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Kim H. Pearson

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# PATRIOTIC HOMOSOCIAL DISCOURSE

KIM H. PEARSON\*

## INTRODUCTION

The term 'patriotic homosocial discourse' describes a particular kind of speech that bears a striking resemblance to nationalistic fervor<sup>1</sup> but is different in its use of sexualized terms and concepts. Whereas strictly nationalistic speech draws a line between patriots and non-patriots, patriotic homosocial discourse conflates gender and sexual identity onto public identity and then draws a line between patriot and non-patriot. Rather than merely distinguishing between public officials who follow the majority versus those who do not, patriotic homosocial discourse distinguishes between heterosexualized/normal patriots and homosexualized/deviant non-patriots.

Eve Sedgwick coined the term "homosocial" to describe the relationship between homosexual and heterosexual men and the ways in which heterosexual men define their gendered identity and bond with other heterosexual men through differentiating themselves from homosexual men by committing violence to homosexual men.<sup>2</sup> Combining the idea of patriotic identity with the concept of

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\* Associate at Kelleher & Kelleher, LLC in Nevada; J.D., Brigham Young University, J. Reuben Clark School of Law; M.A. and B.A. in English, University of Utah. I wish to thank Professors Kif Augustine Adams and Fred Gedicks for critiques and encouragement; Kathryn Bond Stockton and Tomo Hattori for guidance in queer theory and critical race studies; my research assistant, Brian C. Jennings; and my family for enduring the process and supporting me throughout.

1. See Herbert C. Kelman, *Social-Psychological Dimensions of International Conflict*, in *PEACEMAKING IN INTERNATIONAL CONFLICT: METHODS AND TECHNIQUES* 191 (I. William Zartman & J. Lewis Rasmussen eds., 1997). Kelman describes nationalism and group loyalty as "adherence to the group's norms." *Id.* at 216. Of particular interest is the characterization of dissent:

Dissent is considered an act of disloyalty under these circumstances and is often penalized by exclusion, rejection, and ostracism. To dissent at a time of national crisis is seen as tantamount to excluding oneself from the group, to separating one's fate from that of fellow members — a cardinal sin in the nationalist doctrine . . . . Since people with reservations about the dominant policy are reluctant to speak out, and those who do speak out are quickly marginalized, potential dissenters are discouraged from expressing their views because they see themselves as a tiny minority confronting a near-unanimous consensus.

*Id.* at 217.

2. EVE KOSOFKY SEDGWICK, *BETWEEN MEN: ENGLISH LITERATURE AND MALE HOMOSOCIAL DESIRE* 1-2 (1985).

homosociality provides a way to think about how the relationship between media identity and politics has become gendered to enforce a falsely majoritarian view. Whether the person in the media spotlight is actually gay is not the issue; rather the issue is how a person's sexual identity becomes yoked to political deviancy so that the fear of being perceived as deviant appears to force the person to conform to majoritarian ideals. The flip side of that perception leads to homosexuality being re-demonized because it is used as the motivating force/threat behind conformity.

Patriotic homosocial discourse has no ties to a particular political ideology (i.e., conservative or liberal thought) but is deeply invested in whatever happens to be the dominant, majority theory.<sup>3</sup> As an integral part of defining the dominant theory, patriotic homosocial discourse forces unpopular, non-majoritarian speech into a minoritized, deviant space, defining what is the majority by showing/punishing what it is not.<sup>4</sup> 'Normative watching' simultaneously creates and enforces the urge to conform. Normative watching is the perception of being monitored at all times and places, which engenders a normalizing effect on people's behavior.<sup>5</sup> In a period characterized by relentless and nearly global media coverage, the perception of being monitored affects the behavior of those in the public sphere.<sup>6</sup> In addition, normative watching affects people in the private sphere. Private citizens are held in thrall to the possibility that they will be thrust into the public sphere, where their lives will be open to public scrutiny.<sup>7</sup> When private citizens see examples of other private citizens forcibly outed to the public sphere because of perceived deviancy, everyone learns to conform, thereby remaining invisible to public scrutiny. The pressure of normative watching and the resulting drive to reiterate one's sexual identity

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3. Ironically, the current political rhetoric for both Democrats and Republicans is so similar that their platforms are virtually the same, leaving them to fight out differences based on personality rather than substantive political issues. At times, both parties have been required to support the war against terror in order to maintain validity in the political arena. *See, e.g., infra* note 113.

4. Nationalism provides a useful starting point for understanding how patriotic homosocial discourse works. With roots in nationalism, patriotic homosocial discourse adds an element of sexualizing or making deviant any group designated as non-patriotic. *Cf. Kelman, supra* note 1, at 216.

5. *See* MICHEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* 177-84 (Alan Sheridan trans., Vintage Books 2d ed. 1995) (1977) (discussing the application of "normalizing judgment" such that those conforming to the "norm" are rewarded while those who deviate are punished but can redeem themselves through "good behavior" and conformity).

6. *See infra* Part I.B.

7. *See infra* Part I.B.

through political conformity requires violence either in rhetoric or physical force to distinguish between oneself and the deviant group.

Intellectuals, leaders, and law and policy makers must understand the relationship between patriotic homosocial discourse and the physical manifestations of that discourse, even though at first glance they may seem attenuated. Achieving an understanding of how patriotic homosocial discourse works and fully manifests in physical violence will help prevent atrocities such as the prison scandals and detainee mistreatment.<sup>8</sup> Two dangerous effects of yoking these two completely disparate concepts (sexuality and politics) are: (1) that any positive progress made in understanding and awareness about homosexuality is counterbalanced by the enormous weight of patriotic homosocial discourse, which uses the threat of homosexuality as shorthand for deviancy; and (2) that intolerance of homosexuality inevitably increases, as seen in the re-demonization of homosexuality, proposed anti-gay marriage movements, gay bashing (both physically and rhetorically), workplace harassment, and other types of violence aimed at homosexuality. This article does not argue that people should restrain patriotic homosocial discourse, but rather argues that greater awareness and more speech can defuse the negative aspects of patriotic homosocial discourse.

This article explores how homosociality and normative watching create the conditions necessary for patriotic homosocial discourse, starting with an overview of Sedgwick's theory of homosociality in Part I.A. Sedgwick's theory derives from the concept that the socially constructed specter of homosexuality informs male-male bonding relationships. This concept accounts for the often violent homophobia required to define 'safe' heterosexual male-male relationships. An example of homosociality informing male relationships is the dynamic found in fraternities, men drawn together based on similar socio-economic, racial, or other factors, bonding in what appear to be homosexual ways.<sup>9</sup> The fraternity members identify themselves as heterosexual and distinguish heterosexuality from homosexuality through violence against homosexuals (the other, the deviant) either in discourse or physical force.<sup>10</sup>

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8. See *infra* notes Part II.B.

9. See, e.g., Chris O'Sullivan, *Fraternities and the Rape Culture*, in TRANSFORMING A RAPE CULTURE 23, 28-30 (Emilie Buchwald, Pamela R. Fletcher & Martha Roth eds., 1993). O'Sullivan recounts "quasi-sexual, or homosexual," fraternity rituals such as an initiation ceremony where "the president [of the fraternity] walks down the row, putting his penis in each man's mouth." *Id.* at 28.

10. See TOM WOLFE, I AM CHARLOTTE SIMMONS, 595-605 (2004). In a chapter titled "Stand up Straight for Gay Day," one of the fraternities separates itself from

Part I.B discusses the effects of normative watching on public figures as a result of relentless media coverage and, for private individuals, the effects of the perceived notion that they are being watched by the government, consumer information corporations, or even their own neighbors. Normative watching derives from Michel Foucault's theory of discipline and punishment.<sup>11</sup> It is the phenomenon that occurs when a prisoner knows that any misconduct will result in punishment and that guards are monitoring him for that behavior. Under Foucault's theory, the prisoner does not know if or when he or she is being watched, simply that it could be any time, causing the prisoner to adjust his or her behavior accordingly.<sup>12</sup> The resulting self-regulation — or in the case of patriotic homosocial discourse, the drive to conform — arises from being observed or monitored and not knowing when or who is watching and waiting to mete out punishment. Foucault's prison/Panopticon model plays a major role in fostering patriotic homosocial discourse.<sup>13</sup> It ensures that virtually no public figure may deviate without endangering his or her sexualized identity. The model also forces private citizens to live not only with the fear that their sexualized identity is at risk, but also with the real possibility of being forcibly outed<sup>14</sup> and becoming the object of scorn and the recipient of death threats.

Part I.C explores the connection between homosociality and normative watching and how the two work together to create patriotic homosocial discourse. In the public sphere, the drive to force conformity in public figures (lawmakers, leaders, and others) is yoked to the question of each person's sexualized identity. Public officials are now subject to intense media scrutiny; the world is watching and commenting endlessly about their sexual identities. The fear of being identified as homosexual by the media moves people toward conformity. Once a person must choose to conform politically/ideologically to not be identified in the media as effeminate or homosexual, patriotic homosocial discourse begins to flourish.

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homosexuality by disrupting a speech given on Gay Day. *Id.* A straight character holding a sign for Gay Day resents the fact that one of the speakers has the opportunity to distinguish himself from the gay movement in his speech, but the sign-carrying character has no way to articulate his heterosexuality. *Id.*

11. FOUCAULT, *supra* note 5.

12. *Id.* at 201.

13. *See infra* Part I.B.

14. Being forcibly outed includes being thrust unwillingly into the public eye. For example, in *S\*PAM KiNgS*, one of the greatest threats and fears for accomplished Internet users is that of being outed — losing the anonymity and invisibility of a web persona. BRIAN MCWILLIAMS, *S\*PAM KiNGS* 201-17 (2005). Once a person is outed, the person is vulnerable to a barrage of pranks, Internet assaults, and other methods of revenge and/or punishment meted out by other members of the Internet community. *Id.*

Part II discusses the telos of patriotic homosocial discourse, especially in the current political climate in which the West considers itself faced by a terroristic threat from the East. Edward Said's theory of Orientalism<sup>15</sup> helps in analyzing the history of Western thinking about the East wherein the East is feminized, degenerate, perverse, and weaker than the West.<sup>16</sup> The media characterization of the Middle East after 9/11, particularly of the Taliban, is hauntingly similar to nineteenth century European characterizations of the East.<sup>17</sup> To continue queering the East, discourse about border penetration<sup>18</sup> and sleeper terrorists<sup>19</sup> closely mimics homophobic discourse. America's national identity is figured in masculine<sup>20</sup> terms; 9/11 gave ample proof that America is not

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15. EDWARD W. SAID, *ORIENTALISM* (Vintage Books 1979). Said acknowledges that what Europeans referred to as the Orient is what Americans refer to as the Middle East, and that the Far East is usually what Americans think of as the Orient. *Id.* at 1. Using fairly broad strokes, Said argues that the way in which Western (or Occidental) thought has approached both the Far East and Middle East encompasses both as Oriental; thus, the analysis speaks to both European and American ways of thought in relation to the Orient. *See id.* at 1-4.

16. The play *M. Butterfly* also addresses the feminization of the East. DAVID HENRY HWANG, *M. BUTTERFLY* (Penguin 1989). A French male government worker leaks political secrets to Song Liling, a male Japanese opera singer who dresses as a woman. *Id.* The French man denies that he ever knew Song was a man even though their sexual relationship spanned about two decades. *Id.* Song describes the self-delusion as possible because of the relationship between the East and the West:

As soon as a Western man comes into contact with the East — he's already confused. The West has sort of an international rape mentality towards the East. Do you know rape mentality? . . . Basically, "Her mouth says no, but her eyes say yes." The West thinks of itself as masculine — big guns, big industry, big money — so the East is feminine — weak, delicate, poor . . . but good at art, and full of inscrutable wisdom — the feminine mystique. Her mouth says no, but her eyes say yes. The West believes the East, deep down, *wants* to be dominated — because a woman can't think for herself.

*Id.* at 82-83.

17. SAID, *supra* note 15, at 39-40. Said describes the two major elements of the eighteenth century relation between the East and West:

One was a growing systematic knowledge in Europe about the Orient, knowledge reinforced by the colonial encounter as well as by the widespread interest in the alien and unusual . . . [T]o this systematic knowledge was added a sizable body of literature produced by novelists, poets, translators, and gifted travelers. The other feature . . . was that Europe was always in a position of strength . . .

Many terms were used to express the relation . . . The Oriental is irrational, depraved (fallen), childlike, "different"; thus the European is rational, virtuous, mature, "normal."

*Id.*

18. *See infra* Part II.A.4.

19. *See infra* Part II.A.5.

20. Using the masculine/feminine binary construction is not an attempt to set feminism back, but rather is reliance on the traditional binary system that includes a hierarchy. With this understanding, the author does not assert that men are strong/active and women are weak/passive, but instead recognizes that in a traditional heterosexual setting, the binary system still manifests in power relationships.

inviolable and created a new kind of instability and fear. The penetration by terrorists and violence against America was not figured as inevitability, but as perversion — explaining the shock and horror that any entity would dare rise up against America without apparent provocation. After America was proven no longer inviolable, rather than feminizing America's identity, the Terrorist or the East was queered. For America to retain its masculine identity and explain the penetration and violence, the East must be perverse or deviant.

Part III discusses the re-demonization of homosexuality as a result of patriotic homosocial discourse. The upsurge in violence against gays<sup>21</sup> and the fervor for anti-gay marriage amendments<sup>22</sup> seem wholly surprising in a time when gays in popular entertainment enjoy more positive coverage than ever before.<sup>23</sup> Nonetheless, the violence is directly attributable to the re-demonization of gays achieved by patriotic homosocial discourse. When the threat of being identified as homosexual can be used as leverage to force political conformity and the media relentlessly disseminates messages wherein torture and homosexual acts are conflated, people subconsciously understand that they should apply a negative meaning to homosexuality. If being called a "girly-man"<sup>24</sup> can be an effective critique of governing officials, the fact that homosexuality begins to attain a negative meaning is not surprising. It is nearly impossible to see pictures of torture victims without a visceral feeling of revulsion; the fact that the victims are seen ostensibly performing homosexual acts automatically adds a layer of meaning to homosexuality. These images equate torture with homosexual acts, so that the repugnance mapped onto torture is in turn mapped onto homosexuality.

#### I. HOMOSOCIALITY AND NORMATIVE WATCHING: FOUNDATIONS FOR PATRIOTIC HOMOSOCIAL DISCOURSE

This section consists of three parts: a brief description of homosociality and how it is used in the media; a brief description of

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21. NATIONAL COALITION OF ANTI-VIOLENCE PROGRAMS, ANTI-LESBIAN, GAY, BISEXUAL AND TRANSGENDER VIOLENCE IN 2004: NATIONAL COALITION OF ANTI-VIOLENCE PROGRAMS 2-3 (2005), available at <http://www.avp.org/publications/reports/2004NationalHV%20Report.pdf>.

22. Thomas Roberts & Sean Gibbons, *Same-Sex Marriage Bans Winning on State Ballots*, CNN.COM, Nov. 3, 2004, <http://www.cnn.com/2004/ALLPOLITICS/11/02/ballot.samesex.marriage>.

23. Jim Hopkins, *Media Offers New Outlets for Gay Audiences*, USA TODAY, Mar. 1, 2006, available at [http://www.usatoday.com/money/media/2006-03-01-gay-media-usat\\_x.htm](http://www.usatoday.com/money/media/2006-03-01-gay-media-usat_x.htm).

24. See *infra* note 115 and accompanying text.

normative watching and how it is used by the media; and finally, how homosociality and normative watching combine to create patriotic homosocial discourse. Although the connection between homosociality and normative watching may seem attenuated at first, one has only to consider how peer pressure works on a smaller level to understand how, once magnified a thousandfold, the pressure to conform precisely because one is and wishes to remain in the public eye works to inform one's behavior, creating patriotic homosocial discourse.

