EMBODIED TRANSIENCE:
RACIALIZED-GENDERED VIOLENCE IN THE CRIMINAL PUNISHMENT SYSTEM

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모두 사랑해요.
Introduction

Invisible Violence in Visible Times

*Trans visibility isn’t trans justice.*
– Alok Vaid-Menon¹

Shortly after arriving for a summer internship at a respectable LGBTQ advocacy non-profit in Washington, DC, one of my supervisors forwarded me a Google Alert filled with news links with headlines of yet another transgender homicide case. At a different internship site, I wouldn’t have noticed. But the prospect of working with two young, successful trans² professionals promised a sense of purpose during a time of personal and political uncertainty. Still, the emblems of trans visibility inundated my summer only exacerbated my uneasiness for the condition of trans people of color. During the course of my summer at the office, I helped record data for 7 trans homicides,³ all people of color. I witnessed the devastating aftermath of the 49 lives stolen, all Latinx and Black, from the June 12 mass shooting at Pulse, a queer night club in Orlando that was hosting Latin Night. In a “Trans Justice Working Group” meeting on June 30, I discovered that the Pentagon lifted their ban on transgender people serving openly in the U.S. military. Everything culminated on July 28 when I attended a viewing party for our organization’s own Sarah McBride, a young activist and rising political figure expected to deliver a speech at the Democratic National Convention in a historic gesture of transgender visibility.

¹ (Vaid-Menon 2016).
² Throughout this paper, I use “trans” as shorthand for transgender and/or gender nonconforming.
³ Amos Beede (May 29, 2016); Goddess Diamond (June 5, 2016); Deeniquia Dodds (July 14, 2016), Dee Whigham (July 23, 2016), Skye Mockabee (July 30, 2016), Erykah Tijerina (August 8, 2016), and Rae’Lynn Thomas (August 10, 2016).
In a conference room called the “Equality Forum,” staffers and interns rocked on the
ing the edges of their seats and rose to their feet when McBride appeared on the projector. In her short
speech, McBride reflected on coming out as transgender while serving as student body president
in college, interning at the White House, and marrying her husband Andy, a trans health
advocate, who tragically passed away from cancer. The candid vulnerability and fierce
conviction embedded in her voice seized hearts in the Forum and across the country. McBride
spent her last few moments on the stage endorsing Hillary Clinton’s presidential bid, for
understanding the struggles of trans people and ensuring her commitment “to pass the Equality
Act, to combat violence against transgender women of color, and to end the HIV and AIDS
epidemic once and for all.” The Forum erupted in snaps, claps, and white gay men droning
yaaaas! For queer and trans people, coverage of modern trans success is sometimes too good to
pass up.

Inspired by her delivery, yet inevitably apprehensive, I settled for quiet snapping after
McBride’s endorsement of Clinton. Stunned in silence, sandwiched between two white gays, I
also did not want to raise suspicion. Internally though, I had one burning question: WHY? A long
summer within the non-profit industrial complex⁴ confirmed and dispelled many of my own
suspicions, ultimately aggravating my skepticism. Between two apparatuses of State violence
that encourage the surveillance, policing, caging, and social liquidation of racial Others, it is
ominous and reasonable to assume that there’s no room for coincidence (Rodríguez 2009, 25).

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⁴ Dylan Rodriguez defines the non-profit industrial complex (NPIC) as “the set of symbiotic relationships that link
together political and financial technologies of state and owning-class proctorship and surveillance over public
political intercourse, including and especially emergent progressive and leftist social movements” (Foucault 1995,
271), or more precisely, “the institutionalization of a relation of dominance” that support the US racist state (2009,
39). As King and Osayande conclude in their critique of racial hierarchies generated by the NPIC, “Philanthropy
never intends to fund revolutionary struggle that demands the just seizure of wealth, resources, and power that has
been gained by exploiting the bodies, lives, and land of people of color worldwide” (King and Osayande 2009, 88).
HRC stickers embellish laptops, water bottles, car bumpers, and every surface imaginable. Some say Hillary for President. Others are blue squares with yellow equality signs. Most people in my own communities from Metro Detroit to Boston resist denouncing the Democratic Party or large gay rights organizations. This is understandable, since generally they impress harmless notions of progress, equality, and inclusion. As a result, enthusiasm dominates criticism. In this context, everything short of praise is boring, sexist, and backwards. Who wouldn’t support the partnership of a progressive, accomplished female president and a young, bright trans woman with a strong record of activism and advocacy?

The Democratic Party and dominant gay rights organizations demonstrate a long history of discrimination against transgender people (Bevensee 2014, 101; Villarreal 2015; Roberts 2007, 2013). Despite the documented projects of violence against trans people as advanced by seemingly progressive institutions, including supporting Republican candidates, the rhetoric of “tough on crime” and racialized “moral panics” (Gilmore 2007, 88, 90), Clinton and McBride inspired hope for social justice advocates of all ages through a seductive language of human rights. During her speech, I could not help but to think of other visible trans people like Janet Mock, Laverne Cox,⁵ Jen Richards, and Caitlyn Jenner. On one hand, in my experience, the promising achievements of individual trans people, especially as they are cherry-picked, whitewashed, and sensationalized through the media, usually conjure ambiguous affects that coalesce in an incoherent pool of enthusiasm, pride, alienation, apprehension, and fear. That is to say I’m suspicious. Sometimes, on the other hand, I indulge myself with uninhibited,

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⁵ Glover suggests ways in which Cox and Mock produce a definition of “transnormativity through their appeal to respectability politics and how the perpetuation of such politics factor into the media’s focus on them at the exclusion of other transgender women of color whose narratives are significantly different” (Glover 2016, 338). This paper attempts to shine a lot on the latter group of trans women of color.
unquestioning hope in response to pluralistic trans recognition and inclusion. In these times, it’s hard not to.

But just a couple of weeks earlier, in July here in DC, I heard about the death of a 25-year-old Black trans woman named Deeniquia Dodds, known as “Dee Dee” to friends. She suffered a gunshot wound to the neck. She was found the morning of July 4 and rushed to Prince George’s Hospital, where she tragically succumbed to her injuries after 9 days on life support. Joeann Lewis, the aunt who raised Dodds, described her as a beautiful person who loved to make others laugh and smile. Lewis painfully admitted to NBC 4, “Whoever did it, I hope that justice be done to them” (Wright and Swalec 2016). To the relief of Dodds’ loved ones, 22-year old Shareem Hall and 26-year old Jalonte Little were both charged with first degree felony murder while armed in September. Though Dodds was the 15th trans person murdered in 2016, a chilling testament to a growing pattern of violence against trans women of color, Hall and Little would not face enhanced penalty from hate crime charges. The failure to impose enhanced sentences for the murderers of our community members certainly inspires pain, anguish, and outrage among those committed to social justice. But since when did punishing the killers of our loved ones come to mean doing them justice in the world? Moreover, why? Why does it seem that violence grows in direct proportion to visibility?

Susan Stryker (1998) attributes the recent rise in visibility to the global, grass-roots political mobilization of trans people in the 1990s, noting that they still confront everyday forms of “violence, abjection, and marginalization that seem largely invisible” (147). Of particular interest is the persistence of transmisogyny, a practice that projects antipathy specifically against purportedly male bodies and trans women (Serano 2013, 226). Prominent trans individuals

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6 The motive was likely robbery and not anti-transgender bias, according to Interim Police Chief Peter Newsham (Bensen and Swalec 2016).
certainly pave the way for heightened visibility and social inclusion. Less supported, however, are reminders of quotidian violence against transgender people and gender nonconforming people. I have increasingly come to notice even among trans people that the comfortable security of a few implies the chronic vulnerability of others, that stories of marginalized individuals prevailing through exceptional work leave those of mass struggle in the shadows, erased and forgotten. While trans activists have helped the Obama Administration advance federal guidelines and policies intended to protect transgender rights in the realms of employment, documentation, and school bathroom access (Hudson 2014; Office of the Spokesman 2010; Office of the Press Secretary 2016), violent crimes against trans people are thought to be rising. It’s questionable whether current interventions aimed at supporting transgender people are actually helping. A recent survey of 27,715 trans respondents revealed a 15% unemployment rate among trans people, three times higher than the unemployment rate in the U.S. population at the time of the survey (James et al. 2016, 3). It’s no wonder that initiatives like the California Transgender Workplace Project emerged to help trans people find and keep jobs (Orlov 2016). Yet simply having a job doesn’t save the lives of Black trans women (Talusan 2016). It didn’t for Deeniquia.

Not all LGBTQ activists, or even transgender activists, share the same goals or will treat the same issue with the same degree of urgency. Disagreement will always exist regarding priorities for the LGBTQ movement, especially along gender and race divisions. Even when agreement occurs, we have situations where a 25-year old white trans woman’s career soars in the wake of a 25-year old Black trans woman’s death. We need to set aside our desires for inclusion and visibility and practice vigilance when it comes to life and death distributions. The 111 documented murders of transgender and gender nonconforming people from 2010 to 2016
alone, the vast majority of which targeted Black trans women and femmes (Talusan 2016), must be reason alone for us to demand: *WHY?*

The phrase “violence against transgender women of color” is on the verge of becoming a set of hollow words, invoked only as lip service to denounce a universalized social disease of transphobic bigotry. To merely acknowledge its evil without attacking its foundation is to participate in it. How should we address McBride and Clinton’s televised ambitions to “combat violence against transgender women of color… once and for all”? When cameras shoot those we celebrate, and guns shoot those we mourn, behind which do we find ourselves standing?

Transgender are more than just trans, representing multiple subjectivities through diverse races and ethnicities, faith communities, classes, immigration statuses, abilities, family formations, upbringings, occupations, and more. Trans people of color are particularly at risk for structural violence given the effects of interlocking systems of oppression like racism, xenophobia, classism, and transphobia. As with any group, hierarchies of power along race, class, and gender exist. I write this as a gender nonconforming person of East Asian descent, an immigrant, a Canadian citizen, and a young person in the United States. My position is situated in ways that allow for insight as well as ignorance. Since I am exempt from transmisogyny and anti-Black racism, I am capable and culpable of reproducing racialized transmisogyny. I write this as someone who cares about re-centering the lives of Black trans women and trans women of color, but I recognize an incommensurability between my intentions and my impacts. Thus I do not purport to represent the truth.

My principal aim for this paper is to assess the nature, scope, antecedents, and consequences of racialized-gendered violence targeting trans people of color in the criminal punishment system. In particular, this thesis works to dislodge dominant assumptions about
crime and punishment. I critique several aspects of the criminal punishment system, including the State-sanctioned killing of trans people of color and paradoxically problematic “solutions” to social harm. Central to my approach is a desire to effectively contextualize instances of violence to resist defining trans people by the violence they experience and reducing their narratives to death in the making. To that end, I apply an intersectional framework to analyze the interacting effects of race and gender in shaping violence against trans people of color (K. W. Crenshaw 1991, 1244). As I learned during my internship at a nationally-celebrated non-profit, a strategy of “single-issue organizing” promises unsustainable, ineffective, and undesirable results unless one is at ease with a weaker movement that abandons the majority for the benefit of a few. I argue that to pursue justice is to focus on the lives, leadership, and insights of low-income trans women of color. I stand behind the notion that “when Black people get free, everybody gets free” (Garza 2014). What is more, when Black trans women get free, everybody gets free.

In order to frame this paper, I refer to a broad set of sociopolitical and neoliberal projects as constituent aspects of racialized-gendered violence, including the war on terror and the war on drugs, the proliferation of the prison industrial complex,7 and projects of gay inclusion such as marriage equality and military inclusion. To address the limitations of current strategies used to confront racialized-gendered violence, this paper is indebted to the analytical insights of transfeminism, Black feminism, indigenous feminism, critical race theory, critical legal studies, queer and trans theory, as well as anti-globalization and prison abolition movements. Using diverse methodologies such as legal analysis, qualitative and quantitative research, textual

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7 The prison industrial complex (PIC) refers to the extent to which “prison building and operation began to attract vast amounts of capital -- from the construction industry to food and health care provision -- in a way that recalled the emergence of the military industrial complex… driven by ideologies of racism and the pursuit of profit” (A. Y. Davis 2003, 12, 84). As described by Sudbury, the PIC “is a symbiotic and profitable relationship between politicians, corporations, the media, and state correctional institutions that generates the racialized use of incarceration as a response to social problems rooted in the globalization of capital” (2004, 12). These definitions are by no means perfect, but lend a sense of the term more broadly.
analysis, film analysis, oral interviews, social media, and social movement history, in addition to an inductive theoretical approach, I argue that to fight for trans lives is to confront a subordinating system of sexual regulation, not to demand inclusion in that system (Spade and Willse 2000, 42).

One way that activists and organizations have aimed to address violence against transgender people in the United States is through law enforcement and hate crime laws, whose white supremacist, capitalist, and punitive logics I explore in the larger context of the criminal punishment system in Chapter 1. In Chapter 2, I analyze the phenomenology of racialized-gendered criminality and the deadly consequences for transgender people of color. To interpret its scope, I review descriptive quantitative data and existing empirical evidence. In Chapter 3, I discuss the implications of sex work. In the final chapter, I turn to the life narratives of transgender survivors to instruct the discourse on reducing violence against transgender communities. I stand in firm agreement with the many feminist scholars who have long articulated the limitations of law reform strategies (K. W. Crenshaw et al. 1996).

Inspired by Nael Bhanji’s idea of “embodied unhomeliness,” I build from postcolonial theorist Achille Mbembé’s brilliant work on necropolitics, Jasbir Puar’s insights on queer necropolitics, and what C. Riley Snorton and Jin Haritaworn have identified as trans necropolitics to argue that the criminal punishment system participates in the emergence of an

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8 Nael Bhanji analyzes notions of “home” in the context of trans theory, arguing that it has often served to reproduce white Anglo bias and the marginalization of trans people of color (Bhanji 2013).
9 A response to Michel Foucault’s concept of biopower, “that domain of life over which power has taken control,” Achillé Mbembé’s, originally contextualized within slave plantations and colonies, necropolitics can be understood as technologies of power that distribute life to other groups while subjecting others to death-worlds while conferring upon them a status of living dead (Mbembé 2003; Foucault 1997).
10 Jasbir Puar expands on Mbembé’s work to analyze the expansion of queer complicities in the death making practices of the U.S. war on terror (Haritaworn, Kuntsman, and Posocco 2014, 2; Puar 2007, 32).
11 C. Riley Snorton and Jin Haritaworn ingeniously assert in a European context that the value extracted from trans people of color deaths “vitalizes projects as diverse as inner-city gentrification, anti-immigration and anti-muslim
embodied transience, a trans ontology in which seemingly inevitable death\textsuperscript{12} defines existence in suspension between idolatry and neglect, expelled from the past and the future, that is grounded neither in living nor dying. As one example, as trans murders multiply, visibly oppressed queer and trans people routinely propose multitudes of viable strategies. Yet we haven’t been listening.\textsuperscript{13}

Transgender people of color demand transformative justice. Incorporating themes and epistemological frameworks from scholarship associated with the experiences of trans people in the prison industrial complex, this paper makes some important contributions. I critically analyze The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009 in the context of racialized-gendered violence against trans people, using quantitative and qualitative research to attack its deceptive appearance as a human rights milestone. Furthermore, I review case examples of recent trans homicides to elucidate the phenomenon of racialized-gendered violence and to demonstrate how they figure in the senselessly lethal underpinnings of the criminal punishment system. In contrast to ideological hegemonies that turn to powerful white LGBTQ organizations and individuals to lead the work of justice (Gramsci 1971), I advocate for analyses and strategies that center the lives and leadership of trans women of color for preventing and reducing harm and violence, radically redistributing resources and power, and building momentum toward collective healing and accountability. This is about solidarity, which Leslie

\textsuperscript{12} For example, the violent anti-Black institution of slavery is grounded in what Orlando Patterson calls the “social death” of the slave (Patterson 1982, 38–39).

\textsuperscript{13} As a recent example, in June 2015, Jennicet Gutiérrez, an undocumented trans Latin@ activist, interrupted Obama’s White House reception during LGBT Pride Month to demand the immediate release of incarcerated LGBT migrants and to end deportations. Obama reacted by saying “Hey, you’re in my house” and had Gutiérrez escorted off the premises (La Mackerel 2015). In her own words, Gutiérrez asserts that “while he spoke of ‘trans women of color being ‘targeted,’ his administration holds LGBTQ and trans immigrants in detention. I spoke out because our issues can no longer be ignored” (Gutiérrez 2015).
Feinberg asserts as “understanding how and why oppression exists and who profits from it” and about straight up movement work, what Marcia Ochoa defines as “work that is about meeting an urgent need in the community and doing the work not for the salary or the money or the rewards but because it’s work that needs to be done” (Rodríguez de Ruíz and Ochoa 2016, 167; Feinberg 2006a, 206). Throughout the paper, I intend to consistently “acknowledge the legacy of Black contributions to the struggle for human rights” (Garza 2014). I aim to inspire reflection for myself and for those who are not transgender women of color, to help generate possibilities for transformative responses in the face of relentless violence, and to propose a reconfiguration of trans struggle and resistance as being part of a larger constellation of anti-racist praxis.
I. Resisting Assimilation

*If anyone says, ‘I’m here for the GLBT’... No no no, motherfucker, T comes first.*
– Miss Major Griffin-Gracy\(^{14}\)

*Everybody just like, Why the fuck are we doin’ all this for? The people at them bars, especially at the Stonewall, were involved in other movements and everybody just like, Alright, we gotta do our thing. We’re gonna go for it. And when they ushered us out, it was nice, you know, when they just very nicely put you out the door. And then you’re standing across the street in Sheridan Square Park and, but why? But why? All of a sudden you just feel this...everybody’s looking at each other. But why do we have to keep on constantly putting up with this? And the nickels, the dimes, the pennies, and the quarters started flying.*
– Sylvia Rivera\(^{15}\)

Before Stonewall, there was Compton’s to set the backdrop for an endlessly complex history concerning transgender communities and local law enforcement in the United States. Many have already forgotten the riots that erupted in the Tenderloin district of San Francisco one hot night in August 1966 at a popular restaurant known as Gene Compton's Cafeteria. Lesser-known than Stonewall, this was the first recorded incident of trans resistance to police harassment in the United States (Irving 2008, 38).

The film *Screaming Queens* documents verbal testimonies from “female impersonators” and their experiences with restricted access to housing and work, family rejection, and finding work in prostitution and entertainment in the Tenderloin district (Stryker and Silverman 2005). Indicating the enmeshed nature of gender oppression and class oppression, a voiceover in Stryker’s film characterizes the district as “a marketplace of vice, degradation, and human misery,” frequented by “pimps, whores, and drag queens,” and regrettably and perhaps most devastatingly, corrupt police. Tamara Ching, a trans woman of color who grew up in the

\(^{14}\) (Ophelian 2015).
\(^{15}\) (Rivera 1989).
Tenderloin district and became a sex worker as a youth, recalls, “We sold ourselves because we needed to make a living.” As if the hopeless economic conditions for the drag queens weren’t enough, the pursuit of survival was frequently greeted by ferocious punishment, within and beyond the context of law enforcement. Intimacy was outlawed. Many girls were physically assaulted by johns shocked to discover their transgender status. Living was also outlawed, as some were killed (Dignan 2006).

The Emmy Award-winning documentary illustrates the regular abuse and incarceration of trans women by police officers for reasons as inoffensive as “same-sex touching.” Punishment at the hands of law enforcement was guaranteed to visibly gender nonconforming people. As a Tenderloin resident named Amanda St. Jaymes recalls, “If the buttons were on the wrong side, like a blouse, you could get thrown in jail.” Police capitalized on the illegality of cross-dressing to make systematic arrests of gender-variant people while subjecting them to even crueler forms of punishment in jail. As St. Jaymes describes of the trauma and humiliation of being jailed, “I refused to let them shave my head, and they put me in the hole. One girl was in there 60 days, in the hole, because she wouldn’t let them cut her hair” (Dignan 2006).

Stryker contends that the civil rights movement fueled the beginning of LGBTQ militancy, initially incarnated in 1965 by street hustlers and drag queens who formed a social and political organization called Vanguard. Vanguard comprised gay and trans youth from the Tenderloin red-light district, mostly sex workers, who regularly met at the church, organizing

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16 Between 1848 and 1900, 34 cities in 21 states passed laws against cross-dressing in addition to eleven cities before World War I which became a key tool for policing queer and trans people in the 1950s and 1960s (Sears 2013, 554).

17 I use the term “LGBTQ” to denote lesbian, gay, bisexual, transgender, and queer identity. The descriptive adjectives transgender and gender nonconforming may be shortened to “trans,” and “TWOC” refers to transgender women of color.

18 By the time Leslie Feinberg published Transgender Liberation: A Movement Whose Time Has Come, Stryker argues transgender people were rendered a “vanguard class in the old Marxist-Leninist sense” (Stryker 1998, 153).
dances, drag balls, coffeehouses, and direct-action protests (Worley 2015, 47). Persistent economic marginalization and the threat of police harassment and incarceration became central concerns of the group. By July 18, members of Vanguard organized a two-hour picket of Compton’s Cafeteria where they were joined by a group of young lesbians called the Street Orphans, with whom they would eventually merge to form the San Francisco Gay Liberation Front (49). A new night manager at the cafeteria, unsympathetic and overtly hostile to trans youth, summoned the police to remove them from the establishment. Drag queens trashed the establishment, smashed windows, wrecked a police car, and set fire to the ground (55). Violence erupted, but not without explosive resistance. When a cop assaulted a drag queen, she threw her coffee in his face and set off the riot in what Stryker calls “the first known incident of collective militant queer resistance to police harassment in U.S. history.” Despite the lack of an immediate result and the arrests that ensued, a sense of collective power emerged in the hearts of other subordinated groups as the incident provoked reactions from local gender-variant and queer people (Irving 2008, 38), and a second riot in which drag queens smashed the windows repaired from the first riot (Worley 2015, 55). Yet this was but the beginning of the relentless over-policing and punishing of transgender and gender nonconforming people, which would persist in San Francisco well after the enactment of the 1997 Equal Benefits Ordinance.

Initiated and led largely by transgender women, the Compton’s riots set the precedent for the Stonewall Uprising of June 1969 which became ubiquitous in the modern queer imaginary.

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19 “Street children” is a term commonly employed to refer to young people experiencing poverty and homelessness. A study conducted by the Williams Institute found that 40% of the homeless youth served by agencies identify as LGBTQ, suggesting that queer and trans youth are extremely overrepresented in homeless populations (Durso and Gates 2012, 3).

20 San Francisco was the first U.S. jurisdiction to enact this type of ordinance, requiring contractors to offer the same benefits to same-sex partners of employees as they offer to employees’ opposite-sex legal spouses. This ordinance also forbids discrimination in employment or against members of the public based on a list of protected categories including gender identity.
Both framed as cornerstones of queer and trans resistance against the police state, the riots at Gene Compton’s Cafeteria and at Stonewall Inn uncover the historically and deeply fraught relationship between transgender bodies and the prison industrial complex. Yet the modern iconography of queer resistance inspired by Stonewall enabled middle-class white gays and lesbians to eclipse the central role of poor gender-variant people of color against police brutality, a pattern of appropriation that continues to constitute hierarchy along race, class, and gender axes within the LGBTQ community today (Gan 2013, 292). Though Black and Latinx street queens were at the center of the Stonewall Uprising, deracialized narratives contribute to persistent erasure and misunderstanding of the legacy of violence against queer and trans people of color. Sylvia Rivera, a poor working-class Venezuelan and Puerto Rican 17-year old trans girl largely erased within the Stonewall imaginary, characterized the bar as “a white male bar for middle-class males to pick up young boys of different races” (294). A New York law at the time mandating people to wear three pieces of clothing “appropriate” to their assigned sex most viciously targeted Black and Brown street queens, not gender conforming white queers.

Yet in Roland Emmerich’s 2015 film Stonewall, the contributions of trans women of color like Sylvia Rivera, Miss Major Griffin-Gracy, and Marsha P. Johnson were arranged to support a narrative centering a young, white, cisgender male protagonist. Moreover, the film made no allusion to Rivera’s experience as a sex worker and lifelong organizer who co-founded Street Transvestite Action Revolutionaries (STAR)21 with Marsha P. Johnson and closely collaborated with the Black Panthers and the Young Lords,22 a revolutionary Puerto Rican youth

21 Rivera and Johnson fixed up the back of an abandoned trailer truck to create a refuge for young street queens. When they solicited the help of the Gay Liberation Front and the Gay Activists Alliance, they showed little interest (Gan 2013, 297).
22 Pablo Guzman, a leader of the Young Lords, acknowledged that gay liberation groups like STAR “were on the same road we were.” Like the Black Panthers, the Young Lords were hunted by COINTELPRO (Gilligan 2017).
Reduced to the first “brick thrower” in the riot,\(^{23}\) her legacy today remains one of a strategic essentialism, vulnerable to endless manipulation and cooptation by mainstream gay politics (Gan 2013, 298), yet her undervalued narrative remains indispensable for understanding trans subjectivities vis-à-vis law enforcement, especially when they implicate sex work, poverty, racism, incarceration, and colonialism, all of which Rivera survived (291). Though for many queer and trans people the violence of Compton’s and Stonewall seems to be “safely archived through memory of the past,” there are others for whom white supremacist police brutality are an “ever-present reality” (C. Gossett 2013, 581).

Che Gossett (2013) contends that what have become “deradicalized” homonormative narratives of the riots at Compton’s and Stonewall emerged from the deferred dreams of poor, urban, queer and trans people of color, particularly those who were trans women, homeless, poor, and sex workers (580–81). In locating modern claims for trans justice in a history saturated with violent subjection and revolt, the urgency for a new response is ever apparent. In the next section, I challenge current legal responses that prefer punishment over prevention at the expense of the safety, wellbeing, and lives of surviving trans people, particularly trans women of color. I aim to highlight the lived experiences of transgender people in punishment systems, focusing on transgender women of color, their complexly situated subjectivities within the prison industrial complex, and how criminalized survival reactions such as sex work become a site of both repression and resistance. I critique the legal repercussions of sex work which I argue is inextricably linked to violence against transfeminine bodies of color, exacerbated by the economic, political, and social domination of a growing prison industrial complex. In memory of

\(^{23}\) Though Gan cites of Rivera: “I have been given credit for throwing the first Molotov cocktail by many historians but I always like to correct it; I threw the second one, I did not throw the first one!” (2013, 295).
those erased, I wish to restore racial, radical historical continuity in contemporary discourse of transgender people’s experiences within criminal punishment system.

The Inefficacy of Hate Crimes Legislation

The Office of Justice Programs of the Department of Justice may award grants, in accordance with such regulations as the Attorney General may prescribe, to State, local, or tribal programs designed to combat hate crimes committed by juveniles, including programs to train local law enforcement officers in identifying, investigating, prosecuting, and preventing hate crimes.
– The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act

Despite the revolutionary precedents set by trans women of color demanding decriminalization and demilitarization from the state at Compton’s and Stonewall, increasingly commonplace impulses to assimilate among queer people endorse increased criminalization and increased punishment from the state to address injustice and social harm. Demonstrating the growing desire for what she calls “queer investments in punishment,” Lamble (2014) examines shifts in queer discourse from critiquing the carceral state to supporting punitive politics (151). Hate crime laws are one example. But the toxic consequences of hate crime laws are not always apparent given the nearly unanimous support of mainstream LGBTQ organizations such as the National Gay and Lesbian Task Force and Lambda Legal Defense, in addition to the National Association for the Advancement of Colored People and the Jewish Anti-Defamation League, as well as fierce opposition from highly conservative and homophobic organizations like Focus on the Family and Concerned Women of America. Whereas other progressive groups such as the Sylvia Rivera Law Project and the American Civil Liberties Union (ACLU) challenge hate crime

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24 (Skelton 2009, Section 4705).
25 I borrow terms similar to the “mainstream gay agenda” to indicate the “set of projects prioritized by large, national gay rights organizations” whose assimilationist politics often neglect commitments to “anti-racism, feminism, and economic redistribution” (Spade and Willse 2000, 38–39).
laws because they are instrumentalized disproportionately against poor people and people of color and criminalize free speech, conservatives like Mike Pence have argued that hate crime laws would criminalize religious beliefs. Ultimately, no studies have demonstrated that hate crime laws deter crimes (Bronski, Pellegrini, and Amico 2013). Still, assimilation strategies including advocacy for hate crime laws manifest innocuously among queer and trans people, often masked by pretenses of human rights, equality, and citizenship, while reinforcing the hegemonic ideologies\(^{26}\) that our trans revolutionary sisters so forcefully resisted on the frontlines.

