reg. 37,153 (June 20, 2012). The language of § 115.42(g) was originally crafted collaboratively by Jody Marksamer, Harper Jean Tobin, and myself. We proposed it independently in two sets of comments filed with the Department of Justice during its notice and comment period in 2011—one by me alone and one by the consortium of LGBT advocacy groups on whose behalf Marksamer and Tobin were working. *See* Sharon Dolovich, Comments on National Standards to Prevent, Detect, and Respond to

to it, although the present analysis reveals both the potentially humanizing benefits of the K6G approach and the fact that, although not without its risks, it has a considerable upside potential. These positive features of the K6G approach make clear that the negative presumption against segregated housing for sexual minorities, although arguably still on balance the wiser course,<sup>545</sup> is itself not cost-free.

What about race? Given how plainly salient racial difference is in many carceral facilities and how hard prisoners can work to prevent racial mixing, perhaps dividing people up into housing units based on race might generate a K6G-like atmosphere in which shared identity and affinity would prompt mutual toleration and even a sense of community—however unpalatable this prospect may seem.<sup>546</sup> Fortunately, however, the experience of K6G strongly suggests that, rather than a necessary feature of life in custody, the deep racial animus that defines life in the Jail’s GP—and in many other men’s prisons and jails around the country<sup>547</sup>—is only an artifact of a hypermasculine culture in which racially stratified gangs demand fealty to a set of racist norms. In K6G, where people feel safe enough to resist the gangs, prisoner-enforced racial segregation disappears. Although there are some K6G residents who, likely from long experience in

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Prison Rape, submitted pursuant to Notice of Proposed Rulemaking (Jan. 24, 2011) (on file with the author); Protecting Lesbian, Gay, Bisexual, Transgender, Intersex and Gender Nonconforming People from Sexual Abuse and Harassment in Correctional Settings, Comments Submitted in Response to Docket No. OAG-131; AG Order No. 3244-2011, National Standards to Prevent, Detect, and Respond to Prison Rape (Apr. 4, 2011) (comments submitted collectively by the National Center for Transgender Equality, the National Center for Lesbian Rights, the ACLU, the National Juvenile Defender Center, the Sylvia Rivera Law Project, The Equity Project, Lambda Legal Education and Defense Fund, and the Transgender Law Center).

<sup>545</sup> For an extended argument supporting this position, see Dolovich, *supra* note 1, at 54–87.

<sup>546</sup> If the premise of this line of thinking—that there can be no safety in prison without racial segregation—were accurate, such a program could presumably satisfy strict scrutiny and thus pose no constitutional problem. Despite strong precedent establishing a minimal standard of review for prisoners’ constitutional claims, *see* *Turner v. Safley*, 482 U.S. 78, 89 (1987) (holding that regulations burdening prisoners’ constitutional rights will be upheld so long as they “are reasonably related to legitimate penological interests”), the Supreme Court has held that racial segregation of prisoners must be subject to strict scrutiny. *Johnson v. California*, 543 U.S. 499, 515 (2005). For an argument that, although K6G certainly involves state-sponsored identity-based segregation, it does not run afoul of *Johnson*, see Dolovich, *supra* note 1, at 82–87.

<sup>547</sup> *See, e.g.*, MATTHEW PARKER, *LARCENY IN MY BLOOD: A MEMOIR OF HEROIN, HANDCUFFS, AND HIGHER EDUCATION* (2012) (referring repeatedly to the race politics that governed life in the several Arizona jails and prisons where the author did time, which as described bear a strong resemblance to the race politics found in the L.A. County Jail and the California prisons).

the California prison system, are made obviously uneasy by the racial mixing in K6G's dorms, most people seem entirely comfortable with the unit's overt racial integration.

Certainly, the racial politics of the prison world are context-specific and complex, as is the question of how racial integration is likely to affect a given prison environment.<sup>548</sup> Ascertaining what is needed to ensure comparatively safe and humane racially integrated housing units can in no way be accomplished by a single study of K6G. At the very least, however, K6G suggests that, even in extremely racially stratified facilities, racial segregation may not be necessary to the attainment of relatively safe and humane conditions<sup>549</sup>—a finding that, at a minimum, cautions against assuming the need to segregate prisoners by race.