On a small scale, some young boys conform their actions to their peers' actions to avoid appearing to be a sissy or a girl.<sup>25</sup> Whether those boys are observed at all times does not matter, because they continue to make certain that their behavior conforms to their peers' behavior even though their peers are not watching.<sup>26</sup> So, even if the boy is unobserved, the threat of possible discovery continues the original drive toward conformity, and the boy's private actions will still conform to the norms set by his peers. Extending the small scale example to a larger one, the media does not have to work so subtly as it maintains the drive to conform. Whereas a boy may be able to escape from conformity because he is not watched all of the time and may choose at times not to self-regulate his behavior, the media really is always watching. Ample evidence shows that when people are caught not conforming, society deals with them swiftly, maintaining the drive to conform. Knowing that the media is watching at all times, coupled with the leverage exerted by homosocial discourse, leads to patriotic homosocial discourse.

#### *A. Of Pussies, Wusses, Sissies, and Girly-Men: How Homosociality Works in the Public Sphere*

Homosociality, a theory developed by Eve Kosofsky Sedgwick, "places 'male bonding' and male homosexuality on the same continuum"<sup>27</sup> in order to describe the particular way in which male

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25. See, e.g., Michael S. Kimmel, *Clarence, William, Iron Mike, Tailhook, Senator Packwood, Spur Posse, Magic . . . and Us*, in *TRANSFORMING A RAPE CULTURE* 119, 122-27 (Emilie Buchwald, Pamela R. Fletcher & Martha Roth eds., 1993).

26. Carol Lynn Martin & Richard A. Fabes, *The Stability and Consequences of Young Children's Same-Sex Peer Interactions*, 37 *DEV. PSYCHOL.* 431, 433-34 (2001), available at <http://www.apa.org/journals/releases/dev373431.pdf>.

27. *COLUMBIA DICTIONARY OF MODERN LITERARY AND CULTURAL CRITICISM* 139 (Joseph Childers & Gary Hentzi eds., 1995) [hereinafter *COLUMBIA DICTIONARY*] (showing that where social sciences usually used homosociality as an analogy to homosexuality, Sedgwick places the two seeming opposites on the same continuum); see also *SEDGWICK*, *supra* note 2, at 1-2.



bonding (both sexual and social) takes place. Placing both homosociality and homosexuality on the same continuum explains why traditional male-bonding looks very much like homosexuality and accounts for the violence that occurs as a man moves from one end of the spectrum to the other; only an "invisible, carefully blurred, always-already-crossed line"<sup>28</sup> separates heterosexual men from homosexual men.

The reason that "male homosociality seems to require extreme homophobia"<sup>29</sup> is that one cannot see the thin, blurred line, but a person can substitute hatred and fear of homosexuality for proof that he or she has not crossed the line. Determining where a male is in relation to the line between hetero- and homosexuality can range from jokes about homosexuality to outright physical violence against homosexual males.<sup>30</sup> In the movie *Philadelphia*, a group of heterosexual males bond in a bathhouse.<sup>31</sup> While only covered with towels, the gay joke told by the heterosexual males indicates that they are using the bathhouse but are not gay.<sup>32</sup> Several recent examples in television programs and movies portray heterosexual men exhibiting an awareness of appearing gay and the often excessive steps they take to assure themselves and others that they are not gay.

In an episode of *Seinfeld*, when George Costanza receives a massage from another man, his penis moves.<sup>33</sup> George then spends the rest of the episode searching for reassurance and proof that he is heterosexual.<sup>34</sup> When George sees a poster of Evander Holyfield, another character asks him if he likes Evander Holyfield.<sup>35</sup> Even

28. SEDGWICK, *supra* note 2, at 89. The reason that the line is blurred and difficult to find is that there is very little difference between loving men and being "interested in men." *Id.* So-called normal social bonding rituals are fraught with ambiguity and danger, not the least of which is homophobic violence. *Id.*

29. COLUMBIA DICTIONARY, *supra* note 27, at 139; *see also* SEDGWICK, *supra* note 2, at 20 (arguing that another reason that homophobia and homosexuality are difficult to distinguish is because they are both "historical constructions").

30. *See generally* VITO RUSSO, *THE CELLULOID CLOSET: HOMOSEXUALITY IN THE MOVIES* (Harper & Row, rev. ed. 1987) (documenting Hollywood's depiction of homosexuals as depressed, suicidal, victimizers, perverted, and conforming with other negative stereotypes that often led to brutal acts of violence against homosexuals on-screen). Discussing media examples of homophobic violence is a useful way to understand homosocial relationships because the media sources serve both to represent, and as representations of, the culture that creates them.

31. *PHILADELPHIA* (Tri-Star Pictures 1993); *see also* Kimmel, *supra* note 25, at 127; Ted Huckapokie, *Are You a Homosexual?*, SPIKED, Mar. 8, 2001, <http://www.spiked-online.com/Articles/0000000053C1.htm>.

32. *PHILADELPHIA*, *supra* note 31.

33. *Seinfeld: The Note* (NBC television broadcast Sept. 18, 1991).

34. *Id.*

35. *Id.*

though George does like Evander Holyfield, he denies it<sup>36</sup> because of the tension that liking another man engenders — does it mean George is or is not homosexual? George is called a “Mary” when he performs a ballet-like leap over a puddle.<sup>37</sup> Because of his insecurity surrounding his heterosexuality, George chases after the children who called him a “Mary.”<sup>38</sup> The monologue at the end of episode pokes fun at homophobia,<sup>39</sup> reinforcing the difficulty of negotiating an almost invisible line between heterosexuality and homosexuality.

The *Seinfeld* episode called “The Stall,”<sup>40</sup> plays with the tension of wanting to be someone versus wanting to be with someone. After George nearly destroys another male character, Kramer acknowledges the possibility that homosocial desire motivates George’s actions.<sup>41</sup> Another television series, *Just Shoot Me*,<sup>42</sup> aired an episode about a son visiting with his father and brother. The father and brother are both firemen, wearing the signs of heterosexuality.<sup>43</sup> Finch, the son suspected of being gay, spends the episode seeking to prove his heterosexuality, only to accidentally uncover the fact that his fireman brother is, in fact, gay.<sup>44</sup>

In *The Shield*, some policemen tease their colleague about being gay.<sup>45</sup> The policemen lose their jobs, so a group of policemen retaliate by going to the homosexual colleague’s home and beating him with bats.<sup>46</sup> To delineate themselves from the gay police officer, the other officers tease him<sup>47</sup> — few alternatives exist to delineate between homosexuality and heterosexuality in a fraternity-like setting where male-male bonding is the norm. The violence that ensues speaks more about the need to delineate between the heterosexuals and the homosexuals than it does about the fact that police officers lost their jobs. Although the officers could get other jobs, the point of the violence is that in a setting where males bond, some method must exist of safely bonding with other men while retaining a heterosexual identity. On a more tragic note, straight

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36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Seinfeld: The Stall* (NBC television broadcast Jan. 6, 1994).

41. *See id.*

42. *Just Shoot Me: Pass the Salt* (NBC television broadcast Jan. 29, 1998).

43. *Id.*

44. *Id.*

45. *The Shield: Dominoes Falling* (FX television broadcast Apr. 1, 2003).

46. *Id.*

47. *Id.*

men commit hate crimes against gays often in real life, some of which receive news coverage.<sup>48</sup>

### 1. *Looking for the Line*

The vicious way in which homophobic men punish homosexuals keeps heterosexual men in line<sup>49</sup> — panic and contempt go hand in hand.<sup>50</sup> The fear that a man's friend or relative with whom he has bonded, or even he himself, could be gay informs and creates a barrier in friendships with other men. In essence, in bonding with another man, the line between wanting to be *like* the other man and

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48. ABC aired a story about gay violence on 20/20. See '20/20' Revisits Shocking Hate Crime, CHATTANOOGA TIMES FREE PRESS, Nov. 26, 2004, at E5. One of the stories featured Matthew Shepard's murder six years earlier. *Id.* His murder in Laramie, Wyoming helped raise awareness about violence against gays in America. See *id.* The irony of the story is that one of Shepard's murderers was himself bisexual and claims that the violence had more to do with drugs than sexuality. See *id.*

The community where James Maestas was killed in a gay bashing incident was shocked and reflective about violence against gays. Anne Constable, *Santa Feans Rethink City's Gay-Friendly Reputation*, SANTA FE NEW MEXICAN, Mar. 5, 2005, at A1.

Educators discussed homophobia and bullying in schools, remarking that kids were forced to "act straight." Barbara Goldman, a local director of a rape crisis center, remarked that "[h]omophobia is one of [the] last safe bastions in our society where people can throw expletives around . . . and not expect consequences. We all know homophobic behavior is learned — 100 percent. Education is the key." *Id.* She also quoted a 2001 national school climate survey which reported that high numbers of students were verbally harassed and/or "felt unsafe at school because of their sexual orientation." *Id.*

Closely related are the violent deaths of transgender people. See Chris Summers, *The Victims of Prejudice*, BBC NEWS, Dec. 26, 2003, <http://news.bbc.co.uk/2/hi/americas/3219591.stm> (including a ten-year update on the 1993 case of the transgender person whose story was dramatized in the film *Boys Don't Cry*); *US Men Kill Transgender Teenager*, BBC NEWS, Sept. 13, 2005, <http://news.bbc.co.uk/1/hi/world/americas/4242128.stm> (reporting about a teenager killed by severe beating after the two men with whom there had been sexual encounters discovered that the teenager was not biologically female).

49. Kimmel, *supra* note 25, at 127. Contemplating roots of homophobia, Kimmel writes:

The fear of humiliation, of losing in a competitive ranking among men, of being dominated by other men — these are the fears that keep men in tow and that reinforce traditional definitions of masculinity as a false definition of safety. Homophobia . . . keeps men acting like men, keeps men exaggerating their adherence to traditional norms, so that no other men will get the idea that we might really be that most dreaded person: the sissy.

*Id.*

50. *Id.* at 133 ("[T]hose whose masculinity is least secure are precisely those most likely to enact behavioral codes and hold fast to traditional definitions of masculinity. In social science research, hypermasculinity as compensation for insecure gender identity has been used to explain the propensity for homophobia . . .").

wanting to be *with* the other man is not stable or necessarily even knowable.<sup>51</sup>

An immense fear of penetration and concern about protecting bodily integrity also characterizes homosexual panic.<sup>52</sup> Much of the current political discourse mirrors homosexual panic due to ambiguity about masculine/national identity, concern about porous borders/penetration<sup>53</sup> and fear of non-outed enemies of the state. To hold at bay the fear that America has always-already crossed into what George Washington termed "entangling alliances"<sup>54</sup> with other countries and cultures<sup>55</sup> or is even an enemy by its own definition in dealings with other nations, the media uses theoretically homophobic constructs to ensure conformity to a majoritarian view, implying that dissenters are effeminate, cowardly, and gay.

As the nation exhibits signs of deep anxiety about fluid borders (forcible penetration) and paranoia that neighbors and other ordinary citizens could be enemies (non-outed homosexuals), the alienation of the unknown other (homosexual) is mapped onto the idea of patriotism and reiterates homosexuality as deviancy and dissent from the mainstream. Public officials are placed into a bind because their sexualized identity is yoked to their politics; they are asked to prove that they are not gay/effeminate/cowardly by supporting X movement. This discursive move effectively prevents dissenting from the majority. Public dissenters are useful to the

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51. See *Seinfeld: The Stall*, *supra* note 40. In this *Seinfeld* episode, Kramer reveals to George that the tension between George and Tony is a result of sexual tension. *Id.*

52. SEDGWICK, *supra* note 2, at 89 ("[H]omosexual panic' is the most private, psychologized form in which many twentieth-century western men experience their vulnerability to the social pressure of homophobic blackmail.").

53. See *infra* note 115 (discussing "porous borders").

54. A COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS 1789-1902 213, 221-24 (James D. Richardson ed., 1905). George Washington's Farewell Address admonished the United States to avoid "entangling alliances" with other nations. *Id.*

55. NATO, NAFTA, the United Nations, and giving aid to foreign countries all run counter to the isolationist position that George Washington encouraged in his Farewell Address. America's interference with foreign drug wars, setting up puppet dictators, and actions in foreign countries designed to protect American interests illustrate the ambiguous position America occupies as it chooses to define itself as non-terrorist. To better retain its position as non-terrorist, America points to acts by foreign countries in terms that inherently contain a binary relationship (inhumane, terrorist, crimes against civilization, crimes against one's own people, and axis of evil). The unsaid portion of the binary construction reinforces America as the positive, non-terrorist, good opposite. America's involvement in providing arms to Afghanistan and sending money to countries with oppressive dictators undermines the binary construction of America as a morally good country. See also EDWARD W. SAID, CULTURE AND IMPERIALISM 282-302 (1993) for a discussion of the current manifest destiny mindset that America uses as it goes to war. The discussion of the unexamined moral stance and assumption that everyone wants what the United States wants sheds light on the construction of the binary model used by the United States.

majority opinion because their punishment is public, and the publicity works as part of the mechanism maintaining conformity.

## 2. Line Crossers Teach Everyone a Lesson

An example of the anxiety about being able to dissent was the 'either/or' patriotic line pursued in the media shortly after 9/11 — either speak patriotically or do not speak at all. Representative examples of quelled speakers whose speech disrupted the mainstream are Bill Maher,<sup>56</sup> Susan Sontag,<sup>57</sup> Aaron McGruder,<sup>58</sup> the Dixie Chicks,<sup>59</sup> and Martin Sheen.<sup>60</sup> Both Maher and Sontag suggested that terrorists and cowardice are not synonymous.<sup>61</sup> Aaron McGruder's comic strip called "The Boondocks" was pulled because

56. See Michael Massing, *Roseanne over Jennings*, NATION, Sept. 23, 2002, at 7.

57. See *id.*

58. See Bryan Robinson, *Cartoonists' Quandary: Terror Attacks, Patriotism Cause Dilemma Among Cartoonists*, ABCNEWS.COM, Oct. 9, 2001, available at <http://www.mediaworkshop.org/september11/ban.html> (detailing the particular cartoon strip that led to a number of newspapers pulling *The Boondocks* comic strip series).

59. See Jon Herskovitz, *Dixie Chicks Pulled from Air After Bashing Bush*, CNN.COM, Mar. 14, 2003, <http://www.cnn.com/2003/SHOWBIZ/Music/03/14/dixie.chicks.reut> (reporting that radio stations had pulled the Dixie Chicks from their playlists after lead singer Natalie Maines said that she was "ashamed the president of the United States is from Texas"); Kent Kimes, *Dixie Chicks Feel Airplay Backlash*, SUN NEWS, Mar. 18, 2003 (reporting that "many radio stations" had banned Dixie Chicks music); *Radio Stations, Fans Boycott Dixie Chicks*, CNN.COM, Mar. 16, 2003, <http://www.cnn.com/2003/SHOWBIZ/Music/03/16/maines.bush.ap/index.html> (saying that Maines's apology to President Bush "didn't carry much weight with listeners in Maines's home state and elsewhere"); Stephanie Zacharek, *Bush, Shame and the Dixie Chicks*, SALON, Mar. 18, 2003, [http://www.salon.com/ent/music/feature/2003/03/18/dixie\\_chicks/index\\_np.html](http://www.salon.com/ent/music/feature/2003/03/18/dixie_chicks/index_np.html) ("The arch-conservative country music biz forced Natalie Maines [Dixie Chicks lead singer] to apologize to the president. But for a moment she was the bravest American entertainer."). Reports indicate that Dixie Chicks' album sales dropped substantially after Maines's comment in London. E.g., Gary Younge, *War in the Gulf: Censorship: Anti-Bush Remark Hits Band CD Sales: Growing Signs of Backlash Against Anti-War Sentiment*, GUARDIAN (London), Mar. 20, 2003, at 8.

60. *Shrill Sheen Loses TV Ad Gig*, N.Y. POST, Mar. 13, 2003, at 6. Although Visa denies pulling Sheen's advertising spot due to Sheen's "politicking against the war on terrorism," others say that "they [Visa] pulled Sheen's ad right after all the hullabaloo over" Sheen's anti-war statements made to the press. *Id.*; see also Martin Sheen Says *Hollywood Activists Deserve Respect*, SACRAMENTO BEE, Mar. 17, 2003 (Sheen says "the network [NBC] fears his position will hurt the show" [*The West Wing*], but the network denies expressing those concerns.).