Drawing from the valuable insights of Critical Legal Studies (CLS) and Critical Race Theory (CRT), I investigate the widespread acceptance of hate crime laws to address racialized and gendered violence, particularly among members of the queer and trans community. Several CLS and CRT scholars have already contributed useful analyses exposing the limitations of law to remedy systemic oppression such as racial inequality. Notably, in contrast to what he calls the “victim perspective,” Alan Freeman (1996) has discussed the law’s reliance on the “perpetrator perspective,” which generates misunderstandings about racial discrimination as criminal actions by individual perpetrators rather than as the overall life conditions of a victim class. Derrick Bell (1996) offers the principle of “interest convergence,” that Black people’s interest in racial equality will only be accommodated when it converges with white people’s interests, using the

\(^{26}\) “An ideology is hegemonic when three characteristics are present. First, those social arrangements that are in the best interests of the dominant group are presented and perceived as being in everyone’s best interests. Hence, subordinates frequently and nonconsciously accept dominant group interests as their own. Second, the ideology becomes part of everyday thought and is taken for granted as the way things are and should be. Third, by ignoring the very real contradictions in the interests of the dominant and subordinate groups, a hegemonic ideology creates a social cohesion and cooperation where otherwise there would be conflict. Thus, these pervasive ideologies obscure the true nature of interpersonal power dynamics” (Pyke 1996, 529).
example of the 1954 Supreme Court decision *Brown v. Board of Education.* Cheryl Harris (1996) has articulated a long and continuing legacy of “whiteness as property,” which remains a central part of maintaining the racial and economic subordination of Black people. Expanding on the scholarship of critical race theory, Dean Spade asserts the inefficacy of legal reform strategies such as hate crime laws in the context of queer and trans justice (Spade 2011; Spade and Willse 2000; Bassichis, Lee, and Spade 2015; Spade 2015).

In addition to established scholarship that exposes the limitations of the law, I ground my analysis of one specific piece of legislation affecting trans people, The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, in a long history of Black civil rights discourse and legal strategies. A focus on Black civil rights discourse is indispensable, especially given the erasure of racism in CLS and legal strategies, which scholars like Kimberlé Crenshaw (1996) have articulated by noting CLS’s failure to consider the hegemonic role of racism in legal thought (110). While myriad voices like Freeman’s and Spade’s provide trenchant analyses critiquing the rhetoric of anti-discrimination laws and hate crime laws, specific elements of The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act including its inherent, simultaneous and synergistic partnerships with the prison industrial complex and the military-industrial complex remain underexplored. I expand the work of these scholars by exposing specific features of this act that reproduce hegemonic ideologies rooted in the continued racial domination and economic exploitation of Black people. Needless to say, the Black and Brown trans revolutionaries of Compton’s and Stonewall would be disconcerted to learn that the

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27 “Translated from judicial activity in racial cases both before and after Brown, this principle of “interest convergence” provides: The interest of blacks in achieving racial equality will be accommodated only when it converges with the interests of whites” (D. A. Bell 1980, 523).
complex history of their communities resisting law enforcement has evolved from one of fierce resistance to one of quiet collusion.

Since the brutal October 1998 murder of Matthew Shepard, a 21-year old, gay white male student in Laramie, Wyoming, the impetus to expand hate crime legislation inclusive of sexual orientation and gender identity accelerated, becoming a national movement within and beyond the LGBTQ community. First introduced to the House of Representatives in 2001, a developing hate crimes legislation was repeatedly rejected before its success in 2009, implicating a long and difficult battle with many members of Congress who pressured for the removal of coverage for crimes targeting sexual orientation and gender identity (Lieberman 2010). Despite the historically antagonistic relationship with sexual and gender minority communities and government authorities, a 2007 Gallup poll revealed that 68% of Americans favored expanding federal hate crime laws to include crimes committed based on gender, gender identity, and sexual orientation, while only 27% of Americans opposed the idea (Newport 2007). Two years later, in October 2009, the United States Congress passed the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (HCPA) which President Barack Obama signed into law on October 28. This act essentially modified the hate crimes statute under the Civil Rights Act of 1968 which permitted federal prosecution of anyone who “willingly injures, intimidates or interferes with another person, or attempts to do so, by force because of the other person’s race, color, religion or national origin” while the victim attempts any of six federally protected activities including attending school, participating or benefiting from public services, programs, and facilities, applying for employment, serving as a juror in a state court, or voting (U.S. Congress 1968). It is worth noting that the HCPA was part of the first federal legislation to address harm against

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28 At the time under federal law and Wyoming state law, crimes committed on the basis of sexual orientation could not be prosecuted as hate crimes.
However, while hate crimes legislation enables transgender people to be explicitly recognized within the law without being categorized as mentally ill and criminally deviant, their supposed benefits remain unconvincingly inadequate in providing protections for them to fully participate in society (Spade and Willse 2000, 39–40). Others have noted that hate crime laws legally articulate the value of trans people’s lives (Snorton and Haritaworn 2013, 68).

A coalition of civil rights, religious, educational, professional, law enforcement, and civic organizations under The Leadership Conference on Civil and Human Rights, co-chaired by the Anti-Defamation League,29 the Human Rights Campaign,30 the National Council of Jewish Women, and The Leadership Conference, was largely responsible for lobbying and campaigning over a decade to introduce the long-awaited update to the 1969 federal hate crime law to include religion, national origin, gender, sexual orientation, gender identity, and disability. Shortly after the enactment of the law, Michael Lieberman, the Washington counsel for the Anti-Defamation League and chair of the Leadership Conference’s hate crime task force, expressed “the need to complement tough laws and more vigorous enforcement – which can deter and address violence motivated by bigotry – with education and training initiatives designed to reduce prejudice” (Lieberman 2010). When Lieberman, like so many political actors, refers to tough laws and vigorous enforcement, he is alluding to toxic yet unnoticed features of the HCPA that substantially increase the power of law enforcement. For example, the HCPA provides millions

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29 The ADL is a self-proclaimed “top non-governmental law enforcement training organization” that promotes Zionist values, each year training “more than 14,000 law enforcement professionals on extremism, terrorism, hate crimes and building trust with the people they serve” (Anti-Defamation League 2017).

30 The Human Rights Campaign resisted an updated version of the Employment Non-Discrimination Act (ENDA) that attempted to include trans rights in the late 90s and early 2000s (Bevensee 2014, 101). This is not unlike the time that Sylvia Rivera campaigned in 1970 to pass a New York City gay rights bill with protections for gender-variant people. As Gan observes, gay activists and politicians partnered together in a backroom deal with remove the gender protections to increase the likelihood of getting the bill passed (Gan 2013, 297–98).
of dollars of funding to local and state law enforcement personnel agencies to investigate and prosecute crimes, suggesting a greater prioritization for punishment-based law enforcement at the expense of prevention-based anti-violence projects. The price paid by those it intends to aid exceeds fiscal costs associated with investigation and prosecution. Though we have observed the carnal violence of law enforcement against the disenfranchised queer and transgender communities at Compton’s and Stonewall, we have yet to interrogate how the more recent, more covert methods of law enforcement bolster the deadly control, punishment, and exploitation of trans people.

In response to two primary arguments invoked by proponents of hate crime laws, firstly that their enhanced penalties deter biased attacks, and secondly that they bring justice to criminals, Dean Spade (2011) presents corresponding critiques: firstly, they lack a deterrent effect, and secondly, they reinforce the excessively powerful criminal punishment system (Bronski, Pellegrini, and Amico 2013; Spade 2011, 45). In addition to Spade’s analyses, I argue that two main facets of the law’s name, *The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act* (HCPA) warrant further examination. Firstly, the name of the law pays homage to two individual victims of hate crimes, whose deaths shook the mainstream public’s demand for more comprehensive protections for bias-motivated crimes. As reported by prevailing coverage of the cases, Matthew Shepard’s murderers were motivated by hatred for his sexual orientation, then unprotected by the 1968 law, and James Byrd, Jr.’s murderers were motivated by hatred for his race, protected by the 1968 law, but still inapplicable to the existing hate crime law. Secondly, the name of the law calls itself a “Prevention Act,” yet there has been little to suggest its success in preventing or reducing violent hate crimes. I explore these choices of

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31 While race was a protected class under the 1969 Federal Hate Crime Law, Byrd was not engaging in a federally-protected activity like voting or going to school, which has since been removed as a requirement.
naming to assess state complicity in the covert construction of criminalized “Others” to reinforce white supremacy, patriarchy, and a strictly enforced gender binary system.

Firstly, naming the HCPA after two separate victims reduces acts of “hate” to individualized, isolated incidents. Under this rhetoric, “wrongdoing” is perceived as an individual transgression instead of a social policy that affects entire groups and communities (K. W. Crenshaw 1996, 105). While individuals certainly enact violence toward other individuals, this framework limits our ability to identify the most aggressive perpetrators of violence while unwisely attributing violent incidents to a few “bad egg” criminals. As a result, criminal prosecutions admonish individual perpetrators as the sole culprits of social harm when in reality their actions are symptomatic of institutionalized forms of systemic racialized and gendered violence. Freeman (1996) asserts that the “perpetrator perspective” embedded in law enforcement effectively dismisses the overall life condition of the victim class by fixating on transgressive individual criminals. Hate crime laws are thus presented as legal mechanisms through which deviant, violent criminals like Aaron McKinney, Russell Henderson, Lawrence Russell Brewer, John William King, and Shawn Allan Berry32 can be brought to justice through lawful punishment. However, hate crime laws like the HCPA oversimplify how violence works while advancing the criminal punishment system as a solution (Spade 2011, 44). Consequently, the HCPA obscures a larger system of social stratification that benefits those with greater social, political, and economic capital at the great expense of those with more tenuous relationships with social power. Given its insistence on framing crime and punishment through the lens of immoral individualism, the HCPA lacks commitment to investigating who was targeted, why people are

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32 McKinney and Henderson were convicted of Shepard’s murder and sentenced to two consecutive life sentences. Brewer and King were sentenced to death for the kidnapping and murder of Byrd, Jr., while Berry was sentenced to life in prison.
targeted more than others, and what can be done to prevent violence against those people. In contrast to their prevailing representations as human rights-advancing milestones, hate crime laws that claim to protect sexual orientation and gender identity blatantly ignore and silently collude in the everyday hate and violence that queer and trans people, especially those of color, experience.

Another traditional concern of feminist critique presents the problem of racism. Portraits of individual criminals implies those of individual victims which interact to transmit racist ideology. The construction of victimhood in hate crimes related to sexual orientation and gender, as demonstrated by Matthew Shepard, reveals that “perfect plaintiffs” exist – they tend to be white, able-bodied, employed, with lawful immigration statuses (Spade 2011, 44). These schemas suggest that good and deserving citizens may be distinguished from bad and undeserving ones. Thus the coded construction of the Other in criminal prosecutions implicates race and class: it implies racialized criminals who evoke fear through violent threats to society on one hand, and de-racialized victims who elicit sympathy through their lost productive value on the other hand (Irving 2008). These constructions severely endanger poor trans women of color who are perceived in closer proximity to unproductive, racialized criminals than to industrious, law-abiding victims. Masked as a “race neutrality” of the legal system, preeminent racist ideology enables the persistent exploitation of the Black underclass under the illusion that pervasive racism, committed either on an individual or structural level, is not responsible for a group’s poor outcomes (K. W. Crenshaw 1996, 117). Though the HCPA claims to protect people of color from racist hate crimes, it seems less invested in protecting them from other traumatic consequences of racism including increased vulnerability to police brutality and incarceration: the law neglects to acknowledge or reconcile the fact that race has always played a central role in
the construction of criminality in the United States (A. Y. Davis 2003, 28). That the law’s namesake was a young, educated, white, cisgender gay man named Matthew Shepard matters. That the murderers of James Byrd Jr. and Matthew Shepard were all white men matters. Though the criminal punishment system defines its subjects according to universal norms, I argue that it effects a “suspension of law” that allows it to hierarchize and disqualify people based on race, gender, class, sexuality (Foucault 1995, 223). Victimhood and criminality remain highly racialized, yet poor legal understandings of racism make it nearly impossible to address the systematic disadvantages they produce for people of color.

A discussion of Matthew Shepard as a carefully constructed and politically mobilized victim remains unforgivably incomplete without an examination of James Byrd Jr.’s case. Criminal justice has historically enforced the excessive policing, prosecution, imprisonment, and execution of Black people. The HCPA is no exception as it reinforces the social inequalities it claims to remedy (Petersen 2011, 16). In consonance with intersectional feminism, violence against queer and trans people and violence against Black people at the hands of law enforcement are inextricably linked. This is evidenced by the disproportionate overrepresentation of Black trans women among trans murders. Furthermore, given the devastating history of violence directed at Black Americans since chattel slavery, it is no coincidence that the vast majority of hate violence continues to target Black people.

James Byrd Jr. was a Black man who was born on May 2, 1949 in Beaumont, Texas who graduated from the last segregated class at Jasper’s Rowe High School. As a father and grandfather, Byrd lived in Jasper and worked as a vacuum salesman and had two daughters named Renee and Jamie and a son named Ross. Early in the morning of June 7, 1998, Byrd was walking home when three white men in a pickup truck offered him a ride. Instead of taking him
home, his assailants took him to a remote area of town, beat him severely, chained him to the truck by his ankles, and dragged him for miles along an asphalt road before dumping his decapitated and dismembered body in front of a cemetery. He was 49 years old.

In his January 15, 2000 radio address, President Bill Clinton condemned Byrd’s animalistic murder alongside that of Matthew Shepard to “ask Congress to stop the delay and pass strong hate crimes legislation” (Clinton 2000). After one defendant was convicted and sentenced to death, Jet magazine published a photograph of a white cop hugging a Black cop in a victorious display of celebration (A. Y. Davis 2012, 57). Lawrence Russell Brewer has since been executed. Apparently, the execution of a white man for the murder of a Black man meant that the criminal punishment system had put an end to racism. If white supremacy was the disease, then the criminal punishment system was the cure: Clinton absolved himself of racism by supporting hate crimes legislation, Jet magazine absolved its white readers of racism by publishing a colorblind photo glorifying law enforcement officers, a white cop absolved himself of racism by hugging a Black cop, and the criminal punishment system absolved itself of racism by killing a white racist. Through the savior complex of the criminal punishment system, what has become understood as “justice” manifests only in the aftermath of trauma, pain, and death. As Angela Davis (2012) remarked of the Byrd lynching case, “We are in very difficult straits if the measure of equality has become the right to execute white people for killing people of color” (57). Almost 30 years after Byrd’s death, it’s no question that racism is here to stay. White supremacy is indeed the disease. But the criminal punishment system is a symptom, not the cure.

It is worth nothing that the HCPA is commonly referred to as the Matthew Shepard Act, and seldom the James Byrd Jr. Act. Assuming that the two victims commemorated were chosen to reflect two different motivations of hate crimes, the law frames itself as a necessary tool of
justice that conveniently combats homophobia and racism at once. But in simultaneously
differentiating and combining the two, the HCPA encourages a dangerous compartmentalization
of homophobia and racism, allowing it to regulate systematic harms through distinct categories
based on a victim’s identity. It ignores the complex nature of racialized homophobic violence
against queer bodies of color. It ignores the fact that this violence is part of a larger, structural,
systemic problem that harms poor people, people of color, disabled people, and queer and trans
people all at once. Purporting to “solve” a “crime” by punishing a racist or homophobic violent
act, the HCPA does nothing to eliminate systemic racism or homophobia. Treating crimes case-
by-case, the HCPA contributes to the misunderstanding of the systemic and institutional nature
of racialized gender and sexuality subordination (Spade and Willse 2000, 39). For example,
critical yet overlooked motivating factors of Shepard’s murder, including substance addiction,
sexual abuse, HIV, and economic marginalization suggest that even the law named in his honor
would not have prevented his own death. In other words, there was much more to Shepard’s
murder than simple anti-gay hatred. In contrast, Byrd’s case suggests racial bias as clear
motivation by his murderers, at least two of which were known white supremacists with racist
tattoos who supported the Ku Klux Klan. However, since the HCPA works to neutralize the
wrongdoing of perpetrators rather than to enhance the overall life situation of the victim class,
the prosecution of Byrd’s murderers accomplished little to address the condition of living as
Black in a white supremacist context (Freeman 1996, 29).

Secondly, presented as a “Prevention Act,” the naming of the HCPA obscures the
punitive logic at its core. The stated purpose of the bill reveals this quite clearly: “To authorize
appropriations for fiscal year 2010 for military activities of the Department of Defense, for
military construction, and for defense activities of the Department of Energy, to prescribe
military personnel strengths for such fiscal year, and for other purposes” (Skelton 2009).

Evidently, the bill aspires not to deter hate crimes, but to prosecute them. In addition, the “other purposes” tacked to the end of the statement are saturated with troubling stipulations that would appall the queens and trans women revolting at Compton’s or Stonewall, amplifying the power of the police and the military while pretending to protect poor trans people of color and those most subordinated by these very institutions. Given the deceptive portrayal of the HCPA, I propose two related areas that demand further examination: prevention and punishment, and profitability.

Firstly, there is little evidence to suggest the efficacy of the HPCA in preventing hate crimes. The failed attempt forwarded by Lieberman and other activists to “deter and address violence motivated by bigotry” through hate crimes legislation relies on punishment to deter hate crimes (Lieberman 2010). The misleading conflation of justice and punishment is precisely what compels many people to refer to the criminal punishment system rather than the criminal justice system. But does punishment produce justice? Forming the foundation of criminal law, the dominant theory of punishment based in retributivism asserts that deserved punishment follows moral desert (Materni 2013, 264). In this dominant view characterizing retribution as an “infringement of an infringement,” the preemptive quality of punishment assumes the form of vengeance (Hegel 1821, 127). But as Materni observes, despite its seemingly interminable function as the principle guiding our modern criminal punishment system, the dangerous argument equating justice with retribution, justice with punishment or vengeance, has repeatedly been asserted yet remains to be demonstrated (Materni 2013, 280). The State authorizes institutionalized punishment through laws like the HCPA, gratifying public demands for vengeance through punishment rather than justice through prevention. Far from achieving
equality or justice, the HCPA invests resources to secure State penal control by inflicting unpleasant consequences on offenders who have committed bad or immoral acts in what Foucault would characterize as “counter-law” (Foucault 1995, 223). This punishment yields no relief and promises no safety for those who suffer from these acts (Horwitz 1990, 23). It didn’t for James Byrd Jr. It didn’t for Matthew Shepard. Therefore, it is highly suspect for governments to enact contradicting policies emphasizing at once “prevention and partnership” and “enhanced control and expressive punishment.” Strategically, government authorities respond to injustice by highlighting the effects of crime instead of its causes (Garland 2000). Thus, the HCPA invokes criminal punishment in the name of justice without questioning the State’s complicity in manufacturing injustice in part by dictating the parameters of crime and punishment. As Angela Davis (2012) observes:

Race, class, gender are all facts that help to determine who actually gets punished and how. The point is that punishment is not a logical consequence of crime. Punishment does not always follow crime, and you might also argue that factors other than crime play a prominent role in dictating who gets punished and who does not. (68)

Taken together, this suggests the need for investigation and alternative preventative solutions that aren’t based in individualized punishment. In response to proponents of the HCPA who would agree that retribution equals justice, it would be worth looking at some HCPA data.

While Congress has mandated hate crimes data collection through the FBI’s Uniform Crime Reporting (UCR) Program since 1990 with the Hate Crime Statistics Act, this data has only recorded information about crimes that “manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity” (Langton and Planty 2011). Since then, the FBI has additionally started gathering data for bias against persons with disabilities through an amendment in the Violent Crime Control and Law Enforcement Act of 1994 (Biden 1994), bias against gender and gender identity through the HCPA (U.S. Department of Justice and Federal
Bureau of Investigation 2015d), as well as data for bias crimes directed at or committed by juveniles (U.S. Department of Justice and Federal Bureau of Investigation 2016c). In 2013, law enforcement agencies reported to the FBI UCR 7,242 victims of hate crimes. Among the 49.3% of “single-bias” hate crime incidents that were racially motivated, over half (66.5%) involved anti-Black bias. The next year, in 2014, the FBI UCR reported 6,727 victims of hate crimes. Among “single-bias” hate crime incidents, a similar 48.3% were racially-motivated, over half of which (62.7%) involved anti-Black bias. In 2015, the FBI UCR reported 7,173 victims of hate crimes. Among single-bias hate crime incidents, 59.2% were racially-motivated, over half of which (52.2%) involved anti-Black bias (United States Department of Justice 2014, 2015; U.S. Department of Justice and Federal Bureau of Investigation 2016c).

Black Americans continue to represent the most frequent victims of hate violence in the U.S., yet it appears that the HCPA has done little to prevent anti-Black bias-motivated hate crimes.

Furthermore, while there is an unusual decrease from 7,242 hate crimes to 6,727 hate crimes between 2013 and 2014, the number of victims of gender identity bias continues to rise. In 2013, the first year that law enforcement agencies officially began to collect gender and gender identity-motivated hate crimes, only 33 victims of hate crimes with gender-identity bias were reported. But in 2014, that number rose to 109, and in 2015, a shocking 122 victims of hate crimes with gender-identity bias crimes were reported (United States Department of Justice 2014, 2015; U.S. Department of Justice and Federal Bureau of Investigation 2016c).

Additionally, the number of documented hate-motivated murders jumped from 5 murders in 2013 to 18 murders in 2015 (United States Department of Justice 2014; U.S. Department of

33 The FBI UCR is by no means a perfect tracking system. In addition to notorious underreporting by victims, (especially by those who fear incriminating themselves before law enforcement such as undocumented people, trans people, and sex workers), many law enforcement agencies do not report crime data or separate hate crime data to the FBI. I expand on this in Chapter 2.
Justice and Federal Bureau of Investigation 2016c). According to a recent report released by the National Coalition of Anti-Violence Programs, an organization that tracks its own data, the 24 reports of hate violence-related homicides of LGBTQ and HIV-affected victims in 2015 indicate a 20% increase of reports compared to the previous year in 2014. Furthermore, 16 of the 24 homicides targeted transgender and gender nonconforming people, 13 of which were transgender women of color (Waters, Jindasurat, and Wolfe 2016b). Finally, from 2010 to 2016, Mic reports that at least 111 transgender and gender-nonconforming Americans were murdered due to anti-transgender bias, and 75% of them were Black trans women and Black trans femmes, revealing this group as the most violently targeted in the context of hate-related homicides (Talusan 2016).

Unlawful or not, tracked or not, incidents of violence toward people of color and trans people persist. Masquerading as a preventative measure, hate crime laws exhibit the impression that locking people up and increasing the power of law enforcement will end violent crime against disenfranchised people. In reality, they ignore root causes of widespread social harm, admonishing “bad” individuals instead of a failing system. Hate crime laws do not prevent violence, but do add punishing power to a system that is a primary perpetrator of that violence (Spade 2011, 88). The data dispute the claim that punishment deters crime. A more appropriate name for the HCPA would be the Hate Crimes Punishment Act.

Secondly, perhaps to an even greater extent than punishment, the HCPA knuckles down on profitability. Yet its economic objectives have nothing to do with compensating the families of victims or redistributing wealth to subordinated groups frequently targeted by hate crimes and other forms of discrimination. The HCPA taps into “tough on crime” mentality to capitalize on irrational fears about racialized Others and to prosecute individuals through a performance of justice. As Davis concisely noted above, punishment is not a logical consequence of crime.
Similarly, the political rhetoric of “tough on crime” was not a logical consequence of increased crime rates. Mobilized by Richard Nixon and other leaders in the Republican Party, this campaign implicitly painted urban Black people as criminals, promoted harsher punishments, and provoked the Democratic Party to install its own regime of punishment in response (Lerman 2013, 26–27). As a result, more punitive sentencing practices like “three strikes” policies and mandatory minimum sentencing emerged, claiming that crime is a consequence of individual fault rather than of an intrinsically predatory and lucrative criminal punishment system.

It is important to note which individuals are particularly subordinated under the rhetoric of personal responsibility and law and order in the criminal punishment system. Through the paradigm of color-blindness, the criminal punishment system conveniently equates crime with racialized bodies without ever talking about race or racism (Brewer and Heitzeg 2008, 633). The policies of “law and order” are primarily constructed to control and naturalize violence against Black and Brown bodies, including state-sanctioned violence (M. Escobar 2008). The “war on drugs” and the “war on terror” have particularly increased the number of people behind bars through a historical affinity with capitalism. While the majority of hate crimes offenders are white, there is a disproportionate number of people of color and people from the global South in prisons (A. Y. Davis 2012, 82). Imprisonments resulting from hate crimes prosecutions help to guarantee a perpetual source of profits from the forced labor of inmates, which is just another way to maintain racial hierarchies by justifying slavery as retribution for crime (Brewer and Heitzeg 2008, 633).

The Black Power Movement was instrumental in critiquing the white supremacist foundations of the criminal punishment system and publicly resisting its economic exploitation.

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34 The FBI UCR reports 52.4% in 2013; 52% in 2014; 48.4% in 2015.
of Black communities in the 20th century (Brewer and Heitzeg 2008, 633). The Black Panther Party’s Ten-Point Program, for example, explicitly denounces racist government, police brutality, U.S. militarism, “a racist and fascist judicial system,” and capitalism (Newton and Seale 1966). Those in the Black Power Movement knew that prisons greatly benefit from the punitive, racist underpinnings of the larger criminal punishment system, which has since grown and developed to include “progressive” and highly profitable laws like the HCPA:

Women can never be free in a country that is not free. We can never be liberated in a country where the institutions that control our lives are oppressive. We can never be free while our men are oppressed. Or while the amerikan government and amerikan capitalism remain intact (Shakur 1978, 87).

Shortly after the Stonewall Uprising, around the time that Sylvia Rivera and Marsha P. Johnson were organizing STAR, Huey P. Newton published a letter in The Black Panther newspaper extending support and attention to the women’s and gay liberation movements, subsequently mobilizing Third World Gay revolutionary groups to the Panthers Constitutional Convention at Temple University in 1970 (C. Gossett 2013, 583). At the convention, Newton delivered a speech promoting alliances with radical gay liberation groups, arguing that misogyny and homophobia were rooted in fear, which were unacceptable in a real revolutionary movement (Gilligan 2017). Rivera affectionately became known to Newton as “that queen from New York City” (R. Gossett 2012). In her own words, Sylvia told Leslie Feinberg in an interview, “I met Huey Newton at the People’s Revolutionary Convention in Philadelphia in 1971. Huey decided we were part of the revolution—that we were revolutionary people” (Feinberg 2006b). With radical reciprocity, the Black Panthers undeniably facilitated queer and trans articulation of resistance against police brutality at Stonewall, where community members threw shoes, coins, and bricks at the police while shouting “Gay power!” and “We’re the pink panthers!” (Mogul, Ritchie, and Whitlock 2011e, 45; Gan 2013, 295; R. Gossett 2012) Yet three decades later in
March 2003, in a private club called the Power Plant in the Highland Park area of Detroit, dozens of police officers handcuffed, detained, and abused hundreds of Black queer and trans people for “loitering inside a building” (Mogul, Ritchie, and Whitlock 2011e, 46–47). Unchanging police practices and changing queer attitudes expose the increasing emergence of queer investments in punishment (Lamble 2014).

