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## "Don't Talk To Me About Deception": The Necessary Erosion of the Trans-Panic Defense

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## ARTICLES

### “DON’T TALK TO ME ABOUT DECEPTION”: THE NECESSARY EROSION OF THE TRANS\* PANIC DEFENSE

*Aimee Wodda\* & Vanessa R. Panfil\*\**

#### I. INTRODUCTION

A woman sits on a stage and tells a talk show host that a man who has “liked” many of her pictures on Instagram has wanted to meet her for a month, but it had not yet happened because they live in different parts of the country. He called the talk show in order to facilitate their meeting, and she obliged. However, she tells the talk show host: “But he don’t know my secret.” When the host asks her what it is, she replies that she is transgender, to which the audience makes loud “oooooh” noises. She says that because she never planned on meeting this man, she had not been taking their interaction seriously, but she would have told him that she was transgender if he had asked her.

The talk show host brings out her admirer. The man comes out onto the stage, greets the host, hugs his crush, and sits down next to her. After a brief exchange of hellos, she says, “Well, before we go any further, I need to letchu know something. Umm, I haven’t really taken it seriously because we’ve only been talking for a month, and we live so far, I never planned on meetin’ you, but I’m lettin’ you know, I was born a man.” Her admirer asks the host, “Is

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\* Ph.D. Candidate (ABD) in Criminology, Law, and Justice at the University of Illinois at Chicago. We take our title from a quote in an online article by Dylan Vade, who reflects on claims of “deception” leveled at transgender people, including himself and Gwen Araujo. Vade states definitively: “Transgender people do not deceive. We are who we are.” Dylan Vade, *No Issue of Sexual Deception/Gwen Araujo Was Just Who She Was*, SFGATE (May 30, 2004), <http://www.sfgate.com/opinion/article/No-issue-of-sexual-deception-Gwen-Araujo-was-2754880.php>. We acknowledge the research assistance of Gillian Wu and Nene D. LaChance and thank Jody Miller for her helpful comments on an earlier draft of this paper.

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she serious, Jerry?" Before even receiving an answer, he jumps onto the woman, his arms swinging at her, and the show's security guards spring into action as the audience erupts in cheers, hoots, laughter, and applause. They shout, "Jerry! Jerry! Jerry!" The security guards pry the combatants apart and separate them to opposite sides of the stage. The chairs have been moved to the back of the stage, out of the way of the fighters. "Punk ass bitch!" the woman yells at the man as she is held back by a security guard.

The host asks the man why he is upset. He replies, "It's crazy, cuz yeah, I wanted to meet her, I ain't know she was a man, like, come on. I gotta go back to my 'hood, like, it's crazy. I got kids! I don't do that!"

"Did you, why didn't you ask? You saw the pictures," the host says.

"Yeah, I seen the pictures, but she looked, she looked like, you know what I mean, a wo-man, but come to find out she a he-she! Like, come on, man, I don't do that. I don't do that."

The woman interrupts: "Why are you so mad? We didn't sleep together."

He yells, "A month! Cuz you deceived me!"

After a back-and-forth exchange between the man and the woman about her body and her attractiveness, a sound is heard: Ding! Ding! Ding! It is a boxing bell, presumably encouraging the guests to physically fight each other. They lunge at each other. The audience continues to react as the security guards try to keep the fighters apart.<sup>1</sup>

Although The Jerry Springer Show recently vowed to remove "tranny" from its vocabulary,<sup>2</sup> segments featuring a woman who was "born a man"<sup>3</sup> and is there to reveal this to a sexual or romantic partner have been popular on the show. This is evidenced by recent show titles such as "Trannies Tell All,"<sup>4</sup> "Tranny Bomb!,"<sup>5</sup> "Online

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<sup>1</sup> This was the opening segment of the show. *Jerry Springer: Tranny Take Downs* (NBC television broadcast Nov. 13, 2013).

<sup>2</sup> Parker Marie Molloy, *Jerry Springer Will No Longer Use the T-Word*, ADVOCATE.COM (Mar. 24, 2014), <http://www.advocate.com/politics/transgender/2014/03/24/watch-jerry-springer-will-no-longer-use-t-word>.

<sup>3</sup> As in the above example, guests may identify themselves as transgender but may reveal this by using phrases such as "I was born a man," "I was born a boy," "I was born male," or even occasionally "I'm a man." It is unclear if they would use these phrases in their daily lives or if this is sensationalism on the part of the television show. See, e.g., *Jerry Springer: It's Raining Trannies* (NBC television broadcast Oct. 5, 2012).

<sup>4</sup> *Jerry Springer: Trannies Tell All* (NBC television broadcast May 10, 2011).

<sup>5</sup> *Jerry Springer: Tranny Bomb* (NBC television broadcast Apr. 26, 2013).

Tranny Trap,”<sup>6</sup> “You’re a Tranny?,”<sup>7</sup> “Big Tranny Surprise!,”<sup>8</sup> and “Oops . . . I Had Sex With a Tranny!,”<sup>9</sup> among others. The audience may cheer on the transgender guest because they view her as having made a fool of a man (as evidenced by the audience laughing at the bewildered man), and she has provided some exotic entertainment value. Although the heterosexually identified guests themselves occasionally accept or even delight in these revelations (sometimes claiming they already knew), the majority of transgender guests are met with scorn, derision, disgust, anger, and violence.<sup>10</sup> Thus, the above scenario taken from a 2013 episode of *The Jerry Springer Show* crystallizes a number of salient issues facing transgender people in the public imagination, their day-to-day lives, and their experiences with institutions of formal social control, such as the crimino-legal system. These issues include utilizing derogatory language to mark the trans woman as outside of the normative (binary) gender system, conflating gender identity with sexuality, expressing anger at having been “deceived” (and thus declaring that biological sex is the ultimate marker of gender), and inciting violence to punish the gender transgressor.

Transgender and gender nonconforming people,<sup>11</sup> particularly

<sup>6</sup> *Jerry Springer: Online Tranny Trap* (NBC television broadcast May 21, 2013).

<sup>7</sup> *Jerry Springer: You’re a Tranny?* (NBC television broadcast Apr. 18, 2012).

<sup>8</sup> *Jerry Springer: Big Tranny Surprise* (NBC television broadcast Mar. 20, 2009).

<sup>9</sup> *Jerry Springer: Oops . . . I Had Sex with a Tranny* (NBC television broadcast Nov. 11, 2009).

<sup>10</sup> So far as we can tell, this violence stays on the stage and does not continue when guests arrive home, though we cannot be sure. However, a similar incident from *The Jenny Jones Show* did result in tragedy: Several days after Scott Amedure was filmed confessing to friend Jonathan Schmitz that he had a “secret crush” on him, Schmitz fatally shot Amedure. Cynthia Lee, *Masculinity on Trial: Gay Panic in the Criminal Courtroom*, 42 SW. L. REV. 817, 820–21 (2013). Schmitz attempted to present a gay panic defense at trial but was ultimately convicted (twice) of second degree murder. *Id.* at 821–22; see also Kara S. Suffredini, *Pride and Prejudice: The Homosexual Panic Defense*, 21 B.C. THIRD WORLD L.J. 279, 279–80 (2001) (describing the incident on *The Jenny Jones Show*, Amedure’s murder, and Schmitz’s assertion of the gay panic defense).

<sup>11</sup> The word “transgender” has been used as an umbrella term since the 1990s to describe a group of people who, for a variety of reasons, do not conform to the gender binary. Dean Spade, *Documenting Gender*, 59 HASTINGS L.J. 731, 733 n.12 (2008). Many people who are gender atypical or nonconforming reject the “transgender” label, while others embrace its inclusivity and may prefer the shortened term trans or trans\* (with asterisk). *Trans\* Guide*, OHIO U. LGBT CENTER, <http://www.ohio.edu/lgbt/resources/transgender.cfm> (last visited Apr. 6, 2015). Although the asterisk is meant to symbolically include transgender people and *all* gender nonconforming identities (genderqueer, genderfuck, bi-gender, transsexual, genderless, gender fluid, cross dressing, third gender, two spirit, agender, etc.), others fear that this inclusivity does not allow for a recognition of the vast diversity of identities represented by the bit of punctuation. *Trans Asterisk*, VICTORIA SEXUAL ASSAULT CENTRE (Dec. 1, 2014), <http://vsac.ca/2014/12/trans-asterisk/>; *Trans\* Guide*, *supra*. They argue that a recognition of distinct identities (e.g., trans woman, trans man, etc.) would allow for a more

trans women of color, experience rates of violence much higher than any other population in the United States.<sup>12</sup> Although the FBI's Uniform Crime Report does not currently include information on (nonhate) crimes perpetrated against lesbian, gay, bisexual, trans\*, or queer (LGBTQ) victims,<sup>13</sup> and most local agencies also do not collect statistical data that include gender identity and/or sexual orientation for crimes that are not considered hate crimes,<sup>14</sup> researchers have uncovered high rates of sexual abuse/assault and relationship violence among transgender people.<sup>15</sup> Further, according to the most recently released National Coalition of Anti-Violence Programs' hate violence report, LGBTQ people of color represented fifty-three percent of total reported victims and survivors of all hate crimes in the United States in 2012 and comprised 73.1% of LGBTQ homicide victims.<sup>16</sup> A shocking ninety-

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useful understanding of trans\* identities and an acknowledgement of the reality that the experience of a white trans man is necessarily different than that of a black trans woman. See Jessica Cadwallader, *Diseased States: The Role of Pathology in the (Re)Production of the Body Politic*, in SOMATECHNICS: QUEERING THE TECHNOLOGISATION OF BODIES 13, 17 n.2 (Nikki Sullivan & Samantha Murray eds., 2009). In this article, we use the currently preferred term trans\* when referring to persons whose gender presentations do not (whether by choice or not) conform to binary gender norms. Therefore, we use trans woman and trans man (without asterisk) when referring to particular individuals whose preference is or was known, and we use trans\* to refer to gender nonconforming individuals as a group, while at the same time acknowledging that there is no cohesive group that can accurately be defined as "a/the trans\* community." It is in the spirit of inclusiveness and solidarity with trans\* activists that we wish to point out this linguistic and real-life difficulty, and we hope to see an appreciation of the complexity and diversity of gender nonconforming individuals in the near future. The term cisgender (or cis) refers to individuals whose gender identity and presentation continues to align with their assigned birth sex. This term was coined to describe nontrans\* individuals. Donna Lynn Matthews, *Definitions: Cisgender*, CYDATHRIA.COM (May 1999), [http://cydathria.com/ms\\_donna/tg\\_def.html#cisgender](http://cydathria.com/ms_donna/tg_def.html#cisgender).

<sup>12</sup> See JAIME M. GRANT ET AL., NAT'L CTR. FOR TRANSGENDER EQUAL., INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 36–37 (2011), available at [http://www.thetaskforce.org/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf) (describing higher rates of violence among male-to-female transgender African American students).

<sup>13</sup> *Crime in the United States 2012: Expanded Offense*, FED. BUREAU INVESTIGATION, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/offenses-known-to-law-enforcement/expanded-offense/expandedoffensemain> (last visited Apr. 6, 2015) (providing data regarding certain characteristics of crime victims but not disclosing information regarding sexual orientation or gender identity).

<sup>14</sup> See GRANT ET AL., *supra* note 12, at 10.

<sup>15</sup> See NAT'L COAL. OF ANTI-VIOLENCE PROGRAMS, LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER, AND HIV-AFFECTED INTIMATE PARTNER VIOLENCE IN 2012, at 52–53 (2013), available at [http://www.avp.org/storage/documents/ncavp\\_2012\\_ipvreport.final.pdf](http://www.avp.org/storage/documents/ncavp_2012_ipvreport.final.pdf); see also Emilia L. Lombardi et al., *Gender Violence: Transgender Experiences with Violence and Discrimination*, 42 J. HOMOSEXUALITY 89, 98–101 (2001) (examining economic discrimination of trans\* individuals and finding that it is a strong predictor of whether a trans\* individual will experience violence).

<sup>16</sup> See NAT'L COAL. OF ANTI-VIOLENCE PROGRAMS, *supra* note 15, at 20; Sarah Giovanniello, *NCAVP Report: 2012 Hate Violence Disproportionately Target Transgender Women of Color*,

eight percent of incidents perpetrated against trans\*<sup>17</sup> folk are suffered by those occupying the male-to-female spectrum.<sup>18</sup> Julia Serano, who characterizes this phenomenon as “trans-misogyny,” believes that violence against trans women indicates a backlash against femininity.<sup>19</sup> Because an overwhelming percentage of trans women who experience violence are people of color,<sup>20</sup> this phenomenon has alternately been characterized as “transmisogynoir.”<sup>21</sup>

In addition to these explanations, it is believed that a general feeling of disgust or revulsion towards gender nonconforming persons may be regarded as a contributing factor in cases of transphobic acts of violence.<sup>22</sup> Media reports of violence against trans\* persons and even legal narratives may use the term “it” to describe a transgender individual, thereby engaging in

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GLAAD (June 4, 2013), <http://www.glaad.org/blog/ncavp-report-2012-hate-violence-disproportionately-target-transgender-women-color>.

<sup>17</sup> Although we have already noted the importance of using specific terminology for individuals who do not conform to the gender binary, we wish to reiterate that in the interest of space and inclusivity we will use trans\* (with asterisk) when discussing transgender and gender nonconforming communities at large while, at the same time, recognizing that some people we are attempting to include in this category may not consider themselves to fall under this umbrella. Additionally, we use trans\* when discussing the trans\* panic defense as a way to acknowledge that some of the victims discussed in this article may not have identified as transgender and may have located their identities differently along the gender spectrum.

<sup>18</sup> PAISLEY CURRAH & SHANNON MINTER, *TRANSGENDER EQUALITY: A HANDBOOK FOR ACTIVISTS AND POLICYMAKERS* 3, 10 (2000), available at <http://www.thetaskforce.org/download/s/reports/reports/TransgenderEquality.pdf>.

<sup>19</sup> See JULIA SERANO, *WHIPPING GIRL: A TRANSEXUAL WOMAN ON SEXISM AND THE SCAPEGOATING OF FEMININITY* 15 (2007).

<sup>20</sup> Cynthia Lee & Peter Kwan, *The Trans Panic Defense: Heteronormativity and the Murder of Transgender Women*, 66 *HASTINGS L.J.* 77, 97 (2014).

<sup>21</sup> Keir Bristol, *On Moya Bailey, Misogynoir, and Why Both Are Important*, VISIBILITY PROJECT (May 27, 2014), <http://www.thevisibilityproject.com/2014/05/27/on-moya-bailey-misogynoir-and-why-both-are-important/>. This term borrows from the intersectional term “misogynoir,” first used by Moya Bailey in the 2010 essay *They Aren’t Talking About Me . . .*, which interrogates rampant misogyny towards black women in American visual and popular culture. Moya Bailey, *They Aren’t Talking About Me . . .*, CRUNK FEMINIST COLLECTIVE, <http://www.crunkfeministcollective.com/2010/03/14/they-arent-talking-about-me/> (last visited Apr. 6, 2015).

<sup>22</sup> See Emilia Lombardi, *Varieties of Transgender/Transsexual Lives and Their Relationship with Transphobia*, 56 *J. HOMOSEXUALITY* 977, 979 (2009); see also Darryl B. Hill & Brian L. B. Willoughby, *The Development and Validation of the Genderism and Transphobia Scale*, 53 *SEX ROLES* 531, 535 (2005) (stating that trans\* persons are at a higher risk of violence because of transphobia and homophobia); Darryl B. Hill, *Genderism, Transphobia, and Gender Bashing: A Framework for Interpreting Anti-Transgender Violence*, in *UNDERSTANDING AND DEALING WITH VIOLENCE: A MULTICULTURAL APPROACH* 113, 119–20 (Barbara C. Wallace & Robert T. Carter eds., 2003) (stating that transphobia often causes negative or violent reactions to transgender people).

dehumanization based on the notion of a fixed gender binary.<sup>23</sup> Indeed, for mainstream society wedded to the idea of dichotomous gender there are three ways of seeing gender: “a man, a woman, or . . . a nonhuman ‘it.’”<sup>24</sup> This outdated perspective contributes to the politics of trans\* dehumanization.<sup>25</sup>

Transgender and gender nonconforming persons are often the object of fear, scorn, and derision. They may be portrayed in the media as curiosities or oddities, as mentally unstable persons, and/or as predators.<sup>26</sup> The persistent mischaracterization of trans\* persons as deceptive and murderous aberrations contributes to a transphobic social climate perpetuated by mass media. Transphobic behaviors exist on a spectrum of violence from lower-impact harms (e.g., slurs such as shemale, he-she, shim, tranny, and it), to the most extreme enactment of transphobia—lethal violence. In the courtroom, defendants have attempted to legitimize lethal violence

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<sup>23</sup> See, e.g., Victoria L. Steinberg, *A Heat of Passion Offense: Emotions and Bias in “Trans Panic” Mitigation Claims*, 25 B.C. THIRD WORLD L.J. 499, 500 n.4 (2005) (reviewing MARTHA C. NUSSBAUM, *HIDING FROM HUMANITY: DISGUST, SHAME, AND THE LAW* (2004)); Morgan Tilleman, *(Trans)forming the Provocation Defense*, 100 J. CRIM. L. & CRIMINOLOGY 1659, 1669 (2010); Monte Whaley, *Victim Referred to as “It”*, DENVER POST, July 31, 2008, at B01; see also Laurel Westbrook, *Becoming Knowably Gendered: The Production of Transgender Possibilities and Constraints in the Mass and Alternative Press from 1990–2005 in the United States*, in TRANSGENDER IDENTITIES: TOWARDS A SOCIAL ANALYSIS OF GENDER DIVERSITY 43, 55–56 (Sally Hines & Tam Sanger eds., 2010) (discussing mainstream journalism’s reinforcement of binary gender categories in covering stories about transgender individuals).