61. *Politically Incorrect* (ABC television broadcast Sept. 17, 2001). Bill Maher spoke with author Dinesh D'Souza about whether the terrorists were cowards. *Id.*; see also Susan Sontag, NEW YORKER, Sept. 24, 2001, at 32 ("And if the word 'cowardly' is to be used, it might be more aptly applied to those who kill from beyond the range of retaliation, high in the sky, than to those willing to die themselves in order to kill others. In the matter of courage (a morally neutral virtue): whatever may be said of the perpetrators of Tuesday's [September 11, 2001] slaughter, they were not cowards.").

"he jabbed at the CIA for having funded the Taliban in past years."<sup>62</sup> Both Maher and Sontag suffered at the hands of the press, the main theme of the criticism being their unpatriotic speech.<sup>63</sup> Advertisers threatened not to back the network unless Maher's show was cancelled.<sup>64</sup> Sontag's comments generated considerable backlash in the press.<sup>65</sup> The public punishment extended further; the media announced that the position of State Poet Laureate might be discontinued in order to defuse comments made by then-New Jersey Poet Laureate, Amiri Baraka.<sup>66</sup> Other writers, critics, and artists have experienced anger and bitter reprisal for voicing thoughts not in line with mainstream patriotic platitudes.<sup>67</sup> Artists like the Dixie Chicks, Martin Sheen, and others who spoke out against aggression towards the Middle East risked punishment through low product sales, bans on their work, and lost contracts for future performances.<sup>68</sup>

Popular media was not the only place where an either/or line was created and enforced.<sup>69</sup> In a July 25, 2002 Hearing of the Senate

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62. Sharon Waxman & Teresa Wiltz, *You'll Laugh, You'll Cry; For Better or Worse, It's Show Business as Usual*, WASH. POST, Sept. 9, 2002, at C1.

63. E.g., Massing, *supra* note 56 (referring to Sontag as the "national whipping girl" and noting that Maher "lost advertisers" for their comments about cowardice in connection with terrorists); see also Mark Armstrong, *Maher Causes "Cowardly" Flap*, E! ONLINE NEWS, Sept. 20, 2001, available at <http://www.eonline.com/News/Items/0,1,8852,00.html> (showing that Maher had to apologize and carefully elucidate his remarks with author Dinesh D'Souza).

64. Massing, *supra* note 56.

65. *Id.*

66. On January 23, 2003, National Public Radio aired a story about Amiri Baraka called "New Jersey Poet Laureate." *Morning Edition: New Jersey Poet Laureate* (NPR radio broadcast, Jan. 23, 2003) ("[P]oet Amiri Baraka may see his honorary title of New Jersey's Poet Laureate eliminated by the state's legislature today, for one of his works some say is Anti-Semitic. Baraka's poem, 'Somebody Blew up America' includes reference to a conspiracy theory that Israel knew about the September 11 attacks in advance.").

67. In her editorial, writer Barbara Kingsolver discusses "saber-rattling" forms of patriotism that resulted in a gunman's rampage against Arab Americans and death threats against Rep. Barbara Lee, one of the few House members who did not vote to give war powers to George W. Bush. Barbara Kingsolver, *And Our Flag Was Still There*, S.F. CHRON., Sept. 25, 2001, at A17. Kingsolver's piece, rather than provoking dialogue, inspired attacks like William Quick's, "she's a despicable, America-hating witch, which is a perfectly good reason that 'people should not listen to her.'" Posting by William Quick to Daily Pundit, [http://www.iw3p.com/DailyPundit/2002\\_01\\_20\\_dailypundit\\_archive.php](http://www.iw3p.com/DailyPundit/2002_01_20_dailypundit_archive.php) (Jan. 26, 2002, 9:48 PM).

68. See *supra* notes 56-67.

69. Punishment for line crossers was aired in other media as well. See, e.g., Karen Bouffard, *Student Gets Sent Home over His Anti-Bush T-shirt*, DETROIT NEWS, Feb. 19, 2003. In this news story, a high school student in Dearborn, Michigan was sent home for refusing to remove a T-shirt that read "International Terrorist" with a picture of President George W. Bush. *Id.* He wore the shirt for a presentation in class comparing Saddam Hussein with President Bush. *Id.*

Judiciary Committee, Senator Patrick Leahy voiced anxiety about monitoring in the form of the Terrorism Information and Prevention System (TIPS) database.<sup>70</sup> He commented that the database could easily be tracking someone gathering information because she is “the head of Islamic studies at Harvard or . . . a kid doing his term paper at the University of Missouri.”<sup>71</sup> That an “innocent” person would be traced because of speech or speech patterns for which that person expects privacy is troubling. In distinguishing between “innocent”<sup>72</sup> speakers and criminal speakers, Senator Leahy hit on a disturbing element of a database that tracks so-called anomalies that lead agencies to track down suspected terrorists.<sup>73</sup> Attaching guilt or innocence to speech tacitly acknowledges that the criminalization of dissenting speech is part of the mechanism that keeps everyone else in line, conforming to mainstream, “innocent” discourse.

The people publicly punished are useful in alerting others that they are being watched and that they face the possibility of being punished if they do not stay in line, even if there is no actual law. The fact that the media report seemingly innocuous incidents reinforces the perception that someone is watching, and more importantly, that everyone risks punishment for dissenting. The schoolchild sent home for wearing a politically charged T-shirt,<sup>74</sup> the student with a political bumper sticker being questioned by the Secret Service,<sup>75</sup> the attorney mistakenly connected to the bombing in Madrid,<sup>76</sup> Barbara Kingsolver’s editorial piece and resulting ad

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70. See William Matthews, *Ashcroft: No Central Database for Citizen Tips*, FED. COMPUTER WEEK, July 29, 2002, <http://www.fcw.com/fcw/articles/2002/0729/news-tips-07-29-02.asp> (“Ashcroft said . . . ‘TIPS will not maintain a database.’ But the FBI and other agencies might preserve TIPS reports in databases . . .”).

71. *Oversight of the Department of Justice: Hearing Before the Sen. Judiciary Comm.*, 107th Cong. 12-13 (2002).

72. *Id.* at 13.

73. *Id.*

74. See Bouffard, *supra* note 69.

75. See Editorial, *Beehives and Buffalo Chips*, DAILY HERALD (Utah), Sept. 4, 2004, at 16. In the *Beehives and Buffalo Chips* section commenting on events during the week, the newspaper reported that a nineteen-year-old man was reported by his neighbors to the Secret Service for displaying a bumper sticker with a picture of George W. Bush wearing a crown. The sticker read: “King George — off with his head.” *Id.*

76. See *FBI Apologizes to Lawyer Held in Madrid Bombings: Man Feels He Was Singled out Because He’s Muslim*, MSNBC.COM, Mar. 25, 2004, <http://www.msnbc.msn.com/id/5053007> (remarking on the continuing investigation into Brandon Mayfield’s arrest in May 2004). Mayfield — an attorney and Muslim convert — was mistakenly arrested on a material witness warrant when the FBI matched his fingerprint to a fingerprint on a detonator found at the site of the Madrid bombing. *Id.* The FBI has since released Mayfield and admitted its error in arresting him. *Id.* The FBI claimed that the fingerprint match in addition to Mayfield’s “attendance at a local mosque, his

hominem attacks,<sup>77</sup> and Cindy Sheehan's arrest for wearing an anti-war T-shirt to President Bush's State of the Union address,<sup>78</sup> are examples of the private citizens who are punished and derided as a reminder that private citizens are as likely to be punished for deviating as public figures are.<sup>79</sup>

*B. Your Twenty-Four-Hour Window to the World: Normative Watching and the Media*

The world is plugged into media sources now more than ever. Twenty-four-hour news channels, Internet news sites, continuously updated blogs, and electronic commentary work as a virtual watch-tower. The *possibility* that media could be watching public figures has now become an almost certain knowledge that media is indeed watching *incessantly*. With the heightened awareness of media attention on public figures, it becomes increasingly difficult to believe that public figures act without the knowledge that someone is watching all of the time. Whether every public figure who dissents is publicly punished is immaterial; rather, the perception that one can be punished is the motivating force in self-regulating behavior. Only a small group of people have to be publicly punished for the larger group to learn the lesson and conform their behavior to the appropriate model to avoid punishment; this relationship between punishing a few and teaching the masses works on every level, from the public to the private. This concept is best explained

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advertising legal services in a publication owned by a man suspected to have links to terrorism, and a telephone call his wife placed to a branch of an Islamic charity with suspected terrorist ties" combined to make Mayfield a prime suspect for the bombing in Spain. *Id.*

77. See *supra* note 65.

78. Eliot C. McLaughlin, *Activist Sheehan Arrested in House Galley*, CNN.COM, Feb. 1, 2006, <http://www.cnn.com/2006/POLITICS/01/31/sheehan.arrest/>.

79. See Nathan Hodge, *Dispatches from Fort Campbell: A Tale of Two Soldiers*, SLATE, Mar. 24, 2005, <http://www.slate.com/id/2115127/>. In an interesting twist on a theme about speech, Hodge reports about two soldiers in Iraq and the vastly different lives they have because of letters that they wrote home. *Id.* Each soldier wrote letters home. *Id.* One was positive about the war, and the other negative. *Id.* The soldier writing positive letters received a purple heart for light injuries and public recognition from politicians. *Id.* The other soldier, who served in the same division, wrote letters that expressed his frustration, catching the attention of a retired four-star general, the *L.A. Times*, and many other news sources. *Id.* The soldier was honorably discharged so as not to make him a "free-speech martyr." *Id.* Clearly, the Army has more control over the kinds of speech practiced by its members than it does over private citizens, but it recognized the possibility that public punishment would create the opposite of the desired effect — downplaying soldiers' discontent with the war in Iraq.



with a brief summary of theorist Michel Foucault's model of the Panopticon.

### 1. *The Panopticon*

Foucault explores the ways discipline and punishment work in society. Tracing historical methods of discipline to contemporary disciplinary methods reveals a shift in graphic violence against the body to invasive violence against the will.<sup>80</sup> Foucault notes specifically punishment in the form of public hangings, drawing and quartering, and other gruesome, graphic types of violence as are played out on the surface of the body.<sup>81</sup> As civilizations grew more complex, punishment in the form of violence against the body began to "equal, if not to exceed, in savagery the crime itself."<sup>82</sup> The spectacle of shame attached to criminal behavior changed focus so that the trial and conviction became the horror, and punishment became abstract, inevitable, and unseen.<sup>83</sup> As punishment became attenuated from the body, interaction with the body of the prisoner was intended "to deprive the individual of a liberty that is regarded both as a right and as property."<sup>84</sup> The penal system released its hold on punishing the body per se and began reforming or neutralizing the soul.<sup>85</sup> Punishment for crimes became a non-spectacle site of discipline and training. The heightened fear of punishment appeared when punishment was no longer visible. The fear stems from the prisoner's inability to know or see what form the punishment will take. The anticipated terror outweighs the punishment that is publicly meted out because, with public punishment, the prisoner knows exactly what will happen. When the length of the prison term is unfixed and uncertainty exists about what tortures await the prisoner, the power of the idea of punishment grows in the minds of the prisoner and the unimprisoned public so that discipline and self-regulation seem mild in comparison to some imagined punishment.<sup>86</sup>

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80. See FOUCAULT, *supra* note 5, at 3-11.

81. *Id.* at 3-5.

82. *Id.* at 9.

83. *Id.* at 9-10.

84. *Id.* at 11.

85. *Id.* at 17-18 (arguing that prisoners are "punished by means of a punishment that has the function of making the offender 'not only desirous, but also capable, of living within the law'. . . [the punishments sometimes] are not intended to punish the offence, but to supervise the individual, to neutralize his dangerous state of mind, to alter his criminal tendencies").

86. *Id.* at 9. An example of unknowable, and thus greater, psychological punishment is Guantanamo Bay. The detainees do not know what will happen to them, how long

Foucault's theory of Panopticism<sup>87</sup> stems from the seventeenth century plague models<sup>88</sup> and Jeremy Bentham's architectural concept.<sup>89</sup> Bentham's Panopticon is a prison consisting of individual cells in a circular formation with windows facing a central tower.<sup>90</sup> Whoever is placed in a cell, "a madman, a patient, a condemned man, a worker or a schoolboy,"<sup>91</sup> cannot see who is in the watchtower but knows that the cell is perfectly visible to whoever is watching from the tower. The cells become "so many small theatres, in which each actor is alone, perfectly individualized and constantly visible."<sup>92</sup> The principle in the structure is that power lies in visibility. The individuals in the cell "will constantly have before [their] eyes the tall outline of the central tower from which [they are] spied upon."<sup>93</sup> However, the individuals "must never know whether [they] are being looked at at any one moment; but [they] must be sure that [they] may always be so."<sup>94</sup> The intended effect of the Panopticon is that the individuals self-regulate because of the individuals' "state of conscious and permanent visibility . . . assur[ing] the automatic functioning of power."<sup>95</sup> Whether someone is actually watching from the watchtower is irrelevant; the mere possibility that someone is watching leads to self-regulation. Foucault extends Bentham's "architectural figure"<sup>96</sup> to explore power relationships on a broader scope, "a generalizable model of functioning; a way of defining power relations in terms of the everyday life of men."<sup>97</sup>

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they are to be there, or in some cases why they are there. The inability to know with certainty the awaited punishment is itself a greater psychological punishment than anticipating a known fate. For a description of the torture and treatment of detainees at Guantanamo Bay, see *Amnesty Releases New Gitmo Torture Testimony*, GLOBAL POLICY FORUM, Jan. 10, 2006, <http://globalpolicy.igc.org/empire/un/2006/0110/testimonies.htm>.

87. Foucault defines Panopticism as normative watching that leads to self-discipline and the attendant power relationships found in being the observer rather than the observed. FOUCAULT, *supra* note 5, at 201.

88. *Id.* at 195; *see also id.* at 316 n.1 ("[A] whole series of [plague regulations] that date from the same period and earlier."). The townspeople were to be placed in individual cells to ensure proper hygiene and to prevent plague. *Id.*

89. *Id.* at 200; *see also id.* at 316 n.2 (Bentham "recounts that it was while visiting the École Militaire that his brother first had the idea of the Panopticon.").

90. *Id.* at 200.

91. *Id.*

92. *Id.*

93. *Id.* at 201.

94. *Id.*

95. *Id.*

96. *Id.* at 200.

97. *Id.* at 205. The architectural figure of the Panopticon is used as a theoretical figure to explain, for example, a churchgoer's power relationship with deity wherein the churchgoer behaves according to church norms because God is watching all of the time.

## 2. *The Virtual Watchtower — How the Panopticon Works Today*

Since the majority needs only the example of punishment held before its eyes a few times, the perception that someone is watching creates the phenomenon of normative watching. The perception that someone is watching (or empowered to watch with fewer legal restrictions, as is the case in the popular opinion of the USA PATRIOT Act<sup>98</sup>) is more powerful than the actuality: no one can watch the Internet, every person, public library records, and other activity all the time. Nonetheless, heightened worries about the vulnerabilities of electronic media sources and the near paranoia about being tracked or watched by the government<sup>99</sup> work more effectively to create a normative drive than if the government or some other shadowy agency were actually watching. People conform their behavior, believing that they are watched.<sup>100</sup>

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98. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001) (codified as amended in scattered sections of the U.S.C.).

99. Books and articles about government watching, whether they are factual or not, feed the perception that someone is watching. See generally ROBERT O'HARROW, JR., *NO PLACE TO HIDE* (2005). The cover of the book reads:

When you go to work, stop at the store, fly in a plane, or surf the Web, you are being watched. They know where you live, the value of your home, the names of your friends and family, in some cases, even what you read. Where the data revolution meets the needs of national security, there is . . . No Place to Hide.