While the HCPA limits imprisonment to 10 years for hate crimes that willfully cause or attempt to cause bodily injury, its punitive power is limitless when the offense involves real or attempted kidnapping, aggravated sexual abuse, or killing as the perpetrator “shall be imprisoned for any term of years or for life, fined in accordance with this title, or both” (U.S. Congress 2009, 661). It would appear then that the profits grow in direct proportion to the number of prosecutions. In this scenario, it would be undesirable for the criminal punishment system to prevent hate crimes at all. In fact, the more hate crimes committed, the better: private prisons operate on the principle of profit maximization, thus the more prisons expanded and the more people are incarcerated, the more powerful and lucrative the punishment industry becomes (A. Y. Davis 2012, 48–49). Through the unsound justice-punishment equivalence, the HCPA accumulates enormous capital gains for the criminal punishment system by holding individuals accountable for criminalized behavior at the expense of doing so for corporations (Caulfield 2001, 124). In particular, the HCPA protects and collaborates with the military, prisons, corporations, law enforcement agencies, and other powerful dominant U.S. institutions. From the time the bill was first introduced to the House in 2001 by Democratic Representative John Conyers and referred to the Subcommittee on Crime, it failed to advance after two more reintroductions. But when the legislation was introduced again in 2004 by Republican Senator Gordon Smith, notably as an amendment to the Ronald W. Reagan National Defense
Authorization Act for Fiscal Year 2005, it finally passed the Senate for the first time. Ultimately, the HCPA passed as an amendment of the National Defense Authorization Act for Fiscal Year 2010, enabling enormous expenditures for the military and law enforcement at the expense of critical survival services like food, shelter, legal assistance, and medical care. The package of reforms provided $680 billion to the US military and Section 4704 of the bill authorizes $5,000,000 to State, local, and tribal law enforcement agencies for each fiscal year 2010, 2011, and 2012 (U.S. Congress 2009, 661; Lamble 2014, 155). As Lamble (2014) incisively noted, “that the [HCPA] could be passed in the name of anti-violence work, while simultaneously facilitating the single largest appropriation of funds to the US Department of Defense in American history, was a stunning achievement” (155).

The HCPA focuses on punishing individual perpetrators while offering enormous resources and power to the prison industrial complex. Violence against Black people, queer people, and transgender people has yet to see a substantial decline despite slow shifts in legal frameworks supposedly created to help them. While assuming the appearance of a beneficial protective measure, hate crimes legislation does not prevent anti-Black and anti-transgender violence. In fact, “hate crime laws have been used disproportionately to prosecute marginalized groups, actually hurting those they were intended to help” (Kohn 2001). Yet the State is nearly impervious to being held accountable for placing profit over people. As a part of a criminal punishment system with fundamentally white supremacist and capitalist roots, the HCPA must be exposed for the violently deceptive penal accessory that it is. Moreover, members of the LGBTQ community must resist colluding in state-sanctioned anti-Black violence and take this information to sever a legacy of “interest convergence” in which we only accommodate Black people’s interest in racial equality when it converges with the interests of dominant groups (D.
Bell 1996). As we can see, through a system of punishment disguised as crime prevention, the criminal punishment system profits from the perpetuation of anti-Black and anti-LGBTQ violence. Ultimately, another appropriate name for the HCPA would be the Hate Crimes-Profiting Act.

The Myth of Matthew Shepard

The horrendous murder of Matthew Shepard in 1998 is largely invoked as the most famous anti-gay hate crime in American history, but inaccurate representations of his life and death continue to threaten widespread misunderstanding about the nature of racialized structural violence as it devastates the lives of queer and trans people. As his story goes, Shepard was a 21-year old student at the University of Wyoming who was lured from a local pub called The Fireside Lounge by two men, Aaron McKinney and Russell Henderson, on the night of October 6, 1998. He was tortured and beaten brutally and tied to a fence for almost 18 hours until a passing bicyclist noticed his unconscious body, at first mistake him for a Halloween scarecrow. Tear tracks ran down both sides of his face, covered with blood. Six days later, Shepard tragically succumbed to his head injuries at a hospital in Fort Collins, Colorado and passed away. Shepard has since become the inspiration of a meteoric gay rights discourse that precluded the development of numerous films, plays, articles, and of course, the prominent hate crimes legislation signed into law by President Barack Obama. In addition to helping to mobilize the cause of gay rights through the creation of the Matthew Shepard Foundation and the widely performed play “The Laramie Project,” Shepard’s high-profile murder precipitated national public outcry against homophobia and demands for LGBTQ justice. Yet despite the timely prosecutions of McKinney and Henderson, who were charged with first-degree murder and given two consecutive life sentences, and the passing of the HCPA, much remains disconcertingly
unresolved in the context of racialized-gender and sexuality subordination. The HCPA applies incorrect solutions for violence without fully understanding the root causes of the violence, like killing homophobic individuals for killing gay people. In this section, I apply my analyses above to the circumstances of Matthew Shepard’s murder.

While the dominant narrative of Matthew Shepard’s life and death remains unchallenged by many LGBTQ advocates and organizations, some have come forward with audacious suggestions that Shepard’s murder articulated no clear homophobic animus and instead was a robbery gone wrong (Bronski, Pellegrini, and Amico 2013). When Shepard’s murderers McKinney and Henderson appeared on ABC’s 20/20 broadcast in 2004 for the first time, they stunningly declared that the crime, contrary to popular belief, was simply not motivated by homophobic hatred. Kristen Price, McKinney’s girlfriend, who admitted to fabricating the false story of an unwanted gay sexual advance to justify McKinney’s panicked reaction that cost Shepard his life, revealed on 20/20 that McKinney's true motive was money and drugs, and stated, "I don't think it was a hate crime at all. I never did.” Additionally, Ben Fritzen, one of the Laramie Police Department’s lead investigators in the case, held that “Matthew Shepard's sexual preference or sexual orientation certainly wasn't the motive in the homicide” (“New Details Emerge in Matthew Shepard Murder” 2004). Furthermore, after investigative journalist Stephen Jimenez (2014) spent thirteen years interviewing over 100 people across twenty states in connection to the case, he published The Book of Matt: Hidden Truths About the Murder of Matthew Shepard, which resuscitates the forgotten role of crystal meth in the murder of Shepard

35 “Gay panic” originally refers to a legal defense in cases of assault and murder where the defendant claims that they attacked in a temporary state of violent insanity (Chuang and Addington 1988). The argument has since transformed to appeal to the defense of provocation following unwanted sexual advances, which I expand on in the next chapter. “Trans panic” describes a similar defense applied for cases involving transgender victims. California is the only state to officially ban the use of “gay panic” and “trans panic” defenses in court (Molloy 2014).
and other erased factors. In his radical revision of the so-called hate crime, Jimenez refutes the “anti-gay” rhetoric of dominant coverage by investigating Shepard’s use and trading of crystal meth and other hard drugs, cops directly involved with drugs, his HIV positive status, surviving rape in Morocco, a past of sex work, and a history of mental illnesses including severe depression and anxiety, all suggesting the improbability of a singular homophobic motive in the case. Wypijewski (1999) argued that the murder had to do with poverty, economic conditions, meth drug culture, and hegemonic masculinity perhaps more than it has to do with anti-gay hatred. As parents Dennis and Judy Shepard acknowledged, their son had been struggling with his own hardships from the very beginning (2014, 66–67). Why were these important details kept from the public? How did gay activists anoint Matthew Shepard the “heroic martyr” of their pressing human rights cause (Jimenez 2014, 64)?

Freeman’s (1996) notion of the “perpetrator perspective” is invaluable for understanding why dominant representations of the Matthew Shepard murder only seem to focus on the criminal actions of the perpetrators. Modifying the context of racial discrimination to one of sexual discrimination to apply this theory to anti-LGBTQ hate crimes, it becomes clear why the criminal punishment system would ignore the victim’s conditions of life, including lack of jobs or money, and treat the victim as an individual rather than as a member of an oppressed group (29). As a result, the sensationalist punishment of homophobic individuals is considered more meaningful than addressing Shepard’s own experience of structural inequities, including substance abuse, surviving sexual assault, living with HIV, battling mental illness, suicidal ideation, and participating in sex work, still typical of queer and trans youth today. Unfortunately, the doctrinal hegemony of the perpetrator form rests deeply uncontested within the mainstream gay agenda and in gay rights discourse.
Matthew Shepard’s distorted legacy was not an accident. Unblemished, white, young, five-foot-two, and attractive, Shepard became the perfect vehicle for LGBTQ activists to demand recognition through the law. But this dishonest representation promotes undeveloped ideas that expand the power of a violently racist criminal punishment system without increasing the protection of vulnerable groups. It seems that the convictions of two blameworthy perpetrators absolved an entire social phenomenon of sexual and gender-based subordination. As one Vanity Fair article published:

The mythologizing of Matthew – his overnight transformation into a national and international symbol – has left him oddly faceless. No one has seemed interested in publishing the details of his life… But pity is not understanding, and Matthew’s sorrow did not begin at the fence. (Thernstrom 1999)

Since the emergence of antidiscrimination law, from the Supreme Court’s decision in Brown v. Board of Education, it is clear that the Court still prefers to merely identify illegal violations rather than to truly remedy them (Freeman 1996, 31). In the aftermath of Matthew Shepard’s murder, and the passage of the HCPA, the continuing dismissal of the victim’s perspective only serves to minimize and normalize the complexities of structural violence. Moreover, it sets an extremely dangerous precedent for preventing violence against those who reside at the intersections of multiple subordinated groups, particularly against Black trans women.

The case of Matthew Shepard illustrates, canonically, how law enforcement magnifies its power through perceived social and political benefits. The attempt to procure justice for Matthew involved calculated moves to shift attention away from structural violence in order to focus instead on exacting revenge on his murderers. While Shepard’s case enabled a host of positive gains through national activism efforts, it is worth noting that the cultural unification around values of tolerance and liberalism are deeply structured and influenced by race, class, and
masculinity, and many were left out of these criteria of “national membership” (Petersen 2011, 44).

It’s said that hate-crime laws symbolize a society’s values. If that is true, it means gay people are recognized only in suffering, and straight people are off the hook. It means Shepard may stand for every homosexual, but McKinney and Henderson stand just for themselves. It means nothing for life and, because its only practical function is to stiffen penalties, everything for death. (Wypijewski 1999, 74)

Regardless of the true motivation, if there exists one, the dominant sensationalized coverage of the murder of Matthew Shepard, especially the indulgence of the perpetrator perspective, largely erases factors like drug use and oversimplifies the complex dynamics that often exist between victims and perpetrators (Jimenez 2014, 75). On one hand, Petersen (2011) compellingly argued that the universalized discussion of Shepard’s murder among a broad public under the rubric of liberal tolerance has been articulated through specific notions of “modernity and cultural geography, whiteness, class norms, and masculinity” often at the expense of sexuality (33). Her analysis underlines the mythology of the West as a space of idealized (hetero) masculinity and the conflict that Shepard’s whiteness and class privilege created within the “premodern” context of Laramie, Wyoming, which served to emphasize the hegemonic status of certain aspects of his masculinity (35–40). On the other hand, proponents of hate crime laws and gay advocacy organizations have dismissed such details as homophobic diminishments themselves, inadvertently positioning themselves as culprits rather than critics of persistent anti-queer and anti-trans violence. While it is understandable, certainly necessary, to mobilize against the issue of homophobia, it remains counterintuitive to conflate queer rights advocacy with projects of

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36 Petersen defines liberal tolerance as “liberalism as the political philosophy placing protections of individual rights, autonomy, and property as the primary end of politics rather than liberal as a left vs. right partisan label” as a term she uses to analyze the expression of “assumed common grounds of decency, opinion, and ethics.” She argues that liberal tolerance articulated an important but oppressive discourse of inclusion that simultaneously promoted sympathy for Matthew Shepard and disdain for his killers in the realm of affective politics (Petersen 2011, 32).
assimilation using a language of victimization. Equally, we are in dangerous territory when we choose to frame this tragedy as an expression of pure anti-gay violence warranting death sentences in the name of gay rights.

As the White House released a statement after Women’s History Month in 2015 outlining its “first-ever discussion solely focused on the challenges [the transgender women of color] community faces” on the National Transgender Day of Visibility, it predictably invoked the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act as part of the Obama Administration’s “historic steps” in service of LGBTQ people (Tchen 2015). Yet no public outcry, let alone federal government ceremony, has been offered in honor of Rita Hester, a Black transgender women from Boston who was found stabbed in the chest 20 times and subsequently passed away just over a month after the murder of Matthew Shepard on November 28, 1998. Regarding the police’s initial treatment of the case, Hester’s mother Kathleen heartbreakingly responded, “Why I think they didn’t handle it? For two reasons: One, she was gay or whatever they want to call it, and second, she was black and poor, and that’s why they didn’t care. They did not care.” Even as the case was reopened by the Boston Police in 2006, Hester’s sister, Diane, was last told by the department that “it’s a cold case at this point in time” (Allen 2015). Lacking the upper class background, education, and appearance shaped by cultural definitions of whiteness characteristic of Matthew Shepard (Petersen 2011, 40), trans women of color targeted by extreme forms of violence continue to be left behind in memory and in informing policy decisions. Thus, without assimilating to racialized and gendered ideals of sexual citizenship, trans people of color surrender to the most aggressive forms of structural violence, and survival mechanisms encouraging drug use or sex work are additionally framed as criminal, so not only does the refusal to subscribe to hegemonic ideologies of race and gender result in lethal
consequences, it furthermore punishes trans people of color even in their deaths. According to transnational conventions of citizenship, Sima Shakhsari (2013) argues for Iranian transgender refugees that queer deaths represent “a nexus of state and non-state institutions, individuals, human rights discourses, civilizational discourses, diasporas, and media” working to control queer life and death (566). Similarly for Venezuelan trans women, Marcia Ochoa (2013) describes such a phenomenon as “perverse citizenship,” in which for marginalized people what is at stake are “the rights to have rights” (443), while Aren Aizura (2006) identifies a troubling “politics of transsexual citizenship” invested in tropes based in border metaphors (290).

Hegemonic constructions of citizenship seem hinged on racialized-gendered constructions of criminality. Hester’s case is just one among countless examples of failed legal responses to violence against trans people. This is the primary difference between Matthew Shepard as a “hate crime” victim and trans people of color targeted in their everyday lives: while Shepard was represented and carefully constructed to assimilate white queer citizenship in the legal arena as capable of exacting punishment instead of being subjected to it, effectively decriminalizing homosexuality and criminalizing homophobia since the days of Compton’s, many trans people of color cannot as simply refuse the shackles of transgressive citizenship and of racialized-gendered constructions of criminality. And while the local 1998 vigil for Hester organized by her beloved Boston community has transformed into a rapidly growing Transgender Day of Remembrance (TDOR) observed around the world every November 20 to honor trans lives lost to violence,

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37 The Transgender Day of Remembrance pays tribute to lives lost due to anti-transgender hatred and prejudice, but despite the positive effects of collective healing and public denunciation, the ritual may obfuscate our understanding of violence by attributing transphobia as the definitive cause of violence rather than contextualizing individual instances (Lamble 2008, 24–25). For a deeper analysis, see Sarah Lamble’s article, “Retelling Racialized Violence, Remaking White Innocence: The Politics of Interlocking Oppressions in Transgender Day of Remembrance.”
studies suggest that trans homicides are surging, as just in 2016, 24 homicides of transgender people have been reported in the United States (Talusan 2016).

Thus, there is greater urgency and larger purpose to dispelling myths about the phenomena of homophobic and transphobic violence and murder than to instigate petty feuds with gay rights advocates who inaccurately believe that such efforts would devalue queer and trans lives. Because a hate crime can be characterized as less of an individual expression of personal prejudice, and more of a symptom of a larger systemic problem, broader remedies are needed to understand and consequently address underlying systems of oppression and bias, especially as they relate to transgender communities and particularly when they involve criminalized survival reactions such as using drugs and sex work. As scholars have critiqued and questioned of hate crime laws in America, “The truth is… we enforce hate crime laws very selectively. Do parents of LGBTQ youth who intimidate, harass and even physically abuse their children because they are queer get charged with hate crimes” (Bronski, Pellegrini, and Amico 2013)? Evidently, the mainstream deluge of well-intentioned yet misguided efforts to manufacture a perfect posterchild for gay rights have simultaneously normalized the inherent criminality and disposability of people of color. For example, another Black trans woman was murdered in Ohio months before Matthew Shepard’s murder, yet received no media attention, let alone a law named in her honor (Spade and Willse 2000, 49). Consequently, the fact that the face of Matthew Shepard, a young cis white educated and class-privileged male, has joined the ranks of western LGBTQ iconography speaks volumes to the supposed neutrality of the white male subject and larger projects of assimilation (50). Thus, the HCPA is just one example reflective of an entire system devastating communities in the name of “justice.” The myth that Matthew Shepard died as a result of homophobic hatred not only denies his complexity as a fallible human
being and as a young gay man suffering from his own traumas, but also denies our transgender family and community members’ stories the complex attention they deserve as prerequisites in order to brainstorm real violence-prevention initiatives, regardless of how uncomfortable or unpalatable the circumstances may be. Insisting that homophobic individuals, and not structural factors related to white supremacy, hegemonic masculinity, and classism, are to blame only serves to absolve the criminal punishment system for the violence that it generates. Unless we move beyond the idea that hate crimes against queer and trans people are rooted in personal ideology rather than structural determinants, the goal of violence prevention remains excruciatingly out of our reach as we contribute to an empire of “unequal regimes of living and dying” (Luibhéid 2008, 190). As I will explore next, it is inherently contradictory to rely upon the State to solve problems that it creates (Smith 2007, 49).
II. Racialized-Gendered Constructions of Criminality

*If the law is supposed to define offences, if the function of the penal apparatus is to reduce them and if the prison is the instrument of this repression, then failure has to be admitted.*

– Michel Foucault

As trans people are dying, LGBTQ organizations can’t keep their eyes off the dream of “legalizing gay” to achieve equality. Despite a documented increase in violence against trans people since the passing of the HCPA, and intellectual moves that dispute the efficacy of anti-crime and violence legislation, legal responses are still considered a key remedy to combat violence (Lamble 2008, 30). Given the unfolding of the murder of Matthew Shepard, the concept of homonormativity, “a politics that does not contest dominant heteronormative assumptions and institutions, but upholds and sustains them” (Duggan 2004, 50), is indispensable for understanding queer complicities consistent with neoliberal ideologies that encourage claims for legal protections without bothering to question how they “reproduce the white supremacy and the patriarchy of the liberal multicultural state” (Smith 2007, 52). Understanding sexuality as implicated within various and intersecting relations of power such as race, ethnicity, gender, class, citizenship, and geopolitical location, we come closer to deconstructing the processes which argue that queer and trans people of color’s deaths are of their own making, and the cultural violence that reconfigures these deaths as inevitable ends (Stanley 2011, 4; Luibhéid 2008, 170).

38 (Foucault 1995, 271).

39 There is a long, well-recorded history of critically unpacking anti-discrimination law in the context of race politics and civil rights. Various scholars connected to the Critical Legal Studies movement have offered extensive analyses regarding the limitations of the law, especially for explaining the persistence of anti-Black racism, notably in part through Antonio Gramsci’s notion of “hegemony” (Crenshaw 1996; Gramsci 1971). Black scholarship remains essential to understanding the limitations of legal reform in the context of queer and trans justice.
To attack the limbs and foundation of the criminal punishment system, I rely on insights from Critical Legal Studies and namely the idea that “legal ideas are manipulable, and that law serves to legitimate existing maldistributions of wealth and power” (Matsuda 1996, 64). This chapter attempts to reconfigure “queerness” away from reductive ideas about gay and lesbian identititarian subjectivities in order to relate it to a continuum of “anti- and non-normative forms of life and politics” (Haritaworn, Kuntsman, and Posocco 2014, 5), within specific relations of power, in hopes of contributing to a deeper understanding and analysis of queer and trans subjectivities within a context of extreme structural violence. I use the term queer also to “index the collision of difference and violence,” to “labor as the moment when bodies, non-normative sexuality/genders, and force materialize the im/possibility of subjectivity” (Stanley 2011, 3).

Understanding power less as individually enforced and more as discursively and institutionally employed, this chapter moves away from the perpetrator perspective to analyze State violence racialized-gendered constructions of criminality (Foucault 1995, 202, 283, 1978, 93). Through Gramsci’s notion of “organic intellectuals,” or those who are best equipped to relate theory to lived experiences of oppression, I draw on quantitative data in hopes of elucidating the phenomenology and ontology of racialized-gendered violence (Gramsci 1971, 135; Matsuda 1996, 63). I argue that our understanding of the epidemic of trans murders is contingent on what critical race theorist Mari Matsuda (1996) calls the essential practice of “looking to the bottom – adopting the perspective of those who have seen and felt the falsity of the liberal promise” (63).

Queer criminal archetypes refer to the persistent, deeply rooted implicit associations of sexual and gender nonconformity with notions of “danger, degeneracy, disorder, deception, disease, contagion, sexual predation, depravity, subversion, encroachment, treachery, and violence” (Mogul, Ritchie, and Whitlock 2011a, 23). These powerfully ingrained scripts
manufacture dehumanizing narratives that produce stark discrepancies between how a person will be perceived and their actual lived reality. As demonstrated by the systematic profiling of queer and trans people in the Tenderloin district described in Chapter 1, these antiquated ideas not only exacerbate existing hatred and discrimination toward queer and trans people, but they also place queer and trans people at higher risk for criminalization, regardless of whether or not they committed any crimes. The politically and culturally pervasive impulse to incriminate queer and trans people and subject them to massive levels of violence as a function of their perceived deviance, moreover as a function of the discomfort and insecurity of anti-queer/trans people, particularly in the absence of legitimate threats to their safety or security, produces disastrous and often lethal outcomes and is more often than not intimately linked with racialized, anti-Black notions of criminality. Certainly, as Angela Y. Davis (2003) concisely noted, “race has always played a central role in constructing presumptions of criminality” (28–29).

In the following sections, I investigate racialized-gendered constructions of criminality, drawing connections between the complicity of civil society and the State as they organize forms of social hegemony that impose social and legal sanctions against trans people of color (Gramsci 1971, 145). Remembering that “the process of criminalization extends far beyond processes of lawmaking, policing, court proceedings, and punishment” (Mogul, Ritchie, and Whitlock 2011c, xvii), I present this chapter in three parts: In part 1, I demonstrate a history of gay and trans panic mitigation claims as tools for normalizing anti-queer and anti-trans violence. In part 2, I present quantitative analyses related to the policing, incarceration, and killing of trans people of color. In part 3, I consider how racialized-gendered constructions of criminality produce legal, social, and material challenges for trans sex workers in the context of the LGBTQ rights movement. In any case, I argue that the phenomenon of racialized-gendered criminality subjects trans people of
color to significant overrepresentation in all aspects of the penal system (Hanssens et al. 2014, 2).

Gay Panic, Race Panic, Trans Panic

In Mills v. Shepherd the defendant told his two roommates that he had “rolled a queer” and displayed the victim’s ring, watch, and bracelet. The defendant claimed he met the victim in a gay bar where the victim offered him money to commit a homosexual act. The defendant accompanied the victim in his car to an isolated spot where the victim allegedly made a sexual advance. The defendant pushed the victim out of the car, chased him, knocked him down, kicked him, pulled his pants down to hinder pursuit, took his jewelry, left him lying near the creek in which the body was later found, and drove home in the victim’s car. Despite strong evidence that the defendant intended to prey on a gay man, he successfully raised the homosexual-advance defense at trial. The jury found him guilty of voluntary manslaughter and sentenced him to twenty years. Absent the defendant’s homosexual-advance defense, his acts would certainly have constituted murder or felony-murder.41
– Robert B. Mison

If this story, in addition to the countless similar cases, sounds eerily familiar to the murder of Matthew Shepard, it is because the “nonviolent homosexual-advance defense,” also known as the gay panic argument, offers a thinly veiled narrative dripping of prejudice that continues to stay legitimised by the law in most states that is invested in upholding hegemonic arrangements of power that protect white heterosexual masculine subjectivities. At the same time, the gay panic argument contributes to religious, political, and cultural discourses that criminalize and punish queer people in material ways, revealing the “endemic intimacy of the

40 “Rolling a queer” is a slang term that describes when a straight man acts gay in order to seduce and rob a gay victim (Mison 1992, 167).
42 “Gay panic” and ‘trans panic’ are not officially recognized criminal law defenses, but are defense strategies used to lend support to traditional criminal law defenses like temporary insanity, provocation, or self-defense” (Lee and Kwan 2014, 79–80).
link between extrajudicial and judicial punishment of homosexuality” (Sedgwick 1990, 18).

Even after the American Psychiatric Association formally declassified homosexuality as a mental disorder in 1973, and despite being outlawed in California, the gay panic defense remains extant and illustrates the intersections of psychology and law discourses in creating harmful assumptions about queer subjects (Charles 2006, 231). Tracing the historical origins of the gay panic defense offers important insights regarding the history of queer people’s interactions with the law, its administration, and its enforcement. Cynthia Lee (2003), for example, suggests that the transferal of psychiatrist Dr. Edward Kempf’s invention called “homosexual panic disorder” (HPD) to the criminal courtroom in the 1960s precipitated dangerous doctrinal developments. Several legal scholars have sharply criticized the validity of the gay panic defense, such as Robert B. Mison (1992), arguing that non-violent homosexual advance does not constitute sufficient provocation to justify killing while enabling judicial institutionalization of homophobia (133). Accordingly, he concludes that the gay panic argument reproduces, validates, and even encourages violence against gay people since it “reinforces both the notions that gay men are to be afforded less respect than heterosexual men, and that revulsion and hostility are natural reactions to homosexual behavior” (136). Others, like Joshua Dressler (1995), reject Mison’s emphasis on sexual orientation as a motivation for violent crimes and

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43 However homosexuality was replaced by the category “Sexual Orientation Disturbance” in the DSM-II (Spitzer 1981). The diagnosis of the substitution category Ego-dystonic Homosexuality was not removed until 1987 (American Psychiatric Association 1987).

44 Edward Kempf, a psychiatrist, coined the term in 1920 to describe self-identified heterosexual patients who experienced heightened anxiety in same-sex environments. Kempf suspected that these anxious responses were due to latent homosexuality. Yet none of his patients became aggressive after a homosexual advance; homosexuality is not recognized as a mental disorder neither by the American Psychiatric Association nor the American Psychological Association yet “gay panic” in courtrooms frames it as such; Kempf’s HPD patients were male and female, yet the gay panic defense is virtually exclusively employed by male defendants (C. Lee 2013, 818–19).

45 “For a defendant to receive the provocation mitigation, the jury must find that (1) the defendant was actually provoked into a heat of passion, (2) the reasonable person in the defendant’s shoes would have been so provoked, (3) the defendant did not cool off, and (4) the reasonable person in the defendant’s shoes would not have cooled off between the provocative event and the act or acts that led to the victim’s death” (C. Lee 2003, 25).
instead suggest that such an approach oversimplifies perpetrators’ violent actions. Additionally, Dressler insists that an unwanted sexual advance, not a specifically homosexual advance, constitutes a basis for justifiable indignation, and that while any resulting killing is wholly unjustifiable, significant invasions of privacy for ordinary and fallible human beings might produce out of control reactions that deserve mitigated punishment (728, 754). But what happens when the the ordinary and fallible human being holds harmful attitudes about certain groups that predispose them to commit violent acts against those individuals? How do we respond when their “out of control” reactions are not at all reflective of being ordinary and fallible, but are instead symptomatic of pervasive power arrangements that systemically reward whiteness, heterosexuality, gender conformity, masculinity, and economic power while punishing people of color, sexual and gender variance, femininity, and poorness? Why is committing murder more “reasonable” than walking away?