In sum, the first humanizing strategy suggested by K6G—carving off affinity groups into segregated housing—raises some challenges for those prison officials who choose to pursue it, although equally, depending on the groups selected for this treatment, this strategy may also offer the potential for genuine improvement in the custodial experience. By contrast, the second strategy suggested by K6G—providing all people in custody, wherever they are housed, with the means to pursue their own interests and thus to grow and develop as people—should be relatively straightforward to implement. The San Quentin example reveals the way a culture of learning can spread even in an environment not typically hospitable to positive, prosocial behaviors. Certainly, other pieces of the puzzle must also be in place; most obviously, people must feel safe enough to engage in activities that might otherwise mark them as targets. But once this background condition is met, there are likely to be considerable benefits to providing prisoners access to meaningful and challenging educational programs, programs in the arts (theater, music, creative writing, etc.), vocational training, or any other pursuits that would allow people in custody opportunities for self-development and for cultivating a healthy self-respect. Equally beneficial and humanizing are programs that would allow prisoners to maintain and develop meaningful connections with people in the free world, whether family, friends, or other people with common interests.<sup>550</sup>

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<sup>548</sup> For a comprehensive discussion of race politics and the effects of racial integration in the Texas prison system, see TRULSON & MARQUART, *supra* note 136.

<sup>549</sup> Of course, any jurisdiction that concluded otherwise would have to show that the circumstances that tell in favor of racial segregation were compelling enough to survive strict scrutiny. See *Johnson*, 543 U.S. at 515.

<sup>550</sup> See CRAIG HANEY, REFORMING PUNISHMENT: PSYCHOLOGICAL LIMITS TO THE PAINS OF IMPRISONMENT 309 (2006) (“[P]rograms that involve prisoners in meaningful activity and reduce the psychological barriers between prison and the outside world—for example, ones that facilitate and encourage visitation and the maintenance of family ties—can actually

Not only would these pursuits help people to feel more human, but assuming broad enough reach, they may also trigger a virtuous circle, making people who benefit from these opportunities more inclined to treat others with respect and to reject the destructive behavioral norms often dominant in GP.

K6G teaches that, for prison conditions to be made safer and more humane, institutions have to commit to protecting people from victimization and to providing them with meaningful channels for personal expression and self-development. There is nothing surprising here. To the contrary, it is a truism that if prison conditions are to be safer and more humane, prisons must commit to protecting people from harm and treating them like human beings. Society, however, may have reached the point where the deep pathologies that have emerged over years of skyrocketing prison populations and the societal embrace of “penal harm” as the dominant approach to punishment<sup>551</sup> have blinded us to the most obvious pathways to meaningful reform. If so, considering the example of K6G offers a much needed corrective.

Yet the K6G example does more than illustrate the need for safety and for humane treatment. It also reveals the way these obligations are mutually reinforcing. Treating people with respect helps keep people safe, and keeping people safe helps them feel more like human beings and frees them up to act like it. Again, these observations may (and should) seem mundane. That they are positively radical when compared with much contemporary penal practice<sup>552</sup> gives some indication of how normalized harmful carceral conditions have become. K6G strongly suggests that it is the prisons that make the prisoners and not the other way around. And if this is true, it suggests a further implication, almost shocking in its inversion of the conventional wisdom: that far from being monsters who deserve what they get, in too many cases, the people we incarcerate are instead the victims of a system that refuses to recognize those in custody as

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change the prison environment in ways that reduce the harmful alienation that often occurs there.”). For a description of one such “over the wall program,” see Marc Howard, *Lessons in Integrity with San Quentin State Prison’s Tennis Team*, SPORTS ILLUSTRATED (June 16, 2011), <http://sportsillustrated.cnn.com/2011/tennis/06/16/san.quentin.prison/index.html> (“[W]ithin the confines of a tennis court, these men are learning to play inside the lines. And tennis may be giving some of them the hope of finding a new direction in their lives.”).

<sup>551</sup> See *supra* note 535.

<sup>552</sup> See Sharon Dolovich, *Creating the Permanent Prisoner*, in LIFE WITHOUT PAROLE: AMERICA’S NEW DEATH PENALTY? 96, 105–18 (Charles J. Ogletree, Jr. & Austin Sarat, eds., 2012) (tracing the way key components of existing penal practice compromise the ability of former prisoners to successfully reintegrate and combine to keep even those people who manage to avoid reoffending on the social and economic margins of society); *supra* text accompanying note 221.



fellow human beings, as capable of being traumatized and brutalized as anybody else.