<sup>24</sup> See Kendall Thomas, *Afterword* to TRANSGENDER RIGHTS 315 (Paisley Currah et al. eds., 2006).

<sup>25</sup> See Bonnie Moradi, *Discrimination, Objectification, and Dehumanization: Toward a Pantheoretical Framework*, in OBJECTIFICATION AND (DE)HUMANIZATION 153, 159–60 (Sarah J. Gervais ed., 2013).

<sup>26</sup> The predator label has numerous forms: (1) most recently applied in conjunction with “bathroom bills,” which allow trans\* persons to access restroom facilities that align with their preferred gender; (2) as deceivers who lure straight men into sexual encounters; and (3) gender nonconforming persons with lethal intent portrayed in popular films. See, e.g., *DRESSED TO KILL* (Filmway Pictures & Cinema 77 Films 1980) (depicting the character Bobbi); *IN DREAMS* (Amblin Entertainment & DreamWorks SKG 1999) (depicting the character Vivian Thompson); *PSYCHO* (Shamley Productions 1960) (depicting the character Norman Bates); *THE SILENCE OF THE LAMBS* (Strong Heart/Demme Production & Onion Pictures 1991) (depicting the character Buffalo Bill); *SLEEPAWAY CAMP* (American Eagle 1982) (depicting the character Angela Baker); *SLEEPAWAY CAMP II: UNHAPPY CAMPERS* (Double Helix Films 1988) (depicting the character Angela Baker); *SLEEPAWAY CAMP III: TEENAGE WASTELAND* (Double Helix Films 1989) (depicting the character Angela Baker); *RETURN TO SLEEPAWAY CAMP* (Go2sho & Return to Sleepaway Corp. 2008) (depicting the character Angela Baker); *SLEEPAWAY CAMP IV: THE SURVIVOR* (Double Helix Films & Films Around the World (I) 2012) (depicting the character Angela Baker). Lesser known “B” movies also use the predator label. See, e.g., *DEADLY BLESSING* (PolyGram Filmed Entertainment & Planetary 1981); *DERANGED: CONFESSIONS OF A NECROPHILE* (Karr International Pictures 1974); *HOMICIDAL* (William Castle Productions 1961); *NO WAY TO TREAT A LADY* (Sol C. Siegel Productions & Paramount Pictures 1968); *RELENTLESS 3* (Cintel Films & New Line Cinema 1993); *THREE ON A MEATHOOK* (Studio 1 Productions 1973).

against trans women with claims of “trans\* panic” and, thus, the cultural norm of transphobia has been displayed in legal settings in addition to society at large.

This article will look into the cultural and legal milieu that has been made possible and has perpetuated the so-called trans\* panic defense through dual means: the employment of the deception trope and a reliance upon a societal predilection towards dichotomous gender identities and roles. In order to explore why and how the trans\* panic defense has been used and to what end, we explore the origins and “psychology” of the defense, partially by noting similarities to and differences with the gay panic defense. We investigate cultural values that perpetuate the (masculine) fear of deception and nonbinary identities and analyze how sociocultural values are expressed in the legal realm by exploring several of the more noteworthy cases wherein defendants have attempted to utilize the trans\* panic defense. Transphobic values are also evident in media coverage of transgender victims, which we evaluate alongside other sources. We conclude with an investigation into the ways in which the trans\* panic defense is merely a sensationalized version of the denial of rights and humanity that transgender and gender nonconforming persons routinely experience within the law and crimino-legal systems more broadly, but look to positive outcomes such as the movement towards eliminating the trans\* panic defense.

## II. CONCEPTUAL FRAMEWORK: TRANS\* PANIC

To clarify, “[t]here is no official, freestanding gay or trans panic defense” that exists within the legal sphere as a recognized affirmative defense.<sup>27</sup> However, claims of gay panic or trans\* panic are typically presented within the context of an existing criminal law defense, such as temporary insanity, provocation, or self-defense.<sup>28</sup>

The trans\* panic defense parallels the gay panic defense but typically has additional layers. Specifically, a defendant utilizing the gay panic defense would argue “that [a] gay man made an unwanted sexual advance that caused the defendant to panic, lose self-control, and respond with fatal violence.”<sup>29</sup> Although an alleged sexual advance by a transgender person may also be the motivation

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<sup>27</sup> See Lee, *supra* note 10, at 817.

<sup>28</sup> *Id.*; Lee & Kwan, *supra* note 20, at 79–80.

<sup>29</sup> Lee, *supra* note 10, at 817.



for so-called trans\* panic, so might the realization that one has engaged in sex acts with a transgender person without being aware of their assigned sex at birth. Indeed, as we later detail, defendants have even claimed trans\* panic as a result of being sexually attracted to or romantically interested in a transgender person and learning of that person's biological sex. In the next section, we further detail the "psychology" of the defense and the cultural values that underlie transphobia and trans\* panic.

### A. *The Psychology of the Defense*

Trans\* panic is based on transphobia, which has been defined in a number of ways. The simplest definition involves a pathological fear of people who do not conform to gender norms.<sup>30</sup> An alternate, and potentially more useful, definition posits that transphobia can more productively be envisioned as an institutional response to persons who do not conform to binary gender categories.<sup>31</sup> Because these categories function to produce heteronormative and gender-based hierarchies, institutional transphobia is expressed in sensational and stigmatizing media coverage of trans\* individuals and their lives, employment and housing discrimination, slurs, and multiple other levels of harm.<sup>32</sup> In cases such as those we describe, transphobia<sup>33</sup> has undeniably proven fatal.<sup>34</sup> Thus, the ways

<sup>30</sup> See Jody Norton, "Brian Says You're a Girl, but I Think You're a Sissy Boy": *Cultural Origins of Transphobia*, 2 J. GAY, LESBIAN & BISEXUAL IDENTITY 139, 146 (1997).

<sup>31</sup> The organization Transrespect Versus Transphobia Worldwide has produced a useful definition of transphobia that captures the broader impact of the phenomenon beyond the individual level:

We use the term Transphobia to denote forms of violence, discrimination, hatred, disgust, aggressive behaviour and negative attitudes directed at individuals or groups who transgress or do not conform to social expectations and norms around gender. It includes institutionalised forms of discrimination, criminalisation, pathologisation and stigmatisation and manifests in various ways, ranging from physical violence, hate speech, insults and hostile media coverage to forms of oppression and social exclusion. Transphobia particularly affects gender-variant/trans people. It operates together with further forms of power and violence and entails contextualised engagements. Used in the social sciences to denominate a complex social phenomenon, it has acquired a much broader meaning than what is suggested by the term "phobia", which is understood in psychology as an individual pathological response.

CARSTEN BALZER ET AL., TRANSRESPECT VERSUS TRANSPHOBIA WORLDWIDE: A COMPARATIVE REVIEW OF THE HUMAN-RIGHTS SITUATION OF GENDER-VARIANT/TRANS PEOPLE 18 (2012), available at [http://www.transrespect-transphobia.org/uploads/downloads/Publications/TvT\\_research-report.pdf](http://www.transrespect-transphobia.org/uploads/downloads/Publications/TvT_research-report.pdf).

<sup>32</sup> *Id.* at 18, 27, 32, 57–59.

<sup>33</sup> As Bettcher states: "I use the term *transphobia* not necessarily to imply the fear of transpeople, but simply any negative attitudes (hatred, loathing, rage, or moral indignation) harbored toward transpeople on the basis of our enactments of gender." Talia Mae Bettcher, *Evil Deceivers and Make-Believers: On Transphobic Violence and the Politics of Illusion*, 22

transphobia is manifested go far beyond mere fear of gender transgressors; it can entail interpersonal and institutional violence.

We argue that the trans\* panic defense relies upon a number of cultural values regarding masculinity and heteronormativity, particularly those that emphasize a binary system of gender and an aversion to anything outside the boundaries of heterosexual (cisgender male and cisgender female) sexual activity. In a binary system of gender, individuals are assumed to be either male or female, and their biological attributes, such as their genitalia, hormones, and secondary sex characteristics, are expected to align with that designation (e.g., in a binary sex/gender system, “women” cannot possess a penis and/or testicles).<sup>35</sup> Furthermore, although LGBTQ people have achieved unprecedented levels of legal protections and equality in the twenty-first century,<sup>36</sup> same-sex relationships and sexual activity are still stigmatized as outside of “normal” expressions of love and sexuality.<sup>37</sup> Under these cultural frames, men derive masculine status not only from presenting their gender in normative ways, such as being competitive, financially successful, and unemotional, but also from engaging in sexual activity with female partners.<sup>38</sup>

Regarding trans\* panic more specifically, let us discuss, for example, a recurring theme from our data where a cisgender man (someone who was assigned as male at birth and who identifies and presents as male)<sup>39</sup> has become romantically or sexually involved

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HYPATIA 43, 46 (2007).

<sup>34</sup> See *IDAHO 2014*, TRANS RESPECT VERSUS TRANSPHOBIA WORLDWIDE, [http://www.transrespect-transphobia.org/en\\_US/tvt-project/tmm-results/idahot-2014.htm](http://www.transrespect-transphobia.org/en_US/tvt-project/tmm-results/idahot-2014.htm) (last updated Oct. 29, 2014) (using the work of activists worldwide to track incidence of fatal violence against trans\* folk); see also BALZER ET AL., *supra* note 31, at 26 (“Gender-variant/trans people in many parts of the world have for a long time been victims of horrifying hate violence, including beatings, mutilation, rape and murder.”).

<sup>35</sup> For discussions of our culture’s connection of gender to biological sex, see RAEWYN CONNELL, *GENDER: IN WORLD PERSPECTIVE* 10–11, 53 (2d ed. 2009); Candace West & Don H. Zimmerman, *Doing Gender*, 1 *GENDER & SOC’Y* 125, 127–28 (1987). For a discussion about ways biological sex and sexuality have been conceptualized in our society, see generally ANNE FAUSTO-STERLING, *SEXING THE BODY: GENDER POLITICS AND THE CONSTRUCTION OF SEXUALITY* (2000).

<sup>36</sup> See, e.g., *United States v. Windsor*, 133 S. Ct. 2675, 2696 (2013).

<sup>37</sup> See GAYLE S. RUBIN, *DEVIATIONS: A GAYLE RUBIN READER* 148–49 (2011); MICHAEL WARNER, *THE TROUBLE WITH NORMAL: SEX, POLITICS, AND THE ETHICS OF QUEER LIFE* (1999); see also Gregory M. Herek, *Beyond “Homophobia”: Thinking About Sexual Prejudice and Stigma in the Twenty-First Century*, 1 *SEXUALITY RES. & SOC. POL’Y* 6, 14 (2004) (discussing society’s perception that same-sex love is bad or inferior).

<sup>38</sup> See generally R. W. Connell & James W. Messerschmidt, *Hegemonic Masculinity: Rethinking the Concept*, 19 *GENDER & SOC’Y* 829 (2005).

<sup>39</sup> Kristen Schilt & Laurel Westbrook, *Doing Gender, Doing Heteronormativity: “Gender Normals,” Transgender People, and the Social Maintenance of Heterosexuality*, 23 *GENDER &*

with a transgender woman (someone who may have been assigned male at birth but who identifies and presents as female).<sup>40</sup> Perhaps because of widespread transphobia, which may have been informed by her prior negative experiences in telling others of her intent to transition, or perhaps because she fully identifies as female regardless of her assigned birth sex, she decides that it is not relevant to tell her romantic partners about her male genitalia. As a woman who is sexually attracted to men, she identifies as straight. The heterosexually identified cisgender man who correctly interprets her gender as female also assumes her biological sex to be female. However, upon learning that she possesses male genitalia,<sup>41</sup> he confronts her and kills her. This moment after the “reveal,” and subsequent violent and illegal conduct, is what the trans\* panic defense focuses on—that the defendant was allegedly provoked into a fit of rage by this realization and lost his self-control.

A defendant who utilizes the trans\* panic defense attempts to argue that he has been deceived, perhaps even “tricked,” into nonnormative sexual conduct, and his rage and violence upon learning this should be excused because it was justified. That is, he was under the impression that he was engaging with a cisgender woman, not a “man” with a penis. Under a binary and heteronormative system, the victim can only be a “she” or a “he,” and because assigned birth sex becomes the default, the perpetrator views the victim as the “wrong” sex and an unacceptable sexual or romantic partner for a heterosexually identified man.<sup>42</sup> The realization that he has been attracted to or sexually active with a “man” makes his sexuality suspect: Has he just engaged in “gay” sexual activity? Is he now gay? The trans\* panic defense thus also exemplifies the disgust, shame, and anger associated with questioning one’s sexuality.<sup>43</sup> However, this is a misguided conflation of gender identity with sexual orientation because his

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SOC’Y 440, 461 n.1 (2009).

<sup>40</sup> *Id.* at 441.

<sup>41</sup> There may be cases where transgender individuals who have undergone gender affirming genital surgery face violence from potential romantic partners upon learning of their sex assigned at birth; however, the cases which we have identified and discuss herein often center around the discovery of the victim’s male genitalia. See *infra* Part II.B; *infra* Tables 1–2.

<sup>42</sup> See *supra* note 35 and accompanying text; see also Schilt & Westbrook, *supra* note 39, at 458 (stating that some cisgender men claim feeling “raped” and feminized” when engaging in intercourse with trans women).

<sup>43</sup> See Schilt & Westbrook, *supra* note 39, at 458.

attraction to someone presenting as female may, in fact, underscore his normative heterosexuality.<sup>44</sup> The victim's "true" sex is what trans\* panic is about—that defendants perceive "real women" to be anatomically female, no matter how they present. And finally, defendants claim that part of their panic resulted from threats to their masculinity; not only were they allegedly deceived into engaging in "gay" conduct, but they also reevaluated the sexual encounter in terms of a perceived loss of control—for the defendants, the "deception," in essence, interfered with their normative sense of power in sexual situations. In a heteronormative and patriarchal culture, men are generally expected to be in control of their interpersonal interactions, particularly within heterosexual relationships.<sup>45</sup> We further detail such claims in later sections of this article on noteworthy cases.

The existence of trans\* panic as a defense also implies other unfounded and unfair expectations for transgender people. For one, it implies that transgender people could not attract sexual partners without being deceptive or utilizing "trickery"—that anyone so far outside the gender binary could not find willing participants.<sup>46</sup> Second, it implies that individuals have a duty to inform their partners of their genitalia,<sup>47</sup> perhaps even at the stage of sexual interest, before any sexual activity has even been discussed. Of course, we doubt that this would be expected of individuals whose gender presentation is consistent with their sex assigned at birth, even if their genitalia somehow differs from others so assigned. It is the insistence that individuals whose biological attributes do not "match" their gender presentation need to disclose their state of

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<sup>44</sup> In a variety of research studies, a consistent percentage (around fifty percent) of men who have sex with trans women identify as heterosexual. Walter Bockting et al., *Latino Men's Sexual Behavior with Transgender Persons*, 36 ARCHIVES SEXUAL BEHAV. 778, 778–79 (2007); Don Operario et al., *Men Who Have Sex with Transgender Women: Challenges to Category-Based HIV Prevention*, 12 AIDS & BEHAV. 18, 21 (2008); Martin S. Weinberg & Colin J. Williams, *Men Sexually Interested in Transwomen (MSTW): Gendered Embodiment and the Construction of Sexual Desire*, 47 J. SEX RES. 374, 378 (2010).

<sup>45</sup> See CONNELL, *supra* note 35. Furthermore, some defendants (or their legal representatives) explicitly make such claims. Counsel for Michael Magidson, convicted murderer of Gwen Araujo, claimed at trial: "[A] heterosexual male has a right to make choices for his life, and has a right to choose the gender of his partners . . . . [Gwen] Araujo took away that choice by deception." Kelly St. John, *Hayward: Nature of Killing Focus at End of Araujo Case*, S.F. CHRON., June 1, 2004, at B1 (internal quotation marks omitted).