These are not simple questions to answer. Furthermore, considering that feminine people and women respond differently to unwanted sexual advances than men, and are subjected to far greater degrees of sexual violence, a simple alteration in legal wording from “reasonable man” to “reasonable person” does little to reduce violent acts. Mison and Dressler would agree with feminist jurisprudence that denounces the legal construct of the “reasonable man” predicking the provocation defense, criticizing how the construction of the law-abiding person has “always been latent with gender bias” while perpetuating myths about feminine irrationality (Collins 1977, 312, 319). Yet what remains to be addressed are why these gender biases, especially as they are

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46 Of the few women who kill their male partners, they often do so because of domestic violence rather than infidelity, in opposition to the 60 percent of men who kill their female partners in response to infidelity (C. Lee 2003, 7).

47 “Of course, as long as males are defendants in criminal homicide prosecutions more often than women, men are the primary beneficiaries of all criminal law defenses” (Dressler 1995, 735).
racialized and produce lethal consequences, are authorized for the typical “reasonable” person in the first place, and how the construct of the “reasonable” person enables rather than deters dangerous biases and fatal consequences that target vulnerable groups.

Nussbaum (2004) investigates interactions between emotion and the law while providing a sharp critique of the ways in which shame and disgust currently enable certain punishments through legal formulation and administration. She invokes, for example, sodomy laws that appeal to the disgust that “right-thinking people” allegedly feel at the thought of queer acts, and analyzes how disgust toward gay victims is exploited as a mitigating factor in homicide (71, 73). Nussbaum asserts that disgust, in contrast to indignation, is “based on magical thinking rather than on real danger” (102). As a result, she argues that “the unpopular become the vehicles for a contamination we all actually share. Moreover, such projections are not only irrational, they are also objectionable because they are part of the systematic subordination of those people and groups” (128–29).

The “reasonable person” construct finds many applications in different areas of the law, but we are interested in its application in regards to partial defense of provocation in the context of anti-queer and anti-trans murders. Since the “reasonable person” cannot be applied for the mentally ill, this explains in part the doctrinal shift from employing homosexual panic as an *insanity* defense to non-violent homosexual advance as a *provocation* defense48 for mitigating murder charges (Chen 2000). For example, the gay panic provocation defense was asserted on the opening day of Aaron McKinney’s trial on October 25, 1999 when public defender Jason Tangeman tried to save McKinney’s life by reducing his conviction to second-degree murder or

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48 Gay panic arguments have been employed for a few different types of defenses: mental defect defenses (such as temporary insanity or diminished capacity); provocation or “heat of passion” defenses; and self-defense defenses (C. Lee 2013, 819).
voluntary manslaughter by negating the premeditation-deliberation mens rea\(^{49}\) element required for the first-degree murder\(^{50}\) of Matthew Shepard (196–97, 201). According to the current provocation rubric, the “homosexual advance” commonly provides adequate provocation for “heat of passion” killing through a supposedly understandable loss of self-control by ordinary and presumably heterosexual actors, rather than by mentally ill defendants with latent homosexual desires, in contrast to the formerly dominant insanity defense (203). As a result, defendants like McKinney enjoy reduced convictions from murder to voluntary manslaughter by insisting on decreased moral culpability due to a reasonable loss of self-control, which then yields a partial *excuse* of such “heat of passion” killings (205). In an attempt to reconcile the two contrasting perspectives represented by Mison and Dressler, one that considers homophobia a vital contributing factor and one that doesn’t, Chen asserts that rage, not fear or terror, is the only legally recognized and criminally excusable paradigmatic emotion for “heat of passion” killing (221). Indeed, others have commented on how the term “homophobia” suggests a fearfulness of queer people when in fact the anti-queer sentiments originate more often from prejudice and other emotions like rage (C. Lee 2003, 69). Rage overwhelmingly affirms male heterosexual dominance while subordinating feminine genders and non heteronormative subjectivities, demonstrated for example by the well-known cases of husbands justifying the murders of adulterous wives (Charles 2006, 234). Subsequently, Suffredini (2001) argued that the widespread acceptance of the panic defense reaffirms compulsory heterosexuality as a form of

\(^{49}\) To constitute a crime or criminal negligence manslaughter, there must be an *actus reus* (Latin for guilty accompanied by the *mens rea* (Latin for guilty mind). The *actus reus* refers to the defendant’s acts that create a high risk of death or serious bodily injury while the *mens rea* refers to the awareness of the defendant that the risk of death or serious bodily injury is high but commits the acts anyway (Samaha 2013, 343).

\(^{50}\) McKinney’s attorneys claimed that Shepard provoked their client in a heat of passion for grabbing his crotch and trying to lick his ear. The mitigation attempt was rejected by the jury, ultimately finding McKinney guilty of felony murder. Five years after his conviction, McKinney admitted that he and his lawyers fabricated this story (C. Lee and Kwan 2014, 102)
social control. When we couple this notion with the relative lack of cases documenting heterosexual women attacking lesbian women for unwanted sexual advances, or heterosexual women harming their husbands for infidelity, we find that even in its modified terminology, the ostensibly gender-neutral construct of the “reasonable person” remains undeniably attached to heterosexual male power and other dominant relations of power:

It is “reasonable” for a man to kill his unfaithful wife when the greater community sees the physical expression of male jealousy as normal and ordinary. It is “reasonable” to beat a gay man to death for making a homosexual advance if society at large sanctions heterosexual male outrage at male homosexual behavior. It is “reasonable” to kill a Black man in self-defense if pervasive race norms stereotype Blacks as dangerous criminals. (C. Lee 2003, 5)

If it is possibly “reasonable” to express misogyny, homophobia, and anti-Black racism to such a great extent as to implicate killing, then what delineates the standard for “unreasonable” actions? Such a logic risks characterizing women, gay men, and men of color as intrinsically “unreasonable.” As long as reasonableness is legally equated with typicality, dominant perceptions of gender, heteronormativity, and masculinity win over careful deliberation and full consideration of context and power relations. The construct of “reasonableness” must be reconceptualized to neutralize widespread prejudices that make it easier for queer and trans murders to go unnoticed.

Ultimately, regardless of which theory defendants employ to rationalize the provocation defense, they universally rely on the assumption that the victim’s behavior was wrongful, egregious, and unreasonable enough to partially excuse their killing (Mison 1992, 147), while confirming Eve Sedgwick’s (1985) articulation of homophobia as an “immensely potent tool… for the manipulation of every form of power that was refracted through the gender system …of virtually every form of power” (87). Moreover, writing about two decades before the HCPA was

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enacted, Sedgwick suggested that the widespread acceptance of the defense demonstrates a uniquely public and typical hatred toward homosexuals. As she argued, “‘Race panic’ or ‘gender panic’ … is not accepted as a defense for violence against people of color or against women” (1990, 19). However, debatable about her analysis is the way in which she appeared to conflate the existence of hate crime laws for subordinated groups with more favorable power relations for those groups, or at the very least, a lesser degree of “typical hatred.” The provocation defense, since its origin, remains biased in favor of male defendants, making the notions of “race panic” and “gender panic” appear inconsequential in cases involving male victims with the same race as the perpetrator (C. Lee 2003, 7). While it is tempting to parse out the role of repressed homosexuality in cases invoking gay panic, the systemic power afforded to male defendants occurs regardless of sexual orientation, and racial dimensions certainly exist even for cases involving white defendants and victims. Though a lack of “race panic” or “gender panic” defenses may convey stronger existing protections for people of color and women, and thus a lesser need for additional protective measures, intense instances of structural violence against people of color and women clearly persist, arguably to a greater extent than violence against gay people, particularly within queer and trans communities, and particularly for those who reside at the intersections of queer, trans, and people of color subjectivities. While such patterns are harder to trace however, the lack of official “race panic” or “gender panic” legal defenses, rather than demonstrating a relative infrequency of race or gender-motivated hate crimes, may suggest the historical pervasiveness and institutionalization of racial and gender-based violence as social phenomena that are far too normalized to be mediated through the law in the same way as homophobic violence. Thus, Sedgwick does bring up a valuable aspect of the unique nature of “gay panic” since its naming power generates public consciousness and possibilities for legal
enforceability (Lamble 2008, 30). Yet this by no means indicates that “gay panic” may be analyzed as a distinctly unique phenomenon since violence against queer people, Black people, and women is inextricably linked. Within a framework of “competing marginalities,” activists and advocates fall into the trap of ignoring complex relationships between interlocking and interdependent hierarchical systems of oppression (Fellows and Razack 1998). As a result, a commitment to disrupt homophobia without attempting to change racist systems will ultimately fail to dismantle the subordination of queer people. To deracialize, decontextualize narratives of violence is to strip them of value. The 2001 murder case of Fred (F. C.) Martinez, a 16-year-old queer and trans Navajo high school student, illustrates how organizing exclusively around homophobia as the sole cause of violence against queer and trans people of color ignores the collective and symbiotic effects of race, gender, sexuality, and class hierarchies (Lamble 2008, 32). Therefore, I analyze instances of violent crimes less according to isolated notions of homophobia, anti-Black racism, and misogyny as separate categories of crime motivation, and more consistently within specific contexts and specific relations of power that give rise to structural, systemic, and everyday forms of violence (25). While Sedgwick locates homophobia as the potent tool for the manipulation of virtually every form of power, I argue that violent crimes implicate white supremacy. Contextualizing individual instances elucidates their varying magnitudes within their broader symbiotic structure.

For perpetrators, usually men, who commit racialized and gender-motivated hate crimes and conspire to receive mitigated punishment, a part of the obstacle of claiming the “gay panic” argument involves convincing the jury that some unwanted sexualized advance provoked them to

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52 Lamble discusses this case at length including Martinez’s mother Pauline Mitchell’s struggle to center her child’s Navajo identity and experiences with colonialism racism, classism alongside gender nonconformity, and sexuality (Lamble 2008, 30–34).
such an extreme degree that it temporarily offset their masculine rationality to instigate a partially justified or excused killing. This may work in favor of the defendant by reducing his punishment and limiting the parameters of his punishment and contact with other brutal effects of the prison industrial complex. But the appeal to the provocation defense relies on the jury’s affirmation of hegemonic racialized-gendered relations of power which does little to address the lived experiences and needs of those most frequently targeted by such violent acts. As a result of the “perpetrator perspective” (1996), such cases dedicate space for the defendant to cleanse the perceived pollution of his masculinity in order to avoid punitive consequences for transgressing the heterosexuality masculinity he is expected to perform, while depriving space for the silenced and erased victims who cannot speak for themselves and their conditions. When successful, this defense strategy produces frightening consequences beyond the mere promotion of negative stereotypes about gay men. It effectively cancels possibilities for preventing similar crimes in the future, focusing only on a bad individual’s actions, rather than addressing our own complicity in structures of racialized masculinity. In order to resist and attack racialized-gendered violence meaningfully, we must acknowledge and address hate crimes as systemic effects of power rather than validating manifestations of individual prejudice as unavoidable outcomes.

Another part of the defendant’s obstacle is to assert the imminent menace and deviance of the inhuman victim, in which race and gender play pivotal roles. This is again an illustration of the perpetrator perspective, a successful reconfiguration of the power dynamics rendering the aggressive defendant “reasonable” and the dead victim “unreasonable.” In the absence of the victim’s voice, the defendant possesses near complete agency over his narrative, retelling, reconfiguring, and reconstructing every detail to excuse fatal acts of violence. The defendant is free to rewrite the story with the full force of his imagination, so long as the plot capitalizes on
existing power relations that sanction violence against the victim class and secure power that purportedly belongs to the dominant group. The silenced victim is held captive by the defendant’s prescriptive representation, coercively participating in her own subordination. Stripped of consent, deprived of living, the victim becomes the receptacle for everybody’s complicity including her own, rendering everybody but herself innocent.

These asymmetrical power relations are not unique to the doctrine of provocation and emerge in multiple destructive forms, from crimes of passion to crimes of fear. Narratives of the “reasonable person” are not merely problems of heterosexual male jealousy and violence. In contrast to the doctrine of provocation, while there is no explicit reference to the “reasonable person” standard under the doctrine of self-defense, a similar qualification of “reasonability” generates complicated material consequences that contribute to interlocking systems of domination. Taking the example of the February 26, 2012 murder of Trayvon Martin, an unarmed 17-year old Black high school student who was fatally shot by a neighborhood watch volunteer named George Zimmerman in Sanford, Florida, it is worth examining how the idea of separate systems of domination and deracialized narratives of violence perpetuate ongoing systems of gendered and racialized oppression.

The aftermath of this undeniably anti-Black murder surprised few people in an openly white supremacist civil society whose police officers killed 1,152 people in 2015 alone, disproportionately targeting Black people (Sinyangwe et al. 2016). It was no surprise that Zimmerman claimed to have fired at Martin in self-defense. It was no surprise that Attorney

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53 “A defendant is justified in using a reasonable amount of force against another person if she honestly and reasonably believes that (1) she is in imminent danger or immediate danger of unlawful bodily harm from her aggressor, and (2) the use of such force is necessary to avoid the danger” (C. Lee 2003, 127). In addition to the imminence and necessity requirements, there is a requirement of proportionality in which the person who acts in self-defense must not exceed an amount of force in relation to the unlawful nondeadly or deadly threat (C. Lee 2003, 127–30).
General Eric H. Holder Jr. said that the “comprehensive examination” determined a lack of evidence for a federal hate crime prosecution (Berman and Horwitz 2015). It was no surprise that on July 13, 2013, Zimmerman was acquitted of second-degree murder and manslaughter in *Florida v. George Zimmerman*. It was no surprise that a few months later in November 2013, Zimmerman was charged with felony aggravated assault for pointing a shotgun at his girlfriend in addition to domestic violence battery and criminal mischief (Almasy 2013), or that he was charged with aggravated assault with a weapon for throwing a wine bottle at his girlfriend in January 2015 (Kennedy 2015), or that he yelled a racial slur at a waitress at a bar in November 2016 (CBS News 2016). It was no surprise to Dante Barry, Executive Director of the Million Hoodies Movement for Justice, who remarked “further proof that this system was not set up to protect Black or Brown communities” (Berman and Horwitz 2015).

The high-profile Trayvon Martin case, preceding the murders of 18-year old Michael Brown in Ferguson, Missouri, 12-year old Tamir Rice in Cleveland, Ohio, and Eric Garner in Staten Island, directly galvanized the first #BlackLivesMatter call to action and heated a nationwide discussion of racism and debate over police brutality in the United States. We can learn incredibly valuable guiding principles from the movement’s founders, Alicia Garza, Patrisse Cullors, and Opal Tometi, and their demands for policymakers and elected officials to address and combat the anti-Black racism embedded into the fabric of our nation (Waters, Jindasurat, and Wolfe 2016a, 7). As I mentioned previously in the paper, single-issue organizing cannot be trusted as a strategy for justice, and as Garza (2014) notes, “Black queer and trans

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54 Black Lives Matter is not just a call to action for addressing the extrajudicial killings of Black people by law enforcement. As Alicia Garza writes, “Black Lives Matter affirms the lives of Black queer and trans folks, disabled folks, Black-undocumented folks, folks with records, women and all Black lives along the gender spectrum. It centers those that have been marginalized within Black liberation movements. It is a tactic to (re)build the Black liberation movement” (Garza 2014).
folks bearing a unique burden in a hetero-patriarchal society that disposes of us like garbage and simultaneously fetishes us and profits off of us is state violence.” In order to challenge the current legal arrangements that enable continued violence against queer and trans people, it is imperative to consistently apply the framework of racial justice advanced by critical race theorists who argue that “even engaging in rights discourse is incompatible with a broader strategy of social change” (K. W. Crenshaw 1996, 103). Given the horrific scale of anti-Black extrajudicial killings in the United States, as Black feminists and scholars have long observed, legal constructions like gay panic are endemically tied to those like “race panic” and “gender panic.” The criminal punishment system pathologizes and kills Black people, queer people, and trans people, leaving them accountable for their own deaths. The effects are particularly burdensome, as Garza notes, for Black queer and trans people.

Rashawn Brazell was a 19-year-old aspiring web developer and Black gay man who went missing one morning in February 2005. Days later, he was found with his body parts surgically dismembered and divided between blue garbage bags at a Greenpoint recycling plant in New York. This murder and the silent aftermath echoes the unfolding of so many similar cases in which the literal disposability of queer and trans bodies of color is accepted as an impending and unavoidable outcome, similar to the way that Sedgwick may anticipate a hopelessly ruthless deluge of normalized race-based or gender-based violence. Yet even if we could apply “gay panic” to help us explain the motives that stole Brazell’s life, the mere existence of such a term would not have prevented his death. Too often, we ignore how Black queerness becomes equated with gruesome violence and as a result, undeserving and often young queer people of color like Brazell “remain in the swimming generality of cold cases, murders never solved, killers never really feared, and body parts never found” (Stanley 2011, 4). While a break in the case came
twelve years later in February 2017 with the arrest of a suspected serial killer named Kwauhuru Govan, Black queer bodies disproportionately pay the price for an unjust criminal punishment system (Parascandola, Carrega, and Schapiro 2017). Conviction or not, sentence or not, Black bodies are the first to die and the first to get locked up. Meanwhile, uniformed court officers, police officers, and members of the court contribute to the illusion that prosecuting an individual and subjecting him to long periods of isolation and violence will deter and reduce danger. It is essential to dispel “the narrative that violence is the act of a lone killer, not the consequence of a system of racial, gender, class, and sexual hierarchies” (Lamble 2008, 34).

Since the “reasonable man” represents a “normative social ideal” rather than an average person, it is abhorrent that gay-bashing disgust is accepted as an emotion of that hypothetical person (Nussbaum 2004, 134). Others have commented on its implicit association of masculinity with notions of rationality and by extension, femininity with notions of irrationality. While the highly gendered language of the “reasonable man” has been sparsely modified in some contexts to neutralize male bias, the vast majority of anti-transgender hate crimes are committed by men. Yet American jurisprudence continues to heavily rely on heterosexual, cisgender masculinity as the implicit reference for rational human behavior and therefore “gender, elaborated and sustained by behavioral patterns of application and administration, is maintained as a division of power” (MacKinnon 1983, 644). How does this apply for those trapped in a gaze that views them as transgressing at once white, heterosexual, cisgender masculinity?

Most concerning to me is the degree to which non trans women of color quietly contribute to their murders. Without enacting the physical killing, we wrongly view ourselves as without complicity. I continue to invoke case examples to restore context and to highlight the

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55 Women, particularly women of color, are underrepresented on the bench (National Women’s Law Center 2016).
scope of fatal, imperceptible violence attached to the lived experience of being queer, being
trans, and being a person of color. To receive news of trans deaths as a trans person of color is to
fear for your life. When ours is not the nightmare punctuated by missing limbs, but missing keys,
the way we conduct our living must be questioned. Receiving Google Alerts of trans murders
was a tiresome experience. My ability to simply log out, disconnect, and unplug from this stream
of cold-blooded violence mirrors the positions of several of us in academic and institutional
contexts who will never understand or fully come to terms with embodying a humanity deemed
unworthy of living past thirty. To respond is not to simply disconnect and sign off for the next
work week and to delude ourselves of our own innocence. To respond is to question: who is
dying for us to live? Why?

During his 1997 trial, a 35-year old white man named William Palmer successfully
dodged a murder sentence for the killing of Chanelle Pickett, a 23-year old Black trans woman in
Boston who was found dead, beaten, and strangled in Palmer’s apartment after they met each
other at the Playland Café, one of two transsexual bars in Boston at the time as well as Jacques
(Allen 2015). Yet despite evidence of foul play offered by the police and prosecutors, as well as
a medical examination suggesting that she had been strangled for at least eight minutes, Palmer
was found guilty only of punching her in the face rather than forcing the life out of her
(Rothstein 1997). On charges of assault and battery, he received a mere two-year sentence,
skirting murder or even a manslaughter charges for stealing the life of a 23-year old Black trans
woman. In a vile manipulation of the gay panic argument, Palmer’s defense team weaponized
Pickett’s gender identity by asserting that the defendant had no clue he had taken home “a man.”
This resonated with the jury who apparently sympathized with a white male who had just killed a
Black trans woman.
Segdwick’s assertion of a unique and public hatred toward homosexuals is again called into question in light of Palmer’s trans panic defense during his May 1997 trial, articulated by his attorney as “an emotional reaction to a purportedly unexpected bedroom revelation that she was trans.” Moreover, Palmer was known to have had sexual encounters with six other trans women before his encounter with Pickett. This is more than hatred. Watertown Police Captain Edward Deveau asserted “It’s obvious that an argument or something happened [at Palmer’s apartment] that led to her death. But the story he told about being surprised just didn’t add up” (Rothstein 1997). After Palmer modified his story on the stand from his original statement to the police, suggesting he stepped into bars like Playland and Jacques to find cocaine rather than to pursue sexual relations with trans women, Assistant District Attorney Adrienne Lynch also refused to buy the story, lucidly asking, “Do you honestly think that Playland and Jacques are the only places he could get cocaine in Boston? Or is it the only place in Boston he could get cocaine and a transsexual date?” Deveau knew the story didn’t add up. He was wrong, however, about the cause of her death. To reduce Pickett’s murder to the product of “an argument or something” is to ignore white supremacist gender subordination. The conditions that motivated Palmer to kill were those that enabled his acquittal. Local trans people nevertheless spoke out near the Middlesex Courthouse in Cambridge the day of Palmer’s sentencing in a fierce demonstration of visibility, resistance, and solidarity.

Arguably more distressing than Sedgwick’s articulation of gay panic, the trans panic defense is employed by men who kill or harm transgender women.\(^\text{56}\) In this situation, a heterosexual man charged with murdering a transgender woman with whom he was sexually

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\(^\text{56}\) The trans panic defense is overwhelmingly employed by men who take the lives of transgender women (C. Lee and Kwan 2014, 77). It is possible that this would be used to justify the murder or assault of a transgender man, but unlikely given the alarming rates of violence against trans women relative to any other gender.
involved claims that the discovery of the victim’s “biological male sex” provoked him in a heat of passion killing, which, if accepted by the jury, acquits him of murder and grants him a mitigated offense of voluntary manslaughter (C. Lee and Kwan 2014, 77). While it is tempting to characterize trans panic as an extension of gay panic, the use of the former suggests important departures from conventional notions of homophobia in three ways. Firstly, this strategy appeals to stereotypes about transgender people as “sexually deviant and abnormal” and reflects a violent desire to enforce dominant power arrangements that equate sex with gender (77, 83). Male jurors may be especially susceptible to feeling empathy toward defendants who characterize their victims as deceitful “men” (108). These violent tropes about trans femmes and women being deviant and deceptive are often the basis for extreme acts of violence committed against them.

For example, more jurors felt that Larry/Leticia King asked for his own death by transgressing his perceived gender and being flirtatious with defendant Brandon McIerney (121–22).

Secondly, the epidemic of trans murders has simply not received the attention, urgency, or care that it deserves; 24 transgender people were killed in 2016 yet few major national media outlets have commented on the murders (Talusun 2016). Given that a trans person of color may be killed every two to three weeks, one cannot fathom the public chaos and grief if white males were in their place. Thirdly, the surge of anti-transgender hate crimes and related deaths affect trans women, who are women, yet who experience ongoing intense erasure and marginalization if not explicit exclusion from women-centered spaces, events, organizations, and political agendas (Browne 2009, 545; Logie et al. 2012, 2; Bauer et al. 2009, 349; Koyama 2006, 698). This is

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57 I cannot help but to recall the 2008 case in Oxnard, California, in which white high schooler Brandon McIerney shot his Black queer classmate Larry/Leticia King. McIerney’s gay panic defense resonated with 7 out of 12 jurors even though most jurisdictions require more than mere verbal provocation to qualify for mitigation.

58 We mustn’t forget that in the aftermath of the Stonewall Uprising, trans street queens of color like Sylvia Rivera were routinely targeted by members of the gay community. As one chilling example, the Lesbian Feminist Liberation distributed flyers denouncing “female impersonators” at a 1973 gay pride rally in Washington Square Park (Gan 2013, 296).
closely linked to the first point in that trans women regularly have their identity called into question and are accused of being deceitful “men” masquerading as something they intrinsically aren’t. Nobody scrutinizes the gender identity of cisgender gay men when they enter spaces dedicated for men. Hate crimes against gay men do not occur when straight men discover that gay men are men. Even though his sexuality transgresses heteronormative expectations, his gender identity is consistent with the ideals of the patriarchy and the subordination of women and feminine people.

Yet patriarchy does not treat all men identically. Critical legal scholars have repeatedly stressed the role of masculinity for explaining the preponderance of male defendants who commit violent crimes and murders. As critical race theorist Angela P. Harris (2000) observed, power struggles among men emerge from hierarchies of race and class (783). These hierarchies distribute different and lesser material consequences for Black men, for example, as they are denied the privileges of hegemonic masculinity\(^59\) as a result of their subordinated race. Harris notes that an equally complex relationship occurs from the dynamics of class:

For example, Karen Pyke argues that the dominant form of masculinity in American society stresses the importance of intellectual mastery, technological prowess, and the rationalized control of behavior (both one’s own behavior and the behavior of others).\(^60\)

Consequently, men denied access to hegemonic masculinity turn to “hypermasculinity” as they attempt to compensate for the effects of emasculation (784–85). As a result, gender violence is deployed as a vehicle for masculine performance (791). Harris invokes organized attacks like hate crimes against gays and lesbians and cites a survey in which it was observed that perpetrators aggrandized their own “hyperheterosexuality” during these attacks. Therefore, she

\(^{59}\) “Including patriarchal control over women, jobs that permit one to exercise technical mastery and autonomy, and the financial and political power that enables control over others” (A. P. Harris 2000, 783).

\(^{60}\) (Pyke 1996, 531).
suggests that the violence was “as much about the perpetrators’ purportedly secure and superior masculinity as it was about bigotry” (792), and concludes that the challenge lies not in altering men’s nature, but in altering the relationship between masculinity and violence (802). While the survey she cites looked only at victims of bias crimes targeting gays and lesbians, men respond with greater violence when they turn out to be trans women who threaten their “hypermasculinity” and “hyperheterosexuality.” After all, the respondents of that survey were still alive.

Misunderstandings about transgender people are closely related to political and cultural ideologies that regulate heteronormativity and masculinity. In resistance against biologically essentialist gender norms that equate sex with gender, transgressive genders induce anxieties that seem to create an implicit concession to punishment. But why? If gender norms are enforced to such a degree that the simple being of trans people motivates others to react violently rather than to move on, then those who commit trans murders believe that the obliteration of the transgression is preferable to the disciplining of that transgression. Both are preferable to the existence of the transgression. If one type of ideological hegemony involves the ubiquitous belief in an “essential” gender order (Pyke 1996, 529), then a concurrent ideology involves the perception that trans women are expendable. This would be consistent with hegemonic masculinity since trans women are often codified as “men” relinquishing their male power and such a repugnant portrayal, while horrendously inaccurate, induces anxiety for men on two counts: firstly, from the inconceivable invalidation of their own or another’s male power, and secondly, because such a possibility destabilizes their epistemic presuppositions about their entire worldview. Trans people obfuscate dominant assumptions about masculine performance and challenge this hierarchy to the core. In contrast to racialized femininity, white masculinity is
assumed to be intrinsically nonperformative and impenetrable (Halberstam 1997, 107), which has obvious implications for trans ontology. Trans people embody the obliteration, not the consummation of disciplines that render them instruments of their own regulation (Foucault 1995, 138). When uncritical epistemology seeks to kill the truth of trans ontology, the aforementioned concession to punishment can be better characterized as the permission to punish.