*Id.* Another example of such media is the political cartoon featuring police men searching a home without warrants saying things like, "Hey, guys! Check out this underwear on my head!" and "I love our new powers to secretly search homes." Cartoon, *DAILY HERALD* (Utah), July 20, 2004, at A6. Articles about surveillance cameras in public places reinforce the public fear of being watched. Following the trend in England to have closed circuit television cameras in public locations as an integral part of its security, *Wired.com* reported that "Creepy Cams Abound in NYC." *Creepy Cams Abound in NYC*, *WIRED*, Aug. 6, 2005, <http://www.wired.com/news/privacy/0,1848,68530,00.html?tw=rss.TOP>. Certainly, the renewed anxiety surrounding the sunset provisions in the Patriot Act, particularly those that give government the power to obtain information believed to be private, could be a result of the public belief that the government has abused its power to watch the public. See, e.g., *Deal Reached to Extend Patriot Act*, *CNN.COM*, Dec. 2, 2005, <http://www.cnn.com/2005/POLITICS/12/08/patriot.act/> (discussing the balance between security and civil liberties issues); *Online NewsHour: Renewing the Patriot Act* (PBS television broadcast, July 19, 2005) (discussing the abuses against civil liberties exercised under the Patriot Act).

100. The existence of articles and books detailing the pervasive and invasive nature of government watching is itself evidence of a popular belief that people are being watched. Anxiety about the Internet being subject to the same regulations as the wiretap indicates that people may conform their activities and speech on the Internet to avoid being targeted because they perceive that the government is watching. See Declan McCullagh, *Fahrenheit FBI: A New U.S. Government Decision Extending Wiretapping Regulations to the Internet Raises Far More Questions Than It Answers*,

A perceived lower standard of protection for surveillance of email, websites, and other forms of electronic communication as seen in cases like *Konop v. Hawaiian Airlines, Inc.*<sup>101</sup> substantiates a fear of being watched. At the same time, deep concerns that loosening restrictions on surveillance compromises civil liberties only feed the perception of watching.<sup>102</sup> Commentators and scholars

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CNET NEWS, Aug. 9, 2004, <http://news.com.com/Fahrenheit%20FBI/2010-7352-3-5300198.html>. Another anxiety expressed over Internet speech regards blogs, particularly political speech featured on blogs. The Federal Election Commission (FEC) released a draft Notice of Proposed Rulemaking on March 23, 2005. Office of the General Counsel, Federal Elections Comm., Draft Notice of Proposed Rulemaking on Internet Communications Agenda Doc. No. 05-16 (draft proposed Mar. 23, 2005) (on file with the FEC). The Internet community was up in arms within twenty-four hours of the release. See, e.g., Posting of Krempasky to RedState, <http://www.redstate.com/story/2005/3/25/03024/6848> (Mar. 25, 2005, 12:56:51). The prevailing fear and perception is that political speech on blogs, the soapbox on the Internet street corner, will be a "regulatory minefield" for bloggers." *Id.* The final form of the proposed rule was published on April 4, 2005. 70 Fed. Reg. 16,967 (Apr. 4, 2005). Under the proposed rule, the FEC would have expanded powers to regulate public communication via blogs. *Id.* Under the rule, the government could regulate Internet speech, particularly political speech, and would force speakers to conform or face possible punishment. *Id.*

101. 302 F.3d 868, 876-81 (9th Cir. 2002). Groups like the Electronic Frontier Foundation (a civil liberties organization that published an amicus brief for *Konop*) have found *Konop* worrisome because it does not afford electronic communication a higher standard of protection under the Wiretap Act, 18 U.S.C. §§ 2510-2522 (2006). See also *Steve Jackson Games, Inc. v. U.S. Secret Serv.*, 36 F.3d 457 (5th Cir. 1994) (attempting to work out electronic communication issues in terms of the Stored Communication Act, 18 U.S.C. §§ 2701-2711 (2006), and the Wiretap Act, 18 U.S.C. §§ 2510-2522 (2006)).

102. A number of articles express concerns over civil liberties as well as providing excellent analyses of how the USA PATRIOT Act affects current electronic surveillance. E.g., Elise M. Bloom, Madeleine Schachter & Elliot H. Steelman, *Competing Interests in the Post 9-11 Workplace: The New Line Between Privacy and Safety*, 1317 PLI/CORP 303, 323-32 (2002); Justin F. Kollar, *USA Patriot Act, The Fourth Amendment, and Paranoia: Can They Read This While I'm Typing It?*, 3 J. HIGH TECH. L. 67 (2004); Mark G. Milone, *Hacktivism: Securing the National Infrastructure*, 58 BUS. LAW. 383 (2002); Aaron Nance, *Taking the Fear out of Electronic Surveillance in the New Age of Terror*, 70 UMKC L. REV. 751, 757-62 (2002); Gina Tufaro, *Will Carnivore Devour the Fourth? An Exploration of the Constitutionality of the FBI Created Software*, 18 N.Y.L. SCH. J. HUM. RTS. 305, 323-31 (2002); Katherine Vogeley, *Electronic Surveillance*, 90 GEO. L.J. 1209 (2002); Sandy D. Hellums, Note, *Bits and Bytes: The Carnivore Initiative and the Search and Seizure of Electronic Mail*, 10 WM. & MARY BILL RTS. J. 827, 839-52 (2002); Richard Lacayo, *More Eyes on You; Do the Feds Need More Power to Fight Terrorism? The Attorney General Says Yes*, TIME, Oct. 1, 2001, at 66. Cf. Orin S. Kerr, *Internet Surveillance Law After the USA PATRIOT Act: The Big Brother That Isn't*, 97 NW. U. L. REV. 607, 625 (2003) (arguing that the USA PATRIOT Act's effect on electronic surveillance is misunderstood, and rather than destroying civil liberties as feared by many scholars, Kerr argues that it balances protection of privacy and "changes [that] advance law enforcement interests"). Kerr's article is of particular interest because it acknowledges the popular understanding of the USA PATRIOT Act's effect on electronic surveillance. "The passage of the USA Patriot Act on October 26, 2001 has been widely portrayed as a dark moment for the civil liberties of Internet users." *Id.* at 623. Whether Kerr is correct in asserting that people should not fear the USA PATRIOT Act as undermining civil liberties is immaterial; the popular understanding of complex

exhibit anxiety that the expansion of governmental surveillance is the government's attempt generally to seize control of electronic forums.<sup>103</sup> The concern arises because of the awareness that someone (the State<sup>104</sup>) could be monitoring individual speech. The State has already established the possibility of punishment; thus, self-regulation in speech is the default option for avoiding mysterious and non-quantified punishment.

The everyday life of many people in America includes Internet usage.<sup>105</sup> Whether cases like *Konop*<sup>106</sup> and programs like Carnivore<sup>107</sup>

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legislation and decisions like *Konop* that appear to severely compromise civil liberties continues to inform and create a climate of normative watching. Further evidence of the perhaps faulty, but nonetheless popular, understanding of USA PATRIOT Act appears on Eugene Volokh's website. Orin Kerr, as a guest blogger, attempts to debunk a number of misapprehensions about the USA PATRIOT Act. Posting of Orin Kerr to The Volokh Conspiracy, [http://www.volokh.com/2003\\_06\\_01\\_volokh\\_archive.html](http://www.volokh.com/2003_06_01_volokh_archive.html) (June 6, 2003, 1:44 PM). Also of note is an article by Patricia Cohen that addresses Kerr's position and the concern still felt by electronic privacy advocates. Patricia Cohen, *9/11 Law Means More Snooping? Or Maybe Less?*, N.Y. TIMES, Sept. 7, 2002, at 9. Another factor contributing to popular beliefs about the invasiveness of the USA PATRIOT Act is Attorney General John Ashcroft's unwillingness to report "how often FBI agents have asked judges to delay telling people that their homes have been secretly searched by U.S. agents," how many court orders authorize roving wiretaps, and how many court orders have issued "without specifying a subject's full name or listing all of the communication devices the subject uses." Toni Locy, *Ashcroft Defends Patriot Act: Evidence Shows Need to Extend the Law, He Says*, USA TODAY, July 14, 2004, at A8.

103. See, e.g., Nathan C. Henderson, *The PATRIOT Act's Impact on the Government's Ability to Conduct Electronic Surveillance of Ongoing Domestic Communications*, 52 DUKE L.J. 179, 203-08 (2002) (assessing the threat to privacy as a result of the USA PATRIOT Act and the inadequacy of privacy provisions within the Act to ameliorate this threat); see also Ctr. for Democracy & Tech., *What's Wrong with the PATRIOT Act and How to Fix It*, <http://www.cdt.org/security/usapatriot/brochure.pdf> (last visited Mar. 8, 2006) (proposing ways to curtail the government's broad search powers); Privacy Int'l, *Privacy and Human Rights 2003: Threats to Privacy*, <http://www.privacyinternational.org/survey/phr2003/threats.htm> (last visited Mar. 8, 2006) (detailing threats to privacy from increased government surveillance).

104. The term 'State' in this work refers to the Marxist sense wherein the State, rather than the government, consists of all institutions (including media, government, religion, and family) that create and reinforce ideology. Marx's definition is especially pertinent now because in this technological moment, people receive information about culture and ideology through a variety of media, such as the Internet, television, radio, newspaper, or word of mouth. See generally Louis Althusser, *Ideology and Ideological State Apparatuses (Notes Towards an Investigation)*, in *LENIN AND PHILOSOPHY AND OTHER ESSAYS* 127, 137 (Louis Althusser ed., Ben Brewster trans., 1971).

105. As of September 2002, approximately 605.60 million users were online worldwide. ABA Creative Web Services, *Interesting Statistics*, <http://www.eaba.biz/abainc/articles/stats.htm> (last visited Mar. 10, 2006). According to Nielsen Ratings, as of February 2004 in the United States alone, there were 141,389,993 Internet users. *Id.*

106. 302 F.3d 868 (9th Cir. 2002).

107. Carnivore is an FBI program that tracks particular key words or patterns in Internet usage. See generally STEPHEN P. SMITH ET AL., IIT RESEARCH INSTITUTE, *INDEPENDENT REVIEW OF THE CARNIVORE SYSTEM: FINAL REPORT* (2000), available at [http://www.usdoj.gov/jmd/publications/carniv\\_final.pdf](http://www.usdoj.gov/jmd/publications/carniv_final.pdf).

or Magic Lantern<sup>108</sup> actually lower privacy protection for individual users of electronic media does not matter. As long as generalized fear, imperfect understanding of material, and specific examples of people being watched and punished exist, the work of normative watching is done.

The principles of visibility and invisibility are at work. The average Internet user believes he or she functions like the individual in the cell, "perfectly individualized and constantly visible"<sup>109</sup> to an unseen entity tracking Internet usage and delving into stored electronic communication. The same power principle from the Panopticon is at work because no entity realistically could monitor every instance of Internet usage all of the time, and yet users still experience the underlying fear that someone really is watching.

The self-regulating impulse arises from the mere possibility that someone could be watching. The fact that certain words or word patterns will likely trigger scrutiny from imagined, unseen watchers and the fact that government has detained a number of suspects with alleged ties to terrorism<sup>110</sup> instruct Internet users that they should conform their behavior to a specific model (i.e., not using particular search terms too often). Even if the suspects detained by the government are not Internet users, their examples are still effective as a means of training all Internet users<sup>111</sup> in the

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108. Magic Lantern is a pen trap register so that keystrokes can be recorded in order to obtain passwords for encrypted material. See Bob Sullivan, *FBI Software Cracks Encryption Wall*, MSNBC.COM, Nov. 20, 2001, <http://www.msnbc.com/news/660096.asp?cp1=1>; see also Anti-Terrorism Technology: Magic Lantern Surveillance System, <http://www.accelerated-promotions.com/consumer-electronics/usa-patriot-act-magic-lantern.htm> (last visited Mar. 8, 2006). When Magic Lantern is being used, the user does not know that the program is recording the keystrokes the user makes. See Sullivan, *supra*.

109. FOUCAULT, *supra* note 5, at 200.

110. See, e.g., Jonathon Alter, *Between the Lines: Keeping Order in the Courts*, NEWSWEEK, Dec. 10, 2001, at 48; Robert H. Bork, *Having Their Day in (a Military) Court: How to Best Prosecute Terrorists*, NAT'L REV., Dec. 17, 2001, at 18; Adam Cohen, *Rough Justice: The Attorney General Has Powerful New Tools to Fight Terrorism: Has He Gone Too Far?*, TIME, Dec. 10, 2001, at 30; Evan Thomas & Michael Isikoff, *Justice Kept in the Dark*, NEWSWEEK, Dec. 10, 2001, at 37; OF RIGHTS AND WRONGS: THE THREAT TO AMERICA'S FREEDOMS (Alliance for Justice 2002) (film commenting on detainees and civil liberties issues). Another crucial element in creating tension and fear that someone is monitoring Internet communication is the "[e]vidence that surfaced shortly after September 11 show[ing] that the terrorists responsible for the attacks had relied extensively on e-mail and the Internet to plan the attacks." Thomas P. Ludwig, *The Erosion of Online Privacy Rights in the Recent Tide of Terrorism*, 8 COMP. L. REV. & TECH. J. 131, 132 (2003).

111. The media acts as part of the Panopticon tower by emphasizing the Internet's role in catching suspects. See Adam Cohen, *When Terror Hides Online*, TIME, Nov. 12, 2001, at 65 (about encrypted images hidden in seemingly innocuous images sent online). Thomas P. Ludwig's article articulates how the overly-broad USA PATRIOT Act reduces privacy in electronic communication and "gives a not-so-subtle warning to Internet

consequences of practicing what the State considers dangerous speech.

The media also reinforces the horror of the unknown, unseen punishment, by publishing headlines about detainees being held without access to attorneys for unspecified amounts of time without the ability to know the evidence against them.<sup>112</sup> The fear of punishment because of its hidden, secret nature is more powerful than a known, quantified punishment.

Another part of the process of reinforcing normative watching is the 'should have known better' response to accounts of people caught with embarrassing or incriminating information on the Internet or in email accounts. The argument seems logical, but in the case of mere dissent, the argument is another version of blaming the victim; the victim does not know that someone could be watching and, therefore, is 'getting what he or she deserves' when he or she is caught. The people who are caught are in reality being accused of being naive, stupid, or radical for not obeying the rules in normative watching.

### *C. Politics and Homophobic Blackmail*

When Republicans accused Democrats of being cowardly or uninterested in national defense in resisting immediate war against Iraq, Democratic candidates and political figures engaged in patriotic homosocial discourse to keep their offices or ensure reelection.<sup>113</sup> Republicans mapped cowardice directly onto patriotism,

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users to be careful as to what sites they visit and what they enter into online search engines." Ludwig, *supra* note 110, at 164.

112. See, e.g., Frank Davies, *U.S. Readies Tribunals for Terrorism Trials*, MIAMI HERALD, Dec. 26, 2002; David Firestone, *A Nation Challenged: The Immigrants; U.S. Makes It Easier to Detain Foreigners*, N.Y. TIMES, Nov. 28, 2001, at 7; Susan R. Miller, *Must Government Share Evidence with Detainees?*, MIAMI DAILY BUS. REV., Nov. 12, 2001, at A1; *Terror Detainees and US Law*, CHRISTIAN SCI. MONITOR, Mar. 18, 2003, at 8; see also *US Charges 'Jihad Financers'*, BBC NEWS, Feb. 20, 2003, <http://news.bbc.co.uk/go/pr/fr/-/2/hi/americas/2785497.stm>. The article gives an account of Professor Sami al-Arian, founder of a think-tank on Islamic studies, and three U.S. residents whom the government has charged with and arrested for financing terrorism. Al-Arian's brother, Mazen al-Najjar, was "detained without charge for about five years before being deported from the U.S. last August." *Id.* Cf. Michael Isikoff, *Hiding in Plain Sight: Did a Muslim Professor Use Activism as a Cloak for Terror?*, NEWSWEEK, Mar. 3, 2003, at 27 (reporting that federal agents have been collecting evidence and following al-Arian since 1994 and that his activities are tied to Palestinian bombers).