<sup>46</sup> See *supra* note 44 and accompanying text.

<sup>47</sup> Arguments exist that show the illogic of this expectation. See Steinberg, *supra* note 23, at 509–12; Dylan Vade, *No Issue of Sexual Deception: Gwen Araujo Was Just Who She Was*, SFGATE (May 1, 2004), <http://www.sfgate.com/opinion/article/No-issue-of-sexual-deception-Gwen-Araujo-was-2754880.php>.

transition, which again clarifies our societal concern with individuals who are outside of our binary and normative systems,<sup>48</sup> but particularly those who allegedly seek to deceive in order to convince us that they are within these boundaries.<sup>49</sup>

Erroneous perceptions of trans\* and gender nonconforming persons are not limited to mainstream beliefs. Radical feminists find deception built into trans\* persons' bodies<sup>50</sup> and the terms used by some radical feminists ("male-to-constructed female transsexuals")<sup>51</sup> underscore this fact. They claim that trans\* people support, rather than challenge, the gender binary and believe that trans\* identities reinforce sex-role stereotyping.<sup>52</sup> For radical feminists, trans\* persons are not "real" men or women; therefore, they may refer to trans\* persons as "she" and "he" as such (using scare quotes to reiterate their doubts about the accuracy of those pronouns) and they often employ the tactic of referring to trans\* persons by their former (nonpreferred) gender label.<sup>53</sup> For example,

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<sup>48</sup> Although we are not aware of a culturally recognized narrative regarding an expectation that people with intersex conditions (also called disorders of sex development) disclose this to sexual partners, we note that intersex individuals historically have faced "normalizing" efforts from society and the medical field, though as a group they are distinctly different from transgender individuals. See *FAQs*, ACCORD ALLIANCE, <http://www.accordalliance.org/learn-about-dsd/faqs/> (last visited Apr. 6, 2015).

<sup>49</sup> These arguments relating to transgender people's "deception" in sexual encounters and romantic pairings have been accepted by some courts in the Western world. JOEY L. MOGUL ET AL., *QUEER (IN)JUSTICE: THE CRIMINALIZATION OF LGBT PEOPLE IN THE UNITED STATES* 77 (2011); *Man Sentenced for Fraud After Not Telling Girlfriend He Was Trans*, GAY STAR NEWS (Apr. 9, 2013), <http://www.gaystarnews.com/article/man-sentenced-fraud-after-not-telling-girlfriend-he-was-trans090413>. This has resulted in convictions for sexual assault and/or obtaining sexual intimacy by fraud for transgender men who did not disclose their assigned birth sex to cisgender female partners prior to consensual sexual activity. See, e.g., *Man Sentenced for Fraud After Not Telling Girlfriend He Was Trans*, *supra*. In essence, courts were willing to conclude that consent for sexual activity did not exist in the absence of such disclosure. Examples include Sean O'Neil of Colorado and Chris Wilson of Scotland. See MOGUL ET AL., *supra*, at 77–78; *Man Sentenced for Fraud After Not Telling Girlfriend He Was Trans*, *supra*. Both cases also included age differences between the parties that may affect whether or not similar cases make it to court. MOGUL ET AL., *supra*, at 77; *Man Sentenced for Fraud After Not Telling Girlfriend He Was Trans*, *supra*. Interestingly, the judge in Wilson's case gave him a reduced sentence upon the realization that Wilson was transgender. *Man Sentenced for Fraud After Not Telling Girlfriend He Was Trans*, *supra*. A full analysis of his case or others is outside the scope of this article, but we present this as another example of a pressing issue in jurisprudence as transgender lives are made visible.

<sup>50</sup> See JANICE G. RAYMOND, *THE TRANSSEXUAL EMPIRE: THE MAKING OF THE SHE-MALE* 104 (1994).

<sup>51</sup> *Id.* at 101.

<sup>52</sup> *Id.*

<sup>53</sup> Sheila Jeffreys's denial of author Jay Prosser's masculinity provides an example of this type of strategic misgendering as she writes: "[I]n her book *Second Skins*, Jay Prosser . . ." SHEILA JEFFREYS, *GENDER HURTS: A FEMINIST ANALYSIS OF THE POLITICS OF TRANSGENDERISM* 15 (2014). It is important to note that Prosser is an out trans man, his preferred pronouns include he/his/him, and the book Jeffreys references is a study of

radical feminist Janice Raymond even argues that by transitioning from male to female, transgender women (though she would not refer to them as women) commit “rape” on women’s bodies because they appropriate “the real female form . . . for themselves.”<sup>54</sup> Attitudes such as these, combined with societal prejudice against persons who do not conform to gender norms, often cause trans\* persons to experience a “basic denial of authenticity.”<sup>55</sup> This denial, which is accompanied by misperceptions and misreadings,<sup>56</sup> leads to a precarious situation where trans\* persons fall outside the strict limitations of the gender binary, and due to the restrictions of our dichotomous sex/gender system, occupy a liminal space within the law.<sup>57</sup>

We have framed this article primarily in terms of heterosexually identified men assaulting or killing transgender women. This is based largely on the fact that we have found dozens of examples that fit this pattern, but virtually none that are comprised of other dyads.<sup>58</sup> We acknowledge that women or even other transgender people may also feel “deceived” by a transgender partner who has not disclosed their biological sex,<sup>59</sup> and that transgender people have suffered physical violence at the hands of various groups of

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transsexual autobiographies. See *Dr. Jay Prosser*, U. LEEDS, [http://www.leeds.ac.uk/arts/profile/20040/439/jay\\_prosser](http://www.leeds.ac.uk/arts/profile/20040/439/jay_prosser) (last visited Apr. 6, 2015).

<sup>54</sup> RAYMOND, *supra* note 50, at 104.

<sup>55</sup> Talia Mae Bettcher, *Appearance, Reality and Gender Deception: Reflections on Transphobic Violence and the Politics of Pretence*, in *VIOLENCE, VICTIMS, JUSTIFICATIONS: PHILOSOPHICAL APPROACHES* 175, 181 (Felix Ó. Murchadha ed., 2006).

<sup>56</sup> Reflecting on her experience of consuming popular culture images that purport to represent transgender people’s lives, transgender musician Mya Adriene Byrne comments on how others may see her, and how she sees herself:

To them I am not a woman, not even human. I am a thing, an object. They see makeup, glitz, and camp when they look at me—not my honesty. The poster [advertising “Hedwig and the Angry Inch” or “Transparent”], in illustrating trans life this way, gives people permission to apply that perception.

And in such moments I think, uncontrollably: Am I a cheap, shabby imitation of a woman? If I live in a world that says I do not exist, perhaps I shouldn’t. I have to shake this feeling off, right as the oncoming train enters the station. I have to remind myself that I want to live.

Mya Adriene Byrne, Op-Ed., *On Kate Pierson, and How Cultural Misrepresentation Hurts Trans Women*, ADVOCATE.COM (Dec. 10, 2014), <http://www.advocate.com/commentary/2014/12/10/op-ed-kate-pierson-and-how-cultural-misrepresentation-hurts-trans-women>.

<sup>57</sup> Liminal subjects live outside traditional categories, occupying a legal gray zone. See STEPHEN WHITTLE, *RESPECT AND EQUALITY: TRANSSEXUAL AND TRANSGENDER RIGHTS* 2 (2002).

<sup>58</sup> See Schilt & Westbrook, *supra* note 39, at 452 (“Almost ninety-five percent of reported cases involve a cisgender man murdering a transwoman, while no articles describe a cisgender woman killing a transman.”).

<sup>59</sup> As illustrated by the aforementioned cases of Sean O’Neil and Chris Wilson, for example. See *supra* note 49.

people, including women and girls.<sup>60</sup> However, because cultural values regarding heteronormative masculinity are less likely to factor into those scenarios, this may explain the relative lack of such incidents. It also may be true that such instances are underreported; although much criminological work has indicated that women are less likely than men to commit serious violence,<sup>61</sup> it also tells us that women's interpersonal violence is less likely to be *perceived* as serious, particularly by their peers (who may include their victims).<sup>62</sup> In the case of *fatal* violence against transgender individuals, our research has convinced us that it is overwhelmingly perpetrated by men, and thus the subsequent use of the trans\* panic defense is similarly a male-dominated phenomenon. In light of these patterns, we focus on cases where the perpetrator identifies as male and the victim identifies or presents as female.

### B. A Brief History of the Defense

The trans\* panic defense is a close cousin to the gay panic defense, which is rooted in the notion of homosexuality as pathology.<sup>63</sup> Although the term "homosexual panic disorder" was coined by Dr. Edward Kempf in 1920,<sup>64</sup> it did not describe aggression towards gay men. Instead, Kempf was attempting to describe the mental state of nineteen World War I veterans he studied before and after the war.<sup>65</sup> He used this term to describe the men's resistance to and fear of same-sex desire.<sup>66</sup> Beginning in

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<sup>60</sup> As an example of violence against trans\* folks perpetrated by women or girls, we call attention to the 2011 beating of twenty-two-year-old Chrissy Polis in a Maryland McDonald's bathroom by two teenage girls. Jill Rosen, *Victim of McDonald's Beating Speaks Out*, BALTIMORE SUN, Apr. 24, 2011, at 1A. A McDonald's employee filmed the incident and uploaded it to the internet. *Id.* A concerned customer stepped in to stop the beating when Chrissy began to show signs of seizure. *Id.* Polis's attackers were quoted as saying, "That's a dude, that's a dude and she's in the female bathroom." *Id.* In this article we focus on this trope and trans\* panic in the context of an intimate encounter or romantic interest.

<sup>61</sup> Not only this but changes in rates of women's violence, which suggest the gender gap is narrowing, may actually be due to changes in law enforcement, not necessarily a change in women's offending. See Jennifer Schwartz et al., *Assessing Trends in Women's Violence via Data Triangulation: Arrests, Convictions, Incarcerations, and Victim Reports*, 56 SOC. PROBS. 494, 508–10 (2009).

<sup>62</sup> See Jennifer E. Cobbina et al., *Gang Fights Versus Cat Fights: Urban Young Men's Gendered Narratives of Violence*, 31 DEVIANT BEHAV. 596 (2010); see also Jody Miller & Norman A. White, *Gender and Adolescent Relationship Violence: A Contextual Examination*, 41 CRIMINOLOGY 1207, 1213 (2003) (describing how men minimize female violence).

<sup>63</sup> Lee, *supra* note 10, at 817–18.

<sup>64</sup> EDWARD J. KEMPF, PSYCHOPATHOLOGY 477 (1920).

<sup>65</sup> *Id.* at 515; Suffredini, *supra* note 10, at 288.

<sup>66</sup> KEMPF, *supra* note 64, at 486; see also Suffredini, *supra* note 10, at 288 (describing Kempf's work on "homosexual panic disorder" and veterans of World War I).

the 1960s,<sup>67</sup> criminal defense attorneys began to introduce the notion of “homosexual panic” as a defense strategy, using this term to denote aggression towards someone who had allegedly made an unwanted same-sex sexual advance.<sup>68</sup> Although it is difficult to determine exactly how often the gay panic defense has been used and, when used, how “successful” it has been, an estimated forty-five trials and 189 appellate cases have reportedly used the gay panic defense since the 1950s.<sup>69</sup> Despite movement towards LGBTQ equality and some jurisdictions curtailing the use of the gay panic defense,<sup>70</sup> this defense is still utilized in the contemporary era.<sup>71</sup>

The trans\* panic defense is a more recent offshoot of the gay panic defense. Like the gay panic defense, the trans\* panic defense is rooted in patriarchal and heteronormative ideologies, positions heterosexual males as sole possessors of the right to sexual aggression, employs a “deviance” frame, invokes the narrative of

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<sup>67</sup> Lee & Kwan, *supra* note 20, at 100. One of the earliest documented uses of “gay panic” can be found in the 1975 case *Mullaney v. Wilbur*, 421 U.S. 684 (1975), in which the defendant, Wilbur, argued that he was in the heat of passion when he murdered a man who had made sexual advances towards him. Lee & Kwan, *supra* note 20, at 100–01.

<sup>68</sup> See Lee, *supra* note 10, at 818; see also Suffredini, *supra* note 10, at 292–94 (describing several cases where the “homosexual panic defense” was first asserted); David Allen Perkiss, Comment, *A New Strategy for Neutralizing the Gay Panic Defense at Trial: Lessons from the Lawrence King Case*, 60 UCLA L. REV. 778, 795–96 (2013) (providing a description of the “homosexual panic defense” and how the psychology community viewed the defense in the twentieth century).

<sup>69</sup> Jessica M. Salerno, Cynthia J. Najdowski, Bette L. Bottoms, Evan Harrington, Gretchen Kemner & Reetu Dave, *Excusing Murder? Conservative Jurors’ Acceptance of the Gay-Panic Defense*, 21 PSYCHOL. PUB. POL’Y & L. 24, 25 (2015) (“[The] Harrington (2009) [study] located 189 appellate cases, dating from 1952 to 2005, in *LexisNexis* in which defense arguments referenced unwanted gay advances, either as a formal part of trial strategy or in their descriptions of the facts of the cases. The gay-panic defense appeared to be successful in gaining a reduced sentence in 13% of 189 gay-panic cases he identified, either at the original trial (20 cases), or on appeal (5 cases). Given that this analysis utilized the appellate record, these statistics might underrepresent the true number of jury trials in which the gay-panic defense is invoked successfully, because defendants who are successful at trial will not have convictions to appeal.”). For more information about the gay panic defense, see generally Joseph R. Williams, Note, *“I Don’t Like Gays, Okay?” Use of the “Gay Panic” Murder Defense in Modern American Courtrooms: The Ultimate Miscarriage of Justice*, 78 ALB. L. REV. 1129 (2014/2015).

<sup>70</sup> See, e.g., Assemb. 2501, 2013–2014 Reg. Sess. sec. 1, § 192(f)(1) (Cal. 2014) (enacted). (prohibiting the use of “panic defenses”).

<sup>71</sup> See Salerno, Najdowski, Bottoms, Harrington, Kemner & Dave, *supra* note 69, at 25; see also Tilleman, *supra* note 23, at 1668 (describing the modern legal treatment of the gay panic defense). Furthermore, contemporary experimental studies of juror behavior suggest that politically conservative jurors held less punitive attitudes towards murder defendants who utilized a gay panic defense (i.e., attempted to justify the murder because the victim made an unwanted sexual advance) than those whose cases did not include these elements. Salerno, Najdowski, Bottoms, Harrington, Kemner & Dave, *supra* note 69, at 26.



disgust and shame, and goes further to place blame on the victim for deceiving the killer.<sup>72</sup> In the next section, we detail how these sociocultural phenomena are reflected within the use of the defense.

### III. SOCIOCULTURAL VALUES IN LEGAL ACTION

#### A. *How the Trans\* Panic Defense is Used*

It is difficult to accurately track the deployment of the trans\* panic defense because there is currently no list of cases that have used or have attempted to integrate a provocation defense based on the revelation of the victim's so-called "true" sex.<sup>73</sup> It is, however, possible to explore a sample of cases where it is clear that the trans\* panic defense has been employed—whether as part of a formal defense strategy or informally in the language used by the defense team as they characterized the victim<sup>74</sup>—by cross-referencing media reports with transgender activist watch group organization lists.<sup>75</sup> For these reasons, what follows is not an exhaustive list.

Table 1 contains descriptive information for cases where the perpetrator had been arrested, charged, and brought to trial and/or accepted a plea. These cases have been covered extensively in the media, and trial documents (even if partial) are available for some. Thus we know definitively that some form of trans\* panic defense was used as a trial strategy.

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<sup>72</sup> See Tilleman, *supra* note 23, at 1668–71.

<sup>73</sup> The California State Assembly bill analysis of the Gwen Araujo Justice for Victims Act states: "Experts estimate that nationally, similar panic strategies have been used in over 45 cases, often with success." Senate Rules Committee, Bill Analysis, Assemb. 1160, 2005–2006 Reg. Sess. (Cal. 2006) (enacted) (internal quotation marks omitted), *available at* [http://leginfo.public.ca.gov/pub/05-06/bill/asm/ab\\_1151-1200/ab\\_1160\\_cfa\\_20060811\\_143719\\_se\\_n\\_floor.html](http://leginfo.public.ca.gov/pub/05-06/bill/asm/ab_1151-1200/ab_1160_cfa_20060811_143719_se_n_floor.html). This report, unfortunately, does not disaggregate cases of trans\* panic and gay panic. *See id.*

<sup>74</sup> As we later note, some victims may not have identified as female or as transgender, but because they presented as female for some portion of their daily lives and transphobic rhetoric was utilized at trial, we include them here.

<sup>75</sup> For example, Transgender Day of Remembrance's website includes a frequently updated list. *See Memorializing 2014*, INT'L TRANSGENDER DAY REMEMBRANCE, <http://tdor.info/memorizing-2014-2/> (last visited Apr. 6, 2015); *see also Trans Murder Monitoring Project*, TGEU (May 19, 2009), <http://www.tgeu.org/node/53> (describing how the Trans Murder Monitoring Project monitors reports of homicides committed against trans\* individuals).