The being of trans people is not responsible for their murders. Nussbaum observed that disgust is intimately linked to an impossible aspiration for social and physical purity that targets others for gross harms, which is useful for analyzing cultural constructions of masculinity and the pattern of cisgender men killing transgender women with whom they have had sexual relationships (Nussbaum 2004, 74–75). If “disgust concerns the borders of the body” and the possibility that an undesirable substance may infiltrate the self (88), then it is not just the perception of transgender people that inspires disgust. Arguing that courts should never instruct on manslaughter with a trans panic defense, Steinberg (2005) applies Nussbaum’s analysis on emotions to the case of Gwen Amber Rose Araujo, a 17-year old young transgender girl who was viciously killed by four male acquaintances in Newark, California, on October 3, 2002. Upon discovering that she was transgender, two of the men, Michael Magidson and José Merél, with whom she had been sexually intimate, initiated a violent and lethal assault on the teenager

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61 Nussbaum encourages consideration of what she names “the central locus of disgust in today’s United States: male loathing of the male homosexual.” As she contends, “what inspires disgust is typically the male thought of the male homosexual, imagined as anally penetrable. The idea of semen and feces mixing together inside the body of a male is one of the most disgusting ideas imaginable – to males, for whom the idea of nonpenetrability is a sacred boundary against stickiness, ooze, and death” (Nussbaum 2004, 113).

62 A judge posthumously changed Araujo’s legal name on June 23, 2004 at the request of her mother, Sylvia Guerrero, who has been honoring Gwen’s life and has become an important figure in advocating for trans people since her daughter’s death. Of her daughter, Guerrero said, “She was beautiful, intelligent, creative, loving, sensitive, understanding and very honest. I have taught all my children that honesty is the best policy, and Gwen was being honest in being her true self, as she knew herself to be, which is transgender” (St. John and DeFao 2004).

63 Jason Cazares, Michael Magidson, José Merél, and Jaron Nabors.
during a party in a house rented by Merél and his brother. Confirming Nussbaum’s argument that disgust arises from magical thinking rather than real threats of harm, Araujo’s trans identity challenged “the defendants’ illusion that their gender and sexuality was impenetrable, stable, and immovable,” and one defendant shouted “I can’t be fucking gay!” as he killed Araujo, displaying an alarmingly ignorant understanding of transgender identity as well as a profound attachment to preserving his heterosexual masculinity (Nussbaum 2004, 102; Steinberg 2005, 515, 520). The men subsequently buried Araujo in a shallow grave where police found evidence that she had been bound, bludgeoned, and strangled. Although the jury could have convicted Magidson, Merél, and Cazares of lesser charges including manslaughter, the three faced first-degree murder charges with a hate crime enhancement (Marshall 2005).

Ultimately, after years of grief, community anguish, and court complications including a jury deadlock concerning Cazares, Merél and Magidson were convicted of second-degree murder carrying sentences of 15 years to life, Cazares pleaded no contest in a plea bargain with a six-year prison sentence, and the fourth defendant Nabors pleaded guilty to voluntary manslaughter in return for his testimony and an 11-year prison sentence. Many of those who followed the case welcomed the verdict as a legal victory, while others expressed outrage that the convictions did not carry hate crimes charges, like local trans activist Shawna Virago, who said, "This was a transgender youth who was interrogated, brutalized, sexually assaulted, and humiliated before her death, based upon her transgender status. The overkill of the actual murder speaks to the fact that this was a hate crime” (Szymanski 2005). Whether or not we agree with the verdict in the broader pursuit of justice, it is nonetheless disappointing that the defendants’ lawyers argued in part that the “heat of passion” killing did not merit a first-degree murder charge. Moreover, after asserting that his client Magidson was only guilty of voluntary manslaughter for Araujo’s “theft
of heterosexuality,” defense attorney Michael Thorman consistently misgendered Araujo by referring to her by the wrong name and pronouns throughout the trial, delivering his opening statement to the jury of four by claiming, “This is a case that tells a story about deception and betrayal. Mike Magidson does not deny having responsibility for Eddie’s death. It happened because of a discovery of what Eddie had done… His reaction was one of anger and rage and shock and revulsion” (Szymanski 2006; Hoge 2004). But as Bettcher (2013) aptly notes, the violence clearly involved the killers’ sexual desire toward her as well as a rhetoric of deception (280).

Fourteen years later, in October 2016, with increased general understanding of transgender people and after California’s ban on gay and trans panic arguments, Merél, 36, was granted parole with the support of Araujo’s mother, Sylvia Guerrero. She opposed the possible parole of Magidson, who conveyed that he was not ready for release. While ensuring that Gwen’s legacy survived, helping to spur the first Trans March in 2003 and participating in the production of the Lifetime movie, “A Girl Like Me: The Gwen Araujo Story,” Guerrero has lost employment and health care coverage since her daughter’s death and now struggles with homelessness and PTSD64 (Fraley 2016). In 2006, when he was governor, Arnold Schwarzenegger signed A.B. 1160 into law, also known as the Gwen Araujo Justice for Victims Act, with provisions to protect biases related to sexual orientation and gender identity in criminal trials or proceedings. While a provision aiming to preclude defendants from using gay and trans panic did not make it into the final bill, there is no doubt that the Gwen Araujo Act played an instrumental role for passing A.B. 2501 in 2014, the current law that bars defendants in California from invoking gay and trans panic arguments (C. Lee and Kwan 2014, 108).

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64 Readers are encouraged to donate to Sylvia Guerrero through her GoFundMe page: https://www.gofundme.com/mjcbpda6
Neither the Matthew Shepard case nor the Gwen Araujo case delivered hate crimes convictions for the defendants. And nor did either of the juries accept the gay and trans panic arguments forwarded by the defendants. Yet gay and trans panic defenses do resonate with juries with biases, misinformation, and false beliefs about trans people, such as when William Palmer was acquitted of murder and manslaughter in Boston in 1998 and sentenced to just two years for the murder of Chanelle Pickett (Steinberg 2005, 521). James Dixon was not charged with a hate crime when he fatally beat 21-year old Islan Nettles outside a New York police station on August 17, 2013. In a taped confession, Dixon allegedly became enraged after his friends mocked him for flirting with Nettles, who they characterized as “a guy,” subsequently knocking her on the sidewalk and beating her unconscious so that she died after a week in a coma (McKinley Jr. 2016). In a criminal punishment system prepared to justify heterosexual male perpetrators in some measure for the murder of queer and trans people, and thus in a system that believes that queer and trans victims deserved it in some measure, the permission to punish is granted.

Quantitative Analyses

In light of the record-high of 22 trans murders in 2016, my expectation was not that the rate would dramatically decelerate in the wake of a new year. Though truthfully, in spite of the recent installment of the vile Trump Administration, I didn’t think it would rise either. Yet as I write this, I have a tab open on my browser of an article my trans friend shared on Facebook, titled “Four Transgender Murders in a Week ‘Alarming Trend’” (Morlin 2017). These are in

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65 After McJerney pleaded guilty to second-degree murder and voluntary manslaughter, one juror wrote to the district attorney: “You all know this was not a hate crime. You all know the victim had a long history of deviant behavior. Yes, I said deviant. Not his sexual orientation – deviant behavior…. After weeks of testimony, it is my firm belief that this young man [Brandon McJerney] reacted to being bullied and being the target of Larry King’s sexual harassment. There was provocation” (C. Lee and Kwan 2014, 105).

66 As reported by Mic (Talusan 2016).
addition to the three that have already occurred so far this year in 2017, predicting an even deadlier year for trans women of color than the last. As folks exempt from the relentless targeting of trans women (particularly trans women of color, especially Black trans women), the sobering ramifications of carceral violence demand our urgent attention more than ever. I know I keep saying this, but I cannot say it enough. As the new Administration continues to devalue trans people, rescinding Barack Obama’s guidance on protections for transgender students, we must prioritize restoring the humanity of our trans sisters. In order to rehumanize trans people, we must confront the unbearable degree of criminalization and violence we subject them to, intentionally or not, within the appendages of the prison industrial complex. Only when we understand the nature and scale of violence against trans people of color, only when we destroy the false notions of criminality, will we be able to intervene.

Empirical evidence of transgender people’s abusive experiences with the criminal punishment system remains understudied. As is the case for any research involving vulnerable and hidden populations, methodological limitations related to sampling, disaggregation, focus, and criteria hinder conclusive analyses from the studies conducted, but they still provide support for scarce existing information (Stotzer 2014, 264, 275). In this section, I analyze quantitative data from existing surveys in three domains related to carceral violence and punishment against trans people, following each section with critical analysis connected to my findings thus far. Since law enforcement largely controls prevailing narratives about crime and criminality, I turn a

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67 As of February: Mesha Caldwell in Canton, MS (January 4, 2017); Jamie Lee Wounded Arrow in Sioux Falls, SD (January 1, 2017); Jojo Striker in Toledo, OH (February 8, 2017); Jaquarrius Holland in Monroe, LA (February 19, 2017); Tiara Lashaytheboss Richmond in Chicago, IL (February 21, 2017); Chyna Doll Dupree in New Orleans, LA (February 25, 2017); Ciara McElveen in New Orleans, LA (February 27, 2017).

68 In May 2016, the Departments of Education and Justice issued a joint guidance that directed federally-funded schools and colleges to let trans students use names, pronouns, and facilities corresponding with their true gender, based on President Obama’s interpretation of Title IX which is the federal law that bans sex discrimination to encompass discrimination based on gender identity, including discrimination based on a student’s transgender status (Lhamon and Gupta 2016).
lens instead to the testimonies and experiences of those ensnared by the criminal punishment system as primary sources (Mogul, Ritchie, and Whitlock 2011a, 25). While empirical research centered on trans people’s interactions with law enforcement remains lacking, a comprehensive 2014 literature review identified over 300 studies from social science and legal/criminal justice databases, social service organizations, and other nonacademic publications (2014, 264). Further exclusion criteria that eliminated exclusive case studies, expert opinion-based studies, and primarily theoretical studies such as law review articles, yielding 33 studies that met the inclusion criteria. While these studies by no means represent an exhaustive collection of data, they form the foundation of the empirical data I use, in addition to community reports and testimony from trans people, to document the neglected phenomenon of racialized-gendered violence in the criminal punishment system.

Firstly, I look at policing. Secondly, I uncover incarceration. Lastly, I use this preliminary research to enable a more comprehensive analysis of anti-transgender homicides and prosecution outcomes. While I rely on the expertise of social scientists, policy analysts, and government officials from the reports I use, numbers are never enough to explain the phenomenon of anti-transgender violence at the intersection of state violence and gender violence. I continue to highlight the essential perspectives and voices of those who have survived policing, incarceration, and broader contact within the prison industrial complex. By “looking to the bottom” (Matsuda 1996, 63), redirecting and centering our attention to the lived experiences of those directly impacted, I make an effort to recover the silenced testimonies of criminalized trans and gender nonconforming people and to reconfigure these as essential rather than supplementary data, revealing the inseparable relationship between anti-Black, anti-transgender violence and the criminal punishment system. As we shall see, the prison industrial complex not
only depends upon, but exacerbates the oppressive systems of white supremacy, classism, sexism, homophobia, and transphobia (INCITE! Women of Color Against Violence 2017, 2).

**Policing**

_We always felt that the police were the real enemy. We expected nothing better than to be treated like we were animals – and we were. We were stuck in a bullpen like a bunch of freaks. We were disrespected. A lot of us were beaten up and raped. When I ended up going to jail, to do 90 days, they tried to rape me. I very nicely beat the shit out of a man._

– Sylvia Rivera

_They referred to me as a female at first but after they checked my ID, they referred to me as male._

– Anonymous

From trans panic cases in which defendants reflect a desire to police gender norms to trans people’s actual experiences with police officers themselves, policing implicates various consequences in the context of racialized gender violence and has existed for centuries in the United States. Trans people experience gender policing from early ages when parents and community members punish gender variance in children, and they continue to suffer the impact of gender policing as they are bullied at school, as state laws dictate gender markers on legal documents, as they are targeted while accessing public accommodations, as they are pathologized by medical professionals, as they are denied accessible and affordable gender-affirming surgery and other health care, as they face discrimination in housing and employment,

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69 (Gan 2013, 294).

70 Anonymous participant of a study investigating interactions of Latina transgender women with law enforcement (Galvan and Bazargan 2012, 7).

71 Native American studies scholar Andrea Smith has written extensively on this in Conquest: Sexual Violence and American Indian Genocide (Smith 2015). “From the first point of contact with European colonizers – long before modern lesbian, gay, bisexual, transgender, or queer identities were formed and vilified – Indigenous peoples, enslaved Africans, and immigrants, particularly immigrants of color, were systematically policed and punished based on actual or projected “deviant” sexualities and gender expressions, as an integral part of colonization, genocide, and enslavement” (Mogul, Ritchie, and Whitlock 2011d, 1).
and as they fail to “pass” in gendered spaces. Formerly, trans people were targeted in police bar raids. Recent developments in state legislation mandate where trans people can pee. While different gender policing practices affect trans people to varying degrees, individual, interpersonal, institutional, and structural instances of gender policing contribute to myths about the intrinsic criminality of trans people, subjecting them to increased punishment while increasing their likelihood of ending up in the criminal punishment system (Spade 2015, 81).

Although trans people experiencing different forms of policing in their daily lives, I will look primarily at interactions with police and law enforcement officers in this section.

In December 2016, The National Center for Transgender Equality (NCTE) released the report of the 2015 U.S. Transgender Survey (USTS), the largest survey investigating the experiences of transgender people in the United States (S. E. James et al. 2016). With almost 28,000 respondents, the USTS follows as a more comprehensive second iteration of the National Transgender Discrimination Survey (NTDS) which was published in 2011 by NCTE and the National LGBTQ Task Force (Grant et al. 2011). Taken together, these reports are the first to illustrate evidence of hardships that transgender people in the U.S. face on a day-to-day basis, including rates of suicide attempts, poverty, unemployment, and violence (5). While these studies have contributed to increased understanding for the public and policymakers, the results indicate that much remains to be done.

In one section on key findings related to police interactions and prisons, the survey reports that 58% of respondents who interacted with police or law enforcement officers

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72 In the context of gender, “passing” indicates that a trans person is read as their true gender, such as when a trans woman is perceived as a cisgender woman and a trans man is perceived as a cisgender man.
73 See for example House Bill 2, which was passed in North Carolina in March 2016 (Sears 2013, 554). Furthermore, the USTS revealed that over half of respondents (59%) avoided using a public restroom to avoid confrontations while almost a third (32%) of respondents intentionally limited eating and drinking to avoid using the restroom (S. E. James et al. 2016, 15).
experienced some form of mistreatment based on their gender identity, including verbal harassment, misgendering, physical assault, and sexual assault, including officers forcing them to perform sexual acts to avoid arrest. In a section about police, prisons, and immigration detention, the USTS reveals that of the 40% of respondents who interacted with the police or other law enforcement officers, 35% said that the officers thought or knew they were transgender. For the purpose of examining the effects of anti-transgender bias and discrimination, we are going to look at statistics related to only these respondents.

Of those respondents that officers thought or knew were transgender, over half (57%) felt that they were never or only sometimes treated with respect, with people of color, particularly Black (70%) and American Indian respondents (72%), reporting the least respect from officers (James et al. 2016, 185–86). Additionally, of those respondents who were profiled as transgender, people of color, including American Indian (74%), multiracial (71%), and Latinx (66%) respondents reported heightened experiences of mistreatment, compared to the 58% reported from the overall sample (186). Therefore, it is highly likely that the effects of anti-transgender bias or discrimination are exacerbated by a victim’s racial identity, revealing that trans people of color are particularly vulnerable to mistreatment by law enforcement officers.

Additionally, about 11% of these respondents reported that an officer assumed that they were sex workers, with transgender women of color experiencing more profiling overall, including Black (33%), multiracial (30%), Latina (25%), American Indian (23%), and Asian (20%) women (187). As one anonymous respondent noted, “When I began to live in my correct gender, I was stopped by police and forced to strip in public in front of them as well as being

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74 The study lists experiences of “mistreatment” by police and law enforcement officers as one or more of the following: misgendering, verbal harassment, invasive questions about gender transition, assumption of sex worker status, physical assault, sexual assault, forced engagement in sexual activity to avoid arrest.
verbally harassed, threatened with arrest, and accused of being a sex worker” (188). Even when respondents did not participate in sex work, they were immediately criminalized as sex workers. I expand shortly on the implications of criminalizing and profiling sex workers in the context of racialized-gendered violence against trans people of color.

Furthermore, 20% of respondents reported verbal harassment from officers, whereas 6% reported being physically or sexually assaulted. Those who were currently involved in work in the underground economy (27%) experienced extremely heightened levels of sexual assault, suggesting that incrimination makes trans people vulnerable to interpersonal abuse by cops in addition to any possible legal consequences. In particular, trans women of color, including American Indian (20%), Black (17%) and multiracial (16%) women were more likely to report one or more instances of physical or sexual assault (S. E. James et al. 2016, 187–88).

As a result, it’s no wonder that a frightening 57% of respondents indicated that they would feel uncomfortable asking the police for help if they needed it (S. E. James et al. 2016, 12). Whites (53%) were the least likely to feel uncomfortable, whereas Middle Eastern (70%), Black (67%), and multiracial (67%) respondents were the most likely to feel uncomfortable asking the police for help. These numbers are not just indicative of irrational aversions that people of color have toward the police, but testify to the historically fraught relationship between communities of color and law enforcement, particularly gender nonconforming communities of color and law enforcement. By this point, a pattern has emerged. Among trans people, the potential for abuse heightens if you are a trans person of color. It skyrockets if you are a trans woman of color.

In a different study of 220 Latina transgender women’s negative interactions with law enforcement in Los Angeles, two-thirds of respondents reported verbal harassment by law
enforcement and 21% reported physical assault by law enforcement (Galvan and Bazargan 2012). By a marginally higher degree, nearly a quarter (24%) of respondents had experienced sexual assault by law enforcement. The majority of respondents also indicated that they had been stopped by law enforcement unjustly, without violating any law, while engaging in everyday activities like “waiting for the bus” or “walking home” and “shopping.” Considering that over half of respondents reported less than $10,000 of annual income, it is entirely possible and likely that the interacting effects of transmisogyny, racism, as well as classism subject Latina trans women to abusive interactions with law enforcement officers. Furthermore, since 53% of respondents reported being undocumented, these respondents are even more vulnerable to being taken advantage of by the police. With regard to their history of involvement in the legal system, a shocking 71% of participants reported having been arrested at least once in their lifetime. Over half (64%) of these respondents reported having been treated very unfairly or unfairly (5).

Compared to Latinx respondents in the 2011 NTDS, the participants in the present study reported more intense levels of abuse in all three domains of verbal harassment, physical assault, and sexual assault.

Perhaps the most disturbingly, another study based in Virginia found that 83% of transgender victims of sexual assault did not report the incidents to the police (Xavier, Honnold, and Bradford 2007). Even more horrifying is the extent to which law enforcement personnel themselves are found to be perpetrators of sexual violence against transgender people (Grant et al. 2011). Certainly, in the LA study, 42% of participants reported being solicited for sex by police officers and other law enforcement personnel. Only 27% of respondents who experienced any type of assault ever lodged a report and of those, an alarming 66% reported that their report had been handled very poorly or poorly (Galvan and Bazargan 2012, 6).
In any case, respondents expressed the need for law enforcement to show more respect for the transgender community. Given the abuse that trans people experience at the hands of police officers, it should come as no surprise that many trans people cannot rely on law enforcement for help when they need it. All of these studies testify to negative experiences that transgender people have with police and law enforcement officers. Yet these painful experiences of abuse gesture only toward the tip of an ever-growing iceberg.

Though ongoing police abuse practices disciplinary violence on a micro scale, it arguably perpetuates systemic and institutional violence against trans people, as “the organization of the police apparatus in the eighteenth century sanctioned a generalization of the disciplines that became co-extensive with the state itself” (Foucault 1995, 215). In order to consider how individual actors within the (deracialized) police play a role in normalizing racialized-gendered constructions of criminality by enforcing racialized-gendered violence, I turn to Harris (2000) as she reflects on the images that code police officers as hyper-masculine crime-fighters:

The cultural image of a police officer is a uniquely valuable and rare kind of man: tough and violent, yet heroic, protective, and necessary to society’s very survival. In a sense, the police officer is expected to be the mirror image of the paradigmatic criminal, the violent thug who threatens the lives and safety of innocent citizens. Criminals use violence in the service of evil; cops use violence to overcome evil. (793)

Aside from the obvious racial (read: anti-Black) implications, Harris draws connections between the prison industrial complex and the military-industrial complex by noting that “police departments have traditionally been organized according to chains of command and rankings similar to those found in the military” (793). As we have observed the subtle embedding of the HCPA within the Defense Authorization Act, which provided hundreds of billions of dollars to the military, the disciplinary similarities between the police and the military underline the ubiquitous partnership of apparatuses of State power as they exploit subordinated groups like
trans people. Therefore, policing should not be seen as limited to law enforcement personnel. The disciplinary modality of power, stemming from the police, infiltrates economic, juridico-political, and scientific institutions and processes and examples of systemic violence against trans people of color emerge additionally in the education, military, and medical-industrial complexes (Foucault 1995, 218).

Additionally, sexual assault is not unique to those who are not police officers, as women within police departments are sexually harassed to a “rampant” degree (A. P. Harris 2000, 795). Furthermore, accountability for police officers is obfuscated by the fact that higher-ups are quick to condone or excuse excessive brutality at the street level (796). As a result of this hypermasculine policing culture as well as the endemic threat of gender violence in policing, Harris concludes that ending police brutality requires more than individually punishing “bad cops,” and more than support for “community policing,” but instead, a “disruption of the entire gendered culture of policing” (804).

These numbers insinuate a particularly fraught dynamic between law enforcement and trans communities of color. Trans people of color are subjected to suffocating levels of surveillance, incarceration, and violence. While they do not break the law by breathing, trans people of color decimate deeply entrenched myths about gender, race, and sexuality. Since the police benefit from white supremacy, heteropatriarchy, and colonialism, perpetuating racialized-gendered constructions of criminality is in their best interest. The criminal punishment system capitalizes on such queer75 criminal archetypes (Mogul, Ritchie, and Whitlock 2011a, 23). But in

75 While queer and trans are not the same thing, I borrow this term to describe criminal archetypes that affect trans people of all sexual orientations. As Jody Herman found, some trans participants of the NTDS reported discrimination based on sexual orientation and gender identity. One respondent noted, “It’s hard for me to distinguish between when I was discriminated against for being gay and when I was discriminated against for being gender nonconforming” (Herman 2016, 172).
order to paint itself as the auxiliary of justice, police must have, as Harris put it, “the paradigmatic criminal” (793). As a result, racialized, feminized, hypersexualized, transgressive, queer bodies become the embodiment of crime. From the perspective of the criminal punishment system, trans people of color are not at all dangerous criminals. In contrast, they are assets. They are exploitable, profitable, and expendable. To cops, trans people of color may or may not be dangerous criminals. In any case, they are exploitable, profitable, and expendable. Explaining the expansive scope of violence against trans people goes beyond trans people “committing crimes,” beyond “bad cops.” In order to expose the systemic underpinnings of the criminal punishment system, individual and institutional enactments of violence must be identified (Lamble 2014, 153). According to Foucault (1995), power relations are re/produced when structures of domination produce discourses of truth and knowledge that exploit the less powerful in a “field of objectivity” (256). Policing and queer criminal archetypes seem inscribed within these discourses. With respect to police officers and civilians operating in accordance with these, Bourdieu (1977) observes,

In short, because the delegation which is the basis of personal authority remains diffuse and is neither officially declared nor institutionally guaranteed, it can only be lastingly maintained through actions whose conformity to the values recognized by the group is a practical reaffirmation of that authority. (193)

What kind of “criminal justice” system lets its law enforcement personnel directly participate in the verbal, physical, and sexual abuse against society’s most vulnerable? What kind of “criminal justice” system commits the most violent hate crimes itself? Given their testimonials, it is not hard to understand why trans people of color cannot trust hate crime laws or police officers to protect them. As the 2012 study on Latina trans women in Los Angeles revealed, trans women who have been victims of crimes by others (55%), only 31% of the total sample actually reported these crimes to the police. As the study found through interviews, some
felt concern that the police might “not listen to them, believe them or take them seriously,” while others believed that police would not follow up or that “they would be blamed for the incident,” and others expressed fear of discrimination and ridicule. Still, others without legal documentation could not rely on the help of law enforcement for fear of incriminating themselves (Galvan and Bazargan 2012, 8). As one participant suggested, we could reframe these interactions more accurately by naming and denouncing what’s really going on: “They don’t interact with us. When they see us, they abuse their power”76 (9). Yet even the majority of literature on the topic frames the issue as interactions that trans people have with law enforcement, rather than experiences of abuse.

When law enforcement makes trans people fear their own incrimination, safety, or lives for coming forward about hate crimes, then clearly hate crime laws do not solve the problem of violence. The criminal punishment system is part of the problem, not the solution. Black people of all genders have been saying this for literally ages. In opposition to the perpetrator perspective, which only blames trans people of color for the low reporting and poor case handling, the victim perspective77 enables understanding of the various forms of structural violence and corresponding risk factors that they experience on a day-to-day basis. This framework enables us to reframe the over-policing of trans people as a consequence of systemic racialized-gendered abuse, intrinsic to the criminal punishment system, and not as a result of trans people’s intrinsic criminality. We must resist colluding in what Lamble (2014) describes as the emergence of a particular queer penalty (163).

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76 Emphasis mine.
77 I realize this term can be a diminishing one, trapping trans people in a victim/perpetrator dyad, but I use this in opposition to the dominant perpetrator perspective to illuminate the lived experiences of those marginalized communities which are routinely stripped in favor of the perpetrator perspective.
Forty years later in 2006, the Compton’s riot of 1966 was commemorated with a plaque outside the former Tenderloin District restaurant. Yet police, the District Attorney, the Police Chief, and a transgender police sergeant were among the most notable attendees honoring the “men who dressed in women’s clothes,” as USA Today put it, and celebrating a new era of “progress” and “visibility” (Leff 2006; C. Gossett 2013, 584–85). Once a site of queer and trans resistance to police violence, Compton’s is being devoured and coopted by the State as a tool of governmentality. Gossett (2013) put it best when he warned: “Queerness and transgender bodies are no longer policed, they are doing the policing” (586). Still we could learn a thing or two from the drag queens and trans women of color who denounced and resisted police violence at the forefront of the Compton’s riots and the Stonewall Uprising many decades ago.