## VI. CONCLUSION

This Article has described two models of inmate culture in men's carceral facilities. The first, present to a greater or lesser extent in many men's prisons and jails across the country, is what I have called the hypermasculinity model. In this model, men desperate to avoid being seen as weak do their best to appear hard and implacable, and may even resort to victimizing others in a preemptive effort to avoid being victimized themselves. In such a climate, gang membership offers the promise of security and belonging, and thus, where the hypermasculinity imperative governs, gangs tend to increase in size and power. The second model of inmate culture is that found in K6G, a small and unconventional unit in the L.A. County Jail, which houses gay men and trans women. In K6G, there is no hypermasculinity imperative, nor are there any gang politics. Unit residents feel free to express emotions, to develop meaningful interpersonal relationships, to relax, and to be themselves.

K6G is still jail, and there is much about life in the unit that is deeply unpleasant and even dangerous. Still, K6G is widely seen as preferable to the Jail's GP as a place to do one's time in L.A. County. In K6G, sexual assault is relatively rare and collective violence (a.k.a. rioting) virtually never occurs. The absence of gang politics and of any need to perform a hypermasculine identity relieves residents of the pressure to adhere to the rigid and irrational behavioral code that governs life in the Jail's GP. And perhaps more importantly, it frees them from the constant scrutiny of others looking for signs of weakness and vulnerability. As a consequence, people in K6G are able to let down their guard. For these and other reasons, people in K6G far prefer placement in that unit to life in GP. And the daily parade of men coming into the Jail who pretend to be gay in order to gain access to K6G provides strong evidence that many men housed elsewhere in the Jail feel the same way.

It is tempting to think that K6G's distinctive environment, namely its freedom from any hypermasculinity imperative or gang politics, is a function of the sexual identity of its residents. And it is certainly true that the particular character of life in K6G has been shaped by the preferences and inclinations of the people in the unit. But in order for those people to create the internal culture of K6G, they first had to feel able to shed the hypermasculine posturing that for many unit residents was a way of life during previous custodial terms in the Jail or state prison. The particular behaviors and norms of life that have emerged in K6G, some of which may well be traceable to the sexual identity of its residents, are thus best

understood not as the *cause* of the freedom K6Gs enjoy from the gang politics and hypermasculinity imperative that govern life elsewhere in the Jail, but its *effects*.

The primary cause of the freedom K6G residents enjoy, I have argued, is something more basic than the sexual identity of unit residents. By contrast with men in the Jail's GP, the people in K6G feel independently safe from physical or sexual violence. They therefore feel confident that, while in K6G, they need not take the self-protective yet ultimately destructive steps to which men in GP feel compelled to resort in the absence of any surety of external protection.

That the success of the K6G model does not primarily turn on the sexual identity of its residents is something to celebrate. It offers the possibility that this success may be generalized beyond its current narrow context for the benefit of all people in custody, whatever their sexual orientation or gender identity. Realistically, under current circumstances—most notably the overcrowding, understaffing, and resource limitations that plague many prisons and jails nationwide—it is possible that many institutions may feel unable to widely implement the strategies K6G suggests for how to keep people in custody safe. Nor will all correctional officers exhibit the wisdom and humanity of K6G's long-time supervising officers. Still, the K6G experience offers several lessons for those committed to making carceral conditions as safe and humane as possible and suggests a number of strategies that prison administrators committed to reproducing K6G's success might pursue. This Article canvasses several of these lessons and strategies in the hope that, despite the obstacles to their implementation, they may nonetheless guide sorely needed penal reform.

Some may argue that it is the K6G model and not the hypermasculinity model of GP that should be abandoned. After all, the purpose of incarceration is punishment, and the relative ease of life in K6G may seem "too good" for people in custody. This Article rejects this claim, and argues that this notion has it exactly backwards. There are both moral and constitutional limits on what the state may do to the people it has incarcerated, and the fear, trauma, stress, and danger that men in the worst GP units can live with on a daily basis strongly suggest that the conditions imposed by that model far exceed those limits. The question that most urgently bears our attention is thus not whether the people in K6G "have it too good," but what steps prison and jail officials around the country can take to make their GP units more like K6G.