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**Table 1**

<b>Victim</b>	<b>Perpetrator(s)</b>	<b>Year of Murder</b>	<b>State</b>	<b>Outcome</b>
Chanelle Pickett <sup>76</sup>	William Palmer	1995	Mass.	assault and battery/two years
Debbie Forte <sup>77</sup>	Michael Thompson	1995	Mass.	second degree murder/fifteen years to life
Jamaica Green <sup>78</sup>	Eric Carolina	1998	N.Y.	not guilty
Lauryn Paige Fuller <sup>79</sup>	Gamaliel Mireles Coria	1999	Tex.	guilty plea/forty years
Alina Marie Barragan <sup>80</sup>	Kozi Santino Scott	2000	Cal.	second degree murder/fifteen years to life
Victor Pachas <sup>81</sup>	Carlos Camacho	2001	N.J.	first degree murder/thirty years
Gwen Araujo <sup>82</sup>	Michael Magidson Jose Merél Jaron Nabors Jason Cazares	2002	Cal.	Magidson & Merél: second degree murder/fifteen

<sup>76</sup> See Pamela Prasarttongosoth, *Getting Away with Murder—Chanelle Pickett's Killer May Be Acquitted on Homophobic Defense*, THISTLE, [http://www.mit.edu/activities/thistle/v9/9.15/Pickett\\_murder.html](http://www.mit.edu/activities/thistle/v9/9.15/Pickett_murder.html) (last visited Apr. 6, 2015); *infra* Part III.B.1.

<sup>77</sup> Greg Hernandez, *Bittersweet Justice*, ADVOCATE, Nov. 22, 2005, at 36.

<sup>78</sup> See Mike Claffey, *Bronx Man Charged in Village Slay*, N.Y. DAILY NEWS, Aug. 21, 1998, at 24; Hernandez, *supra* note 77, at 36.

<sup>79</sup> Jordan Smith, *The Lauryn Paige Fuller Story*, AUSTIN CHRON. (Feb. 18, 2000), <http://www.austinchronicle.com/features/2000-02-18/75904/>; *Stabbing Death of Cross-Dressing Teen in Austin, Texas*, MY SISTERS HOUSE (2000), <http://www.angelfire.com/ca2/MySistersHouse/Msh14.html>.

<sup>80</sup> Connie Skipitares, *S.J. Man Is Guilty of Teen's Murder Jury Decides Killing Wasn't a Hate Crime*, SAN JOSE MERCURY NEWS, Jan. 20, 2001, at 1B; *Kozi Santino Scott*, NAME PROBLEM (Nov. 22, 2012), <http://nametheproblem.com/2012/11/22/kozi-santino-scott/>.

<sup>81</sup> See *State v. Camacho*, No. 01-06-0660, 2010 WL 3218888, at \*5 (N.J. Super. Ct. App. Div. Aug. 16, 2010) (per curiam) (upholding Camacho's conviction for the murder of Victor Pachas); *infra* Part III.B.2.

<sup>82</sup> See Howard Mintz, *Court Upholds Convictions of Two Men Who Killed Transgender Newark Teen*, SAN JOSE MERCURY NEWS (May 13, 2009), [http://www.mercurynews.com/breakingnews/ci\\_12362289](http://www.mercurynews.com/breakingnews/ci_12362289); *infra* Part III.B.3.

				years to life; Nabors: eleven years (plea); Cazares: six years (plea)
Bella Evangelista <sup>83</sup>	Antoine D. Jacobs	2003	D.C.	second degree murder/sixteen years, eight months
Emonie Kiera Spaulding <sup>84</sup>	Derrick Antwan Lewis	2003	D.C.	manslaughter/ ten years
Nireah Johnson (and her friend Brandie Coleman) <sup>85</sup>	Paul Moore	2003	Ind.	120 years
Joel Robles <sup>86</sup>	Estanislao Martinez	2004	Cal.	guilty plea/four years
Angie Zapata <sup>87</sup>	Allen Andrade <sup>88</sup>	2008	Colo.	first degree murder and hate crime/life without parole
DeeDee Pearson <sup>89</sup>	Kenyon Jones	2011	Mo.	second degree murder/thirty years

By contrast, the cases listed in Table 2 are those where the language in media reports suggests that some type of provocation defense was utilized in order to reduce a murder charge to manslaughter. Thus, this table also reflects cases where the motivation for the killing was or may have been a reaction to the

<sup>83</sup> *Crime & Justice*, WASH. POST, Dec. 17, 2005, at B02; *Hate Crime Info*, INTROTOGENDER, <http://introtogender.wikispaces.com/Hate+Crime+Info> (last visited Apr. 6, 2015).

<sup>84</sup> Hernandez, *supra* note 77, at 36.

<sup>85</sup> See *infra* Part III.B.4.

<sup>86</sup> See Hernandez, *supra* note 77, at 36; *infra* Part III.B.5.

<sup>87</sup> See Valerie Richardson, *Man Gets Life in Transgender Teen's Death*, WASH. TIMES, Apr. 23, 2009, available at 2009 WLNR 7609211; *infra* Part III.B.6.

<sup>88</sup> Andrade was the first person in the United States whose murder of a trans\* person was categorized as a hate crime. Richardson, *supra* note 87.

<sup>89</sup> Macradee Aegerter & Sarah J. Clark, *Man Sentenced in Transgender Murder Case*, FOX 4 NEWS (Oct. 4, 2012), <http://fox4kc.com/2012/10/04/man-sentenced-in-transgender-murder-case/>.

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victim's transgender status, but the coverage pertaining to the trial strategy is less conclusive than the cases listed in Table 1.

Table 2

Victim	Perpetrator(s)	Year of Murder	State	Outcome
David McLaughlin <sup>90</sup>	Roland Patnode	1986	N.Y.	second degree manslaughter/ two to six years
Tracie Gainer <sup>91</sup>	Mark Hayes	2002	Va.	forty-five years (two murders; one unrelated to Tracie's case)
Lateisha Green <sup>92</sup>	Dwight DeLee <sup>93</sup>	2009	N.Y.	original jury verdict of first degree manslaughter (as hate crime) overturned on appeal; awaiting

<sup>90</sup> *Hate Crime Info*, *supra* note 83.

<sup>91</sup> Michelle Washington, *Man Sentenced to 45 Years for His Role in Two Murders*, VIRGINIAN-PILOT (Norfolk, Va.), Nov. 2, 2003, at B7.

<sup>92</sup> *N.Y. Man Convicted of Hate Crime in Transgender Killing*, BOS. GLOBE, July 18, 2009, at A2; *Syracuse: Hate Crime Conviction in NY Slaying Overturned*, EVENING TIMES (Little Falls, N.Y.), Aug. 10, 2013, at 5.

<sup>93</sup> Although DeLee was the second person in the United States to be charged with killing a transgender person as a hate crime, the hate crime enhancement was vacated on appeal. *People v. DeLee*, 969 N.Y.S.2d 350, 354 (App. Div. 2013) (mem.), *aff'd as modified*, 26 N.E.3d 210 (N.Y. 2014); *Syracuse: Hate Crime Conviction in NY Slaying Overturned*, *supra* note 92, at 5. Because the jury did not also find DeLee guilty of simple manslaughter (without the hate crime attachment), he was released from prison in August 2013 pending a prosecutorial appeal. *Syracuse: Hate Crime Conviction in NY Slaying Overturned*, *supra* note 92, at 5. The New York State Court of Appeals has since modified the appellate division's holding to allow the prosecution to resubmit the crime to a new grand jury, and the district attorney's office has indicated that it intends to retry DeLee. *People v. DeLee*, 26 N.E.3d 210, 215 (N.Y. 2014); Douglass Dowty, *Prosecutors Vow to Retry Hate Crime Case After Conviction Is Tossed*, POST-STANDARD (Syracuse, N.Y.), Nov. 27, 2014, at A16. Additionally, his victim is identified in court transcripts as a "known homosexual," so the hate crime enhancement seems to be based on an assumption of the victim's sexual orientation rather than her gender identity. *See Hate Crime Conviction Dropped in Death of Transgender Person, Dwight DeLee Release from Prison*, CNYCENTRAL.COM, (Aug. 8, 2013), <http://www.cnycentral.com/news/story.aspx?id=931532#.VGfmK1ff9Ck>.

				retrial
Sanesha Stewart <sup>94</sup>	Steve McMillian	2008	N.Y.	first degree manslaughter (plea)/nine years
Denise McCoy <sup>95</sup>	Larry Davis	2010	N.Y.	original jury verdict of second degree murder reduced to manslaughter in the second degree
Shelley Hilliard <sup>96</sup>	Qasim Raqib	2011	Miss.	second degree murder (plea)/twenty-five to forty years
Cemia "CeCe" Dove <sup>97</sup>	Andrey Bridges <sup>98</sup>	2013	Ohio	murder/life with possibility of parole

<sup>94</sup> See Barry Paddock et al., *Nesha Was Just One of the Girls*, N.Y. DAILY NEWS, Feb. 11, 2008, at 20; Telephone Interview with Clerk's Office, Bronx Supreme Court, Criminal Term (May 8, 2015).

<sup>95</sup> People v. Davis, 986 N.Y.S.2d 488, 489 (App. Div. 2014); Art Leonard, *New York Appellate Division Rules on Erotic Asphyxiation Case*, N.Y.L. SCH. (May 11, 2014), <http://www.artleonardobservations.com/new-york-appellate-division-rules-on-erotic-asphyxiation-case/>; *New York Appellate Division Rules on Erotic Asphyxiation Case*, LGBT B. ASS'N GREATER N.Y., <http://le-gal.org/new-york-appellate-division-rules-erotic-asphyxiation-case/> (last visited Apr. 6, 2015).

<sup>96</sup> James Withers, *Man Gets 25 to 40 Years for Death of Transgender Teen*, GAY STAR NEWS (Apr. 7, 2012), <http://www.gaystarnews.com/article/man-gets-25-40-years-death-transgender-teen070412>.

<sup>97</sup> Bob Vitale, *Life Sentence for Cleveland Woman's Killer*, OUTLOOK OHIO MAG. (Nov. 14, 2013), <http://outlookcolumbus.com/2013/11/life-sentence-for-cleveland-womans-killer/>.

<sup>98</sup> An article about the jury decision in Bridges's case seems to indicate that the prosecutor and the arresting officer suggested a "trans\* panic" scenario:

[Assistant County Prosecutor] Radigan and [Police Lieutenant] Vanyo theorized that Bridges flew into a rage after becoming intimate with Dove and discovering that she was biologically a man.

"Something happened in that apartment," Vanyo told Bridges, according to the recording. "When you found out that she wasn't a woman, but was actually a guy, is that when things went wrong? Things got intimate, and you were furious."

James F. McCarty, *Jury Convicts Andrey Bridges of Stabbing to Death Cemia "Ce Ce" Dove*, CLEVELAND.COM (Nov. 23, 2013), [http://www.cleveland.com/metro/index.ssf/2013/11/jury\\_convicts\\_andrey\\_bridges\\_o.html](http://www.cleveland.com/metro/index.ssf/2013/11/jury_convicts_andrey_bridges_o.html).

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Diamond Williams <sup>99</sup>	Charles Sargent	2013	Pa.	awaiting trial
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We note that these tables only capture cases of fatal violence against trans women where a suspect was detained, arrested, charged, and either went to trial or made a plea bargain. Unfortunately, we are not able to identify cases of fatal violence against trans women, particularly trans women of color, where there is no suspect, where charges go unfiled, and where the murder goes unsolved.

### B. Noteworthy Cases

When discussing fatal violence perpetrated against transgender and gender nonconforming individuals, the stories of Gwen Araujo and Angie Zapata are particularly notable due to the extensive media coverage of their murders. This section will discuss the details of those cases and will also briefly explore a sampling of lesser known cases including those of Chanelle Pickett, Victor Pachas, Joel Robles, and Nireah Johnson and her (cisgender) friend, Brandie Coleman. When referring to the victims in these cases, we use first names in an attempt to reinforce their preferred names and pronouns (when known) and to resist the media's tendency to use nonpreferred names and misgender victims.<sup>100</sup>

The majority of these cases follow a similar narrative thread. Generally, the victim and perpetrator meet and are attracted to one another, the perpetrator begins to inquire as to whether the person he is attracted to is “really a woman,” at which point there is generally some type of “examination” or “reveal” of male genitalia. Continuing the tragic narrative thread, the perpetrator asserts his heterosexuality and from here he perpetrates fatal violence. Afterward, the perpetrator and/or his attorneys and/or media reports propose an explanation of the crime that centers on the victim's supposedly “deceptive” practices. The cases described in

<sup>99</sup> James Nichols, *Diamond Williams, Transgender Woman Murdered in Philadelphia, Memorialized at Vigil*, HUFFINGTON POST, July 24, 2013, available at 2013 WLNR 18089561.

<sup>100</sup> We hesitate to even include excerpts of court transcripts and media coverage that reflect these actions but do so in order to illustrate transphobic rhetoric. For this reason, we also avoid placing “[sic]” after every instance of misnaming or misgendering, though we note that we vehemently disagree with such language. For an example of what we wish to avoid in our own writing, see John Caniglia, *Oddly Dressed Body Found in Olmsted Township Pond Identified*, CLEVELAND.COM (Apr. 30, 2013), [http://www.cleveland.com/metro/index.ssf/2013/04/body\\_of\\_oddly\\_dressed\\_man\\_foun.html](http://www.cleveland.com/metro/index.ssf/2013/04/body_of_oddly_dressed_man_foun.html).

brief below provide evidence of the widespread nature of this toxic narrative.

1. Chanelle Pickett (1995)

The case of Chanelle Pickett is unfortunately regarded as one of the most “successful” uses of the trans\* panic defense.<sup>101</sup> The original charges of first and second degree manslaughter were eventually downgraded to assault and battery.<sup>102</sup> Although Chanelle was beaten and asphyxiated for an estimated eight minutes, Chanelle’s assailant, William Palmer, was sentenced to only two years in prison.<sup>103</sup> While the jury found Palmer guilty only on the lesser charge, the judge sentenced Palmer to serve more than the minimum sentence associated with the crime (eighteen months at the time), causing some to speculate that the judge did not fully agree with the jury’s conclusion.<sup>104</sup>

Palmer’s defense relied heavily on the “deception trope,” as an article from the *Boston Phoenix* explains:

Throughout the trial, Palmer’s defense team emphasized that Palmer had no idea he had picked up a man. His lawyers even tried to introduce as evidence a segment from the talk show Geraldo entitled “Dead Ringers, Twisted Tales of Twins.” On the show, Pickett appeared with her twin Gabrielle, also a pre-operative transsexual, and said she fooled men “all the time.”<sup>105</sup>

Chanelle’s twin sister, Gabrielle (who was also reportedly murdered in 2003),<sup>106</sup> testified as the key prosecution witness at Palmer’s trial.<sup>107</sup> The following excerpt from the *Boston Globe* illustrates Gabrielle’s frustration with the system even as it misgenders and misnames her:

“I have lost all faith in the system, and I think the judge and jury ought to be ashamed of themselves,” Gabriel Pickett said. “This sends a message to anyone who dates a

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<sup>101</sup> Tilleman, *supra* note 23, at 1671.

<sup>102</sup> *Id.*

<sup>103</sup> Kevin Rothstein, *Travesty of Justice: When Is a Murder Not a Murder? When the Victim Is Transsexual*, WWW.BOSTONPHOENIX.COM (May 1997), <http://www.bostonphoenix.com/archi ve/lin10/97/05/MURDER.html>.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> Helen Boyd, *Tragedy After Tragedy*, EN GENDER (Feb. 28, 2008), <http://www.myhusband betty.com/2008/02/28/more-death/>.