Incarceration

_No tenemos el derecho a vivir._
– Julia Garcia

_I decided to take a plea deal, and I was automatically sent to solitary confinement. That happened before I even took a prison sentence. They claimed it was “for my own protection” and that they wanted to be sure I was safe, when in reality, solitary confinement only fucks with your mind. It’s scientifically proven that people who go into solitary confinement usually don’t come out the same. It traumatizes you in ways that you sometimes can’t come back from. I’m evidence that it messes with you psychologically, and even physically. But there wasn’t a way I could fight it. It’s me against a system that’s been in place for 500 years. I also didn’t have a choice in being sent to a men’s prison, but it wouldn’t have mattered even if I was sent to a women’s prison. Being around more women wouldn’t have stopped me from dealing with the other intersections of oppression like sexism, hypersexualization of my body, racism, or violence._
– Cece McDonald

78 “We don’t have the right to live” (Amnesty International 2005, 20).
79 (McDonald 2016).
On the night of June 5th, 2011, 23-year old Cece McDonald was walking past a Minneapolis bar with a group of friends and her boyfriend when they were all confronted by a group of white people yelling homophobic, transphobic, and anti-Black racist slurs. A physical confrontation ensued. One white woman hit Cece’s face with a glass that sliced her face open, but this marked only the beginning of a brawl of escalating terror and violence. Eventually, 47-year old Dean Schmitz charged at Cece before dying from a stab wound from a pair of scissors in Cece’s purse. As a rare case of a Black transgender woman surviving her attackers, there were few prospects for justice:

The word of a queer defendant – already marked as dishonest and perverted – is pitted against the word of law enforcement officers, whose testimony is generally afforded more credibility than that of civilians… queer defendants often accept less than equitable guilty pleas to escape the humiliation of defending against such charges and the harsher punishments they risk of being convicted after a trial. (Mogul, Ritchie, and Whitlock 2011b, 76)

Originally charged with two counts of second-degree murder, Cece pleaded guilty to second-degree manslaughter and reluctantly accepted a plea deal that landed her in two men’s prisons with a 41-month sentence, beginning a nightmare that even Orange is the New Black wouldn’t be able to illustrate.

In 2016, the United States saw the release of Free CeCe! a crowdsourced documentary confronting carceral violence against trans women of color primarily through the voices of Cece McDonald and Laverne Cox (Gares 2016). Cece’s case turned a national spotlight on the intersectional nature of violence and discrimination that trans women of color survive on a daily basis, including the toxic issue of incarceration. But in resistance to dominant narratives rendering trans women of color visible only in their death, Cece presents an uncommon story less about grief and more about survival. As director Jac Gares observed, “The thing that stood out the most to me was that CeCe was a survivor, and the way she survived was that she said to
herself, ‘My life has value.’ [For Black trans women], that’s not a story we often hear in the headlines” (Anderson 2016).

Yet the same year that Cece was released, Nate Mancha, Eisha Love, and Luke O’Donovan all faced prosecution for defending themselves against hate violence attacks (Ahmed and Jindasurat 2015, 4). Given the racialized and gendered constructions of criminality that render queer and trans youth and especially queer and trans youth of color increasingly vulnerable to the traumatizing mechanisms of control and punishment within the prison industrial complex, it is urgent to demystify their lived experiences in those contexts, beginning with incarceration, a murderous and inevitable product not of police harassment or police profiling, but of policing as a phenomenon in itself.

As I mentioned previously, trans people begin to experience intense gender and sexuality policing from early ages, implicating a series of negative consequences related to school, family, homelessness, substance abuse, and mental health (Ware 2010, 14–15). Risk factors such as these, increase trans youth’s susceptibility to ending up in the criminal punishment system. A prevalent myth assumes that the juvenile justice system detains few LGBTQ youth, while the disproportionate incarceration of youth of color exacerbates the invisibility of incarcerated LGBTQ youth (Irvine 2017, 676). Yet national survey data dispel both of these assumptions: around 15% of youth in the juvenile justice system identify as LGBTQ and whites do not outnumber youth of color (676–77). Still, the proportion of LGBTQ youth may be higher as they resist disclosing this information due to real threats of discrimination and violence, including

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80 One study found that trans and gender nonconforming youth in the juvenile justice system were three times more likely to be removed from their home than gender conforming youth and five times more likely to have been ensnared in the child welfare system (Irvine and Canfield 2016, 4). Taken together, these results highlight that abuse at home may be an important antecedent for considering later abuse in institutional settings. The authors suggest a clear narrative about the trajectory for LGBTQ youth “from family rejection to child welfare involvement to homelessness to survival crimes, and finally, to juvenile justice involvement” (Irvine and Canfield 2016, 10).
reprisal from adult authorities like parents, teachers and juvenile hall staff (680). As one study in Louisiana found, even when they resist disclosing this information, LGBTQ youth are actually more likely to be consumed by the juvenile justice system (2010, 15). While collecting accurate data remains a challenge, existing data and interpretations suggest a profound overrepresentation of trans people of color who are incarcerated (Stotzer 2014, 264).

The anonymous structure of the USTS facilitates more accurate reporting that helps clarify the nature and scope of trans incarceration rates. The USTS reports that of the 2% of respondent who were arrested in the past year, over a fifth (22%) believed that they were arrested due to their transgender identity (S. E. James et al. 2016, 12). With regard to the racial dimension of incarceration, trans women of color, including Black (9%) and American Indian (6%) women were more likely to have been incarcerated in the past year (James et al. 2016, 190). Among NTDS respondents who had been incarcerated or held in a cell due to their gender (7%), Black (41%) and Latinx (21%) transgender people reported much higher rates than the overall sample (Grant et al. 2011).

While one study based in Hawai’i found that trans men reported marginally higher levels of incarceration, the majority of studies in Stotzer’s (2013) review report that trans women experience incarceration at a higher rate than trans men (Clements, Katz, and Marx 1999; Clements-Nolle et al. 2001; Clements-Nolle, Marx, and Katz 2006; Grant et al. 2011). This is consistent with national survey findings that higher percentages of trans women (11%) experienced unjustified arrest than trans men (4%) or gender nonconforming people (4%) and that trans women served more time than trans men overall (Grant et al. 2011).

In this context, it is not difficult to see why unjustified stops and arrests frequently occur targeting trans people of color. Respondents in the study of Latina trans women in Los Angeles
believed that police arrest trans people based on false charges (Galvan and Bazargan 2012, 8).

The conflation of trans women and sex workers is not uncommon. As one trans woman pointed out:

The police assume we are on the street to do sex work. Why else would a transgender be on the street? Lots of transgender people are academics and have college degrees, but they are totally ignorant of it. (Amnesty International 2005, 20)

Taken together, these studies demonstrate that trans women of color are particularly vulnerable to unjustified arrests and abuse within detention facilities. Even when trans women are engaged in normal activities like waiting for the bus or buying groceries, they are stopped unjustly and profiled as criminals, increasing the likelihood of incarceration (Galvan and Bazargan 2012).

Furthermore, abuse by law enforcement officials is not limited to the streets. In custodial and institutional settings, the potential for abuse is greatly heightened since trans people are subjected to victimization from staff as well as other inmates (Stotzer 2014, 273). A report by the Sylvia Rivera Law Project found that every person interviewed (100%) experienced some form of harassment or assault during their imprisonment (Bassichis 2007, 19). Another report found that 79.7% of participants experienced verbal abuse from staff, 44.1% experienced sexual harassment, and 27.1% experienced both physical assault and sexual assault (Emmer, Lowe, and Marshall 2011, 31). In this study, physical and sexual abuse was not only perpetuated by staff themselves, but encouraged or permitted by staff by other inmates. Of USTS respondents who were held in jail, prison, or juvenile detention in the past year, nearly a quarter (23%) experienced physical assault from staff and other inmates and a fifth (20%) experienced sexual assault. Compared to the general U.S. population experiencing incarceration, transgender respondents were more than five times more likely to experience sexual assault by facility staff.
and more than nine times likely to experience sexual assault from other inmates (S. E. James et al. 2016, 13).

In 2009, Janetta Johnson faced a 71-month sentence for possession and intent to distribute methamphetamine. Recalling the economic recession in 2008, Johnson said she leaned on drug sales as a survival mechanism. Unlike other women offenders however, Johnson is a Black trans woman. As a result, she was sent to a male correctional facility outside of Portland, Oregon, housing over 1200 male inmates. “When I was first sentenced to the men’s facility, I told the judge, ‘You know you’re sentencing me to sexual abuse too,’” Johnson told Rewire. “It’s highly likely that a transgender woman in a men’s facility will be sexually assaulted. There’s no ifs, ands, or buts about it.” Johnson was right. She remembers experiencing persistent sexual assault, performing sexual acts in order to avoid penetrative rape, and enduring assault from guards. She was additionally denied adequate medical treatment for her gender dysphoria and she asserts that the officials presiding over her protection aggravated her experience of violence. “When we as transgender people make a request for safety, they feel like we’re asking for extra privilege,” Johnson told Rewire (Greenberg 2015). In April 2013, Johnson was finally released from custody and has served as Executive Director of the Transgender Gender Variant and Intersex (TGI) Justice Project as Miss Major Griffin-Gracy’s successor following her retirement in late 2015.

As if being subjected to sexual assault wasn’t enough, transgender people living behind bars experience life-threatening consequences from the denial of proper medical care. Keirra Lacey James is another trans woman who is currently surviving incarceration at a maximum-security men’s prison in Illinois. In 2012, she filed a complaint specifying her experience being denied hormone treatment, despite the fact that she has lived as a woman since she was 16 and
received the necessary diagnosis from a prison psychiatrist. However, the medical director of the prison simply denied her request by asserting, “We don’t give out hormones. You didn’t get them when you were free, and you won’t now. Deal with it.” James wrote that she had attempted self-harm and suicide since being denied proper care and treatment (Greenberg 2015).

Apart from verbal, physical, and sexual abuse during incarceration, trans people experience denial of basic health care and access to hormones. The USTS reported that over a third (37%) of respondents who were taking hormones before their incarceration were denied hormone treatment while incarcerated (S. E. James et al. 2016, 190), while the NTDS reported that 16% and 24% of trans women, 7% and 9% of trans men, and 2% and 3% of gender nonconforming people were denied basic health care and hormones respectively while incarcerated (Grant et al. 2011). Given that trans people experience horrifying rates of physical and sexual abuse during incarceration, accessing medical care when it’s needed is also a daunting affair. In addition to the global commodification of gender reassignment within privatized health care, trans people struggle to access basic quality health care and prisons only exacerbate this catastrophic experience (Agbemenu 2015, 2; A. Z. Aizura 2013, 508).

Since prisons and jails enact gender policing through the strict segregation of female and male facilities, trans people funneled into this system experience instant and prolonging abuse. This section lacks data or analysis of trans people of color who survive solitary confinement which Cece characterized best as “a prison in a prison” (McDonald 2016). This is all not to discount the resilience of trans people of color, especially trans women of color, who survive the traumatic experience of incarceration. While a thorough discussion of trans people and trauma

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81 As Nael Bhanji incisively points out, the pressure for trans people is intense to blend in, “from transitioning to transitioned, from transgressive to transfixed” (Bhanji 2013, 515).
survival is beyond the scope of this thesis, it is important to note that anti-racist and trans justice praxis, as Cece taught us, cannot rest on a deficiency model (Singh and McKleroy 2011, 36).

**Homicides**

*Black trans women should never have to live in fear that today will be their last day.*
– Elle Hearns

*What bodies are absent, invisible, discarded? What bodies must be sacrificed so that others may live?*
– Che Gossett

*So far as we feel sympathy, we feel we are not accomplices to what caused the suffering. Our sympathy proclaims our innocence as well as our impotence.*
– Susan Sontag

As I currently write this at 21 years old, with my 22nd birthday approaching next month, I cannot help but to think of Islan Nettles who lost her life at this age. I cannot help but to grieve for my trans siblings whose lives were stolen too soon. In the spirit of those forgotten, in memory and in honor of my trans siblings too revolutionary for the world to handle, we must charge ourselves with seeing and hearing the invisible violence if we hope at all to end it. However, the seemingly endless mourning of our community members must be accompanied by an impetus to intervene. It is not enough to express sympathy. It is not enough to grieve. It is not to enough to resign to mourning deaths unless if we have the capacity to affirm, protect, and prioritize lives. Above all, we must listen. As Lamble (2008) notes:

Each case is abstracted from its history and context: Each murder is decontextualized and reabsorbed within a unified narrative and a universalized body of the dead trans subject…We do not remember the names of the victims so much as we remember the

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82 (Starr 2015).
83 (C. Gossett 2013, 582).
84 (Sontag 2004, 102).
violence that was done to them... The very existence of transgender people is verified by their death. Violence thus marks the body as belonging to the trans community. (28)

Therefore, I aim to resist the pervasive deracializing and decontextualizing of trans murders. While numbers are an important part of understanding the phenomenon of violence against trans women of color, they provide but small fragments of the whole picture, which rests inconsequential without an in-depth examination of specific cases to illuminate interpretive patterns. Central to reducing violence against trans women of color is to listen to their narratives and their demands. Vital to this end is reconfiguring trans murders as excessive, not trans people. As one editor put it, “It takes self-reflection and determined effort to overcome complacency in a society that often treats those who defy rigid cultural norms — like gender nonconforming and transgender people — as unworthy of respect or safety, but it should not have to take a friend's death to remind us to speak up” (Moore 2015). As I interpret in this section, the racial and class-based implications of gender identity enable devastating forms of subordination for low-income trans women of color (C. Lee and Kwan 2014, 97).

Though the first two sections, related to policing and incarceration, drew from empirical data from studies and community reports, the paucity of random sample studies resulted in studies focusing on some of the trans community’s most vulnerable, including those who are engaged in sex work, those who are living with HIV, those who have experienced drug use, homelessness, and disability, gesturing to the need for more high quality sample strategies for improved generalizability (Stotzer 2014, 275). Though these numbers might not reflect the entire transgender population, various patterns have emerged to identify those who are most sharply at risk for structural violence: Black trans women and trans women of color. In the context of anti-transgender homicides, historically inconsistent and inaccurate reporting practices and misunderstanding about transgender identity make it difficult to collect reliable data for
understanding the nature and scope of these homicides, but recent forward-thinking efforts initiated by informal networks of LGBTQ organizations and advocates to more effectively track violence offer valuable insights (Talusan 2016).

Until recently, there were two primary national data collection systems that document details on deaths and homicides: The Federal Bureau of Investigation’s (FBI) Supplementary Homicide Reports (SHR), which is a part of the FBI Uniform Crime Reporting (UCR) Program, and the Center for Disease Control and Prevention’s (CDC) Fatal Injury Reports. For the purpose of this paper, I am focused on looking at those labeled as murders and non-negligent manslaughters, or in other words, those that are potentially bias-motivated fatal crimes. Rather than tracking all general and incidental deaths provided by the CDC’s Fatal Injury Reports, I will look primarily at the numbers provided by the FBI. However, a few problems arise with these kinds of tracking programs. Firstly, anti-transgender hate are likely underreported due to the conflation of bias based on gender identity and sexual orientation (C. Lee and Kwan 2014, 95). Secondly, data collected by local and state law enforcement agencies are inaccurate or incomplete due to misgendering victims (i.e., failing to identify the appropriate name, gender, and pronouns), which then fail to get passed on correctly to the FBI's UCR Program as hate crimes based on gender identity. Thirdly, since the FBI began to accept data on crimes motivated by gender identity in accordance with the Shepard/Byrd Act of 2009 (U.S. Department of Justice and Federal Bureau of Investigation 2015b), but does not require it, many hate crimes against transgender and gender nonconforming people have not been reported to the FBI altogether.  

85 The UCR Program’s supplementary homicide data provide information about age, sex, race, and ethnicity of the murder victim and the offender; the type of weapon used; the nature of the relationship between the victim and the offender; the circumstance of the incident (U.S. Department of Justice and Federal Bureau of Investigation 2016a, 1).

86 The voluntary nature of the FBI system not only inhibits understanding of anti-transgender violence, but it has also enabled widespread police force without accountability by underreporting the number of “justifiable homicides.” In response to the glaring lack of government figures recording the number of people killed by law
A 2015 report released by the Human Rights Campaign in collaboration with the Trans People of Color Coalition also found that the vast majority of jurisdictions incorrectly report that they have had no hate crimes or neglect to report at all. For example, the report noted that the FBI’s Hate Crimes Statistics 2013 report neglected to report at least three killings despite clear evidence of anti-transgender bias. In the same report, the researchers discovered that only 33 gender bias motivated crimes were reported nationwide, none of which were categorized as murder or non-negligent manslaughter (Sherouse, Broadus, and Griffin 2015, 27). Evidently, the lack of accurate national data presents a major barrier for addressing the nature and scope of the violence directed toward transgender people.

In response to the FBI’s erratic and limited data, organizations have initiated more complex research projects by conducting surveys and releasing reports, such as the National Coalition of Anti-Violence Programs (NCAVP)’s annual reports that examine lesbian, gay, bisexual, transgender, queer, and HIV-affected hate violence (Dixon et al. 2011; Mitchell-Brody and Ritchie 2010; Dixon et al. 2011; Dixon, Jindasurat, and Tobar 2012; Chestnut, Dixon, and Jindasurat 2013; Ahmed and Jindasurat 2014, 2015; Waters, Jindasurat, and Wolfe 2016a). Another highly valuable resource that has recently emerged is “Unerased,” Mic’s database of transgender killings (Talusan 2016). This database reports that in 2015, for example, there were 24 hate violence related homicides of LGBTQ and HIV-affected people. Of the 24 reported homicides, 16 of them targeted transgender and gender nonconforming people (Waters, Jindasurat, and Wolfe 2016a, 9). Yet of the 118 hate crimes motivated by anti-transgender bias enforcement in the aftermath of the fatal police shooting of Michael Brown in August 2014, The Guardian initiated a crowdsourced monitoring system and database called “The Counted.” As an example, in 2013, the FBI system reported 461 justifiable homicides by law enforcement, yet crowdsourced counts found almost 300 more fatalities for that year (Swaine et al. 2016).

87 Islan Nettles in New York, Cece Dove in Ohio, and Diamond Williams in Philadelphia.
reported by the FBI in 2015, only 1 is listed as a murder or non-negligent manslaughter (U.S. Department of Justice and Federal Bureau of Investigation 2016b). Apparently, the other 15 victims were not recognized as transgender or gender nonconforming, experiencing erasure even in their deaths.

The disparities between the more recent crowdsourced databases and national tracking databases demonstrate that the problem has long been misunderstood. Emily Waters, senior manager of the national research and policy at NCAVP, suggests that the apparent increase in documented transgender homicide cases is a consequence of more accurate tracking (Talusan 2016). In other words, the recent surge of trans murders may be nothing new and we just got better at tracking them. Without accurate data to reference from past years, it remains unclear whether the increase in documented cases implies increased rates of violence. In any case, lethal violence is ever present for trans people of color.

Table 1. Reported Transgender Homicides from 2010 to 2017

<table>
<thead>
<tr>
<th>Year</th>
<th>FBI 88</th>
<th>NCAVP 89</th>
<th>Mic 90</th>
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</tr>
<tr>
<td>TOTAL</td>
<td>1</td>
<td>77-78</td>
<td>133</td>
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90 (Talusan 2016).
91 The 2012 NCAVP report notes that 50% of 25 anti-LGBTQ murders targeted trans people (Chestnut, Dixon, and Jindasurat 2013).
Flawless accuracy in tracking is an unfeasible goal, but reports from the NCAVP and 
*Mic*’s “Unerased” database present compelling insights. The latter tracks data on trans homicides 
in the United States since 2010. While the NCAVP reported 16 trans murders in 2015, *Mic* was 
able to track 24 trans murders, the majority Black and Latinx, primarily identifying information 
through published news reports. Regardless of reporting methods and outcomes, Alexis Dinno, a 
trans woman who works as a social epidemiologist, observed, “Brown transgender bodies are 
most vulnerable.” *Mic*’s analysis of trans homicides since 2010 confirms that violence against 
trans people is an intersectional phenomenon that is exacerbated by race, gender, and class. 
Evaluating the circumstances of the murders, *Mic* found that “many men killed partners after 
discovering they were trans, or out of fear of being outed as being in a relationship with a trans 
woman.” To reiterate, trans murders have more to do with them than transphobic strangers. But 
in stranger cases, Black trans women are at greater risk than other trans people – such cases 
account for 27% of Black trans women murders but only 10% of other groups (Talusan 2016). 

Given the disgusting violence of the criminal punishment system, it would be logical to 
assume that the prosecution rates for anti-trans homicides may be lower than those for the 
general population. However, this is not the case. Given that the FBI reported a 64.1% clearance 
rate for homicides in 2013 (Figure 1), and 64.5% in 2014 (Figure 2), about a third of all 
homicides go unsolved, similar to the 39% of trans homicides still under investigation according 
to *Mic* (U.S. Department of Justice and Federal Bureau of Investigation 2014a, 2015a; Talusan 
2016). And yet, transgender people, specifically transgender women of color, and particularly 
Black trans women, constitute disproportionately high rates of murder victims compared to the 
general population. If comparable prosecution rates cannot explain the disproportionate murder 
rates targeting trans people, then clearly something else is at play.
A contributing factor is that perpetrators attack trans people not because of anti-transgender “hate” but because they believe that transgender victims are significantly less likely to seek help from the police. Such opportunistic bias crimes, in which perpetrators exploit group

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92 (U.S. Department of Justice and Federal Bureau of Investigation 2014a).
93 (U.S. Department of Justice and Federal Bureau of Investigation 2015a).
ostracism, make sense when trans women of color are already profiled and harassed by the police for no reason (Woods 2008). Since opportunistic bias crimes are motivated by a target group’s perceived vulnerability rather than the perpetrator’s animus toward the group, consistent with criticisms of the perpetrator perspective, there should be no surprise at this point in the context of low-income trans sex workers of color. Furthermore, of the convictions, *Mic* revealed that those who kill Black trans women and femmes are usually convicted of lesser charges than those who kill people of other trans identities. Clearly, the fraught dynamic in which the criminal punishment system profiles, exploits, and abuses trans communities is at stake. To reduce these murders to instances of transphobic “hatred” is to ignore the white supremacist State violence that the combatants of Compton’s and Stonewall exposed before our eyes.
III. Street Queens, Sex Work, and Survival

*After all these years, the trans community is still at the back of the bus.*
– Sylvia Rivera 94

*There’s a far more complex narrative to trans women of color’s deaths than simply that they were killed because they were trans. The actual narratives surrounding each particular death reflects different parts of trans oppression. For example, many of the trans women of color killed in any given year are sex workers. Why? Because, in many cases, racialized transmisogyny keeps trans women from finding other work. Acknowledging these nuances of trans deaths is important to me because it gives us a goal to work for as a community, rather than the alternative of us getting together, decontextualizing the lives of the dead, and dispersing after a day.*
– Princess Harmony 95

Despite what Emmerich’s *Stonewall* would have us believing, Sylvia Rivera’s complex narrative disputes a tasteful rhetoric of LGBTQ equality. Born in 1951 in the Bronx to a Puerto Rican father and a Venezuelan mother, she lost her parents at a young age. She was abandoned by her father José Rivera. She was equally neglected by her step-father, a drug dealer. She was almost taken with her mother at age three when her mother committed suicide and spent two months in a hospital after attempting suicide herself. She had sex for the first time at age seven. Dark-skinned, precocious, and unbearably alone, “I basically grew up without love” (Gan 2013, 293). Long before Stonewall, alienated by an abusive grandmother and community, 10-year old Sylvia Rivera left home for 42nd Street in Times Square, where she met trans sex workers for the first time, became a street queen, and met Marsha P. Johnson (294–95). When 17-year old Marsha first met 11-year old “Ray” on the street, she took her by the hand and bought her something to eat with the “tips” she had earned (Duberman 1994, 68). But treasured community was rare. As she began to politicize through involvement in gay groups like the Gay Activists

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92 (Gan 2013, 291).
95 (Harmony 2016).
Alliance, other members publicly shunned her for “parodying” womanhood (2013, 296). Her eventual trajectory – implicating family and community rejection, survival sex work, and abuse from law enforcement – resonates with many trans women of color to this day.

Plugging in the Light

Che Gossett (2013) observes that “Sites of queer resistance are sanitized and cleansed of undesirables – queers of color, trans and gender-non-conforming people, sex workers – and folded into the state as a means of including particular bodies and politics” (584). What is the experience of this “sanitization” for those who embody the epitome of undesirability in Gossett’s terms – trans women of color who are sex workers? Trans women of color who participate in sex work report disproportionately high rates of incarceration (Cohan et al. 2006; L. M. Escobar 2007). The perpetrator perspective would blame trans women of color for disproportionate policing, incarceration, and death at the hands of law enforcement because they participate in this “criminal activity.” In this view, punishment is a logical consequence of crime. Yet a San Francisco study found that trans women sex workers were arrested and convicted more frequently than sex workers who were not trans women (Cohan et al. 2006; Stotzer 2014). While trans women of color certainly struggle with the legal repercussions of sex work, this doesn’t entirely explain why they are targeted more than others.

It’s been my life experience that it’s always been harder for the girls of color for everything. It’s like, you know, we have two strikes against us, we’re not only Black but we’re also transgender. All my life I’ve had to prove myself… I had to work harder at everything I did… I feel like I’m constantly being scrutinized. I’ve always had to prove myself as being a good person (Sausa, Keatley, and Operario 2007, 773).

In New York, Washington, DC, and Los Angeles, Human Rights Watch found that trans women profiled and found in possession of condoms are arrested for solicitation no matter what they were doing, or extorted for sex, both in and out of institutional settings (Human Rights
Watch 2012). As the Figure 3 illustrates, the USTS revealed that police and law enforcement officers assume trans women of color are sex workers, including a third of Black trans women and a third of multiracial women (S. E. James et al. 2016, 12). No wonder they cannot seek assistance or trust law enforcement (Graham 2014, 280).

Transgender women, particularly transgender women of color, are so frequently perceived to be sex workers by police that the term walking while trans, derivative of the more commonly known term driving while Black, was coined to reflect the reality that transgender women often cannot walk down the street without being stopped, harassed, verbally, sexually and physically abused, and arrested, regardless of what they are doing at the time. (Mogul, Ritchie, and Whitlock 2011e, 61)

What these authors fail to address is the effect of walking while trans and driving while Black in the same experience. Figure 3 illustrates a racialized distribution of trans women targeted and profiled as sex workers regardless of whether they were or not:

*Represents respondents of all genders who interacted with officers who thought they were transgender
**Sample size too low to report

Figure 3. Trans Women Profiled as Sex Workers by Law Enforcement96

96 “Transgender women reporting that police assumed they were sex workers in the past year (out of those who interacted with officers who thought they were transgender)” (S. E. James et al. 2016, 13).
The police practice of profiling constitutes another dimension of racialized-gendered violence against trans people of color in the criminal punishment system. Charged with “enforcing” the law, police officers never bother to question how and why factors like discrimination influence certain people more than others to participate in sex work – they just, as Gossett would put it, “sanitize” human “undesirables” from the streets. Yet studies\textsuperscript{97} that describe survival behaviors within a violently corrupt criminal punishment system use terms like “high-risk behaviors” which insinuate that survival mechanisms precede the impending abuse. Punishment is no logical consequence of crime; neither is it a logical consequence of what we call “high-risk behaviors.” Instead of fixating on the associated risks of sex work,\textsuperscript{98} we need to do better to characterize and understand the act of sex work for trans women of color. To characterize sex work as “risky” is to distrust the judgment of those we victimize. It is to allude to an inventive array of “less risky” actions supposedly accessible to all. It is to conveniently eclipse the structural factors that influence “risk.” It is to demoralize those who know fully well what the risks entail. One API trans woman lay it down:

I’m going to state why most transgender girls prostitute. It’s not because they really want to, it was just a means of support. I would lose my job in the daytime… I still have to pay rent… It was a way, a means of support. Because after a while I gave up, and prostitution was easy; it was easier going out than dealing with society, it was easier than going out looking for a job and getting fired, and I was my own boss (Sausa, Keatley, and Operario 2007, 772).