113. For example, CNBC reported that "Tom Daschle gets angry and hits back at the president for his [Bush's] charge that Democrats are not as interested in homeland security." *Bush Eases off Rhetoric After Wacky Wednesday Eruptions*, NAT'L J.'S HOUSE RACE HOTLINE, Sept. 26, 2002. On a CNN Live Event, Wolf Blitzer read a viewer's opinion that "Democrats are, unfortunately, buying into [Bush's policies] because they

in effect accusing Democrats of effeminacy, weakness, and unmanliness, yoked not to a history of revolt and dissent (what Sacvan Bercovitch describes as America's ideological roots<sup>114</sup>) but to patriotism, which was shorthand for conformity to the majoritarian view. Yoking sexualized identity to political conformity is, in essence, a return to the boyhood threat — either conform or be a girl.

Another example of mapping sexuality onto non-conforming bodies is Governor Arnold Schwarzenegger's reference to the Democrats who disagreed with his policies as "girly-men."<sup>115</sup> Using images of women and weakness appears in the politics of governmental interest in steroid use in sports. Yoking feminine, hysterical images to Mark McGwire's refusal to confess to steroid use is another example of not "being man enough" to conform to majoritarian views.<sup>116</sup> As seen in the McGwire example, homophobic

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are afraid of being called unpatriotic." *CNN Live Event/Special: Showdown: Iraq: Should U.S. Invade Iraq?* (CNN television broadcast Oct. 10, 2002); CNN Transcripts, <http://transcripts.cnn.com/TRANSCRIPTS/021010/se.07.html> (last visited Mar. 8, 2006); see also Sean Loughlin, *Lawmakers Voice Support for Armed Forces*, CNN.COM, Mar. 20, 2003, <http://www.cnn.com/2003/ALLPOLITICS/03/20/sprj.irq.congress.reax/index.html> (recounting an excellent display of the drive to conform when Senate Minority Leader Tom Daschle said, "[w]e may have had differences of opinion about what brought us to this point, but the president is commander-in-chief, and today we unite behind him as well," and only two days before, Daschle had "infuriated many Republicans when he blasted what he called Bush's 'failed' diplomacy, saying it had moved the country toward war"); *Washington Lines up Behind U.S. Troops*, CNN.COM, Mar. 17, 2003, <http://www.cnn.com/2003/ALLPOLITICS/03/17/sprj.irq.congress.briefing/> (reporting that even though Democrat Senator Joseph Lieberman has been "supportive of a possible military strike against Iraq," he also said "the Bush administration's unilateralist, divisive foreign policy . . . has pushed a lot of the world away").

114. SACVAN BERCOVITCH, *THE RITES OF ASSENT* 20 (Routledge 1993).

115. *Morning Edition: Schwarzenegger Brings California Concerns to D.C.* (NPR radio broadcast Feb. 18, 2005), available at <http://www.npr.org/templates/story/story.php?storyId=4503976>. After recalling how Governor Schwarzenegger called Democrats who opposed his tax plan "girly-men" in the summer of 2004, one of Schwarzenegger's critics pointed out that Schwarzenegger's victories may only be symbolic. *Id.* At least one Democrat writes off the name-calling as "showbiz," but in spite of opposition, Schwarzenegger's plan was approved. Burt Prelutsky invokes George W. Bush's ability to be "man enough" as a call to action in stemming the flow of illegals across "our porous borders." Burt Prelutsky, *Stop Ignoring Illegals . . . Enough Already*, WASH. TIMES, Feb. 11, 2005, at A21. At the same time, he refers to Governor Schwarzenegger as "Maria Shriver with muscles!" *id.*, demonstrating that everyone is vulnerable to patriotic homosocial discourse. Calling people "girly-men" only goes so far to define the line between majoritarian consent and dissent; because of the very nature of patriotic homosocial discourse, bodies are always vulnerable and must visibly and continually define where they are in relation to a sexualized identity/majoritarian opinion.

116. Joe Hawk, *McGwire Should Have Worn Dress to Congressional Hearings*, LAS VEGAS REV.-J., Mar. 22, 2005, at C1, available at [http://www.reviewjournal.com/lvrj\\_home/2005/Mar-22-Tue-2005/sports/26128361.html](http://www.reviewjournal.com/lvrj_home/2005/Mar-22-Tue-2005/sports/26128361.html). Phrases like "[p]assing the tissues," "steroid use not only shrinks an important part of the male anatomy it causes the



blackmail does not distinguish between causes; a moral standard is absent. Public figures and politicians are subject to the shifting grounds of popular opinion and constantly must negotiate the perception of their sexualized identity with respect to demands that are inconstant and arbitrary. Immigration issues illustrate perfectly the shifting ground of popular opinion.<sup>117</sup> Whereas critics refer to political inaction to stop illegal immigration as “downright cowardice,” Congress has protected business owners by giving them the “I didn’t know he/she was illegal” defense in cases where business owners have employed illegal immigrants.<sup>118</sup>

The similarities between the current discourse of political issues and homosexual panic seem attenuated at first glance. The speech and actions that normative watching informs and shapes, however, resonate with the rhetoric generated by the relationship between homophobia and homosociality. People speaking or wearing signs of ideological homosexuality (at present, communities that share the same ideas or appearance as the 9/11 terrorists) are thrust into the margin. They are punished for the benefit of the so-called mainstream, average American — to inform the mainstream group of their possible fate should they choose to deviate from homosociality.<sup>119</sup>

In America, homosocial discourse provides a way for different groups (males, females, racial groups, and social classes) to bond over the homosexualized bodies of dissenters; it is the smoothing of difference required to imagine a monolithic American identity. Patriotic homosocial discourse requires homophobic action to differentiate between normal and deviant. Public figures who try to resist patriotic homosocial discourse and homophobic rhetoric are

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development of ovaries,” “[c]hoking back tears,” “asking if the dress slacks he was wearing made him look fat,” and “Miss McGwire had more estrogen in her system than testosterone,” *id.*, resonate with locker room mentality. McGwire’s refusal to confess to steroid use, and his unwillingness to conform to an imagined standard of taking punishment ‘like a man’ marks him as a dissenter, and makes him vulnerable to sexualized labels.

117. See, e.g., Mary Sanchez, *Volunteer Border ‘Patrol’ Raises Questions of Motivation*, VENTURA COUNTY STAR, Mar. 22, 2005, at 6.

118. *Id.* Sanchez’s article highlights the competing interests in immigration issues. See *id.* Businesses seeking continued protection in employing illegal immigrants for low wages in potentially dangerous settings need only allege political cowardice. See *id.* On the other hand, groups anxious about illegal immigrants taking jobs from Americans accuse politicians of cowardice in stemming the flow of illegals across the border. See *id.*

119. See SEDGWICK, *supra* note 2, at 87 (discussing how “domination offered by this strategy [European homosexual oppression that at once both terrorized the gay community and allowed its continued existence] is not only over a minority population, but over the bonds that structure all social form”).

pushed by a similar process into the ideological space occupied by homosexuals in a predominately heterosexual climate — the margin. Extending Sedgwick's theory to political discourse means that, in a landscape of terrifying, unknown difference, discriminating between self and other is accomplished through violent demarcations of the line between the two. Yoking images of homosexuality, effeminacy, deviancy, and weakness to political or ideological dissent authorizes the same kind of violence appearing in homophobic efforts to divide homosexuals from heterosexuals. The deviant thus becomes sub-human and subject to physical torture, and the participant in patriotic homosocial discourse must take the majoritarian political stance, often requiring some form of violence against the so-called deviants, in order to define his or her own sexualized identity — or risk being defined as deviant.

## II. THE TELOS OF PATRIOTIC HOMOSOCIAL DISCOURSE: ABU GHRAIB, BELMARSH, GUANTANAMO BAY, AND FEDERAL PRISONS

This section explores the natural telos of patriotic homosocial discourse. Rather than arguing that the prison abuse scandals are an isolated series of events that spontaneously erupted into the media, this article considers the ideological groundwork necessary to end up with torture on a widespread scale, making this section a type of case study for patriotic homosocial discourse's telos. This article also considers the effects of the physical manifestation of violence intersecting homosexuality and patriotic fervor over the male Arab body — what does it mean when endlessly reproducible pictures, testimony, and media reports of such activities are disseminated in electronic media?

### A. *Shock and Awe: Orientalism and the Age of Technology*

Post-colonial oppression discourse recognizes the sexualization of colonial conquest. Edward W. Said's theory of Orientalism posits that western cultures have been "in a whole series of possible relationships with the Orient"<sup>120</sup> without ever losing . . . the relative

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120. "Orient" in Post-colonial theory is akin to a term of art. See SAID, *supra* note 15, at xviii. It is no longer neutral and representative of a scholarly interest in the Asian and Sub-Asian continent, but pejorative of the paternalistic discourse stemming from colonialism and extending into modern thought. See *id.* at xvii. "Orient" in Said's book *Orientalism* refers mainly to the Middle East and Southeast Asia. SAID, *supra* note 15, at 16-18. Said explains that Europeans, particularly the British and French, have a particular relationship with the Orient that is slightly different from the relationship that Americans have with the Orient. *Id.* at 3-4. The comparison between Europe's

upper hand.”<sup>121</sup> Said views the Orient as something “fixed in time and place for the West. . . . [In fact,] entire periods of the Orient’s cultural, political, and social history are considered mere responses to the West.”<sup>122</sup> Said analyzes a number of European texts about the Orient to show that stereotypes, discourse, and conceptualizations of the Orient make it for the West “a living tableau of queerness.”<sup>123</sup> The sexualization of the Orient is a method of reinforcing colonial power and rationalizing continuing oppression. Said notes:

Along with all other peoples variously designated as backward, degenerate, uncivilized, and retarded, the Orientals were viewed in a framework constructed out of biological determinism and moral-political admonishment. The Oriental was linked thus to elements in Western society (delinquents, the insane, women, the poor) having in common an identity best described as lamentably alien.<sup>124</sup>

One source of the sexualization of the Orient, “escapism of sexual fantasy,”<sup>125</sup> could have been the nineteenth century strictures placed on sex so that the “Orient was a place where one could look for sexual experience unobtainable in Europe.”<sup>126</sup> Said also tracks colonial sexual discourse in relation to the land, noting that out of

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relationship with the Orient, nonetheless, is useful because American ideology is informed by European ideology.

121. SAID, *supra* note 15, at 7.

122. *Id.* at 108-09.

123. *Id.* at 103. Said quotes Gustave Flaubert’s narrative:

[S]ome time ago a *santon* (ascetic priest) used to walk through the streets of Cairo completely naked except for a cap on his head and another on his prick. To piss he would doff the prick-cap, and sterile women who wanted children would run up, put themselves under the parabola of his urine and rub themselves with it.

*Id.* This anecdote demonstrates how “[t]he Orient is *watched*, since its almost (but never quite) offensive behavior issues out of a reservoir of infinite peculiarity.” *Id.* Whether or not “queerness” referred to homosexuality in 1979, it nonetheless resonates with queer theory because the minoritizing effect described in *Orientalism* is similar to the minoritizing effect described in queer theory. See EVE KOSOFSKY SEDGWICK, *EPISTEMOLOGY OF THE CLOSET* 18-21 (1990). Sedgwick situates her argument in the landscape of gender and race discourse by offering the example of victims of gay hate crimes being doubly victimized because the concept of homosexual panic permits a defense to gay bashing that would not be permitted for victims of gender- or race- based hate crimes. *Id.* Sedgwick also discusses the particular form of minoritization that the gay community faces with discourse created by hate crimes in the past few decades, commenting on the tension and oppression centered around coming out of the closet. *Id.* at 70-73.

124. *Id.* at 207.

125. *Id.* at 190.

126. *Id.*

"the commonly held view of the Orient as a geographical space to be cultivated, harvested, and guarded . . . images of agricultural care for and those of frank sexual attention to the Orient proliferated accordingly."<sup>127</sup>

Centuries-old Oriental stereotypes emerge today in media coverage about the Middle East.<sup>128</sup> Mainstream media depictions of the Taliban reinforce the outmoded perceptions of "the Oriental Arab [as] 'civilized man fallen again into savage state'"<sup>129</sup> and "Orientals [and] Arabs whose civilization, religion, and manners were so low, barbaric, and antithetical as to merit reconquest" so that the West is justified in continuing its "teaching the Orient the meaning of liberty . . . [about which] Orientals, and especially Muslims, [know] nothing."<sup>130</sup> Media coverage portraying Middle Eastern citizens, particularly the Taliban, as oppressive, backward, and cruel<sup>131</sup> supports the underlying premise that the "West is the spectator, the judge and jury, of every facet of Oriental behavior."<sup>132</sup> These strains of discourse support the idea that America is a 'city set on a hill' ready to teach the rest of the world about liberty and moral good.<sup>133</sup>

### 1. *America the Masculine: Ideological Construct of America*

America is ideologically structured as masculine. Tracing the idea of conquest from colonization<sup>134</sup> through modern political relationships shows ideological structure that mimics male narratives

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127. *Id.* at 219. "A society colonizes, when itself having reached a high degree of maturity and of strength, it procreates, it protects, it places in good conditions of development, and it brings to virility a new society to which it has given birth." *Id.* (quoting Leroy-Beaulieu).

128. See, e.g., Lisa Beyer, *The Women of Islam: The Taliban Perfected Subjugation. But Nowhere in the Muslim World Are Women Treated as Equals*, TIME, Dec. 3, 2001, at 50; Richard Lacayo, *Lifting the Veil: The Shocking Story of How the Taliban Brutalized the Women of Afghanistan*, TIME, Dec. 3, 2001, at 34; Johanna McGeary, *The Taliban Troubles*, TIME ASIA, Oct. 1, 2001, at 36; Fareed Zakaria, *How to Save the Arab World*, NEWSWEEK, Dec. 24, 2001, at 22.

129. SAID, *supra* note 15, at 171 (quoting Chateaubriand's *Itinéraire de Paris à Jérusalem, et de Jérusalem à Paris* (1810-1811)); see *supra* note 127 and accompanying text.

130. SAID, *supra* note 15, at 172.

131. Media coverage after the events of 9/11 focused on the Middle East, particularly in popular magazines such as *Time* and *Newsweek*; see *supra* note 128.

132. SAID, *supra* note 15, at 109.

133. John Winthrop, *A Modell of Christian Charity*, in COLLECTIONS OF THE MASSACHUSETTS HISTORICAL SOCIETY 33, 47 (3d Series 7:31-48, 1838), available at <http://xroads.virginia.edu/~drbr/winthmod.html>. Winthrop states that settlers were "a city on a hill" preparing to civilize and bring Christianity to the Americas. *Id.*

134. *Id.*

of sexual conquest. Rhetoric authorizing interference and violence is made in terms of sexual conquest: The East is raped,<sup>135</sup> and the Americas<sup>136</sup> are virgin lands. A favorite trope for America, ironically now that George W. Bush is president, is that of the rogue, tough cowboy nation.<sup>137</sup> The national idea of America resonates strongly with similar masculine archetypes — the policeman, the fireman, the father figure, or the elderly statesman. These are all figures that are masculine and represent the morally good.<sup>138</sup>

## 2. A "Boot in Your Ass":<sup>139</sup> Ambiguity in Masculinity

Holding straight, masculine space requires rigorous maintenance of traditional notions of manliness, including shows of physical strength, aggression, and violence. At the same time, however, tension arises from the violence surrounding homophobia being informed by sexual images. "Courtesy of the Red, White and Blue (The Angry American)," the chart-topping country music song,

135. See SAID, *supra* note 15, at 12 (examining the rhetoric of rape about the East).

136. See BERCOVITCH, *supra* note 114, at 9 (discussing America's symbolic position as a "virgin" land or "wilderness"); John Smith, *A Description of New England*, in ANTHOLOGY OF AMERICAN LITERATURE: COLONIAL THROUGH ROMANTIC 28 (George McMichael ed., 1985) (describing America as a virgin: "land is so fertile . . . [but] some tender plants may miscarry").