<sup>107</sup> Francie Latour, *Sibling Decries Murder Acquittal: Verdict Is Assault in Transsexual’s Death*, BOS. GLOBE, May 3, 1997, at B1.

transsexual that they can beat the person up, and it's OK. You can say you didn't know, you can say drugs were involved, you can make up any excuse and get away with it."<sup>108</sup>

In this case, the deception frame was employed despite evidence that William Palmer was often present in spaces frequented by trans women and he arguably knew of Chanelle and her sister's trans\* status.<sup>109</sup> Although this evidence was presented at trial, the jury was swayed by the deception frame and, like other juries in similar cases, relied upon heteronormative understandings of gender to decide the case. Because the jury interpreted Chanelle's gender presentation as "deceptive," they viewed the violence against her as an understandable reaction to Palmer's supposed "discovery" of her male genitalia.<sup>110</sup>

## 2. Victor Pachas (2001)

Victor Pachas was a Newark, New Jersey, resident who enjoyed dressing in feminine attire in the evenings and generally wore masculine attire during the day.<sup>111</sup> After an evening out with a friend, Victor returned home with a person they<sup>112</sup> had met on Slater Street (a well-known gay pickup area).<sup>113</sup> At 4:00 a.m., a neighbor heard a cry for help but did not call the police.<sup>114</sup> Another neighbor heard the cry and did call the police but fell back asleep.<sup>115</sup> At 5:00 a.m., someone was heard running from the building.<sup>116</sup> Later that morning, when a neighbor went to check in on Victor, he found the door open and the apartment covered in blood.<sup>117</sup> A court document describes an extremely violent crime scene: "[T]he bedroom walls, ceiling and door jambs were covered in blood; the

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<sup>108</sup> *Id.*

<sup>109</sup> Schilt & Westbrook, *supra* note 39, at 457 ("The belief that gender deception in a sexual relationship would result in fatal violence is so culturally resonant that, even in cases where there is evidence that the perpetrator knew the victim was transgender prior to the sexual act, many people involved in the case, including journalists and police officers, still use the deception frame.").

<sup>110</sup> *Id.*

<sup>111</sup> *State v. Camacho*, No. 01-06-0660, 2010 WL 3218888, at \*1 (N.J. Super. Ct. App. Div. Aug. 16, 2010) (per curiam).

<sup>112</sup> Victor's preferred name and pronouns are unknown, so we refer to them using their birth name and use the gender neutral pronouns "they/their/them" when referring to Victor.

<sup>113</sup> *Camacho*, 2010 WL 3218888, at \*1.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

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



bed and sheets were soaked with blood; and the kitchen floor and carpet were covered in bloody footprints.”<sup>118</sup> Victor had been stabbed, strangled, and beaten.<sup>119</sup> The court transcript mentions that the defendant at one point stepped on Victor’s throat to “shut him up.”<sup>120</sup>

In an article titled *Jurors Deciding if Transvestite Was Murdered; Defense Cites Crime of Passion*, the author explains that the jury had to decide “whether Carlos Camacho purposefully and knowingly killed 43-year-old Victor Pachas on Feb. 25, 2001, or whether the crime was manslaughter committed in the heat of passion resulting from a reasonable provocation.”<sup>121</sup> The “reasonable provocation” referred to in this article is the fact that the biological sex of the victim does not match their gender presentation and identity. The article clearly embraces a “deception trope”<sup>122</sup> as it continues:

In closing arguments Monday in state Superior Court, Carlos Camacho’s attorney told jurors that his client became enraged after learning the woman who picked him up on Slater Street and offered him \$20 for sex was actually a man.

“To people who are not inclined that way, that is a deviant lifestyle, it’s a perversion, it’s frightening,” said defense lawyer Greg Aprile. . . .

“There is no way that Mr. Camacho had any way of knowing what he was in for, whether he’s in physical danger or in danger of being subjected to who knows what type of sexual perversion,” Aprile said.<sup>123</sup>

Despite the defense attorney’s transphobic rhetoric, the jury refused to accept that the perpetrator was provoked into committing a crime,<sup>124</sup> it found Camacho guilty of first degree murder, and he received a thirty-year sentence.<sup>125</sup>

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<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.* at \*2 (internal quotation marks omitted).

<sup>121</sup> Jennifer V. Hughes, *Jurors Deciding if Transvestite Was Murdered; Defense Cites Crime of Passion*, RECORD (Bergen Cnty., N.J.), Oct. 29, 2002, at L05.

<sup>122</sup> “The ‘deception’ in these frames is a dual one; articles portray victims as lying both about their gender and about their sexual orientation.” Schilt & Westbrook, *supra* note 39, at 454; *see also* Bettcher, *supra* note 33, at 44–45 (discussing sexual deception as a legal defense).

<sup>123</sup> Hughes, *supra* note 121, at L05.

<sup>124</sup> In cases such as these—where the jury had reason to believe that the perpetrator was seemingly interested in same-sex sexual activity, sexual conduct with a trans\* person, and/or sex for sale—the aforementioned deviance frame may encompass not just the victim’s actions but the perpetrator’s actions as well.

<sup>125</sup> Hughes, *supra* note 121, at L05.

### 3. Gwen Araujo (2002)

The murder of seventeen-year-old Gwen Araujo is one of the most well-known cases of violence against a transgender person. The film *A Girl Like Me: The Gwen Araujo Story*, which aired on the Lifetime television channel in 2006, was based on her life and death.<sup>126</sup> Gwen was murdered at a house party on October 3, 2002, by four cisgender men who “kneaded her in the face, slapped, kicked, and choked her, beat her with a can and a metal skillet, wrestled her to the ground, tied her wrists and ankles, strangled her with a rope, and hit her over the head with a shovel.”<sup>127</sup> At trial, the defense presented this fatal violence against Gwen as a response to the young men’s realization that Gwen possessed male genitalia.<sup>128</sup> After having been sexually intimate with Michael Magidson and Jose Merél, Gwen was subjected to a forced inspection of her body; her assailants reacted to what they saw in a violent manner.<sup>129</sup>

Jaron Nabors led the police to Gwen’s body, buried in a remote area four hours from the scene of the crime.<sup>130</sup> He pled guilty and received an eleven-year sentence in exchange for testifying against his three friends.<sup>131</sup> At trial, the jury was unable to render a unanimous verdict; therefore, a second trial was held.<sup>132</sup> After the second trial, Magidson and Merél were sentenced to fifteen years to life, while Jason Cazares, who insisted he was only involved in burying Gwen’s body, was given a six-year sentence after pleading no contest to voluntary manslaughter.<sup>133</sup>

News stories reporting on this case—even ostensibly sympathetic coverage—misgenders, misnames, and blames the victim for her own death as a result of her “lifestyle”:

Eddie Araujo liked to dress in women’s clothes and wear makeup. Long ago, he told his mother he felt more comfortable as a woman and wanted to get a sex-change operation.

<sup>126</sup> *A GIRL LIKE ME: THE GWEN ARAUJO STORY* (Braun Entertainment Group 2006).

<sup>127</sup> Moya Lloyd, *Heteronormativity and/as Violence: The “Sexing” of Gwen Araujo*, 28 *HYPATIA* 818, 818 (2013) (quoting Steinberg, *supra* note 23, at 499–500) (internal quotation marks omitted).

<sup>128</sup> Steinberg, *supra* note 23, at 502.

<sup>129</sup> Kelly St. John, *Hayward Witness Tells How She Learned Transgender Teen Was Male*, *S.F. CHRON.*, Apr. 21, 2004, at B5.

<sup>130</sup> See John Ritter, *Slaying of Transgender Boy Haunts City*, *USA TODAY*, Oct. 21, 2002, at 3A.

<sup>131</sup> St. John, *supra* note 129, at B5.

<sup>132</sup> Lloyd, *supra* note 127, at 820.

<sup>133</sup> *Id.*

....

Araujo's lifestyle cost him dearly, police say. On Oct. 3, dressed in a denim miniskirt and flip-flops, the 17-year-old attended a small house party. According to court papers made public Friday, after a girl came out of the bathroom and said Araujo was a man, three men beat him, dragged him to the garage and strangled him with a rope.<sup>134</sup>

The fact that Gwen Araujo, a young woman, was described using her male name and masculine pronouns in the quotation above perfectly illustrates the problematic societal misperception of trans\* and gender nonconforming individuals. As mentioned earlier in this article, trans women *are* women.<sup>135</sup> Gwen didn't just "like" to dress in feminine clothing. She was a woman and she wore clothing that suited her identity, the weather, and her mood.<sup>136</sup> Further, the police's statement that Gwen's "lifestyle" cost her dearly exemplifies a fundamental misunderstanding of the nature of identity and places responsibility for harm avoidance squarely on the shoulders of the victim.<sup>137</sup>

Both media reports and courtroom strategies rely on the "deception trope" to justify Gwen's killing as one that took place in the heat of passion. For example, in an early news story covering the incident, Wanda Merél, the mother of Jose Merél, said that she didn't raise her son to harm others, but if he committed the crime he should be punished.<sup>138</sup> Upholding heteronormative assumptions of gender and sexuality, however, Merél's mother added that the killing was not a hate crime: "If you find out the beautiful woman you're with is really a man, I think it would make any man go crazy."<sup>139</sup>

<sup>134</sup> Ritter, *supra* note 130, at 3A.

<sup>135</sup> See Jessica Valenti, *Transgender People Want to Exist Without Having to Prove They Are "Real,"* GUARDIAN (June 20, 2014), <http://www.theguardian.com/commentisfree/2014/jun/20/transgender-janet-mock-passing-realness>; see also Byrne, *supra* note 56 ("If we do not adhere to impossible, heterosexual standards of femininity, we are not considered women.").

<sup>136</sup> In an interview with The Project (Australia) in 2011, entertainer Eddie Izzard responded to a comment that he "famously . . . dressed up in women's dresses" by interrupting with, "No, I wear dresses. They're not 'women's dresses.' They're my dresses. I buy them. It's like when women wear trousers. They're not cross-dressing; they're not wearing men's trousers. They're wearing trousers." Rove Online—The Project, *Eddie Izzard Interview on The Project (Australia) 2011*, YOUTUBE (Nov. 4, 2011), <https://www.youtube.com/watch?v=gHPh9j7lc58&feature=youtu.be>.

<sup>137</sup> Ritter, *supra* note 130, at 3A.

<sup>138</sup> Tim Reiterman et al., *Trying to Understand Eddie's Life—and Death*, L.A. TIMES, Oct. 20, 2002, at 1.

<sup>139</sup> *Id.* (internal quotation marks omitted).

## 4. Nireah Johnson (2003)

Seventeen-year-old Nireah Johnson and eighteen-year-old Brandie Coleman were killed in 2003 in Indianapolis, Indiana.<sup>140</sup> Their charred bodies were discovered by police in a burning car in a wooded area.<sup>141</sup> Nireah was a young trans woman and Brandie was her cisgender friend.<sup>142</sup> On July 18, 2003, the women met two young cisgender men, Paul Moore and Curtis Ward, and exchanged phone numbers.<sup>143</sup> On July 23, Nireah and Brandie visited Ward and Moore's home.<sup>144</sup> According to court documents, "Ward and Coleman went into Ward's room, and Moore and Johnson went into Moore's room."<sup>145</sup> When, shortly afterward, Moore expressed his uncertainty to Ward that Nireah was a woman, his friend assured him that she seemed like a woman to him.<sup>146</sup> A still doubtful Moore continued to question Nireah and Brandie about Nireah's assigned birth sex.<sup>147</sup> When Nireah went to use the restroom, Moore followed and was reported to exclaim, "Man, this is a boy," after which he began to talk about a violation of his manhood and indicated that there had been some level of sexual contact.<sup>148</sup> Moore stated that he should either beat up the two women or kill them, and he asked Nireah, "What did you think, I was a faggot?"<sup>149</sup>

Moore and Ward proceeded to bind Nireah and Brandie with wire and put them in the back seat of the Jeep in which the young women had arrived.<sup>150</sup> With Ward following in a separate car, Moore drove the Jeep to a wooded area and shot the victims through the forehead.<sup>151</sup> He shot Nireah first and then Brandie, whom he

<sup>140</sup> Aaron Sharockman, *Bullets Lead to Arrest in Double Slaying*, INDIANAPOLIS STAR, Aug. 2, 2003, at A1.

<sup>141</sup> *Moore v. State*, 827 N.E.2d 631, 635–36 (Ind. Ct. App. 2005).

<sup>142</sup> *Id.* at 634–35. Transphobia may also extend to include violence and discrimination against friends and partners. Examples include the murder of Brandon Teena (1993) in which his friends Philip DeVine and Lisa Lambert were also killed, and the (2013) double homicide of Milan Boudreaux and her boyfriend Akeem Boudreaux. See Loree Cook-Daniels, *Social Change and Justice for All: The Role of SOFFAs in the Trans Community*, FORGE 1, <http://forge-forward.org/wp-content/docs/CLAGS-SOFFA-social-justice.pdf> (last visited Apr. 6, 2015); Michelle Hunter, *Metairie Couple's Deaths Ruled Double Homicide*, NEW ORLEANS TIMES-PICAYUNE, Feb. 17, 2013, at B.

<sup>143</sup> *Moore*, 827 N.E.2d at 634.

<sup>144</sup> *Id.* at 635.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.* (internal quotation marks omitted).

<sup>149</sup> *Id.* (internal quotation marks omitted).

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

described as agitated.<sup>152</sup> Brandie was not only shot in the head, but suffered a crushed larynx and blunt force trauma to the chest.<sup>153</sup> Following the murders, Moore asked his brother and Ward to burn the bodies to “cover his tracks.”<sup>154</sup> On April 8, 2004, Moore was found guilty of two counts of murder, felony criminal confinement, and felony arson and was given an aggregate sentence of 120 years.<sup>155</sup> The aggravated and calculated nature of the assault precluded the defense from offering trans\* panic as a mitigating factor, yet the language used in media coverage of the case and available court documents suggests that while a panic defense was not mounted, themes of deception and “true sex” were also present in the narrative retelling of the murders.

##### 5. Joel Robles (2004)

Another case that follows the narrative established by heteronormative cultural practices is that of Joel Robles,<sup>156</sup> who was a dental assistant murdered by Estanislao Martinez in 2004.<sup>157</sup> One night while out drinking, Joel met Estanislao and the two returned to Estanislao’s apartment where they engaged in sexual activity.<sup>158</sup> The media reports of the incident state that when Estanislao saw Joel’s genitalia he reacted by stabbing Joel twenty times with a pair of scissors.<sup>159</sup> Then, Estanislao jumped out of the window and was discovered shortly afterward, naked and covered in blood.<sup>160</sup> Although the case did not go to trial, Estanislao’s lawyer was preparing a trans\* panic defense.<sup>161</sup> Indeed, the public defender’s argument on behalf of Estanislao resulted in a plea bargain in which Estanislao received the minimum sentence of three years in prison for voluntary manslaughter and one year for using scissors

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<sup>152</sup> *Id.*

<sup>153</sup> *Id.* at 635–36.

<sup>154</sup> *Id.* at 635 (internal quotation marks omitted).

<sup>155</sup> *Id.* at 636.

<sup>156</sup> Joel’s preferred name and pronouns are unknown, so we refer to Joel using their assigned birth name and use gender neutral pronouns “they/their/them” when referring to Joel.

<sup>157</sup> *Man Receives Just Four Years for a Transgender Murder*, SEATTLE GAY NEWS (Sept. 2, 2005), <http://www.sgn.org/sgnnews35/page4.cfm>.

<sup>158</sup> *Man Gets Four Years in Prison for Transgender Slaying*, FOX NEWS (Oct. 1, 2005), <http://www.foxnews.com/story/2005/10/01/man-gets-four-years-in-prison-for-transgender-slaying/>.

<sup>159</sup> Roger Brigham, *TG Panic Bill Weakened*, BAY AREA REP. (Apr. 27, 2006), <http://www.ebar.com/news/article.php?sec=news&article=781>; *Man Gets Four Years in Prison for Transgender Slaying*, *supra* note 158.

<sup>160</sup> *Man Gets Four Years in Prison for Transgender Slaying*, *supra* note 158.

<sup>161</sup> *Id.*

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as a weapon.<sup>162</sup>

#### 6. Angie Zapata (2008)

Angie was an eighteen-year-old trans woman who had spent several days with thirty-two-year-old Allen Andrade before her murder.<sup>163</sup> When Angie left to run an errand, Andrade's perusal of the family photos displayed around Angie's apartment caused him to develop a "suspicion" about Angie's sex.<sup>164</sup> When she returned home, Andrade confronted her.<sup>165</sup> Angie reportedly told him that she was "all woman" and smiled.<sup>166</sup> He reacted by grabbing her crotch and when he felt a penis, he beat her first with his fists and then with a fire extinguisher.<sup>167</sup> At this point, as Andrade revealed to an investigator later, he thought he had "killed it"; however, in the course of cleaning up, Andrade heard "a 'gurgling' noise" and saw Angie sitting up.<sup>168</sup> Andrade proceeded to hit Angie again on the head and stole her purse, keys, and cell phone and used the car Angie was driving to escape the scene.<sup>169</sup> Angie's body was found the next day by her sister.<sup>170</sup>

Angie's smile was treated in court as a provoking act.<sup>171</sup> As the public defender remarked in his opening statement: "This case is not about a judgment of lifestyle . . . . This case is about a deception and the reaction to that deception."<sup>172</sup> The defense attempted to frame Angie's murder as a crime of passion, despite evidence that her killer continued to assault her after he realized she was still alive. In this particular case, the deception frame failed and

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<sup>162</sup> Hernandez, *supra* note 77, at 36; Press Release, Equality Cal., Manslaughter Conviction Troubling in Stabbing Murder of Transgender Fresno Resident (Aug. 26, 2005), <http://www.eqca.org/site/apps/nlnet/content2.aspx?c=kuLRJ9MRKrH&b=4025509&ct=5194783>.