Again, the criminal punishment system assembles racialized-gendered constructions of criminality to dupe us all into fearing the inborn deviance of trans people of color rather than its own intrinsic savagery. The USTS found that those who are most likely to participate in sex work, drug sales, and other criminalized survival reactions include those who have experienced

\textsuperscript{97} For example, K. L. Nadal et al. describes that “transgender sex workers…engage in high-risk behaviors (e.g. risky sexual practices, substance abuse)” (Nadal, Davidoff, and Fujii-Doe 2014, 170)

\textsuperscript{98} The health risks including substance use, HIV and other STIs are well-documented.
family rejection, poverty, and discrimination based on employment, housing, and education. Furthermore, a fifth of USTS respondents have a history of participating in the underground economy for income at some point, while one in eight respondents have participated in sex work for crucial necessities: money, food, or a place to sleep (S. E. James et al. 2016, 158). In light of these findings, dependence on sex work can be reconfigured to reflect a reaction to abuse, not as a debauched solicitation for abuse. When we say “high-risk behaviors,” we vindicate an entire society that ruthlessly attacks trans women of color interpersonally, institutionally, and systemically. We absolve ourselves of the high-abuse actions that engender criminalized survival reactions.

Destroying the risk goes beyond cleansing the streets. That is to say that the criminal punishment system should charge itself instead with cleansing family rejection, cleansing poverty, and cleansing discrimination. Cleansing itself. That is to say that the criminal punishment system supplies the risk and creates the demand. That is to say that trans women are not punished because they are criminal sex workers. The TransLatin@ Coalition recently published a report that over half of translatin@s in Southern California earned less than $10,000 a year. One respondent voiced, “Because of not having stable housing I have prostituted, used drugs to deal with homelessness, and have gone through dehydration” (Caraves and Salcedo 2016, 21–23). Are we listening yet?

Sex work is inextricably connected with economic struggle. In 2015, the Center for American Progress and the Movement Advancement Project reported that trans people are nearly four times more likely than the general population to earn $10,000 or less, and that an unconscionable 34% of Black trans people live in extreme poverty (Andrews et al. 2015, 3). If given $1.25 a day to live, I do not suspect that a police officer would wait long before employing
his own set of criminalized survival reactions. I do not suspect that he would bother to seek help from the criminal punishment system. I do not suspect that he would last very long.

In sum, empirical evidence is sparse but it is logical to conclude that family rejection increases the risk for leaving or getting kicked out of the home. This increases the risk for economic marginalization, violence, discrimination, and harassment. This increases the risk for criminalized survival reactions like sex work. This increases the risk for contact with law enforcement. Obviously, since we’ve observed that many trans women are unlawfully profiled and arrested for nothing more than existing, none of these implies causality for another. We may never articulate a coherent and common linear progression for violence against trans people. Yet, family rejection emerges as a consistent precursor for oppressed trans people, from Sylvia to our youth today. In the face of familial separation and rejection, trans youth of color use survival sex work for income, food, and housing. Says Fatima, a Black trans woman in Detroit:

I was forced to commercial sex, I had nowhere else to go, I mean, I was gonna go to… my uncle, but he didn’t like the way I live my life, so I couldn’t go to him. So, where am I going? (Graham et al. 2014, 107)

Sometimes it takes more than one try to restore support in the place of a missing family. When successful, the new familial bonds may carry little resemblance to the former abuse, rejection, and estrangement. Coercively assigned the status of a crime, sex work as a criminalized survival reaction restores deprived income, in addition to deprived family and community. That older trans women introduce younger trans women to sex work implies a generational dimension to sex work in trans communities (Graham 2014, 280), but also gestures to a generational dimension to the lived experience of racialized transmisogyny. “Marsha plugged in the light for me,” according to Sylvia’s tender memory (Duberman 1994, 67). Indeed, she did. Marsha “Pay It No Mind” Johnson not only fed Sylvia with her “tips” during her time of abandonment, she
also offered her a long and committed friendship in which the two trans women of color eventually rioted together at the Stonewall Uprising and continued to agitate for justice. One could say that STAR was the direct product of Marsha’s love and will to plug in the light.

Similarly, in recent times, criminalized survival reactions manifest close relationships denied elsewhere. As another young Black trans woman in Detroit recalled:

You know, the older trans girls were showing me the ropes and what to do. My gay mama was out there helping me, so if I could make my fair share, let me sleep in her room one night or whatever the case may be. (Graham et al. 2014, 107)

It is tempting to rebuke trans women who “show the ropes” to other trans women. But to assume that trans women do this to enable crime is to perpetuate queer criminal archetypes. It is to blame trans women for crime and health consequences like HIV/AIDS instead of a deliberate criminal punishment system. It is to ignore how trans women alleviate the suffering of others, provide family, and offer channels to escape economic hardship. It is to sever the link between survival sex work and “the historic dire economic situation of Black communities and the commodification, objectification, and eroticization of Black and transgender bodies” (Graham 2014, 280). It is to accept that those we charge with enforcing the law often participate themselves in sex work as Johns. As a Black trans woman named Dina said:

Oh, the police are no different than johns to me. They use their authority to get what they want… The same thing that the rest of them want, but they want it for nothing… Because they are police, ‘I can take you to jail if you don’t suck my dick.’ (281)

Despite the infinite complexities underlying sex work narratives for trans women of color, disgusting assumptions that prescribe sex work as essentially criminal subordinate them for exploitation, violence, and terror:

99 The majority of research articles addressing trans women sex workers focus on safer sex practices and HIV/AIDS (Nadal, Davidoff, and Fujii-Doe 2014, 174). For the purpose of my paper, I move away from research focusing solely on HIV since health gains are largely dependent on fundamental social determinants of health (C. Davis 2014, 2).
He used to pick up one of the girls… he would rob them if they had any money on them, and then he would, I mean terrorize them basically. He would use different types of weapons each time. There was one time he terrorized my friend with a hunting knife, and put cuts on her throat, and with me he used one of those heavy-duty razors. (Sausa, Keatley, and Operario 2007, 774)

And State-orchestrated death:

They think you’re a girl and then you don’t know whether or not to tell them the truth, because you know they may react. I know someone who got butchered…was cut up, boom, boom…And I think he got away with it… He used the defense of the shock of finding out that you know, that this girl had a, the way he phrased it, ‘had a dick.’ My friend died. (2007, 774)

*Mic* reports that in addition to intimate partner violence and stranger attacks, transgender murders most commonly occur in conditions related to sex work (Talusan 2016, 6). How convenient for the trans panic argument.

In the wake of increasing “prostitution free zones” to round up criminalized, degenerate sex workers, abuse and death are endemic issues. As Princess Harmony articulated in the epigraph at the beginning of this section: *There’s a far more complex narrative to trans women of color’s deaths than simply that they were killed because they were trans.* Accordingly, there is a far more complex narrative to sex work than simply that it is a “crime.” Some trans women continue sex work because male clients’ offer validation and appreciation that nobody else concerns themselves with sharing (Nadal, Davidoff, and Fujii-Doe 2014, 175). Not even their families.

We lean on certain people for support and love in this life. And if you’re not getting it from your own blood, it hurts. That’s why a lot of us go out into the streets and look for that love and affection and respect that we would have probably been fine if we got that at home. (Sevelius 2013, 12)

In the midst of this sinister darkness, we must plug in the light for ourselves. We must learn from Marsha, from Sylvia, from trans women of color sex workers, from street youth today. I did not need to write this after Princess Harmony said it all. After all, we owe everything
we know to define queer and trans justice to Vanguard at Compton’s over 50 years ago – to the fearless, resilient sex workers who organized to cull revolutionary power at the intersection of sex work, youth, queerness, and radicalism (Worley 2015, 48).

So I ask again: *Are we listening yet?*

Dee Dee Taught Me

*I know there were a lot of robberies and other things that happened on the Fourth of July weekend. But for two transgenders to be in some very serious incidents and the city put out absolutely nothing about it. That’s very concerning to me.*

– Earline Budd

In my introduction, I mentioned the erased murder of Deeniquia Dodds a couple of weeks before Sarah McBride’s speech at the Democratic National Convention in July 2016. Just like McBride, Dee Dee was just 25 years old. But unlike McBride, Dee Dee stood before the gun, not the camera. Found by a pedestrian in the early hours of July 4, 2016, Dee Dee passed away after spending over a week on life support. She was the 15th trans person murdered in 2016. On July 16th, a vigil in memory of Dee Dee brought community members together. But vigils are not enough. I want to revisit this case in light of everything I’ve reviewed so far. Dee Dee’s story is more than a Google Alert, more than a cautionary tale. Dee Dee’s story is more than an opportunity for us to absolve our complicity through the act of mourning.

I refer to the testimony of longtime DC-area trans activist Earline Budd who currently works with HIPS, a DC-based organization that focuses on harm-reduction strategies for people engaged in sex work and drug use. Budd was unofficially alerted by police sources after Dee Dee passed away. When the police waited over a week to release a statement or a press release

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100 (Chibbaro Jr. 2016).
disclosing the attack, Budd came forward and asserted, “They need to put out the word to the
community that this happened. Somebody may have seen something during that early part of the
morning. They may have seen her with someone” (Brighe 2016). Budd expressed vocal concern
that the suspect could be targeting trans women sex workers. Indeed, shortly after on June 28,
another trans woman of color, 22-year old Lola Bell, was robbed at gunpoint several blocks from
where Dee Dee was found.

Yet the Metropolitan Police Department only released information about the shooting on
July 13. Still, the police reports referred to Dee Dee by her incorrect birth name, replicating the
racialized-gendered violence that resulted in her death. Lola also failed to be recognized as a
trans woman. In the aftermath of Dee Dee’s death and the poor handling of the case by law
enforcement, HIPS published a blog post condemning the MPD for its “inexcusable negligence
in their purported efforts to serve and protect the LGBTQ+ community” and suggested the MPD
to release a formal apology as a step toward accountability (HIPS DC 2016). To take it a step
further, I charge the MPD with responsibility for Dee Dee’s death.

New developments in the investigation reflect a few changes in departure from what I
had originally reported in my introduction. Three defendants – 26-year old Jalonte Little, 21-year
old Monte T. Johnson, and 21-year old Cyheme Hall – have been charged in a robbery
conspiracy with first-degree felony murder. The Washington Post recently reported in March that
the three men will face hate crimes charges for Dee Dee’s murder, in addition to assaulting and
robbing two other trans women. Budd praised the possibility for an enhanced penalty: “It sends a
message that it’s not okay to go around and shoot, harm and kill transgender people. It sends a

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101 I had originally reported that Shareem Hall and Jalonte Little were both charged with first-degree felony murder while armed in September without hate crimes charges. Shareem Hall was not listed in the current indictment but has a hearing scheduled for May.
message that we are human like anyone else.” In response, Hall’s attorney Jonathan Zucker called this move a “leap” and asserted that no specific comments had been made about gender identity (Marimow 2017).

Yet as we have uncovered, arresting and jailing perpetrators doesn’t reduce violence against trans women of color. Especially when they are sex workers, like Dee Dee was. According to the indictment, the perpetrators took Dee Dee’s life in exchange for small items like cellphones, earphones, and Metro cards. While it certainly mattered that Dee Dee was a Black trans woman and a sex worker, she did not bring this upon herself. Instead, this heartbreaking murder confirms the “opportunistic bias crime” theory that transphobic hostility does not fully explain high rates of murderous violence against trans people (Woods 2008). The perpetrators would never have targeted Dee Dee had they not assumed an abusive dynamic between trans people of color and law enforcement. The perpetrators might never have killed Dee Dee had they not known that the system had already abandoned her.

Dee Dee is actively teaching us that hate crimes legislation doesn’t work. Dee Dee is actively teaching us that criminalizing survival reactions in response to death threats doesn’t work. Dee Dee is actively teaching us that “equality” doesn’t work.

Dee Dee is actively teaching us to listen.

Because there’s no way. There’s no way that our stories are just going to be hidden or silenced…no. It’s important that people know that it’s not because we go after the so-called American Dream. What American Dream? To me it’s like, no, it wasn’t an American Dream and for most translatinass it’s trying to survive, trying to stay alive.
– Alexandra Rodriguez de Ruiz

102 El/La Para Translatinass, a community organization based in the Mission District of San Francisco, is dedicated to social justice, HIV prevention, collection vision and action for transgender Latinas. Alexandra Rodriguez de Ruiz, former program coordinator for El/La, came up with “translatinass” as “a way of empowerment and a way of including and a way of giving visibility to a community that was always in the background… Nobody cared about translatinass” (Rodriguez de Ruiz and Ochoa 2016, 162). El/La eventually evolved to become an integral part of the trans Latina community in San Francisco.

103 (Rodriguez de Ruiz and Ochoa 2016, 170).
IV. (Trans)formative Liberation

What we did wrong was being Black and trans and fabulous.
– Janetta Johnson

A theory in the flesh means one where the physical realities of our lives — our skin color, the land or concrete we grew up on, our sexual longings — all fuse to create a politic born out of necessity. Here, we attempt to bridge the contradictions in our experience: We are the colored in a white feminist movement. We are the feminists among the people of our culture. We are often the lesbians among the straight. We do this bridging by naming our selves and by telling our stories in our own words.
– Gloria Anzaldúa and Cherrie Moraga

In the introduction to this thesis I asserted that we fail to listen to trans people of color. When we elevate trans people of color to the status of legendary only in their deaths, we annihilate their ability to offer power, insight, and strategies of resistance when they’re living. In the event that an inkling of public recognition is conditional on traumatic levels of violence and death, visibility can’t be praised by itself. In the face of relentless penal and carceral violence targeting trans people of color, my analysis has brought me to cherish proactive strategy in the place of reactive answers. Here I plead for us to direct our attention to the lives and leadership of trans survivors on the ground laboring to address the epidemic of anti-transgender violence.

Where are we investing our futures? Who are we disempowering?

For one, that our movement is dominated by a desire for expediency disappears the possibility for long-term strategies to reduce violence. While big steps of progress seemingly bring us closer to that obscure goal of equality, we cannot rely on the integrity of large institutions that ignore and erase trans women of color. We cannot rely on the furtive violence of

104 (Johnson 2017).
105 (Moraga and Anzaldúa 1983, 23).
the criminal punishment system to deliver justice. Going back to my introduction, I maintain that to fight for trans lives is to confront a subordinating system, not to demand inclusion in that system. Yet the widespread appeal for inclusion transforms demands for justice into subdued compromises that uphold systems of oppression. Such a resigned strategy sets us up for further exploitation.

On the Back of the Bumper

Large and respectable LGBTQ organizations that operate through a language of human rights discourse tend to be directed, funded, and controlled by white people. Ironically their strategy for “inclusion” entails a blatant exclusion for those at the bottom. It’s no secret that the HRC, one of the most prominent “gay rights guardians,” is sometimes referred to Human Rights Corporation or White Men’s Club (Geidner 2017). Sylvia Rivera was inherently opposed to this kind of politics. As she wrote in April 2001:

One of [STAR’s] main goals now is to destroy the Human Rights Campaign, because I’m tired of sitting on the back of the bumper. It’s not even the back of the bus anymore — it’s the back of the bumper. The bitch on wheels is back.

Fighting for homeless queer and trans kids on her deathbed and shortly before she passed away on February 19, 2002, STAR issued a press release calling the Human Rights Campaign "a separatist organization devoted to money and power that has insulted STAR and the transgender community through ignorance, arrogance, and transphobia”106 (Bronski 2002, 1; Gilligan 2017). Sylvia knew that senior gay leadership in powerful nonprofits like the HRC chose politics over lives, especially when those lives were Black, Brown, trans, and poor. In Sylvia and Marsha’s

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106 Emphasis mine.
time, dominant gay white organizations like the Gay Activists Alliance shunned, ignored, rejected, and humiliated trans women of color.

Recently, the “gay rights movement” has been scheming to coopt trans struggle into their larger assimilationist agenda in complicity with carceral and penal violence. Even organizations and individuals who claim to push for trans lives have excused the anti-transgender agendas of the HRC and similar groups. For example, an influential transgender advocacy nonprofit called the The National Center for Transgender Equality, which focuses almost exclusively on policy and is directed by white trans woman Mara Keisling, colludes with what Black trans activist Monica Roberts calls “Gay, Inc”:

What does it say about the purported ‘national trans organization’ when its founding ED refuses to stand up and call out the disparity [of trans women and men hired] and acts as an apologist for those who consciously and continually piss on trans women when we seek employment, by telling us that piss is just unconscious rain? (Roberts 2013).

In response to criticisms that “Gay, Inc” employs no trans women while employing several trans men for advocacy work, Keisling dismissed this discrimination as “mostly not overt or conscious.” This is the same NCTE that published the NTDS and the USTS and the same NCTE without a single person of color on their board of directors, as Roberts (2011) pointed out in a column titled Why NCTE Doesn’t Speak for Me or My Black Trans Community. While both of its national surveys provide extremely valuable data as the largest existing surveys of trans respondents, the NCTE maintains a troubling degree of faith in the criminal punishment system to alleviate violence and discrimination against trans people in what they call a strategy of “incrementalism.” As Mara Keisling told a reporter, “Incrementalism is how policy gets done while other people are whining about incrementalism. We have made it an article faith over the past few years that if a bill lacks public accommodations, it’s useless. That’s not true” (Holden

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107 ED stands for Executive Director.
Trans historian and legal scholar Kat Rose made no bones about it: “I simply do not trust NCTE or Mara Keisling.” When money and resources prioritize large, respectable organizations that actively marginalize people of color, we must be suspicious and actively resist the vague idea of “transgender equality” as it swoops into the “NGO-ization” of social justice work (Nepon, Redfield, and Spade 2013, 3).

Organizations, let alone those directed by people of color, whose missions are not inscribed within a rhetoric of “equality” do not receive the attention, money, or resources that they need. With its history of alienating transgender people of color, it’s no surprise that it took the NCTE over ten years from its founding in 2003 to develop The Racial and Economic Justice Initiative in 2014. Yet the disturbing fact remains that the NCTE has not made it a priority to address the ongoing killings of Black trans women. Instead, the pluralistic objective to achieve “equality” comes at the expense of looking to the bottom and comes at the expense of modeling leadership by those directly impacted. Whereas Keisling founded Trans United for Hillary for respectable white trans advocates, Sylvia and Marsha opened the STAR House in a Greenwich Village trailer truck for homeless trans sex workers of color. Whereas Keisling chases donors and grants, Sylvia and Rivera paid the rent by working the streets at night (NSWP 2015; Caterine 2016). Black trans femme poet, activist, and writer Venus Selenite (2016) put it best when she wrote:

As Clinton happily glides over the bases of trans ally baseball, she’s only scored home runs with white trans people. Mara Keisling… is perched comfortably at the top of the list of Trans United for Hillary’s founding members. Activist Sarah McBride’s name is right up there, too. (Selenite 2016)

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108 “In these instances, seduction toward something better promises subjects an end to pain, marginalization, and violence in exchange for being recognized as legitimate subjects who can potentially participate in global capitalist relations and its futures – collusion becomes the cost of belonging” (Agathangelou, Bassichis, and Spira 2008, 129).

109 This initiative developed after the results of the 2011 NTDS were analyzed and demonstrated worse outcomes for trans people of color in every area of life. According to their website, “NCTE recognizes that racial and economic justice requires an intersectional approach and sensitivity to race and class, understanding historical and present systems of oppression” (NCTE 2017).
On the flip side, organizations such as the Sylvia Rivera Law Project turn to the lives of trans women of color like Marsha and Sylvia and keep their legacies alive by “increasing the political voice and visibility of low-income people and people of color who are transgender, intersex, or gender non-conforming” while recognizing that low-income communities of color in particular are “suffering from the severe cutbacks to anti-poverty programs, increasing militarization of the police, and rising rates of incarceration.” On their website, they state that “We can’t just work to reform the system. The system itself is the problem” (Sylvia Rivera Law Project 2017a, 2017b). They also share the conviction that “the people most affected by the systems of violence and oppression we fight are the best people to lead that fight.” One way that SRLP practices this strategy is through its SRLP Prisoner Advisory Committee (PAC) which consists of 70 trans, intersex, gender nonconforming people and allies who are currently incarcerated. The PAC members work with members of the SRLP collective to “work on changing policies, building community and sharing information and strategies” (SRLP 2017). With a Prisoner Advisory Committee and through its collective leadership structure, SRLP has made enormous contributions for low-income trans and gender nonconforming people of color “from the bottom up” (Nepon, Redfield, and Spade 2013). While trans women of color are not relegated to the “back of the bumper” in this context, they still aren’t found directly behind the wheel.
On the Wheels

*Of course, we still got a long way ahead of us.*
– Sylvia Rivera\(^{110}\)

*I want to assure you that while I’m stepping down as Executive Director, my mouth is not stepping down and I will continue to bitch and let people know what my community is going through. It’s difficult living in our truth, but what better way to survive? It’s important that we survive; we’ve got to come out on top.*
– Miss Major Griffin-Gracy\(^{111}\)

When I was researching trans-centered organizations, I found it difficult to identify those whose leadership comprised Black trans women and trans women of color. I first came across The Transgender, Gender-Variant, and Intersex Project (TGIJP) website haphazardly many months ago as I sought trans people of color support communities during a time of personal strife. When I noticed that they indicated their members as “low income transgender women of color and our families who are in prison, formerly incarcerated, or targeted by the police,” I moved on. I believed that this was not my place, not in my interest. What I failed to recognize about my seemingly innocent gesture was the quiet replication of racialized transmisogynist *Othering* foundational to the liberal capitalist democracy. Whereas the HRC employs interest-group politics at the expense of trans people of color, TGIJP responds in a way that resists such exclusion. With a few modifications from Derrick Bell’s (1980) assessment of “interest convergence,” I argue: The interest of trans people of color in achieving justice “will be accommodated only when it converges with the interests of whites” (523). Furthermore, the interest of trans women of color in achieving justice will be accommodated only when it converges with the interests of everyone else. This is a dangerous mindset for those of us who

\(^{110}\) (Rivera 1998).

\(^{111}\) (TGIJP 2015, 2).
fall into the category of everyone else. So why? The criminal punishment system propagates the myth that our interests and those of our trans sisters of color are inherently divergent when in fact they are inextricably linked.

Earlier in the section on incarceration of Chapter 2, I used quotes from an article from Janetta Johnson on her experience with being arrested and incarcerated. Revisiting the TGIJP site months later, I quickly wrote down Janetta’s email and sent her a message requesting to speak with her in the context of this project. Thanks to her immense patience and generosity, I had the privilege to speak with Janetta over the phone and to listen as she described the uncommon experience as a Black trans woman with a history of incarceration who now serves as Executive Director of the TGIJP based in San Francisco. On their website, she states:

Our experience at TGIJP affirms the truth that confronting the issues impacting currently and formerly incarcerated trans women of color leads to uplifting social justice movements as a whole (Johnson 2015, 3).

When Black trans women get free, everybody gets free. To me, Janetta embodies a theory in the flesh, a breathing testament to the power of trans women of color in a society that seeks to disempower them. As academics, we aren’t doing enough to create room for reflexivity, for critiquing ourselves and our complicity, for reproducing the same structures of power that we claim to resist. As established and respectable white people like Clinton and McBride express a desire to “combat violence against transgender women of color… once and for all,” I turn to Janetta’s embodies expertise to guide us in bridging the gap between complicity and resistance, between theory and praxis. During my enlightening conversation with her, we began by discussing TGIJP and its mission. In her own words:

At one point in time, people were always funding policy work, and at that time, TGIJP really did not have the capacity to do policy work. And not to mention there were so many immediate needs that we felt like we had no response within the trans community
and that kinda hurt us a little bit and it sort of kept us stagnant but we always knew that there were places we wanted to go.

We are currently working on policy. We are the first cohort of transgender people that the Women’s Policy Institute has ever had. We’re trying to ensure that transgender women have an opportunity while they’re [inside the criminal justice system] to legally change their name and gender so that when they get out of jails and prisons, they will have better access to employment opportunities and one of the things that a lot of people don’t know is that first of all, once you’re inside the criminal justice system, they use everything they can to erase your transgender experience. So we’re basically trying to support trans women so when they transition back out into our society, that they have the support they need in order to respond quickly and focus on recidivism and reentry into society that has never socially accepted them. We’re working on the policy with the name and gender change and we do political education and empowerment.

Given the preponderance of carceral and penal violence against trans people of color, infiltrating the realm of legal reform can be a daunting endeavor that requires a strong will to resist the extreme levels of disillusionment, pain, and hopelessness that the criminal punishment system generates. While it can be tempting to abandon legal strategies altogether, thoughtful reform is possible as long as “merely symbolic” changes can be distinguished from those that actually “prevent trans poverty, criminalization, deportation and death” (Spade 2015, 88). As we’ve seen, the HCPA’s strategy toward inclusion and recognition represents a primarily symbolic change that invests its resources to punish crime rather than to prevent violence. In contrast, the project that Janetta describes assumes the position of those currently held captive in prisons and jails. The difference between this project and the HCPA is that people like Janetta have a seat at the decision-making table.

That TGIJP is the first cohort of trans people that the Women’s Policy Institute has ever had is hopeful. The Women’s Policy Institute (WPI), a leadership and public policy training program under the Women’s Foundation of California, has helped pass 29 laws at the state and county levels in areas of child care, criminal justice, environmental justice, reproductive justice, and trauma justice. On their website, WPI offers the following Martin Luther King Jr. quote:
“Morality can’t be legislated, but behavior can be regulated. Judicial decrees may not change the heart, but they can restrain the heartless” (WPI 2017). Whereas hate crimes legislation does not include trans people in the process of forming and implementing laws on their behalf, the WPI indicates that it “amplifies the voices of women and trans folks throughout the state, training them to be policy advocates and champions for gender justice.” Recognizing that champions for gender justice must be identified among those most directly impacted by gender injustice, TGIJP’s participation in WPI inspires hope for the future by trusting Black trans women to develop policy advocacy projects of their choosing while expanding the capacity of an entire movement dedicated to economic empowerment.

In WPI, Janetta is currently a member of the Criminal Justice Team along with two other members of TGIJP and three other members representing the Transgender Law Center, Western Regional Advocacy Project, and St. James Infirmary. The coalition works to expand safety and access for incarcerated trans people specifically through \textit{SB 310: The Name and Dignity Act for Incarcerated Trans People}, authored by Democratic Party Senator Toni Atkins. Currently, trans people in prison must obtain approval to change their name and gender marker. If passed, this bill would allow currently incarcerated trans people to change their name and gender marker without having to get “authenticated” by the Director of Corrections, a parole agent, or a probation officer. As of April 19, 2017, the Facebook page for SB 310 announced that it passed the Senate Judiciary Committee in a 5-2 vote. Next, the bill will be heard in the Senate Appropriations Committee, which will determine how much the bill will cost. Afterwards, the bill will be presented on the Senate floor before being passed along to the Assembly side of the legislature. This is big news.
Janetta fully harnesses this access to institutional power for improving the chances of incarcerated trans people making smooth transitions back into the free world as their true selves. As Street Sheet articulates in a recent March 2017 issue, “First, this bill is a re-entry concern… Second, this bill is integral to honoring trans people’s dignity while incarcerated” (Feigin and Buchert 2017, 1). Indeed, administrative systems inflict violence on trans people from the day they’re born as birth certificates misgender them, regulating, managing, and categorizing their bodies into normative prescriptions that dichotomize “Male” and “Female.” As newborns, trans people’s inability to articulate their genders is exploited and used as standardized data as a form of “identity surveillance” in complicity with the War on Terror (Spade 2015, 77). And as adults, this administrative violence continues. The process of changing one’s legal name and gender marker in the free world is already an excessively burdensome experience that entails court processes, fees, social security office appointments, medical appointments, paperwork, and other forms of “authentication,” in some cases requiring evidence that one has undergone a specific surgery. The overwhelming majority of trans people do not satisfy such medical authorization requirements since surgeries, which are not always wanted or needed, are prohibitively expensive (79–80). Young people and those who do not resonate with either “M” or “F” face additional barriers navigating gender classification systems. Unsurprisingly, this process is particularly impossible for incarcerated low-income trans people of color.