137. See, e.g., Massing, *supra* note 56 ("Now, with George Bush acting like a cowboy and the rest of the world reacting with horror."). George W. Bush was chosen as *Time* magazine's person of the year in 2004, celebrating his "10-gallon hat leadership style and for sticking to his guns literally and figuratively." *Paula Zahn Now* (CNN television broadcast Dec. 20, 2004).

138. The *Paula Zahn Now* news program addressed George W. Bush's stance on religion and politics noting: "He is a president who sees the war on terror as good versus evil. And counts God as an ally." *Paula Zahn Now*, *supra* note 137. Robert Dallek, professor of History at UCLA, noted that "somebody once said that America is the only country that people in the United States believe it [sic] was born perfect and it [sic] strives to improve itself. . . . I mean, we kind of believe in our exceptionalism." *The Charlie Rose Show: Interview with Robert Dallek* (PBS television broadcast Jan. 21, 2005). Interestingly, Senator John McCain invokes the same type of moral discourse mapped onto American identity when he argues against torture. McCain stated that "[p]risoner abuses exact a terrible toll on us in this war of ideas. They inevitably become public, and when they do they threaten our moral standing . . ." Sen. John McCain, *Torture's Terrible Toll; Abusive Interrogation Tactics Produce Bad Intel, and Undermine the Values We Hold Dear. Why We Must, as a Nation, Do Better*, NEWSWEEK, Nov. 21, 2005, at 34-35. McCain demonstrates his authority to speak about the issues by relating his own experience as a torture victim in Vietnam and then arguing against torture. *Id.* at 34. McCain and his fellow prisoners were strengthened by the belief that had they been the captors instead of captives, they would not have indulged in prisoner abuse. *Id.* at 36. Finally, in his call to action, McCain exhorts Americans to be "different, better and stronger than those who would destroy us." *Id.*

139. TOBY KEITH, *Courtesy of the Red, White and Blue (The Angry American)*, on UNLEASHED (Dreamworks 2002).

crossed onto the Billboard pop charts and boasted sales of approximately 338,000 albums by August of 2002.<sup>140</sup> The song contains images of aggressive and angry masculinity.<sup>141</sup> Although "Mother Freedom" and the Statue of Liberty appear in the lyrics, they are symbolic motivation for fighting, rendering them passive in comparison to the "big dog" who "will fight when you rattle his cage," "Uncle Sam" who will "put your name at the top of his list" (presumably a hit list) and the "eagle" who will "fly" (as a hunting bird of prey).<sup>142</sup> The singer then recounts how America "lit up your world like the Fourth of July" when it attacked Afghanistan in 2002.<sup>143</sup>

The straight, tough, masculine images are complicated by the lyrics "[y]ou'll be sorry that you messed with the US of A / 'Cuz we'll put a boot in your ass/ It's the American way"<sup>144</sup> because they capture the ambiguity in the relationship between patriotic homosocial discourse and homophobia. An image of anal penetration in the middle of a country song embraced by the Pentagon, the Naval Academy, the United States troops in Kosovo,<sup>145</sup> and Americans at home emphasizes the blurring and instability of the line between homosocial and homophobic speech. Embedded in the very threat of retaliation in masculine terms is an image of forcible anal penetration. Ironically, the violence standing between being interested in men and being manly is expressed in violent homosexual or, at the very least, sexual terms.<sup>146</sup>

The violent, sexualized image of a boot in the ass simultaneously allows the West to retain its heterosexuality<sup>147</sup> while commenting on the perversity of the East. In a similar way, fraternity culture models the manner in which traditionally heterosexual males can flirt with homosexuality as a way of reinforcing heterosexual power as mainstream and dominant in comparison to homosexuality.<sup>148</sup>

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140. Craig Shelburne, *Toby Keith Debuts at No. 1 on Billboard 2000*, COUNTRY.COM, Aug. 2, 2002, [http://www.cmt.com/news/articles/1456420/08022002/keith\\_toby.jhtml](http://www.cmt.com/news/articles/1456420/08022002/keith_toby.jhtml).

141. KEITH, *supra* note 139.

142. *Id.*

143. *Id.*

144. *Id.* For lyrics and music, see Toby Keith Website, Albums: Unleashed, [http://tobykeith.musiccitynetworks.com/index.htm?id=1341&inc=7&album\\_id=67#427](http://tobykeith.musiccitynetworks.com/index.htm?id=1341&inc=7&album_id=67#427) (last visited Mar. 8, 2006).

145. Jay Orr, *Toby Keith Claims Jennings Nixed His Performance*, COUNTRY.COM, Aug. 13, 2002, [http://www.cmt.com/news/articles/1456420/08022002/keith\\_toby.jhtml](http://www.cmt.com/news/articles/1456420/08022002/keith_toby.jhtml).

146. See *infra* Part II.B.1 for a discussion of sexualizing violence as a means to make ideas of dissent match ideas of deviancy.

147. See *infra* note 152 for a discussion of homophobia and protection of male power while instituting homosexual acts. In other words, in a rape scenario, the rapist maintains heterosexual status, but the victim is figured as homosexual.

148. See *supra* notes 9-10 for examples of homosexual activity among traditionally heterosexual fraternities.

The danger of the violent expression is that it rationalizes and normalizes aggression at the same time that it creates a minoritized group. This expression encourages Americans to espouse the view that the terrorists deserve a violent retribution. The song does not explore the possible reasoning behind the September 11 attacks. It assumes that America is morally justified in answering violence with further violence because "[j]ustice will be served"<sup>149</sup> by America, the moral arbiter.<sup>150</sup>

The shock with which the West met the events of 9/11 reflects to some extent the West's inability to imagine that the East can and would act in so arbitrary and destructive a manner when the Western idea of the East is that of a passive, colonized, and feminized people.<sup>151</sup> To reassert the power relationship so that the West can have the 'upper hand' in relation to the East, the attacks are labeled as arbitrary, a designation that at once reinforces the cruelty and alien-ness of the East and ruptures its feminized, passive construct. Breaking from the passive ideological space creates a shift in the sexualization dynamic. As the East has acted in a way that embodies a masculine, colonizing aggression, the

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149. KEITH, *supra* note 139.

150. See, e.g., Bernard Lewis, *Did You Say 'American Imperialism?': Power, Weakness, and Choices in the Middle East*, NAT'L REV., Dec. 17, 2001, at 26 (stating, in a caption by David Pryce-Jones, "Iraq is in the condition of precolonialism, in need of rescue from its regime and reincorporation into the international order"); Ramesh Ponnuru, *The Empire of Freedom*, NAT'L REV., Mar. 24, 2003, at 35, 36-37 (proposing that English speaking countries should form a new alliance, "an empire of freedom," based on the similarities in culture among English speaking countries). In contrast is an ongoing counter-dialogue to the idea that "the West is the only civilization capable of secular reason, liberal democracy, and true individualism." *Id.* at 40-41. Rather than seeking to undermine the vision of the West as the only arbiter of reason and justice, the counter-dialogue adds to and opens discussion to consider that multiple systems and cultures are capable (and have been for some time) of governing themselves without adopting Western models of government. Hugh Gusterson, *The Seven Deadly Sins of Samuel Huntington*, in *WHY AMERICA'S TOP PUNDITS ARE WRONG: ANTHROPOLOGISTS TALK BACK* 25, 40 (Catherine Besteman & Hugh Gusterson, eds.). See generally SAID, *supra* note 55. For excellent treatments of post-colonial theory, see generally PARTHA CHATTERJEE, *NATIONALIST THOUGHT AND THE COLONIAL WORLD: A DERIVATIVE DISCOURSE?* (1986); GAYATRI CHAKRAVORTY SPIVAK, *A CRITIQUE OF POSTCOLONIAL REASON: TOWARD A HISTORY OF THE VANISHING PRESENT* (1999).

151. Feminization in this context derives from binary constructs that proliferated in texts about the East. Critical theory and feminist thought more fully address binary constructions such as passive/active and feminine/masculine. Recently, *Newsweek* reported that "[a]n unidentified U.S. soldier, in a videotape" said, "[y]ou allowed your fighters to be laid down facing west and burned. You are too scared to retrieve the bodies. This just proves you are the lady boys we always believed you to be." *Perspectives*, NEWSWEEK, Oct. 31, 2005, at 25. The formulation of the soldier's taunt highlights how power relationships map onto sexuality; an audience without the power to remove bodies is cast as feminine and, therefore, weak.

counter-move by the West is to queer the East.<sup>152</sup> To keep the East in the category of the 'lamentably alien' requires accounting for and undermining the way in which Eastern action refuses to remain fixed as passive and feminine.

### *3. Aggressive Action by the East as Gender Shift*

Accounting for aggressive and masculinized action in the East denotes that the West can no longer figure Eastern men (read terrorists) as women. Where Eastern women are seen as shrouded victims of the brutality and savagery of Eastern men,<sup>153</sup> Eastern men are no longer emasculated men. Undermining the East's refusal to act out Orientalist fantasies is seen when the West casts the East in homosexual terms to account for what is viewed as masculinized action and alien perversity. American anxiety that terrorists can and do act like colonizers (necessarily and rationally in the mind of the colonizer versus violently and irrationally in the mind of the colonized) is figured as a crime against "the civilized world,"<sup>154</sup> which reinforces homosocial discourse (civilized West bonding over national, ethnic, gender, and class lines) and justifies ideological homophobic violence (rhetoric about the uncivilized East that has crossed the line between wanting to be like the West and wanting to conquer the West, thus warranting violence by the West against the East).

### *4. Porous Borders: Fear of Penetration*

Anxiety about bodily integrity, i.e., avoiding forcible penetration, runs throughout mainstream media contributions to

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152. See, e.g., Andrea Dworkin, *I Want a Twenty-Four-Hour Truce During Which There Is No Rape*, in *TRANSFORMING A RAPE CULTURE* 11, 17 (Emilie Buchwald, Pamela P. Fletcher, & Martha Roth, eds.) (1993). Dworkin argues:

[Homophobia is] very important: it is very important to the way male supremacy works. . . . [T]he prohibitions against male homosexuality exist in order to protect male power. . . . as long as men rape, it is very important that men be directed to rape women. As long as sex is full of hostility and expresses both power over and contempt for the other person, it is very important that men not be declassed, stigmatized as female, used similarly.

*Id.* Since homophobia protects male power, violence against homosexuals reasserts male heterosexual power — even if the acts of violence appear to be homosexual themselves. For example, the rape of a male prisoner may have more to do with power relationships and less to do with sex.

153. See, e.g., *supra* notes 129-30 and accompanying text.

154. *Bush: World Stirred to Action on September 11*, CNN.COM, Mar. 11, 2002, <http://www.cnn.com/2002/US/03/11/bush.memorial/> (quoting George W. Bush as saying at the White House memorial ceremony that "the civilized world was stirred to anger and to action").



homophobic discourse.<sup>155</sup> In much the same way, the media and government (read: the State) worry about American border penetration.<sup>156</sup> The *Congressional Quarterly* noted that “[t]o keep America safe from terrorists, customs and immigration agents must monitor 7,500 miles of land and sea borders, dozens of airports and 300 official ports of entry.”<sup>157</sup> Just as homophobic discourse is based on an anxiety about penetration, the intense concern about border protection reiterates the East’s position as being deviant — desiring to penetrate and pervert. Ethnicity and culture become conflated onto the bodies of non-Caucasian immigrants seeking to enter the United States. Border anxiety is mapped onto the bodies of ethnic minorities, reinforcing otherness and defining the idea of who belongs in America.<sup>158</sup> This anxiety is not limited to Arabic bodies. The Department of Homeland Security continues to use the threat of border penetration as a means of tightening immigration control.<sup>159</sup> In 2003, approximately “37,000 immigrants . . . [,] primarily from Central America[,] were arrested at the southwest border.”<sup>160</sup> Ironically, the reason given for further tightening security at the borders is that as port security is tightened, “there will be more

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155. See, e.g., *OFFICE SPACE* (Twentieth Century Fox 1999) (using the phrase “[w]atch out for your cornhole” to illustrate the anxiety about forcible homosexual activity in prison in the film); *THE SHAWSHANK REDEMPTION* (Columbia Pictures 1994) (depicting a group of predatory homosexuals repeatedly raping the main character); *THE BUTTERFLY EFFECT* (New Line Cinema 2003) (depicting the main character bargaining for the return of his notebooks by promising to perform oral sex on other male inmates); *PULP FICTION* (Miramax 1994) (exemplifying how violent retribution delineates between homosociality and homosexuality after one of the characters is forcibly sodomized). See generally RUSSO, *supra* note 30.

156. See Prelutsky, *supra* note 115, as an example of the anxiety over the porous nature of U.S. borders and the resulting anxiety about illegal immigrants flowing into the United States.

157. Patrick Marshall, *Policing the Borders: Can the United States Guard Against Terrorists?*, 12 CQ RESEARCHER 145, 145 (2002).

158. See David Masci, *Debate over Immigration: Does the U.S. Admit Too Many Newcomers?*, 10 CQ RESEARCHER 571, 573-78 (2000) (expressing anxiety about economic forces, population growth, and an increase in foreign-born Americans). See also Steve Ginsberg, *Immigration Law Shifts Focus in Post 9/11 World*, S.F. BUS. TIMES, Feb. 7, 2003, available at [www.bizjournals.com/sanfrancisco/stories/2003/02/10/focus5.html](http://www.bizjournals.com/sanfrancisco/stories/2003/02/10/focus5.html) (expressing concern about the complexity of immigration law in the face of tightening security regulations, particularly as it affects particular ethnic groups who are in America on high-tech work visas).

159. Rachel L. Swarns, *U.S. to Give Border Patrol Agents the Power to Deport Illegal Aliens*, N.Y. TIMES, Aug. 11, 2004, at A2 (explaining that border agents can now deport illegal immigrants without first allowing them the opportunity to present their case before an immigration judge).

160. *Id.*; see also Prelutsky, *supra* note 115. Prelutsky voices anger about porous borders because “the flood of aliens has already helped destroy the quality of life in every place they’ve settled.” Prelutsky, *supra* note 115.

opportunity or more effort made by terrorists to enter our country through our vast land borders.”<sup>161</sup> By using the specter of the Arabic body penetrating the borders, other illegal or deviant<sup>162</sup> bodies can also be controlled and used as public instruction about who is allowed to be American. The announcement that illegal immigrants can be deported without having the opportunity to plead their cases before an immigration judge is justified by the same reasoning: increased port security will lead to increased terrorists’ attempts to enter the United States via unsecured Canadian and Mexican land borders.<sup>163</sup>

### *5. The Unseen/Unknown Sleeper: Fear of the Other Strengthens Homosocial Bonding*

One particular reason this element is dangerous is that anyone can always already be a terrorist.<sup>164</sup> Because of the dichotomy set up by patriotic homosocial speech (one is either a patriot/heterosexual man or a dissenter/homosexual man), dissent or even silence from patriotic homosocial speech implicates the possibility that the non-participant in patriotic homosocial speech is like a sleeper terrorist. As seen earlier in the media examples where dissent equaled punishment, any speech not clearly associated with mainstream speech was publicly quelled so that the spectacle of quelling speech can teach the public about acceptable speech.<sup>165</sup>

The symbol of the sleeper terrorist/closeted homosexual is embodied by John Walker Lindh. The fact that Lindh, a twenty-one-year-old, young, white man from California, pled guilty to fighting for the Taliban against the United States<sup>166</sup> was used to demonstrate that anyone can be a terrorist. The media cast Lindh in the

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161. Swarns, *supra* note 159. Swarns notes that Asa Hutchinson, the undersecretary for border security at the Department of Homeland Security, is credited with making this statement. *Id.*

162. Asa Hutchinson also commented that the new policy will “send a clear message that those individuals who follow legal immigration rules will benefit, while those who choose to break our nation’s immigration laws will be promptly removed from the U.S.” *Id.*

163. *See id.*

164. *See* John Cloud, *The Plot Comes into Focus: A Low Profile, Even Meager Lifestyle Allowed 19 Hijackers to Blend into the American Tapestry. Does This Mean Others are Still out There?*, TIME, Oct. 1, 2001, at 50; Louis Meixler, *British Report Cites “Sleeper Cells” in Baghdad*, ST. LOUIS POST-DISPATCH, July 16, 2004, at A1 (indicating that British intelligence received reports revealing not only sleeper cells existed in Baghdad but also that the sleeper cells had plans to target U.S. forces in northern Iraq).