<sup>163</sup> Sharon Dunn, *Andrade Guilty, Sentenced to Life in Murder of Zapata*, GREELEY TRIB. (Greeley, Colo.), Apr. 23, 2009, available at 2009 WLNR 7570427.

<sup>164</sup> Ernest Luning, *Prosecutor: Accused Zapata Killer Didn't 'Snap' at Transgender 'Deception'*, COLO. INDEP. (Apr. 17, 2009), <http://www.coloradoindependent.com/26875/prosecutor-accused-zapata-killer-didnt-snap-at-transgender-deception>.

<sup>165</sup> *See id.*

<sup>166</sup> Monte Whaley, *Defense Calls Smile a "Provoking Act" in Transgender Killing*, DENVER POST, Sept. 19, 2008, at B01.

<sup>167</sup> Whaley, *supra* note 23, at B01.

<sup>168</sup> Luning, *supra* note 164 (internal quotation marks omitted).

<sup>169</sup> Whaley, *supra* note 23, at B01. Andrade also removed the fire extinguisher from the scene. *Id.*

<sup>170</sup> Luning, *supra* note 164.

<sup>171</sup> Whaley, *supra* note 23, at B01.

<sup>172</sup> Luning, *supra* note 164 (internal quotation marks omitted).

Andrade was sentenced to life without parole.<sup>173</sup> Additionally, a hate crime enhancement was added to his sentence, signaling the first time in history that the murder of a trans\* person was treated as a bias crime.<sup>174</sup>

## 7. Summary: Trans\* Panic Narratives

It is clear that the noteworthy cases described in this section follow a similar narrative thread, one that could be subverted by challenging the binary nature of our sex/gender system and combating homophobia, transphobia, and heteronormativity. It is important to note that the majority of trans\* homicide victims are people of color, more specifically, trans women of color.<sup>175</sup> Further, while some of the victims discussed above had acquired hormones, none of them had gender affirming surgery. Therefore, young trans\* and gender nonconforming individuals of color who are of lower socioeconomic status are the most vulnerable to harm arising from multiple intersections of oppression.<sup>176</sup> In these examples, trans\* and gender nonconforming persons were seen as male and as gay, which led their cisgender, heterosexual sexual partners, who were not aware of their partner's trans\* status, to question their own sexuality and to react with violence. Apparently, the goals of this violence were not only to punish the gender transgressor, but also to somehow rescue or repair the perpetrator's masculinity. Finally, the overarching system of heteronormativity in place in U.S. society relies on fixed gender roles and norms<sup>177</sup> despite the *appearance* of more relaxed norms and roles. The institution of heteronormativity continues to maintain and regulate gender roles and norms to such an extent that people who fall outside these norms (e.g., trans\* and gender nonconforming folks) are nominally accepted in society if they conform to norms such as being "passable" (read as the gender with which they identify), while trans\* and gender nonconforming folk who do not, cannot, or refuse to pass are still regarded as "freaks" or "monsters."<sup>178</sup>

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<sup>173</sup> See *Life Without Parole in Transgender Murder*, ORLANDO SENTINEL, Apr. 23, 2009, at A2.

<sup>174</sup> Dan Frosch, *Murder and Hate Verdict in Transgender Case*, N.Y. TIMES, Apr. 22, 2009, at A20; Luning, *supra* note 164.

<sup>175</sup> See NAT'L COAL. OF ANTI-VIOLENCE PROGRAMS, *supra* note 15, at 8, 21.

<sup>176</sup> Lee & Kwan, *supra* note 20, at 97; Rebecca L. Stozer, *Gender Identity and Hate Crimes: Violence Against Transgender People in Los Angeles County*, 5 SEXUALITY RES. & SOC. POL'Y 43, 50 (2008).

<sup>177</sup> Lee & Kwan, *supra* note 20, at 112.

<sup>178</sup> Transgender writer Janet Mock has critiqued the notion of "passing" by suggesting that

### C. *Media Perpetuation of Transphobia*

Transphobia and negative stereotypes are perpetuated by the media in a number of ways, and media coverage of trans\* persons has not grown increasingly sensitive over time.<sup>179</sup> The official Associated Press stylebook recommends that reporters should

[u]se the pronoun preferred by the individuals who have acquired the physical characteristics of the opposite sex or present themselves in a way that does not correspond with their [assigned] sex at birth.

If that preference is not expressed, use the pronoun consistent with the way the individuals live publicly.<sup>180</sup>

Despite the availability of such style guides and LGBTQ websites offering cultural competency, misgendering, misnaming, victim blaming, and stereotyping are not uncommon in current coverage of fatal violence against trans\* persons.<sup>181</sup> What seems to have changed over time is the interactive nature of news media (hosted largely online) and the presence of trans\* activists on the internet who are quick to locate and protest stereotypical and transphobic media coverage of trans\* folk and who are sometimes able to mobilize demonstrations in protest of such coverage.<sup>182</sup>

The foundation of the trans\* panic defense (e.g., the notions of provocation and deception) remains in the socio-cultural sphere

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it conforms to a deception narrative. Valenti, *supra* note 135. She asserts that she is a woman; she does not “pass” as one. *Id.* Further, she notes that not being read as transgender is associated with increased safety, but declares: “Our safety should not be based on the way that we look.” *Id.*

<sup>179</sup> See Schilt & Westbrook, *supra* note 39, at 452 (“Articles describe homophobia or transphobia as the primary cause of violence in only 6 percent of the total cases, while in the majority of cases, 56 percent, journalists depict violence as resulting from private, sexual interactions in which the perpetrator feels ‘tricked’ into homosexuality by ‘gender deceivers.’ An additional 5 percent depict the murder as resulting from cisgender men defending themselves from unwanted sexual advances.”).

<sup>180</sup> ASSOCIATED PRESS, STYLEBOOK AND BRIEFING ON MEDIA LAW 227 (Norm Goldstein ed., 39th ed. 2004). Although the Associated Press stylebook recommends sensitivity when reporting news about trans\* individuals, we would like to point out that they, too, reinforce the gender binary by using “opposite sex” language configurations. See *id.* A page on GLAAD’s website provides a comprehensive list of terms to use and terms to avoid when writing about transgender people. *GLAAD Media Reference Guide—Transgender Issues*, GLAAD, <http://www.glaad.org/reference/transgender> (last visited Apr. 6, 2015).

<sup>181</sup> See Schilt & Westbrook, *supra* note 39, at 454.

<sup>182</sup> See Daniel Joyce, *Media Witnesses: Human Rights in an Age of Digital Media*, 8 INTERCULTURAL HUM. RTS. L. REV. 231, 233–34 (2013); Kate Abbey-Lambertz, *Protests Mount Against Michfest Music Festival that Excludes Trans Women*, HUFFPOST GAY VOICES (July 29, 2014), [http://www.huffingtonpost.com/2014/07/29/michfest-michigan-womyns-festival-trans\\_n\\_5630726.html](http://www.huffingtonpost.com/2014/07/29/michfest-michigan-womyns-festival-trans_n_5630726.html); James Nichols, *‘From Russia with Love’ Campaign Shows Solidarity with LGBT Activists*, HUFFINGTON POST, Sept. 5, 2013, available at 2013 WLNR 22073423.



even though the defense has rarely been “successfully” used. Media reports that describe violence against trans\* people can make the trans\* panic defense seem reasonable even while acknowledging that it is wrong to kill someone. Because cultural understandings of trans\* persons are received from a variety of media sources—including, for example, television, films, and news reports—trans\* activists find it essential to push back against harmful and negative stereotypes that perpetuate the notion of trans women as deceptive, as criminals, as less than human, and as disposable people.

In the previous section, we discussed the heteronormative and violent narratives present in specific cases of fatal violence against trans women, and in this section, we take a moment to look at the media coverage of one illustrative case: that of twenty-year-old Cemia “CeCe” Dove, who was brutally stabbed to death<sup>183</sup> and was later found floating in a pond in Olmsted Township, Ohio, on April 17, 2013.<sup>184</sup> Unfortunately, media coverage of CeCe’s<sup>185</sup> murder is emblematic of the ways the public at large tends to think about trans\* folks.

A *Plain Dealer* news article initially reporting the story titled *Body of Oddly Dressed Man Found in Olmstead Township Pond Identified* is no longer available<sup>186</sup> and has been overridden by a story titled *Oddly Dressed Body Found in Olmsted Township Pond Identified*.<sup>187</sup> A Google search for the phrase “oddly dressed body

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<sup>183</sup> Although CeCe’s murder has been characterized by a few later news reports as a robbery, it is also important to note that she was stabbed an estimated forty times, overkill for a simple robbery. Vitale, *supra* note 97.

<sup>184</sup> Trudy Ring, *Transgender Woman’s Body Found Near Cleveland; News Coverage Denounced*, ADVOCATE.COM (Apr. 30, 2013), <http://www.advocate.com/crime/2013/04/30/transgender-womans-body-found-near-cleveland-news-coverage-denounced>. Although we are focusing on the media representation of CeCe Dove, we would like to note that this is a persistent theme with media reporting of fatal violence against trans\* victims. The news media has tended to misgender and misname trans\* victims, even in the well-known cases of Gwen Araujo and Angie Zapata. See Ritter, *supra* note 130, at 3A; *Arrest Made in Colorado Transgender Slaying*, TUCSON CITIZEN (Tucson, Ariz.) (July 30, 2008), <http://tucsoncitizen.com/morgue/2008/07/30/92415-arrest-made-in-colorado-transgender-slaying/>. This misapprehension correlates with defense strategies of misgendering and misnaming in the courtroom. For an example of how Angie Zapata’s friends and family attempted to combat transphobia in the courtroom, see Emily Dianne Cram, “Angie Was Our Sister”: *Witnessing the Trans-Formation of Disgust in the Citizenry of Photography*, 98 Q.J. SPEECH 411, 424–25 (2012).

<sup>185</sup> The name CeCe used with friends is alternately spelled “CiCi.” See Autumn Sandeen, *Revictimized in Death*, TRANSADVOCATE (Apr. 30, 2013), [http://www.transadvocate.com/revictimized-in-death\\_n\\_9275.htm](http://www.transadvocate.com/revictimized-in-death_n_9275.htm).

<sup>186</sup> Aaron McQuade, *GLAAD and Local Advocates Addressing Horrific Coverage of Transgender Murder Victim*, GLAAD (Apr. 30, 2013), <http://www.glaad.org/blog/glaad-and-local-advocates-addressing-horrific-coverage-transgender-murder-victim>.

<sup>187</sup> Caniglia, *supra* note 100; McQuade, *supra* note 186.

found in pond,” however, reveals the original title as well as a telling portion of how the story was framed: “Using DNA from family members, officials have identified the strangely dressed body found in a retention pond in Olmsted Township, as Carl . . . .”<sup>188</sup> As evidenced in this brief snippet, the victim’s manner of dress was foregrounded in the story, sensationalizing the victim, and a description of the victim’s attire was retained in later, ostensibly more “sensitive” coverage of the event.

Outrage from readers and trans\* activists resulted in an altered follow-up story and title, *Brutal Slaying Marks the End of Cleveland’s Fight for Acceptance*;<sup>189</sup> however, this story continued to misgender and misname CeCe.<sup>190</sup> It also featured a mugshot of the victim instead of linking to a more representative photo from her social networking webpages, such as those easily discovered by gay and trans\* blogs.<sup>191</sup> Additionally, irrelevant information about CeCe’s encounters with the law (some of which were related to her transgender identity) were foregrounded and mischaracterized,<sup>192</sup> while information about her murder was offered only later in the story. For example, one of the charges against CeCe included possession of “dangerous drugs” which included hormones she was using to transition.<sup>193</sup> In another incident, a driver on public transportation performed a check on her bus pass and her gender presentation did not match her official identification<sup>194</sup>—a common situation for young trans\* folks.<sup>195</sup> Additionally, reports of CeCe’s murder in other news venues also retained incorrect information.<sup>196</sup>

<sup>188</sup> GOOGLE, <https://www.google.com/#q=oddly+dressed+body+found+in+pond> (last visited Apr. 6, 2015) (search “oddly dressed body found in pond”). As of April 2015, the phrase “oddly dressed man” can be found in the cached page snippet when running a Google search using the phrase “oddly dressed body found in pond.” *Id.*

<sup>189</sup> John Caniglia, *Brutal Slaying Marks the End of Cleveland’s Fight for Acceptance*, CLEVELAND.COM (Apr. 30, 2013), [http://www.cleveland.com/metro/index.ssf/2013/04/brutal\\_slaying\\_marks\\_the\\_end\\_o.html](http://www.cleveland.com/metro/index.ssf/2013/04/brutal_slaying_marks_the_end_o.html).

<sup>190</sup> *See id.*

<sup>191</sup> *Compare id.* (using victim’s mugshot), with Sandeen, *supra* note 185 (using photograph of victim obtained from social media).

<sup>192</sup> *See* Caniglia, *supra* note 189. For example, one mischaracterized encounter involved a run-in CeCe reportedly had on public transportation where she sprayed mace in a man’s face, *id.*, which some regarded as an act of self-defense. *See* Lou Chibbaro Jr., *Activists Condemn Media Coverage of Ohio Murder*, WASH. BLADE (May 1, 2013), <http://www.washingtonblade.com/2013/05/01/activists-condemn-media-coverage-of-ohio-trans-murder/>.

<sup>193</sup> Caniglia, *supra* note 189.

<sup>194</sup> *Id.*

<sup>195</sup> *See, e.g.*, Complaint at 2, *Culpepper v. Shwedo*, No. 3:14-cv-03504-CMC (D.S.C. Sept. 2, 2014), 2014 WL 4354629.

<sup>196</sup> *See* Tina Kaufmann, *Olmsted Township Police ID Man Dead in Pond, Tied to Concrete Block/Steel Pipe as Carl Acoff Jr.*, NEWSNET5 CLEVELAND (Apr. 29, 2013), <http://www.newsnet>

In response to the persistent misgendering, misnaming, and criminalization of the victim, GLAAD (formerly the Gay and Lesbian Alliance Against Defamation) released a statement that addressed what it perceived to be “anti-transgender” coverage of Cemia “CeCe” Dove’s murder.<sup>197</sup>

Points that were noted in the GLAAD statement, in trans\* and gay blogs, and more knowledgeable media sources include the fact that media coverage continued to use the wrong name when referring to the victim even when it became clear that Cemia was her preferred name.<sup>198</sup> She was referred to as “he” in the initial *Plain Dealer* coverage, and while later revisions reverted to gender neutral language, in one instance her body was referred to as “it”—a move that dismayed some trans\* bloggers.<sup>199</sup> Also, the *Plain Dealer* coverage maintained its description of what CeCe was wearing when she was found, an immaterial detail that remained in the story as a sensational “news bite,” calculated to draw readers by its characterization of the victim as deviant.<sup>200</sup> Further, the GLAAD statement argued that the inclusion of information about CeCe’s run-ins with the law were completely irrelevant and were not contextualized.<sup>201</sup> A more accurate news report would include information that explains how trans\* folks of color often have little agency in their dealings with law enforcement, such as the aforementioned example which illustrates the challenges in obtaining legal identification that matches their gender presentation. And finally, as the Director of News and Field Media at GLAAD notes, “[h]er murder did not ‘end her fight for acceptance,’ it ended her life. Period.”<sup>202</sup>

When covering stories where the victim of violence is a socioeconomically disadvantaged trans\* person of color, media

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5.com/news/local-news/oh-cuyahoga/olmsted-township-police-id-man-dead-in-pond-tied-to-concrete-blocksteel-pipe-as-carl-acoff-jr; see also *Man Found in Olmsted Township Pond Has Criminal History*, TUCSON NEWS NOW (Apr. 29, 2013), <http://www.tucsonnewsnow.com/story/22106038/man-found-in-olmsted-township-pond-has-criminal-history> (“Olmsted Township Police have identified the body of a man found in a McKenzie Road retention pond on April 17 . . . [as] Carl Edward Acoff, Jr., 20 of Cleveland . . .”).

<sup>197</sup> McQuade, *supra* note 186.

<sup>198</sup> See, e.g., Chibbaro Jr., *supra* note 192; *Cleveland LGBT Group Delivers Letter to Plain Dealer*, TRANSGRIOT (Nov. 6, 2013), <http://transgriot.blogspot.com/2013/11/cleveland-lgbt-group-p-delivers-letter-to.html>; McQuade, *supra* note 186.

<sup>199</sup> Laurel Ramseyer, *Cleveland Plain Dealer Dehumanizes Murdered Transgender Woman*, PAM’S HOUSE BLEND (Apr. 30, 2013), <http://pamshouseblend.firedoglake.com/2013/04/30/cleveland-plain-dealer-dehumanizes-murdered-transgender-woman/>.

<sup>200</sup> See *id.*

<sup>201</sup> McQuade, *supra* note 186.

<sup>202</sup> *Id.*

reporting generally does not allow for the fact that the victim might not have been able to afford to change their name, to acquire any type of gender affirming medical care, and that there might be a lack of understanding of trans\* issues among their family and friends.<sup>203</sup> As the director of news and field media at GLAAD observes:

The truth is, when someone like Cemila appears to identify as female sometimes and male other times, it's because it's still socially unacceptable (and often dangerous) to be transgender. The fact that some people in Acoff's life didn't know she sometimes identified as female, and the fact that her legal identification might not have reflected her gender identity, doesn't change the fact that she was a transgender woman.<sup>204</sup>

We have used the media coverage of Cemila "CeCe" Dove's murder in order to demonstrate the particular ways in which trans\* individuals and their lives are often misunderstood and misrepresented in the media. When news reports of trans\* persons use inappropriate pronouns, incorrect names, and employ a deviance frame<sup>205</sup> in order to describe trans\* folk, negative stereotypes and transphobia are perpetuated and trans\* persons

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<sup>203</sup> Here, we cite two recent examples of the chasm of understanding between some trans\* folks and their families. In the first case, when Jennifer Gable died suddenly in October 2014, her friends were shocked and saddened to see that Jennifer's family had effectively erased her trans\* identity. Mitch Kellaway, *Outrage After Idaho Trans Woman Buried 'As a Man'*, ADVOCATE.COM (Nov. 24, 2014), <http://www.advocate.com/politics/transgender/2014/11/24/outrage-after-idaho-trans-woman-buried-man>. Jennifer's hair was cut in a masculine fashion and she was dressed in a suit as she lay in the casket. *Id.* The *Advocate* report notes that according to the *Miami Herald*, the obituary "explicitly referred to her as a man and by her male birth name, despite the fact that she publicly identified as a woman, and legally changed her name long before her death. The obituary was apparently paid for and possibly written by Gable's father." *Id.* Another recent controversial case of misunderstanding resulted in the tragic suicide of seventeen-year-old Leelah Alcorn. Ashley Fantz, *An Ohio Transgender Teen's Suicide, a Mother's Anguish*, CNN (Jan. 4, 2015), [http://www.cnn.com/2015/01/04/us/ohio-transgender-teen-suicide/index.html?hpt=hp\\_t2](http://www.cnn.com/2015/01/04/us/ohio-transgender-teen-suicide/index.html?hpt=hp_t2). A CNN news report states that although Leelah attempted to come out to her parents as transgender, her gender identity was minimized. *Id.* An excerpt of Leelah's suicide note reads:

After 10 years of confusion I finally understood who I was. I immediately told my mom, and she reacted extremely negatively, telling me that it was a phase, that I would never truly be a girl, that God doesn't make mistakes, that I am wrong. If you are reading this, parents, please don't tell this to your kids. . . . Even if you are Christian or are against transgender people don't ever say that to someone, especially your kid. That won't do anything but make them hate them self. That's exactly what it did to me.

*Id.*

<sup>204</sup> Ramseyer, *supra* note 199. Acoff is Cemila's legal last name, though she utilized Dove as her last name. Jessica Dabrowski, *Bond Set in Case of Body Found in Pond*, FOX 8 CLEVELAND (May 10, 2013), <http://fox8.com/2013/05/10/bond-set-for-man-eyed-in-pond-death/>.

<sup>205</sup> See, e.g., Caniglia, *supra* note 189.

remain at risk of violence.

*D. Dismantling the Trans\* Panic Defense Strategy*

In August 2013, the House of Delegates of the American Bar Association (ABA) passed a resolution that detailed its recommendations for combating the discriminatory effects of gay panic and trans\* panic defenses.<sup>206</sup> Its three major recommendations were:

First, at the request of any party, courts should provide jury instructions advising juries to make their decisions without improper bias or prejudice. Second, legislatures should specify that neither non-violent sexual advances nor the discovery of a person's gender identity can be adequate provocation for murder. Third, state and local governments should proactively educate courts, prosecutors, defense counsel, and the public about gay and trans panic defenses and the concrete harms they perpetuate against the LGBT community.<sup>207</sup>

The ABA also noted that although some courts and legislatures have already begun to curtail the use of these defenses, the fact that some defendants have successfully utilized these defenses in recent memory is problematic.<sup>208</sup>

The ABA's report definitively states: "Successful gay and trans panic defenses constitute a miscarriage of justice."<sup>209</sup> The ABA argues that the harm of being assaulted or murdered is obvious, but is compounded by the fact that at trial the victim is then blamed for their victimization based on their sexual orientation or gender identity.<sup>210</sup> The ABA argues that this gives the impression that LGBTQ lives are worth less than other lives, that their victimization will not be taken seriously, and perhaps can even encourage anti-LGBTQ violence by sending these messages, as well as promulgating antigay and anti-trans\* sentiments and stereotypes.<sup>211</sup> Finally, the ABA notes that mitigation due to gay or trans\* panic is inconsistent with state and federal laws that treat

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<sup>206</sup> AM. BAR ASS'N, RESOLUTION 113A AND REPORT 1 (2013), *available at* <http://lgbtbar.org/wp-content/uploads/2014/02/Gay-and-Trans-Panic-Defenses-Resolution.pdf>.

<sup>207</sup> *Id.* at 2.

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> *Id.*

<sup>211</sup> *Id.*

anti-LGBTQ crimes as aggravated offenses.<sup>212</sup> Following these justifications for its recommendations, the ABA details its legal reasoning regarding diminished capacity, provocation, and self-defense claims, before making the concrete suggestions mentioned above, and includes model language for these changes.<sup>213</sup>

Some of these recommendations have already been addressed by various courts and state legislatures. For example, the Gwen Araujo Justice for Victims Act<sup>214</sup> was signed into law by California Governor Schwarzenegger on September 28, 2006,<sup>215</sup> and the Transgender Law Center describes it as the nation's first bill addressing the use of gay and trans\* panic strategies in the courtroom.<sup>216</sup> Where the 2006 bill proactively *allows* "a party to a criminal trial or proceeding to request that the court instruct jurors not to allow bias based on sexual orientation, gender identity or other protected bases to influence their decision,"<sup>217</sup> in 2014, California moved from request to prohibition with Assembly Bill 2501, which outlaws the use of gay panic and trans\* panic defense strategies.<sup>218</sup> The amended text of this bill reads as follows and could provide a useful template for other states wishing to follow suit:

(1) For purposes of determining sudden quarrel or heat of passion pursuant to subdivision (a), the provocation was not objectively reasonable if it resulted from the discovery of, knowledge about, or potential disclosure of the victim's actual or perceived gender, gender identity, gender expression, or sexual orientation, including under circumstances in which the victim made an unwanted nonforcible romantic or sexual advance towards the defendant, or if the defendant and victim dated or had a romantic or sexual relationship. Nothing in this section shall preclude the jury from considering all relevant facts to

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<sup>212</sup> *Id.* at 4.

<sup>213</sup> *Id.* at 6–9, 13–14.

<sup>214</sup> Gwen Araujo Justice for Victims Act, ch. 550, 2006 Cal. Stat. 4617 (codified at CAL. PENAL CODE § 1127h (West 2015)); see *AB 1160: Gwen Araujo Justice for Victims Act*, EQUALITY CAL. (Apr. 25, 2008), <http://www.eqca.org/site/apps/nlnet/content2.aspx?c=kuLRJ9MRKrh&b=4025853&ct=5196353>.

<sup>215</sup> *AB 1160: Gwen Araujo Justice for Victims Act*, *supra* note 214.

<sup>216</sup> See *Gwen Araujo and the Justice for Victims Act*, TRANSGENDER L. CENTER, <http://transgenderlawcenter.org/archives/339> (last visited Apr. 6, 2015).

<sup>217</sup> *AB 1160 Fact Sheet*, EQUALITY CAL. 2, [http://www.eqca.org/atf/cf/%7B34F258B3-8482-4943-91CB-08C4B0246A88%7D/AB%201160%20FACT%20SHEET\\_05.08.06.DOC](http://www.eqca.org/atf/cf/%7B34F258B3-8482-4943-91CB-08C4B0246A88%7D/AB%201160%20FACT%20SHEET_05.08.06.DOC) (last visited Apr. 6, 2015).

<sup>218</sup> Assemb. 2501, 2013–2014 Reg. Sess. sec. 1, § 192(f)(1) (Cal. 2014) (enacted).

determine whether the defendant was in fact provoked for purposes of establishing subjective provocation.

(2) For purposes of this subdivision, “gender” includes a person’s gender identity and gender-related appearance and behavior regardless of whether that appearance or behavior is associated with the person’s gender as determined at birth.<sup>219</sup>

While we are encouraged by changes such as these, there are critiques regarding their effectiveness or underlying assumptions. For example, legal scholars Cynthia Lee and Peter Kwan acknowledge that while legislative bans against gay and trans\* panic defenses “can serve . . . [important] expressive function[s],” they question whether legislative bans can actually combat the *bias* that motivates these crimes and is reflected by such defenses or merely make it easier for the state to incarcerate individuals.<sup>220</sup> We see parallels to such cautionary tales exemplified by the work of advocacy groups such as the Sylvia Rivera Law Project, which “works to guarantee that all people are free to self-determine their gender identity and expression, regardless of income or race, and without facing harassment, discrimination, or violence,”<sup>221</sup> but whose activism opposing the prison industrial complex focuses not only on punitive sentencing and housing but also the myth that increased criminalization (through hate crimes legislation, for example) makes LGBTQ individuals safer.<sup>222</sup>

A more encouraging sign of progress is the small but growing contingent of trans\* and gender nonconforming people who increasingly function as role models and spokespeople for the wider trans\* community. This new “face” of transgender includes fashion models Isis King,<sup>223</sup> Andreja Pejic,<sup>224</sup> Yasmine Petty,<sup>225</sup> Ines Rau,<sup>226</sup>

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<sup>219</sup> *Id.*

<sup>220</sup> Lee & Kwan, *supra* note 20, at 84.

<sup>221</sup> See *About SRLP*, SYLVIA RIVERA L. PROJECT, <http://srlp.org/about/> (last visited Apr. 6, 2015).

<sup>222</sup> See generally Sylvia Rivera Law Project, *SRLP Opposes the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act*, in *AGAINST EQUALITY: PRISONS WILL NOT PROTECT YOU 19* (Ryan Conrad ed., 2012); *SRLP on Hate Crime Laws*, SYLVIA RIVERA L. PROJECT, <http://srlp.org/action/hate-crimes/> (last visited Apr. 6, 2015).

<sup>223</sup> See Julien Sauvalle, *What’s Inside Candy Magazine’s 5th Anniversary ‘Transversal’ Issue?*, OUT (Dec. 16, 2014), <http://www.out.com/fashion/truman-says/2014/12/16/inside-candy-magazine-transversal-5th-anniversary-transversal-issue-laverne-cox-janet-mock?page=full>.

<sup>224</sup> Natalie Robehmed, *Andreja Pejic and the Rise of Transgender Models*, FORBES (Nov. 11, 2014), <http://www.forbes.com/sites/natalierobehmed/2014/11/11/andreja-pejic-and-the-rise-of-transgender-models/>.

<sup>225</sup> See Sauvalle, *supra* note 223.

<sup>226</sup> Ines Rau, *Brothers, Sisters, Sons & Daughters: Meet Ines*, WINDOW (Jan. 30, 2014), <http://www.window.com/ines-rau>.

Geena Rocero,<sup>227</sup> and Lea T,<sup>228</sup> writer Janet Mock,<sup>229</sup> filmmaker Lana Wachowski,<sup>230</sup> musicians Laura Jane Grace<sup>231</sup> and Lucas Silveira,<sup>232</sup> actresses Laverne Cox<sup>233</sup> and Candis Cayne,<sup>234</sup> writer/activist Chaz Bono,<sup>235</sup> and TV personalities B. Scott,<sup>236</sup> Carmen Carrera,<sup>237</sup> and Caitlyn Jenner.<sup>238</sup> Unfortunately, even as certain segments of the trans\* community are becoming more publicly accepted and protected, other members of the community remain at risk.<sup>239</sup> Despite the boon that this newly positive depiction signifies for trans\* activists, members of the trans\* community at large continue to face discrimination, stigma, and violence.<sup>240</sup>

#### IV. CONCLUSION: A HESITANT OPTIMISM

Contrary to our initial expectations, the trans\* panic defense as a trial strategy has been largely ineffective in securing acquittals for

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:/thewindow.barneys.com/brothers-sisters-sons-daughters-meet-ines/.

<sup>227</sup> Sauvalle, *supra* note 223.

<sup>228</sup> James Nichols, *This Transgender Model Just Made History*, HUFFINGTON POST, Nov. 7, 2014, available at 2014 WLNR 31314229; Sauvalle, *supra* note 223.

<sup>229</sup> Sauvalle, *supra* note 223.

<sup>230</sup> Cavan Sieczkowski, *Larry Wachowski Transgender: 'Matrix' Director Reveals Transition to Lana Wachowski*, HUFFPOST GAY VOICES (July 31, 2012), [http://www.huffingtonpost.com/2012/07/30/matrix-director-sex-change-larry-wachowski\\_n\\_1720944.html](http://www.huffingtonpost.com/2012/07/30/matrix-director-sex-change-larry-wachowski_n_1720944.html).

<sup>231</sup> Jon Blistein, *Watch Laura Jane Grace Explore Parenting, Relationships in Web Series*, ROLLING STONE (Nov. 25, 2014), <http://www.rollingstone.com/music/news/watch-final-episode-s-laura-jane-graces-true-trans-web-series-20141125>.

<sup>232</sup> Curtis M. Wong, *Lucas Silveira, Canadian Transgender Singer of the Clicks, Hits Brooklyn's Branded Saloon for Intimate Show*, HUFFPOST GAY VOICES (Feb. 16, 2013), [http://www.huffingtonpost.com/2013/02/16/lucas-silveira-transgender-singer-songwriter-brooklyn\\_n\\_2699347.html](http://www.huffingtonpost.com/2013/02/16/lucas-silveira-transgender-singer-songwriter-brooklyn_n_2699347.html).

<sup>233</sup> Sauvalle, *supra* note 223.

<sup>234</sup> Jase Peeples, *Candis Cayne to Guest Star on Elementary*, ADVOCATE.COM (Mar. 26, 2013), <http://www.advocate.com/politics/transgender/2013/03/26/candis-cayne-guest-star-elementary>.

<sup>235</sup> Daniel Reynolds, *Chaz Bono Talks Trans Issues on RuPaul's Drag Race*, ADVOCATE.COM (Apr. 15, 2014), <http://www.advocate.com/politics/transgender/2014/04/15/chaz-bono-talks-trans-issues-rupauls-drag-race>.

<sup>236</sup> Cavan Sieczkowski, *BET Emails About Host B. Scott Suggest Network Didn't Want Him 'Looking Like a Woman'*, HUFFINGTON POST, Jan. 9, 2014, available at 2014 WLNR 755788.

<sup>237</sup> Sauvalle, *supra* note 223.

<sup>238</sup> Ravi Somaiya, *Caitlyn Jenner, Formerly Bruce, Introduces Herself*, N.Y. TIMES, June 2, 2015, at B1.

<sup>239</sup> See generally DEAN SPADE, *NORMAL LIFE: ADMINISTRATIVE VIOLENCE, CRITICAL TRANS POLITICS AND THE LIMITS OF LAW* (2011); Morgan Bassichis et al., *Building an Abolitionist Trans and Queer Movement with Everything We've Got*, in THE TRANSGENDER STUDIES READER 2, at 653 (Susan Stryker & Aren Z. Aizura eds., 2013); Richard M. Juang, *Transgendering the Politics of Recognition*, in THE TRANSGENDER STUDIES READER 706 (Susan Stryker & Stephen Whittle eds., 2006).

<sup>240</sup> See Phyllis Randolph Frye, *Facing Discrimination, Organizing for Freedom: The Transgender Community*, in CREATING CHANGE: SEXUALITY, PUBLIC POLICY, AND CIVIL RIGHTS 451, 453–54 (John D'Emilio et al. eds., 2000); Lombardi et al., *supra* note 15, at 91.



perpetrators accused of murdering transgender and gender nonconforming people. However, presenting such a defense has, in some instances, resulted in convictions on lesser charges or reduced sentences and, in very rare cases, has led to a determination that the defendant was not guilty.<sup>241</sup> Because some judges and juries have been sympathetic to claims of transgender “deception,” victim precipitation, and provocation, and because “[s]uccessful gay and trans panic defenses” have been seen as constituting “a miscarriage of justice,”<sup>242</sup> the ABA has recommended that gay and trans\* panic defenses be combated in the courtroom<sup>243</sup> and California has enacted legislation that specifically bans gay and trans\* panic defense strategies from courtrooms in that state.<sup>244</sup>

The cases discussed in this article represent those few that were investigated, charged, and ended up in court; however, it is not difficult to find media reports of trans\* persons whose murders were not taken seriously because they were assumed to be “vagrants” or “prostitutes.”<sup>245</sup> A full understanding of trans\* harm is suppressed due to instances such as these and others where the victim was devalued, their victimization was seen as deserved, or in cases where prosecutors chose not to charge because they did not feel they could secure a conviction when the victim would be so feared or despised by most juries. Unfortunately, we cannot be sure how often discretionary decisions such as these happen with homicide or with other forms of victimization. Based on existing court narratives and media coverage of violence against transgender people, we propose that there may in fact be a substantial amount of downstream filtering that presents us with an inaccurate picture of the full effect of trans\* panic narratives as they relate to the behavior of crimino-legal system actors. While the availability of the trans\* panic defense presents possibilities for miscarriages of justice, so too do the transphobic values that underlie the defense.