165. *See supra* notes 56-67.

166. *See* Bob Franken & John King, “I Plead Guilty,” *Taliban American Says*, CNN.COM, July 17, 2002, <http://www.cnn.com/2002/LAW/07/15/walker.lindh.hearing>.

role of the everyman, all-American boy,<sup>167</sup> making his link to terrorism seem inexplicable and even more horrifying; he had neither grinding poverty nor a lifetime of religious training in Islam.<sup>168</sup> The anxiety that anyone, including the next-door neighbor,<sup>169</sup> could be a terrorist strengthens the idea that everyone should participate in patriotic homosocial speech, or at the very least, guard against sympathizing with or speaking about dissenters in anything except the most cautious way.

In the same way that homophobic discourse plays on the insecurity or anxiety that anyone, including oneself, could be seen as homosexual, the iconic figure of Lindh demonstrates the danger of crossing the line. The song *John Walker's Blues* by Steve Earle attempts to capture Lindh's experience from Lindh's point of view.<sup>170</sup> However, Earle was blasted in media coverage for creating a "twisted ballad [that] honors Tali-rat."<sup>171</sup> Lindh's prison sentence and Earle's failed attempt to create sympathy or understanding exemplifies the disciplining of the masses about unacceptable speech and its consequences. The failure to create understanding or sympathy for Lindh also demonstrates how patriotic homosocial discourse rationalizes and authorizes violence against a minoritized group by first creating the groundwork through continually demonizing and othering that group.

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167. *E.g.*, Evan Thomas, *A Long, Strange Trip to the Taliban*, NEWSWEEK, Dec. 17, 2001, at 30 (comparing Lindh's upbringing in "hot-tub country" to his experience with the Taliban).

168. *Id.*

169. See Joshua Kurlantzick, *The Left and the Islamists*, AM. JEWISH COMMITTEE COMMENT., Dec. 2004, at 34. Kurlantzick's article features a review of David Horowitz's book. DAVID HOROWITZ, *UNHOLY ALLIANCE: RADICAL ISLAM AND THE AMERICAN LEFT* (2004). Recognizing the role that the Internet plays in allowing seemingly disparate parties separated by geography to connect and the new life breathed into anti-Semitic and anti-American rhetoric by the anti-globalization movement, scholars see more connections forming between young leftists dislocated by "trade, outsourcing, and economic integration." Kurlantzick, *supra*, at 35. The young left looks for villains and, thus, the anti-Semitic, anti-American rhetoric. See *id.* Showtime's television event, *Sleeper Cell*, also taps into the fear that terrorists are living in our own backyard. See *Sleeper Cell* (Showtime television broadcast 2005). The preview for the program takes pains to emphasize that it is not the community of Muslims at large who are to be feared, but the few "extremists" who have distorted the religion. To view a streaming version of the preview, see *Sleeper Cell Website*, <http://www.sho.com/site/sleepercell/> (last visited Mar. 8, 2006).

170. See Aly Sujo, *Twisted Ballad Honors Tali-Rat*, N.Y. POST, July 21, 2002, at 3.

171. *Id.* But cf. Posting of David Corn to The Nation, <http://www.thenation.com/blogs/capitalgames?pid=84> (July 24, 2002, 1:40 PM); Posting of C.J. to Revolution, <http://rwor.org/a/v24/1161-1170/1162/steveearle.htm> (Aug. 11, 2002).

### *B. Torture and the Re-Demonization of Homosexuality*

Having laid out how patriotic homosocial discourse worked in the post-9/11 media's treatment of the East and America's war on terror, it is in many ways not surprising that the prison scandals broke out with pictures splashed over the newspapers,<sup>172</sup> Internet,<sup>173</sup> and television networks<sup>174</sup> as both evidence of the horror of war and further proof of the degenerate nature of the Eastern male body. Especially because the images of torture were linked to homosexual acts,<sup>175</sup> the yoking of sexual identity to political action became increasingly tight, reinforcing the power of patriotic homosocial discourse used against public officials.

In a time when homosexuality as a lifestyle and homosexual icons enjoy more positive exposure in Hollywood than ever before,<sup>176</sup> it seems surprising that there was sudden push for anti-gay marriage amendments in post-9/11 America. With the war in Iraq, forces in Afghanistan, and increasing tension in North Korea, American interest in banning gay marriage was unusually fervent for an issue so little connected to the possibility of loss of life, oil, or weaponry. Nonetheless, gauging the intensity and furor surrounding the movement to ban gay marriage, it was as though gay marriage would leave America completely undone; not only would America lose its masculine identity, but the very social fabric of America would unravel.<sup>177</sup>

172. Margaret Wentz, *Iraqi Horror Picture Show: A Smirking Female Soldier Has Done the U.S. War Effort More Damage Than Its Enemies*, GLOBE & MAIL, May 8, 2004, at A25 (remarking that the dissemination of digital media completely prevents the U.S. government from performing damage control on what it claimed was a localized problem, but the problem with digital media is that they are widespread, and repeated showings foment rage and discredit U.S. forces).

173. Ironically, proof that the Internet is a form of endless publication is the fact that this paper can cite to photographs of the prison scandal. See *infra* note 186.

174. Many political cartoons commented on the major television and cable networks' airing of the prison photographs repeatedly, but one of the most striking was the Mallard Fillmore cartoon discussed *infra* note 201.

175. See *infra* note 186.

176. See generally LARRY GROSS, *UP FROM INVISIBILITY: LESBIANS, GAY MEN, AND THE MEDIA IN AMERICA* (2001) for an excellent history and analysis of gays and lesbians in the media.

177. See *An Unnecessary Amendment*, CHATTANOOGA TIMES FREE PRESS, Mar. 19, 2005, at B6 (blaming the vote to amend a state constitution to ban gay marriage on a "poisonous political atmosphere"); *Gay Marriage Debate Clouds Real Issue of Equal Treatment*, USA TODAY, Aug. 5, 2003, at 10A; *Gay Marriage: One of Gavin Newsom's Consultants Has His Own Modest Proposal*, HOTLINE, Mar. 10, 2005 (arguing that "Democrats seem weak and untrustworthy" and that they "lack credibility when they say they oppose gay marriage"). On the other side of the argument, Republican Senator Hatch held hearings on same-sex marriage on June 22, 2004, wherein Senator Leahy

In the larger context of patriotic homosocial discourse and its inevitable physical manifestation, negative meaning and violence against bodies that are coded deviant and homosexual are authorized and rationalized. Thus, it only stands to reason that negative meaning bleeds backwards onto the idea of homosexuality itself and re-demonizes homosexuality. Patriotic homosocial discourse depends on public officials who would rather toe a party line that does not represent their political view than be called a homosexual. Once the threat of appearing to be homosexual is used as a lever to coerce conformity, and homosexual acts are tied visually to torture and degeneracy, homosexuality maps onto, and becomes shorthand or substitution for the actual horror of coercion, violence, and violation.

### *1. Getting Fucked up Versus Getting Fucked*

The prisoners' testimonies about experiences in Abu Ghraib are examples of torture in a setting created by patriotic homosocial discourse. When a soldier/torturer threatens a prisoner in the prisoner's own language — Arabic — so there will be no misunderstanding, "today I am going to fuck you,"<sup>178</sup> dresses male prisoners

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complained that the Senate Judiciary Committee was wasting time on same-sex marriage hearings instead of dealing with other important issues like Abu Ghraib, the FBI, and the USA PATRIOT Act. *U.S. Senator Orrin Hatch (R-UT) Holds Hearing on Same-Sex Marriage: Hearing Before the Sen. Judiciary Comm.*, 108th Cong. (2004); *Scarborough Country* (MSNBC television broadcast May 17, 2004). In discussions about gay marriage, God and religious language often are invoked. George W. Bush commented that there are "sinners among all of us" in reference to gay marriage. See *Paula Zahn Now*, *supra* note 137. Opponents of gay marriage tend to rely on moral arguments. See, e.g., James Drew, *Faith and Values May Decide Election*, TOLEDO BLADE, July 11, 2004, at A1 ("[H]e will vote for President Bush, who . . . has embraced a federal constitutional amendment to ban same-sex marriage" because he is more concerned about what "concerns God."); Alexis Kanter, *Religion Inevitable Seep into U.S. Politics* [sic], DAILY TEXAN, Nov. 17, 2004 (discussing the inevitability of George W. Bush's religion influencing policy decisions regarding gay marriage); *Morality Won out Election Day*, CHILLICOTHE GAZETTE, Nov. 9, 2004, at 4A ("[R]esults prove that this particular moral conviction, that marriage is only between one man and one woman, is not the view of some lunatic fringe or far right group (as the national media would have us believe), but rather the view of mainstream America."); *Readers' Forum*, COURIER-J. (Louisville, Ky.), Nov. 15, 2004, at 10A ("[S]etting your course with political activists who advocate partial-birth abortion, gay marriage and a godless society is the wrong route. This nation has a moral center.") (quoting Charles McCullum).

178. Statement of Kasim Mehaddi Hilas (Johnson Isho & Abdelilah Alazadi trans., Jan. 18, 2004), available at <http://media.washingtonpost.com/wp-srv/world/iraq/abughraib/151108.pdf> (prisoner's testimony from Abu Ghraib); Statement of Ameen Sa'eed Al-Sheikh (Gawdat Hussein trans., Jan. 16, 2004), available at <http://media.washingtonpost.com/wp-srv/world/iraq/abughraib/151362.pdf> ("[An American soldier] told me to take a shower and he said he would come inside and rape me.").

in women's underwear and calls them "faggot,"<sup>179</sup> and prisoners witness the rape of a male teenage prisoner by a soldier,<sup>180</sup> the character of torture changes completely. The difference between getting fucked up and getting fucked is that of non-sexualized violence versus sexualized violence. The shift from non-sexualized violence to sexualized violence indicates a more dangerous trend; sexualized torture demonstrates that nothing is inviolable — neither the physical body itself nor the sexual identity of the person are invulnerable. The physical body and sexual identity of the person are vulnerable to forcible change; sexualized torture is the worst imagined experience in the heterosexual imagination, and so enacting it on prisoners' bodies demonstrates the extent of the captor's power over the victim.

The thirteen testimonies from Abu Ghraib prison available to the public bear a striking similarity to one another; there are accounts of men being forced to simulate masturbation while one or more male prisoners either watch or must pretend to participate by posing, simulating either intercourse or oral sex.<sup>181</sup> More than one prisoner recounted beatings, particularly aimed at genitalia<sup>182</sup> and inserting items such as brooms or wire into prisoners' rectums.<sup>183</sup>

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179. Statement of Anonymous Prisoner (Johnson Isho & Abdelilah Alazadi trans., Jan. 21, 2004), *available at* <http://media.washingtonpost.com/wp-srv/world/iraq/abughraib/10.pdf> ("[The military police] wanted to do me because I saw him and he was opening his pants, so I started screaming loudly and the other police starting [sic] hitting me with his feet on my neck and he put his feet on my head so I couldn't scream."); Statement of Kasim Mehaddi Hilas, *supra* note 178.

180. Statement of Kasim Mehaddi Hilas, *supra* note 178.

181. Statement of Hussein Mossein Mata Al-Zayadi (Abdelilah Alazadi & Johnson Isho trans., Jan. 18, 2004), *available at* <http://media.washingtonpost.com/wp-srv/world/iraq/abughraib/19446.pdf> ("And one of [the American soldiers] brought my friend and told him 'stand here' and they brought me and had me kneel in front of my friend. They told my friend to masturbate and told me to masturbate also, while they were taking pictures."); Statement of Nori Samir Gunbar Al-Yasseri (Gawdat Hussein trans., Jan. 17, 2004), *available at* <http://media.washingtonpost.com/wp-srv/world/iraq/abughraib/7787.pdf> ("When we were naked [a U.S. soldier] ordered us to stroke, acting like we're masturbating and when we start to do that he would bring another inmate and sit him down on his knees in front of the penis and take photos which looked like this inmate was putting the penis in his mouth.").

182. Statement of Anonymous Prisoner, *supra* note 179; Statement of Shalan Said Alsharoni (Abdelilah Alazadi & Johnson Isho trans., Jan. 17, 2004), *available at* <http://www.washingtonpost.com/wp-srv/world/iraq/abughraib/150422.pdf> ("When they torture him they took gloves and they beat his dick and testicles with the gloves.").

183. Statement of Mustafa Jassim Mustafa (Johnson Isho & Abdelilah Alazadi trans., Jan. 17, 2004), *available at* <http://media.washingtonpost.com/wp-srv/world/iraq/abughraib/150542-1.pdf> ("[American soldiers] beat [the new prisoner] a lot then they removed all his clothing then they put wire up his ass and they started taking pictures of him."); Statement of Abd Alwhab Youss (Abdelilah Alazadi & Johnson Isho trans., Jan. 17, 2004), *available at* <http://media.washingtonpost.com/wp-srv/world/iraq/abu>

Women participated in the sexual humiliation and mockery of male Arab sexuality in a number of accounts.<sup>184</sup>

Although the accounts seem to be isolated, shocking accounts of torture, the groundwork for the physical manifestation of patriotic homosocial discourse was laid in place well before American soldiers were ever put in charge of the prisoners in Abu Ghraib, at the army base at Mosul,<sup>185</sup> Belmarsh,<sup>186</sup> Guantanamo Bay,<sup>187</sup> Afghanistan,<sup>188</sup> and federal prisons in the United States.<sup>189</sup> Because the male Arab body was considered non-patriotic and patriotic homosocial discourse conflates homosexuality onto dissenting bodies, the natural progression leads to making real the homosexuality of dissenting bodies. Hence, the sexualized torture against the male Arab body as opposed to physical torture without a sexual aspect. The interchange wherein the soldier dresses the prisoner in

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ghraib/150425.pdf (“[American soldiers] pressed my ass with a broom and spit on it.”); Statement of Anonymous Prisoner, *supra* note 179 (“And one of the police he put a part of his stick that he always carries inside my ass and I felt it going inside me about 2 centimeters approximately.”).

184. Statement of Hiadar Sabar Abed Miktub Al-Aboodi (Laurence H. Dice & Johnson Isho trans., Jan. 20, 2004), *available at* <http://media.washingtonpost.com/wp-srv/world/iraq/abughraib/13077.pdf> (“I saw an American female soldier which they call her Ms. Maya, in front of me they told me to stroke my penis in front of her.”); Statement of Anonymous Prisoner, *supra* note 179 (“And the two American girls that were there when they were beating me, they were hitting me with a ball made of sponge on my dick. And when I was tied up in my room, one of the girls, with blonde hair, she is white, she was playing with my dick.”); *see also* Seymour M. Hersh, *Torture at Abu Ghraib*, NEW YORKER, May 10, 2004, at 42 (detailing the Army report by Major General Antonio M. Taguba which called the “numerous instances [of detainee abuse] . . . ‘sadistic, blatant, and wanton criminal abuses’”).

185. *See, e.g., Morning Edition: Pentagon Eyes Changes for Guantanamo* (NPR radio broadcast, Mar. 28, 2005), *available at* <http://www.npr.org/templates/story/story.php?storyId=4563349>. The broadcast detailed a new report that promises to change the rules used to operate Guantanamo Bay with regard to detainees and their rights. *Id.* The report also acknowledges the release of Army documents revealing that in late 2003, torture was widespread, not limited to a few soldiers on night duty misbehaving as the publicists tried to convince the public, and occurred in Northern Iraq at the base in Mosul. *Id.*

186. *See, e.g.,* BBC News, *Iraqi Prisoner Abuse Photos*, [http://news.bbc.co.uk/1/hi/in\\_pictures/4185719.stm](http://news.bbc.co.uk/1/hi/in_pictures/4185719.stm) (last visited Mar. 8, 2006).

187. *See supra* note 86.

188. *See, e.g.,* Jason Lewis, *I’ve Been Freed from Guantanamo . . . But Banned from Coming Home Because of What I Said Under Torture; Home Secretary Personally Vetoed Student’s Return to UK*, MAIL ON SUNDAY, Feb. 19, 2006, at 15; *News Conference with House Minority Leader Pelosi (D-CA); Representative Henry Waxman (D-CA); Representative Ike Skelton (D-MO) Topic: Creation of Select Committee to Investigate Abuse of Detainees in Iraq, Afghanistan and Guantanamo Bay*, FED. NEWS SERVICE, June 21, 2005.

189. *See, e.g.,* Mark Sherman, *Mistreatment of Muslims Alleged in Prison Report: Justice Department Inspector General Details Abuses at Federal Penitentiary, Other Lockups*, LAS VEGAS REV.-J., Mar. 12, 2005, at 12A.

women's underclothing and calls the prisoner "faggot" demonstrates the staged nature of the sexualized torture.<sup>190</sup> When the prisoner responds that he is not a "faggot," the soldier asks the obvious question, "why are you wearing this underwear?"<sup>191</sup> The soldier knows that the prisoner is only wearing women's underclothing because the prisoner was forced to do so. Asking the prisoner so obvious a question is not about the underclothing at all, but about the soldier being able to force the prisoner to acknowledge the soldier's power to inscribe meaning, sometimes literally,<sup>192</sup> onto the prisoner's body. The scenario is analogous to an older child hitting a younger child with the younger child's own hand and asking the younger child why he keeps hitting himself. The answer is obvious, it is because the older child is forcing the younger child to do so. The real meaning underlying the exchange is about the power relationship, and the weaker person being forced to acknowledge the stronger person's power.

## 2. Does Smiling Mean Consent? Lessons from the Prisons

Perhaps one of the most ghoulish aspects of the prison photographs was the image of the torture victims smiling and giving a thumbs-up to the camera while naked and ostensibly performing homosexual acts.<sup>193</sup> Reading the Belmarsh thumbs-up photograph in the context of the prison scandals means that the viewer understands that people outside of the photograph are forcing the victim to pose, smile, and simulate pleasure. However, as the pictures are eternally disseminated, becoming more and more attenuated from the context of the prison and forced participation in the posing and so on, the image/fiction of participation begins to mask or replace the actual force exerted by unseen, extra-photographic people. The smile is also seen in pedophilia, where adults enter into a fiction that a smile means consent<sup>194</sup> — even though society,<sup>195</sup> the law,<sup>196</sup>

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190. See Statement of Kasim Mehaddi Hilas, *supra* note 178.

191. *Id.*

192. In some of the accounts, prisoners testified that the soldiers would write words in English on the prisoners' bodies. Statement of Hiadar Sabar Abed Miktub Al-Aboodi, *supra* note 184; Statement of Nori Samir Gunbar Al-Yasseri, *supra* note 181.

193. BBC News, Iraqi Prisoner Abuse Photos, *supra* note 186.

194. Jesse Green, *The Men from the Boys*, OUT, Sept. 1994, at 80 ("A photograph in a recent *Bulletin* of a happy-looking boy lying naked on his stomach bears a caption that defines their [NAMBLA — North American Man Boy Love Association] position: 'Smiles imply consent.'").

195. Society recognizes minor children's inability to consent by prohibiting children from marriage and driving before age fourteen to sixteen. See 4 AM. JUR. 2D *Annulment of Marriage* § 38 (2006); 7A AM. JUR. 2D *Automobiles and Highway Traffic* § 120 (2006)



and medicine<sup>197</sup> understand that children are not capable of consent. Where force is involved, the prison scandal photographs reinforce the fiction of the violable, secretly always already degenerate Eastern male body.

Unlike the series of photographs that seemed more like American soldiers touring a torture site, the Belmarsh thumbs-up picture has no other figures in the picture, containing only the figures of the two men.<sup>198</sup> Since there are no other bodies in the frame, the fiction of consent works better especially as the photograph was disseminated late in the scandal's time line. The public had already seen and become in some measure used to the images of torture; the thumbs-up succeeded in not only isolating the image of the men's bodies, but in reinforcing the fiction that the men actually enjoyed and/or consented to the acts depicted in the photograph.

### 3. Hooded Bodies and Infinite Substitution

Although the smiling victims stood out, those images were fairly rare in comparison to the black hooded figures.<sup>199</sup> Photographs of black hooded bodies became iconic representations of the dehumanized torture victims. The endless dissemination of the photographs across multiple forms of electronic media works on two levels. On the surface, the dissemination operates under the auspices of the free press raising awareness, shock, and disgust at the inappropriate actions of the U.S. and British forces. At the same time, however, disseminating the photographs is a part of the teaching mechanism implicit in Foucault's model of discipline and punishment.<sup>200</sup> The public punishment, especially wherein the body is interchangeable and indistinct, operates to reinforce the possibility that all male Arab bodies can be superimposed onto the

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("Statutes . . . may prohibit the issuance of drivers' licenses to persons under the prescribed age.").

196. The law recognizes a minor child's inability to consent by prohibiting the formation of contracts with minors and by creating laws like statutory rape laws, for example. See 17A AM. JUR. 2D *Contracts* § 28 (noting that "infants" do not have capacity to enter into a contract); 65 AM. JUR. 2D *Rape* § 14 (discussing the age limit element of statutory rape).

197. See 61 AM. JUR. 2D *Physicians, Surgeons, and Other Healers* § 160 (2006) ("[T]he law requires the consent of a parent to a surgical procedure on a child.").

198. BBC News, *Iraqi Prisoner Abuse Photos*, *supra* note 186.

199. See Abu Ghraib Prison Photos, <http://www.antiwar.com/news/?articleid=2444> (last visited Mar. 8, 2006); see also *Chaos and Violence at Abu Ghraib*, BBC NEWS, May 6, 2004, <http://news.bbc.co.uk/1/hi/world/americas/3690097.stm>.

200. See generally FOUCAULT, *supra* note 5.

photograph as a torture victim. No face can be seen; the bodies are identified as male Arab bodies, but are made monstrous by the repetition. The bodies appear eerily alike, and at the same time different from the viewer because of the de-humanizing nature of a black hood. In essence, only a handful of photographs are actually necessary to do the work — it is the endless and universal dissemination across electronic media that removes the need to torture a continuing series of people.

As the photographs were flashed almost non-stop when the story broke, the public reacted appropriately with shock and disgust at evidence of the torture. As the media continued *ad nauseam*<sup>201</sup> to flash the pictures, post them on websites, and talk about them in detail, the shock began to fade and the public outrage moved closer to apathy. Just as the images of the prisoners were interchangeable, so too did the prison settings themselves become interchangeable — reinforcing an idea that torture is a widespread practice in American- and British-run prisons. Accounts of torture and violence against male Arabs have appeared in connection with British-run Belmarsh,<sup>202</sup> American-run Abu Ghraib,<sup>203</sup> Guantanamo Bay,<sup>204</sup> and some federal prisons in the United States.<sup>205</sup>

The idea that sexualized torture is not only widespread, but also performed by Americans and British soldiers against male Arab bodies, transmutes into the idea that all male Arab bodies are vulnerable to sexualized torture. The repetition and endless dissemination of a handful of photographs reinforces and reiterates Orientalist discourse;<sup>206</sup> the male Arab body is endlessly violable and violated. As in Sedgwick's homosociality model,<sup>207</sup> the Western male body reappropriates its heterosexual position in relation to the

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201. Martin Miller, *Mallard*, DAILY HERALD, June 27, 2004. The creator of *Mallard Fillmore*, a political cartoon with definite right wing tendencies, "blasted the media for 'relishing showing the pictures over and over and over again.'" *Id.* The comic strip also featured "major networks, CBS, ABC, and CNN . . . suing one another for the right to show an abused Iraqi prisoner next to their station logo." Evan Thomas & Michael Hirsh, *The Debate over Torture*, NEWSWEEK, Nov. 21, 2005, at 32 ("The Internet slide shows [of the photographs of prisoner abuse at Abu Ghraib] are still playing across the Muslim world.").

202. *Britain Shamed by Shocking Pictures: Abuse of Iraqi Prisoners Is the Latest Blow to Its Reputation*, FIN. TIMES LIMITED (London Edition) Jan. 20, 2005, at 18; Neil Mackay, *Human Rights Solicitor Attacks 'Soviet-Style Justice' in UK; No Access to Lawyers for Belmarsh Internees*, SUNDAY HERALD, Oct. 10, 2004, at 12.

203. See *supra* notes 178-84.

204. See *supra* note 86.

205. Sherman, *supra* note 189.

206. See generally SAID, *supra* note 15.

207. See SEDGWICK, *supra* note 2, at 113.

Eastern male body via violence, particularly where the violence is homosexualized.

The touristy aspect of the pictures seems to indicate no fear of reprisal on the part of the soldiers in charge of the prisoners. In the media firestorm after the release of the photographs, the possibility of high-level approval or at least winking at the torture led to higher ranking officials being questioned and even removed from duty.<sup>208</sup> Nonetheless, in many ways even the high ranking officials' knowledge and approval of the prison soldiers' actions<sup>209</sup> does not explain the fearlessness demonstrated in the photographs. Whether the soldiers had official orders to perform torture is somewhat immaterial because the authorization and rationale for homosexualized torture had already been so well established and embraced as a societal model for power relationships; the soldiers were enacting the natural telos of patriotic homosocial discourse, and thus authorized to act with impunity and without fear of reprisal. Obviously, the soldiers made personal choices, and this article is not about removing the blame from the soldiers and placing the blame solely on society; the individual soldiers have their personal responsibility for their own actions. At the same time, however, the soldiers were sacrificed for the larger ideological work that patriotic

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208. *Lynndie England to Be Tried in May*, USA TODAY, Mar. 10, 2005, available at [http://www.usatoday.com/news/nation/2005-03-10-england-trial\\_x.htm](http://www.usatoday.com/news/nation/2005-03-10-england-trial_x.htm). England became famous after her appearance in the Abu Ghraib prison photographs, notably holding a leash tied to a naked, hooded prisoner, posing in front of the human pyramid consisting of naked Iraqi prisoners, and aiming her finger like a gun at a naked prisoner's genitalia. *Id.* Charles Graner, Jr., the "alleged ringleader of the abuse" has already been convicted and will serve ten years in prison. *Id.* A factual dispute exists as to whether or not England and Graner were acting under orders to "soften up" prisoners before the day shift began interrogations, or the soldiers were acting independently. *Id.* England pled guilty under a plea agreement before her trial began in August 2005. Matthew Chlosta, *England Court-Martial Declared a Mistrial*, ARNEWS, May 5, 2005, [http://www4.army.mil/ocpa/read.php?story\\_id\\_key=7289](http://www4.army.mil/ocpa/read.php?story_id_key=7289). Apparently, as of November 2005, "[n]o high-ranking officer has been prosecuted in connection with the abuses, and no Pentagon official has even been publicly reprimanded." Thomas & Hirsh, *supra* note 201, at 33. *Army Will Not Prosecute 17 Involved in Detainee Deaths*, ORLANDO SENTINEL, Mar. 27, 2005, at A8. In the case of soldiers' involvement in detainees' deaths, the soldiers' commanders determined that "the soldiers . . . didn't understand the rules for using force." *Id.*

209. *Hearing of the Sen. Armed Service Comm.*, FED. NEWS SERVICE, Mar. 10, 2005. Senator James Inhofe (R-Okla.) summarized the findings of the Church report, which he characterized as a "comprehensive evaluation of DOD detention operations" and a possible connection between interrogation and abuse. *Id.* The report states, "[w]e found no link between approved interrogation techniques and detainee abuse. . . . no approved procedures called for or allowed the kind of abuse that in fact occurred. There is no evidence of that policy of abuse promulgated by senior officials or military authorities." *Id.* The Church report examined detainee deaths as well as torture and sexual assault. Already, there are seventy closed abuse cases, six of which resulted in deaths.

homosocial discourse demands so that the West can reappropriate a straight masculine identity in a relation to the East. Even though the soldiers have been punished by the system that set them loose in the prisons in the first place, the real ideological work has been accomplished, and still continues its work as the photographs extend into Internet eternity.

### CONCLUSION

This article does not suggest that people see photographs from Abu Ghraib or Belmarsh and then go beat up the nearest homosexual person they see. This article posits, however, that patriotic homosocial discourse and the reinforcement of a negative meaning of homosexuality are connected. The return to a negative meaning is seen in the apparent paradox between gay figures enjoying more popular success and acceptance in the media,<sup>210</sup> while at the same time gay bashing deaths appear in the headlines,<sup>211</sup> argument about gay marriage sweeps through the country,<sup>212</sup> and at a more pedestrian level, a video game featuring the opportunity to kill homosexuals and Middle Eastern figures enjoys popular success.<sup>213</sup>

The connection between photographs, media stories about torture, and video games may seem attenuated from the issue of gay bashing or attempts to ban gay marriage, but reason dictates, in the face of a constantly repeating pattern, that some kind of connection must exist. When homosexuality is used as a lever to

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210. GROSS, *supra* note 176, at 174 ("At a time of steadily increasing visibility of gay people throughout society, in high school and college classrooms as well as on the news and in TV programs, young people also seem more open in expressing prejudice and hostility."). Gross cites a 1998 survey that polled over 3000 high school students who reported high rates of intolerance for homosexuality, showing an increase of almost twenty percent in one year. *Id.* Ellen DeGeneres; *Will and Grace*, the television sitcom; *Connie and Carla*, a film about women who learn to accept drag queens; Rupert Everett; Showtime's *Queer as Folk*; and Bravo's *Queer Eye for the Straight Guy*, a cable series showing gay designers helping straight guys with their wardrobes and home design, are a few representative examples of positive mainstream homosexual public figures and media programming.

211. *See supra* note 48.

212. *See supra* note 177.

213. Marc Saltzman, *Review: 'Postal 2' More Offensive Than Fun*, GANNETT NEWS SERVICE, June 5, 2003 (noting that the game "includes slurs against gays and lesbians, Middle Eastern men are shown perusing bomb-making and terrorism books at the library (before opening fire with a machine gun)"; *see also* Rob Fahey, *Now Clinton Jumps on the Violent Videogames Bandwagon*, GAMESINDUSTRY.BIZ, Mar. 29, 2005, [http://gamesindustry.biz/content\\_page.php?aid=7660](http://gamesindustry.biz/content_page.php?aid=7660) ("This is a silent epidemic of media desensitisation that teaches kids it's OK to diss people because they are a woman, they're a different colour or they're from a different place.") (quoting Hillary Clinton).

threaten or coerce action, it can only mean that being labeled or associated with homosexuality has negative power or else the threat would lose its ability to motivate. Once the connections between patriotic homosocial discourse, torture, and violence against homosexuals are laid out, the next step is to take action and raise awareness about patriotic homosocial discourse.

Intellectuals, scholars, teachers, policy makers, law enforcement officials, public officials, and leaders have a responsibility to think carefully about dialogue and action that feeds or supports a system of patriotic homosocial discourse. It is not only a question of recognizing the flow of violent rhetoric and action against the male Arab body and against homosexuals, but really a question of stepping outside of patriotic homosocial discourse and understanding that it will not stop once it has consumed the deviants it creates, but will continue to create deviants. Countering patriotic homosocial discourse is already a question of human interest. It is not an Arab or homosexual question, but a human one, as every person stands equal in the lineup of becoming possible deviants in a system where patriotic homosocial discourse is allowed to run without multiple voices raised in dissent and adding to the dialogue. Intellectuals and leaders must begin to dissent without fear or in spite of the fear of being branded homosexual, and in this way they will be able to defuse the threat and negative connotation applied to homosexuality, and effectively undermine the power that patriotic homosocial discourse uses to coerce conformity and authorize violence.