Furthermore, we see connections to concerns within other

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<sup>241</sup> See *supra* Table 1. For instance, Eric Carolina, the man who allegedly stabbed Jamaica Green twenty-six times, was found not guilty. Hernandez, *supra* note 77, at 36.

<sup>242</sup> AM. BAR ASS'N, *supra* note 206, at 2.

<sup>243</sup> *Id.*

<sup>244</sup> Parker Marie Molloy, *California Becomes First State to Ban Gay, Trans 'Panic' Defenses*, ADVOCATE.COM (Sept. 29, 2014), <http://www.advocate.com/crime/2014/09/29/california-becomes-first-state-ban-gay-trans-panic-defenses>.

<sup>245</sup> See, e.g., Lisa McCormack & Frank Wolfe, *Prostitute Slaying Is Latest in String*, WASH. TIMES, Oct. 4, 1989, at B1; see also Josh Kleinbaum, *Victim of Beating Called Transvestite Prostitute*, DAILY NEWS (L.A.), Nov. 30, 2005, at N6 (describing the victim as a “transvestite prostitute” and noting that police did not believe the murder was a hate crime).

segments of the crimino-legal system. The normative socio-legal system currently in place in the United States offers only a dichotomous system of classification in order to group persons according to their gender identity and gender expression.<sup>246</sup> This creates an often frightening milieu where trans\* persons may fail to dichotomize. As a result, trans\* persons are often left out of official statistics,<sup>247</sup> they are vulnerable to violence and ridicule not just by members of society but by crimino-legal system actors as well,<sup>248</sup> and trans\* people who are incarcerated face dangerous (e.g., housed with the general population) and/or psychologically harmful (e.g., housed in solitary confinement for long periods of time, a practice regarded by many as torture) living circumstances.<sup>249</sup> A significant percentage of trans\* folk do not report their victimization due to difficult police-community relations<sup>250</sup> and official transphobia,

<sup>246</sup> Abigail W. Lloyd, *Defining the Human: Are Transgender People Strangers to the Law?*, 20 BERKELEY J. GENDER L. & JUST. 150, 153 n.6 (2005); see also Freya Schiwy, *Decolonization and the Question of Subjectivity: Gender, Race, and Binary Thinking*, 21 CULTURAL STUD. 271, 276 (2007) (tracing the history of binary gender classification); David Valentine, *The Categories Themselves*, 10 GLQ: J. LESBIAN & GAY STUD. 215, 216 (2004) (discussing the separation of sexuality from gender and binary gender classifications); Laurel Westbrook & Kristen Schilt, *Doing Gender, Determining Gender: Transgender People, Gender Panics, and the Maintenance of the Sex/Gender/Sexuality System*, 28 GENDER & SOC'Y 32, 33 (2014) (discussing a 1989 case in which a trans woman filed a medical malpractice suit against a Texas doctor for allegedly misdiagnosing her husband and the judge refused to recognize her status as a spouse because she was "chromosomally male").

<sup>247</sup> See GRANT ET AL., *supra* note 12, at 10; *supra* notes 13–14 and accompanying text.

<sup>248</sup> See generally AMNESTY INT'L, CRIMES OF HATE, CONSPIRACY OF SILENCE: TORTURE AND ILL-TREATMENT BASED ON SEXUAL IDENTITY (2001), available at <https://www.amnesty.org/download/Documents/120000/act400162001ar.pdf> (detailing the global ill-treatment, torture, and abuse suffered by gay, lesbian, bisexual, and trans\* individuals at the hands of agents of the state).

<sup>249</sup> See *Transsexual Prisoners*, NAT'L CENTER FOR LESBIAN RTS., <http://www.transgenderla.org/resources/prisoners.htm> (last visited Apr. 6, 2015) (explaining the negative effects of using administrative segregation to protect vulnerable trans\* individuals in prison); see also Gabriel Arkles, *Safety and Solidarity Across Gender Lines: Rethinking Segregation of Transgender People in Detention*, 18 TEMP. POL. & CIV. RTS. L. REV. 515, 538–39 (2009) (detailing the extent of sexual violence against trans\* individuals in prison and the detrimental psychological effects of solitary confinement used to prevent such violence); Anna Conley, *Torture in US Jails and Prisons: An Analysis of Solitary Confinement Under International Law*, 7 VIENNA J. ON INT'L CONST. L. 415, 442 (2013) (condemning the use of solitary confinement as a means of protection because it "effectively punishes victims"); Holly Boyer, Comment, *Home Sweet Hell: An Analysis of the Eighth Amendment's 'Cruel and Unusual Punishment' Clause as Applied to Supermax Prisons*, 32 SW. U. L. REV. 317, 332 (2003) (citing a Madrid court's finding that where prison confinement causes severe psychological harms, it should be considered a form of psychological torture).

<sup>250</sup> NAT'L COAL. OF ANTI-VIOLENCE PROGRAMS, LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER, AND HIV-AFFECTED HATE VIOLENCE IN 2013, at 36–37 (2014), available at [http://www.avp.org/storage/documents/2013\\_ncavp\\_hvreport\\_final.pdf](http://www.avp.org/storage/documents/2013_ncavp_hvreport_final.pdf). Trans\* people (across race and ethnicity) were "3.7 times more likely to experience police violence as compared to cisgender survivors and victims," and were "7 times more likely to experience physical violence when

which further obscures our estimates of how many transgender people experience violence and victimization. These crimino-legal issues exist in addition to the focus of this article: that transgender people are dehumanized by trans\* panic defenses, which allege that their bodies are so monstrous the defendant had no choice but to kill the victim.<sup>251</sup>

This article was originally (and inaccurately) subtitled *The Rise and Decline of the Trans\* Panic Defense*. Since embarking on this research project, we have discovered that most attempts to use the trans\* panic defense have been defeated in court, thus foiling our characterization of any type of heyday for this particular defense. Further, although a few perpetrators have received a reduced sentence despite the fact that they committed an act of fatal violence (e.g., William Palmer was convicted of assault and battery for killing Chanelle Pickett, Eric Carolina was found not guilty of stabbing Jamaica Green twenty-six times, and Estanislao Martinez received a sentence of four years via plea bargain for the stabbing death of Joel Robles),<sup>252</sup> it is plain that the majority of these cases have resulted in sentences that range from ten years to life, thus potentially providing a sense of justice for friends and family.<sup>253</sup> Additionally, the cases of Angie Zapata and Lateisha Green were treated as hate crimes and their killers received sentencing enhancements.<sup>254</sup>

In this way, we are thrilled to be wrong—that despite identifiable cultural narratives of deception and transphobic rhetoric, defendants who make it to trial seem to be held accountable (to

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interacting with the police compared to cisgender survivors and victims.” *Id.* at 9. Likewise, trans\* people of color were “2.7 times more likely to experience police violence . . . compared to White cisgender survivors and victims,” and were “1.5 times more likely to experience discrimination . . . compared to White cisgender survivors and victims.” *Id.*

<sup>251</sup> See Carrie L. Buist & Codie Stone, *Transgender Victims and Offenders: Failures of the United States Criminal Justice System and the Necessity of Queer Criminology*, 22 CRITICAL CRIMINOLOGY 35, 39 (2013); see also Albert Bandura et al., *Disinhibition of Aggression Through Diffusion of Responsibility and Dehumanization of Victims*, 9 J. RES. PERSONALITIES 253, 255 (1975) (explaining how murderers justify killing their victims by dehumanizing them); Em McAvan, *Rhetorics of Disgust and Indeterminacy in Transphobic Acts of Violence*, in HOMOFILES: THEORY, SEXUALITY, AND GRADUATE STUDIES 23, 26, 30–31 (Jes Battis ed., 2011) (describing how mainstream culture views the trans\* figure as assaultive and criminal by nature, thereby not deserving of protection by the law or society); John Nguyet Erni, *Legitimizing Transphobia: The Legal Disavowal of Transgender Rights in Prison*, 27 CULTURAL STUD. 136, 137–38 (2013) (discussing a U.S. court’s use of disparaging language to describe a transgender person’s body and the court’s refusal to recognize the transgender person’s right to privacy under state government employer’s job discrimination clause).

<sup>252</sup> See *supra* Table 1.

<sup>253</sup> See *supra* Tables 1–2.

<sup>254</sup> See *supra* Tables 1–2.

some extent) for their violent conduct. Indeed, the application of hate crime laws to fatal violence against trans women in the cases of Angie Zapata and Lateisha Green<sup>255</sup> signals a change in the judicial administration of these cases. However, we stand in solidarity with transgender activist organizations as we argue that while hate crimes perpetuate the worst type of “othering,”<sup>256</sup> bias crime *laws* are inadequately preventive and inordinately punitive.<sup>257</sup> As activist and scholar Eric Stanley puts it: “[H]ate crimes enhancements ignore the roots of harm, do not act as deterrents, and reproduce the force of the [prison industrial complex], which produces more, not less harm.”<sup>258</sup> Stanley further explains that although “trans/queer folks, especially those of color and/or low income, experience overwhelming amounts of personal violence that must be attended to,” the prison industrial complex offers no real remedy.<sup>259</sup> Abolitionist activists argue that institutionalized racism and heteronormative and gender normative

<sup>255</sup> We wish to reiterate information also noted earlier: although Dwight DeLee’s murder of Lateisha Green was prosecuted as a hate crime, the hate crime enhancement was vacated on appeal. *People v. DeLee*, 969 N.Y.S.2d 350, 354 (App. Div. 2013) (mem.), *aff’d as modified*, 26 N.E.3d 210 (N.Y. 2014). Because the jury did not also find DeLee guilty of simple manslaughter (without the hate crime attachment), he was released from prison in August 2013 pending a prosecutorial appeal. See *Syracuse: Hate Crime Conviction in NY Slaying Overturned*, *supra* note 92, at 5. The New York State Court of Appeals has since modified the appellate division’s holding to allow the prosecution to resubmit the crime to a new grand jury, and the district attorney’s office has indicated that it intends to retry DeLee. *People v. DeLee*, 26 N.E.3d 210, 215 (N.Y. 2014); Dowty, *supra* note 93, at A16.

<sup>256</sup> See Laura Seay & Kim Yi Dionne, *The Long and Ugly Tradition of Treating Africa as a Dirty, Diseased Place*, WASH. POST, Aug. 25, 2014, available at 2014 WLNR 23364537 (“Othering happens when an in-group . . . treat[s] other groups of people . . . as though there is something wrong with them by identifying perceived ‘flaws’ in the out-group’s appearance, practice or norms.”).

<sup>257</sup> See Sally Kohn, *Greasing the Wheel: How the Criminal Justice System Hurts Gay, Lesbian, Bisexual and Transgendered People and Why Hate Crime Laws Won’t Save Them*, 27 N.Y.U. REV. L. & SOC. CHANGE 257, 270 (2001/2002); see also Doug Meyer, *Resisting Hate Crime Discourse: Queer and Intersectional Challenges to Neoliberal Hate Crime Laws*, 22 CRITICAL CRIMINOLOGY 114, 114, 119–20 (2014) (describing how hate crime laws are merely punitive rather than preventive and therefore lack the power to protect potential future victims); Dean Spade, *Trans Law Reform Strategies, Co-Optation, and the Potential for Transformative Change*, 30 WOMEN’S RTS. L. REP. 288, 296–97 (2009) (describing the lack of trust in hate crime legislation because of its past inability to deter future violent crime against transgender people); Jordan Blair Woods & Jody L. Herman, *Anti-Transgender Hate Crime*, in THE ROUTLEDGE INTERNATIONAL HANDBOOK ON HATE CRIME 278, 284–86 (Nathan Hall et al. eds., 2015) (noting that hate crime legislation results in the endangerment of trans\* people, rather than preventing hate crimes, because such legislation reinforces discrimination).

<sup>258</sup> Eric A. Stanley, *Fugitive Flesh: Gender Self-Discrimination, Queer Abolition, and Trans Resistance*, in CAPTIVE GENDERS: TRANS EMBODIMENT AND THE PRISON INDUSTRIAL COMPLEX 1, 3 (Eric A. Stanley & Nat Smith eds., 2011).

<sup>259</sup> *Id.* at 6.

institutional structures enable and perpetuate rather than prevent violence against oppressed groups such as women, people of color, and people who identify as part of the LGBTQ community.<sup>260</sup> They see transformative and restorative justice practices as essential tools in working to dismantle the prison industrial complex and they argue that grassroots community-based activism, education, and harm reduction strategies must replace mass incarceration.<sup>261</sup>

In sum, we have observed that the trans\* panic defense is not often successful, it is actively discouraged by the ABA, and it is illegal in some jurisdictions. The cultural “norm” of transphobia seems to be weakening as out-and-proud trans\* activists become increasingly visible in a variety of media platforms. Nevertheless, the fact remains that trans\* and gender nonconforming people who cannot afford or do not want expensive medical treatments may be marginalized, misunderstood, discriminated against, socially isolated, and violently victimized. Young people, in particular, seem at risk.<sup>262</sup> A way forward may lie in improved education<sup>263</sup> and more familiarization with transgender and gender nonconforming individuals. For example, the visibility of trans\* celebrities and increased media coverage of trans\* issues such as accessibility of public accommodations<sup>264</sup> and employment discrimination rights wins<sup>265</sup> have a normalizing effect.<sup>266</sup> And indeed, they should have

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<sup>260</sup> *Id.*

<sup>261</sup> See SPADE, *supra* note 239, at 14–16; THERESE QUINN & ERICA R. MEINERS, *FLAUNT IT! QUEERS ORGANIZING FOR PUBLIC EDUCATION AND JUSTICE* (2009); Bassichis et al., *supra* note 239, at 654–55, 663–65; see also PCARE, *Fighting the Prison-Industrial Complex: A Call to Communication and Cultural Studies Scholars to Change the World*, 4 COMM. & CRITICAL/CULTURAL STUD. 402, 407, 420 (2007) (arguing that there are a variety of positive alternatives to mass incarceration).

<sup>262</sup> Transgender and gender nonconforming youth have been found to experience higher rates of victimization, particularly in school settings, than other demographics of young people, including their lesbian, gay, and bisexual peers. See GRANT ET AL., *supra* note 12, at 82. See generally EMILY A. GREYAK ET AL., *HARSH REALITIES: THE EXPERIENCES OF TRANSGENDER YOUTH IN OUR NATION’S SCHOOLS* (2009), available at <http://www.glsen.org/site/s/default/files/Harsh%20Realities.pdf>.

<sup>263</sup> A number of books for young people about trans\* issues have been published in recent years. These books are not specifically targeted towards trans\* kids but are also aimed at a more general audience. See, e.g., B.J. Epstein, *Dreaming of Dresses: Transgender Books for Children*, HUFFPOST BOOKS (Feb. 15, 2012), [http://www.huffingtonpost.com/bj-epstein/transgender-books-for-children\\_b\\_1278473.html](http://www.huffingtonpost.com/bj-epstein/transgender-books-for-children_b_1278473.html); Tara Fowler, *Jazz Jennings Hopes to Inspire Other Transgender Kids with New Picture Book*, PEOPLE (Sept. 16, 2014), <http://www.people.com/article/jazz-jennings-picture-book-transgender-kids>; Sarah Mirk, *41 Transgender-Friendly Books for Young Kids*, BITCHMEDIA (Sept. 3, 2013), <http://bitchmagazine.org/post/41-transgender-friendly-books-for-young-kids>.

<sup>264</sup> See Kieran Nicholson, *Coy Mathis’ Family Celebrates Win for Transgender Child*, DENVER POST, June 25, 2013, at 4A.

<sup>265</sup> See Press Release, Office of Pub. Affairs, Dep’t of Justice, Attorney General Holder Directs Department to Include Gender Identity Under Sex Discrimination Employment

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such an effect—transgender lives matter.

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Claims (Dec. 18, 2014), <http://www.justice.gov/opa/pr/attorney-general-holder-directs-department-include-gender-identity-under-sex-discrimination>.

<sup>266</sup> Kim Case et al., *Transgender Across the Curriculum: A Psychology for Inclusion*, 36 TEACHING PSYCHOL. 117, 120 (2009).

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