If passed, this bill has the potential to interrupt racialized-gendered property regimes, operations of population management, and other nation-making activities (78). By fighting for the right to request name and gender marker changes for incarcerated trans people, TGIJP and the WPI coalition create a space of possibility for effective legal reform and long-term strategy to reduce violence against trans people of color within the criminal punishment system. Not only
does such a choice enable employment opportunities, as Janetta indicates, but it also reaffirms one’s history, experience, and existence as a transgender person in direct resistance to a politics saturated with notions of abandonment and disposability. In this way, Janetta’s visions in legal reform reflect the refusal to compromise the complexities of trans identity in exchange for “incremental” inclusion. The legal name and gender change initiative at once confronts the injustice of systemic economic marginalization as well as violent gender policing and other forms of administrative violence. As Janetta underlined, “once you’re inside the criminal justice system, they use everything they can to erase your transgender experience.” Empowering incarcerated trans people to exercise full agency when it comes to their legal name and gender helps to ensure that erasure and mistreatment will be recognized for the violence that it is. Returning the power to define one’s legal name and gender prevents the criminal punishment system from capitalizing on such inconsistencies, particularly when trans people of color face heightened aggression in courts, police experiences, social contexts, public accommodations, schools, and work settings.

As she expanded on the importance of political education and empowerment, glaringly absent in dominant punitive arrangements, Janetta illustrated the need to support trans prisoners until the very end, through various means, such as facilitating their reentry process, legal advocacy through alternative sentencing, physically visiting incarcerated trans people, and reaching out to those inside the criminal punishment system:

We work with transgender women that are inside and outside of the prisons to make sure that they get the information and resources and support them in being politicized so they can understand clearly about systems of oppression and how we’re going to move around the world during these very difficult times. We make sure that when people are getting out of prisons that they have enough information to go back to their cities and counties to have a point of contact for them to start their reentry process. We also want to make sure that when someone lets us know that they’re leaving, they’re getting out. We kind of do the research and help them find a contact person that they can go and meet with upon
release. And we also support trans women because they do organizing within the criminal justice system and they do transgender support groups and we make sure that they have the information and resources that they need.

We have a legal program where we do alternative sentencing and we work with transgender people that are caught up in the criminal punishment system and we work alongside with judges and public defenders and try to get them alternative sentencing; instead of going to jail or prison we try to get them to go to halfway houses or drug and alcohol treatment programs. We do prison visits; we go inside the prison system and we visit with different transgender people and find out how we can be a resource for them. From the outside to the inside, we’re working with the one lady who just did six years in prison and we were able to work with her and support her as she was going up against the parole board and supporting her in making sure that she’s properly prepped for the parole board. Our mail night program meets every Tuesday from 4-8.

Firstly, Janetta refers to TGIJP’s Melenie Eleneke Grassroots Re-entry program. As its name suggests, the program provides the support and services necessary to ensure that incarcerated trans people can stably and safely transition into society. Its services include medical/mental health referrals, housing assistance, job training, political education, and more (Figure 4). These approaches that Janetta describes integrate advocacy, politicization, and community-building to confront systems of oppression rather than to demand the right to participate in them. Notably, for people who face the risk of further criminalization, ensuring the supportive presence of a trusted point of contact reduces the likelihood of experiencing repeated abandonment, recidivism, or violence from law enforcement. In prioritizing political education during re-entry, this program helps to mobilize critical strategies to intervene in violent systems by understanding the calculated methods through which they stealthily expand control, punishment, and surveillance. Secondly, Janetta refers to TGIJP’s legal team which coordinates weekly mail nights with incarcerated trans people, monthly support groups for trans people in San Francisco County Jail, statewide prison visitation for leadership development for incarcerated trans people, in addition to a newsletter called Stiletto which is published twice a year using content from members (Figure 5 and Figure 6). TGIJP’s focus on decarceration
through alternative sentencing explicitly denounces queer criminal archetypes, racialized-gendered criminalization, and the prison industrial complex as a whole. Instead of adding punishing power to an excessively violent punishment system, this program works to eliminate the circumstance of incarceration altogether, avoiding proposals to build new facilities, hire new staff, or any other decision that would heighten the controlling capacity of the criminal punishment system (88-89). Furthermore, direct support provided in the form of legal counsel, prison visitations, and letter-writing refutes the dehumanizing claim that “criminals” are undeserving of well-being and human contact. While legal tools cannot be the only strategy employed in pursuit of transformative change, TGIJP works with judges and public defenders to diminish punishing power, not to increase it. Both of these programs seem to be inscribed within TGIJP’s Leadership for Liberation program which promotes leadership development for formerly and currently incarcerated trans, gender-variant, and intersex people. A developing part of this program is #BlackGirlsRulez, which convened 30 Black TGI leaders from around the United States to lead movement building, grassroots fundraising, trainings, and workshops. Since the infrastructure of existing nonprofits and social service organizations never concentrate leadership or decision-making power among Black folks, let alone Black trans folks, TGIJP brilliantly establishes its own infrastructure to center Black trans folks. As Spade (2015) observes, doing the work to directly support the survival and the political participation of those directly affected is an essential part of dismantling criminalization and incarceration (89).

While Janetta serves as the organization’s Executive Director, it was evident that TGIJP’s strategies for justice and visions for transformative change were based in a shared imagination (89). As I admired her fierce will to resist the abandonment and disposal of trans women of color, I sensed that this was partly the result of somebody else’s refusal to abandon her. When I
asked her about how she became involved with TGIJP, she invoked the generational dimension to the experiences of sex work and of racialized transmisogyny, gesturing to the continuing legacy of Black trans women supporting each other toward liberation through solidarity and resistance from Stonewall to today:

First of all, I have to give you the backstory. I don’t know if you know Miss Major? Okay so I was living in Tampa, Florida in 1997 and I was having a really difficult time and things just weren’t working out for me well. Someone knew Miss Major, met her at a conference and gave me her number, and I called her and I explained to her that I was having a very difficult time and though I had been living in my truth as a transgender woman for many years, it’s just that… I just… felt like I was not… Florida was not a safe place for me to continue on to try to create a better quality of life for myself besides drugs and prostitution. So I called Miss Major and we had about a two-minute conversation and I was just like, “Hey, they told me if I called you, I’m a Black trans woman, that you would probably help me, and you’re doing a lot of amazing things.” And she was just like “Sure, come on baby!” And two weeks later I showed up and ever since then, Miss Major has become my mother.

Though the initial phone conversation lasted a short two minutes, Miss Major’s kindness, caring, and mentorship profoundly transformed Janetta’s life trajectory to come. A lead combatant of the Stonewall Uprising, Miss Major witnessed early forms of police brutality, racialized-gendered criminalization, and State-orchestrated mass death. After being selected as the grand marshal for the 2014 San Francisco Pride Parade and becoming the subject of the recent documentary, *MAJOR!*, she is now credited as the “matriarch of the Bay Area’s trans community” and continues to dedicate her life to taking care of “the girls” (Wong 2015, 1).

But things have not always been simple for Miss Major. During her transition in her teens and over the next two decades, she suffered from homelessness and participated in criminalized survival reactions such as sex work and theft in order to remain alive. As a result, the criminal punishment system swallowed her, sentencing her to five years in the Clinton Correctional Facility in Dannemora, where she incidentally met leaders of the prison riot in Attica, like Frank “Big Black” Smith (2). It was Big Black who cultivated her political consciousness through
Black literature and history, politicizing her to criticize interlocking systems of oppression, whether they attack Black cis folks or Black trans folks. When she was finally released back in the free world around 1974, Miss Major found herself in a position heavy with despair and devastation not unlike that of Janetta. Given that 40% of trans people attempt suicide in their lifetime, and that the risk of suicide is exacerbated by criminalized survival reactions like sex work and drug sales, racism, and the lack of family support and access to health care, employment, and housing, it’s at once inspiring and unbelievable that Miss Major has been surviving and organizing on the ground as long as she has (S. E. James et al. 2016, 112).

Annelise Ophelian, one of the filmmakers of MAJOR! explains, “The predominantly queer and trans youth of color who were responsible for instigating and carrying out the rebellion that night, didn’t survive through the ‘70s and ‘80s and ‘90s. We don’t have them with us today to tell the story. So the fact that Major can tell her story of that night is really spectacular” (Nichols 2013). What’s more, that Janetta found Miss Major went against all odds: the lack of Black trans women elders should come as no surprise given that the community still faces disproportionate devastation from HIV, mass incarceration, hate violence, homicides, and suicides (Nichols 2013). This uneven distribution of life and death chances seems to be at the heart of Miss Major’s generous and far-reaching impact for struggling youth. In her own words,

A lot of time, you know, my girls don’t get to 30 or 40 years old. For me, I want all of us to at least have an opportunity to make it to 70. And when the dust settles, I want my girls to stand up and let people know, we’re still fucking here. (2015, 3)

Offering her friendship, sustenance, employment, and an avenue for unapologetic survival, we could say that Miss Major plugged in the light for Janetta much in the same way that Big Black plugged in the light for Miss Major, in the same way that Marsha plugged in the light for Sylvia. And just like Sylvia and Marsha cleaned up the STAR House for their street children, Miss
Major and Janetta did too. My conversation with Janetta continued to explore the impact of community on survival in the context of her relationship with Miss Major:

I mean she was working at an organization during that time and when I met her, it’s just like, I started volunteering and helping her out because when I got here the transgender support group was almost like a building that they used to have raves in and like we got the space but we had to clean it up. So we cleaned the space up an everything and we created a space specifically for transgender folks, gender nonconforming folks.

The decision to build a space specifically for trans and gender nonconforming folks was by no means unintentional. For people surviving the crushing effects of daily cissexism, heteropatriarchy, and transmisogyny, there are few chances to access autonomy, community, or even escape from the constant threat of death. Subjected to alarming levels of criminalization, discrimination, and violence, trans people need intentional spaces where the absence, not the dominance, of inhumane treatment allows radical growth, self-love, community-building, and healing. To undermine the necessity of such intentional spaces is to center, validate, and prioritize the position of those who benefit from it all – white supremacy, heteropatriarchy, transmisogyny, and capitalism. As long as trans people’s existence remains contingent on their progressive elimination, they have every reason to create their own space. Still, through this endeavor, TGIJP not only established an area for TGNC people to physically convene, it also created a space of lively possibilities – a space that values above all their lived experiences intellectually, emotionally, politically, and personally – in response to the seemingly unstoppable force of death. Unlike elite spaces where wealthy and white senior staff monopolize the decision-making power (read: HRC and NCTE), TGIJP actively redefines organizing practices to center those most directly impacted by systemic harms. In this context, TGIJP’s intentional space disassembles the link between transgressive gender and criminality. It honors the connection between trans survival and collective power. To create this space is to destroy the idea that trans
people belong in jail cells, prison cells, or graves. To create this space is to assert the right of trans people to live.

Miss Major’s response to the Black trans girl in need was not a perfunctory one. Janetta subsequently told me how she remembered taking on larger roles at the organization as a result of Miss Major’s influence, trust, and teaching:

And then so Miss Major had to go and do some different things and she allowed me to facilitate the group while she was gone. I was just a participant. And eventually as her schedule got busy I started facilitating for her more and more. And then like after three months of being there Miss Major hired me as a Program Manager. And she trained me and helped me and like basically she was a role model, a leader. That’s the most amazing thing. You know sometimes you can talk to people and make them tell you how to achieve that or how to make this happen or how to do this… but she was a person that lived by example. So you didn’t have to ask her. If you just watch her, you will see her story, her life, her passion, you know? And so she basically trained me how to work.

At this point, I’m noticing the increasing emphasis on leadership development as an organizing principle in TGIJP and Miss Major’s visions for the future of the world. Marking a radical departure from traditional conceptualizations of leadership that ascribe this quality exclusively to white masculinity at the expense of racialized femininity, Miss Major’s simple belief in Janetta conveys the conviction that leadership resides in those who share a common experience of surviving oppression and who share a demand to change it. For Miss Major to inspire her girls as “a role model, a leader” invalidates queer criminal archetypes designating Black trans women as incompetent, unproductive, deviant, and dangerous, while resisting dominant narratives depicting them as passive, weak, and exploitable victims. Living by example, Miss Major grew Janetta’s inspiration to exchange her sense of acquiescence with one of intolerance in response to systemic discrimination. Furthermore, Janetta powerfully recalled how Miss Major taught her to get vocal for justice:

When I came here I had no voice. And I watched her use her voice. And I watched the way she used her voice. And I watched her being a strong activist and advocate for the
transgender community. And I watched her like make sacrifices and I watched her give and give and support and nurture and love and all these things. And so basically like that was her way of politicizing me.

Miss Major’s refusal to surrender to the dark omnipresence of violence carries transformative implications in a world that so heartlessly disempowers, silences, and erases Black trans women. That Janetta came to TGIJP with “no voice” and eventually became Executive Director reveals an earth-shattering dimension to the act of speaking by Black trans women, and the beautiful outcomes created when one listens. Leveraging her voice, her values, and her love, Miss Major helped politicize Janetta to reclaim her own voice in a way that resists trans vulnerability rather than merely reproducing it. Since love and nurturing were central parts of Janetta’s politicizing by Miss Major, the political strategy of mobilization is an intrinsically personal one. Unlike social services operating through a top-down charity model, TGIJP aims for bottom-up political mobilization in order to get to the root causes of violence through a shared common experience of structural violence (Spade 2015, 97). For this reason, I see Miss Major’s education, the act of using her voice, as an act of revolution and as an act of love.

Janetta continued to expand on the value of Miss Major’s lessons including the commitment to uncompromising solidarity and liberation from subordination, all within a framework of intersectional feminism:

We’ve had numerous conversations about numerous things, about the work and what we were doing, and why it was so important not to leave any girl behind, why it was so important not to throw any girl under the bus, why was it important that sometimes you just have to be in people’s faces. You know, why it was important that sometimes you just have to curse somebody the fuck out in order to get our needs met.

But she always taught me to take care of the community. And she always taught me that if you go someplace good, or you receive something nice, you make sure your sisters have the same, at least, get the same treatment. She always taught me how to use my power, my platform.
According to Miss Major, we must not leave any girl behind. In other words, because the success of TGIJP’s organizing strategy depends on the political engagement of all of its members, rather than the privileged power of a few leaders, it is imperative to honor a shared experience of oppression. Using this as a guiding principle, TGIJP resists dominant “rights” frameworks that blame individuals for their negative outcomes. As long as TGIJP can bring trans women of color together, its members will have the power to resist harmful, often internalized myths that pit themselves against each other. Such a model reconfigures one’s oppressed condition from a matter of individual moral violation to an issue of systemic violation of justice. For TGIJP, the movement-building power resides in its precious formerly and currently incarcerated members, not in corporate funding, elite media strategies, or wealthy white people with degrees (98, 104). As such, a shared experience of oppression as a guiding principle recovers some of the loss that occurs as trans people navigate a nation-state that permits and perpetuates their mass incarceration and killing. Building community and mass mobilizing is a strategic way for TGIJP to confront systemic harm through shared visions, analyses, and strategies.

Janetta then described how economic marginalization and structural violence led her to criminalized survival reactions like selling drugs. Her experience in prison, which I outlined in the incarceration section, was a traumatizing one, which began when the economy changed:

You remember when the economy changed, right? That was during a time when White America was losing. You remember 2008-2009? When like, rich white America was losing all their whole pension, everybody was losing. And me, as a Black trans woman, I knew really in my mind, I was just like, “Oh my god, if the white man is losing, I know I’m gonna lose!” You know. If the white man is losing, I know I’m gonna lose. Because we live in White America. So I made a poor decision and I sold drugs and I ended up doing some time in prison. I did three and a half years inside, in between the jails and the prison, and then one year in the federal halfway house because I was charged with conspiracy to distribute. Crystal meth.
As she highlights, “if the white man is losing, I know I’m gonna lose!” In other words, if the economic downturn negatively impacted the most economically, politically, and socially endowed members of our society, then it would have annihilated those at the margins. Despite a universal experience of suffering during the recession, Janetta emphasized the persistence of hierarchies of power and the aggravation of her marginalized subjectivity in relation to those with greater access to power. In response to the suffocating pressure of her economic condition, exacerbated triply by her Blackness, her transness and the recession, Janetta turned to criminalized survival reactions, and as a result, was ensnared by the criminal punishment system. Yet whether this would not have happened in the absence of a recession is debatable. Without an economic downturn but within a capitalist system, Black trans women are still at a disproportionately high risk for economic marginalization, police surveillance, criminalization, punishment, and incarceration, and death. Janetta expanded on her situation during the recession and criticized the trap of recidivism:

I hadn’t been in trouble since 1997 up until 2009. And that’s when I found myself in a situation, I was like “Oh my god, I fucked up, here I am, how the hell did I get back here? I worked so damn hard not to be here and here I am. What the hell happened. Like yeah, you did some fucked up shit. You took yourself out of therapy. You were working 12 hours a day. You dropped out of school.” You know, I’m looking at all these things, you know, and also looking at…. Okay yeah it’s fucked up and it’s bad and you’re here. What do you do?

Through her words, Janetta raises two important questions: First, how the hell did she get back there? According to my critique of the perpetrator perspective in the context of hate crime laws, I have no intention of suggesting that Janetta deserved to be punished for reacting to her oppressive condition in a way to prioritize her survival. Unfortunately, since trans women of color, and especially Black trans women are excessively and violently targeted by law enforcement, Janetta’s experience of recidivism unfortunately mirrors those of many other trans
women of color. While punishment is not a logical consequence of crime, or even wrongdoing, Janetta’s traumatic experience enables particular insights that make her fit to run TGIJP. Second, white economically powerful queers who view the criminal punishment system as protective rather than punitive confirm their own assumptions when they observe the police systematically targeting the most vulnerable queer and trans people through racialized-gendered constructions of criminality (34).

While incarcerated, Janetta did not hesitate to organize and form a community. She actively sought to hear stories from other incarcerated trans people of color, identifying common experiences of violence including a perpetual fear of trauma:

So my mind immediately went to recidivism. My mind said recidivism. I’m gonna figure out how the hell I’m in this system. So I began the process of talking to every Black trans person I met. Every trans person of color that I met. And actually, I did, this was in county jail. And I did about 15 months in county jail. So I talked to every trans person, I’m like, “Hey, what’s up, girl how the fuck we get in here, why does this keep happening to us, why do we put ourselves at risk, what are the similarities, what are the differences, what what what what what. How did we get here?”

You know, and I was listening to our stories, because a part of it was just listening to our stories, listening to the disparities, you know listening to Sunshine, listening to Shakka, listening to Sabrina. And I realized that our stories share so many similarities, you know. Like so many. And it was just abuse, trauma, family abandonment, dealing with society, mental health stuff. A big part of it for me I would say was a fear to move forward because not knowing what to expect. And a lot of people don’t know what life could be like for us without this trauma. And I had the same experience. I think the thing that sustains me, especially in that situation where I sold drugs and I did not use drugs at all, I just sold them, and I have a history of drug use, but we don’t know what life could be like for us without all this trauma and with all this. You know, we’ve been conditioned to that by society. For a long time, that’s all we experienced.

Again, Janetta demanded to know: how did we get here? Through the process of listening to the stories of other incarcerated trans people in prison and identifying a shared experience of oppression, she concluded that we have been conditioned by society to expect the worst. That these kinds of revelations happen within incarcerated trans communities is essential. Much in the
same way that Vanguard was able to mobilize through shared dialogue, analyses, and experiences of violence, Janetta’s politicization continued to expand during her time in prison. But not without the constant fear of trauma. Janetta explained that the trauma followed everywhere, even when she went to Western Africa thanks to roommates who were flight attendants whom she met in San Francisco in 1997. For Janetta, the experience of being a Black trans woman is closely bound with the systematic denial of access:

And that was kind of like one of the things that happened in my life is to spend three and a half weeks in Western Africa. To me, that was like wow. Wow. How the fuck did I get here? A lot of times we don’t understand what life could be like for us without that trauma and I feel like as a result that I was doing a lot of work in therapy, that that allowed me the opportunity to kind of like be there even though when I was there it was a process of me learning like how to be there because that was never accessible to me. Not me, a Black trans woman that walked the street and used drugs. So like I said, a lot of trans women don’t know what life could be like for us without that trauma. So that’s one of the things that came out a lot for us, because in there, the majority of trans women that were there never had a job. Out of all those numbers, the majority of them never had employment as a trans woman. And there was a lot of fear around that. And being inside the system, being stripped from your entire identity.

Even so, Miss Major never gave up on her. She never left any girl behind:

But during all this time, all this time, Miss Major was working at TGIJP and while I’m going through all this stuff, it’s just like, she’s like, “Okay, you really fucked up, you know. And you’re gonna have to be there. But I’m waiting on you to get out. Because I want you to be the Executive Director of TGIJP.”

Here, Janetta demonstrates the beautiful possibilities that appear when somebody sees potential in you. Despite all of Janetta’s traumatic experiences, Miss Major’s persistent belief instilled in her the self-determination necessary to transform herself and her world. Without Miss Major’s support, nourishment, and love, it would be hard to imagine Janetta recovering from where she was.
In response to the denial of access and the consequent trauma, Janetta emphasized the centrality of reentry and access for formerly incarcerated trans people, in addition to leadership development, agency, and economic empowerment:

We knew that we wanted to focus on reentry and create reentry positions so when transgender people get out of prison, they have an opportunity to get immediate access to employment and leadership development within that employment situation… So basically we have our leadership development reentry program where we have people doing filing, we have them doing mail night, we have them doing data entry. We have some people do custodial stuff. We sort of let people decide which way they wanna move, and what they wanna do, and what they wanna seal off. And sometimes, yeah, it’s just we do the best we can with them with that. It’s 25 hours a week at 15 dollars an hour. And it took some time to get there, but that was our dream, and that was our goal, and we got there. And right now we have three positions. And my next goal is that we have ten of those positions readily available.

Again, the reentry program reflects a bottom-up approach in which members can exercise self-determination while working toward economic empowerment and self-sufficiency. Not only do members have a seat at the table as participants, they have pens in hand as decision-makers.

When I asked Janetta about essential steps for reducing racialized-gendered violence, she reflected on her personal experience coming out as a Black trans woman and the racial differences within the trans community, especially in terms of economic marginalization, heightened profiling, gender policing, and discrimination. She pointed out the specific struggles of Black trans women as they experience persistent and racist denial:

There’s a thing called healing justice. And there’s a thing called reparations. And there’s a need for healing justice within the trans community, specifically trans women of color, particularly Black trans women. Because I came out as a Black trans woman in the early 80s and all the white trans women I knew, and I realized that’s very traumatic, that’s a very traumatic experience, but their families paid them to stay away. They paid them to stay away. All the trans women that I knew had businesses. And their families paid them to stay away. You know, and Black trans women had a totally different experience. You go in looking for employment and you get denied, denied, denied, denied. You get the police called on you because they think you’re coming to do a robbery. You get the police called on you because you’re doing some type of ruse. Or people tell you you can’t work here dressed like that. And it’s not like you had on a super miniskirt where your
butt cheeks were showing, you know. So Black trans women have experienced so much denial when it comes to access to things, even to the extent of going to the mall.

When I came out as a Black trans woman, generally, Black trans women would get together and go to the mall. And we all worked the streets the night before and we all got hella money. But it always ends up that the police are called on us because we’re doing something wrong. And what we did wrong was being Black and trans and fabulous. And it’s like, too much of that can be very taxing on the self-esteem. Because you’re going, and you feel normal, you feel good in a lot of ways, and then you’re going into experiences like basically that always told you you were undesirable and not necessarily welcome you need to get right back in that bubble in that ho trap, in the few bars stepping out in mainstream society was not a safe place to be for Black trans women.

The particular experience of being a Black trans woman told through the perspective of Janetta entails an insidious denial of living. Whereas the white trans women she knew received monetary compensation in exchange for their disappearance, Black trans women continue to get profiled, policed, robbed and killed at unacceptable rates, indicating the extreme significance of racism and anti-Blackness in the context of trans organizing and analysis. As a result, even forward-thinking trans-centered organizations like the NCTE fail to adequately address the specific concerns of Black trans women by generalizing, depoliticizing, and deracializing trans identity as a common experience with presumably common goals. Nothing could be further from the truth.

During the most emotional part of my conversation with Janetta, I asked her to expand on the most treasured parts of her experience at TGIJP from coming in as a participant to becoming Executive Director. Passed down from her mentor and predecessor Miss Major, Janetta focused on the power of self-love and resilience in the face of injustice:

At this point, in this political climate, I think one of the most powerful gifts that was given to me by Miss Major, is I wanna teach everybody to learn to believe in their self, their work, their value, and make sure that people understand that there’s nothing wrong

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112 Emphasis mine.
with us, there’s so many things that are right with us. Yes, there’s some tragic things that happen that cause us to make some poor decisions. Miss Major told me never to give up, never to stop loving yourself, you love yourself because you wanna make sure that the community that you’re taking care of knows that you love yourself.

As Janetta was making it clear to me that power must be reclaimed, that access must be demanded, and that healing must be practiced, I began to understand the urgency of supporting Black trans women like Janetta who have had their humanity stolen from them and who fight unapologetically for their self-determination and liberation every single day. What Janetta identifies as one of Miss Major’s most powerful gifts was the ability for Black trans women to distinguish violent myths perpetuated by the criminal punishment system and other institutions from the essential truth of their being: “there’s so many things that are right with us.”

I wanna really focus on healing justice with the trans women. That’ll give us an opportunity to move around in the world, in a way that leaves people no choice but to respect us because we don’t feel like we used to feel. Like sometimes, I feel like me, I practice and I take my role as a Black trans woman, I take my role as a queen, as someone who’s beautiful and special. And a lot of times, if I pull up to a door, and there’s a guy in front of the door, I literally take my energy and my body and I command him to open the door for me. You know what I mean? When the elevator opens, or when the door opens, I immediately walk out because that’s who I am and that’s what I deserve and I realize that a lot of that stuff was taken from me and I want it back! And I work on getting it back: my self-love, my dignity, my respect. I try to do the best that I can to not allow shame to take over my body. I just try to take every negative experience that has happened to me in my life and to put it in a positive aspect. I want everybody to learn how to walk in a different way. And that to walk in a way that we have been intended to walk, as beautiful Black folks here. Like we have so much to contribute to society and the world and given the opportunity, and I’m also saying girl, let’s just take the opportunity. Let’s just walk in our boldness and our fierceness and get the tools we need so we can feel comfortable when we get where we’re going. I think we have to build our own safety. There’s a lot of healing justice that needs to take place within our community. We need to have the opportunity to create a safe and comfortable space to talk and chat. There’s something about just having some healing time.

I was captivated my Janetta’s focus on healing in the aftermath of trauma. With her self-determination and confidence, I couldn’t imagine a point where she had no voice coming into

113 Emphasis mine.
TGJJP. I asked her whether she considered healing to be an essential step for harm and violence reduction. Focusing on intracommunity healing, she turned an eye to the false notion of “interest convergence” in the context of the Black community. Taking what she learned from prison, she highlighted the urgent need for organizing within a framework of solidarity and common experiences of oppression to guide us toward liberation:

I think healing is the first step. And I think Black trans women and cis Black folks need to come together in a healing space and have some very deep-rooted conversations and understand each other and in a lot of ways, understand that we are affected by a lot of the same systems. But also understand how those systems are putting us against each other and causing us to cause each other harm. And we need to look at that together through the same lens. Their silence is violence.\(^{114}\) They do not want to look at that, honey.

For Janetta, the urgency of intracommunity healing for Black folks comes first and foremost. As she analyzes, when oppressed groups perceive their interests as divergent rather than convergent to those of other oppressed groups, “their silence is violence.” The power of the criminal punishment system depends on this very dynamic. As we suffer, each of us to varying degrees, under the effects of white supremacy, heteropatriarchy, transmisogyny, and capitalism, Janetta highlights the importance of mobilizing and strategizing together to eliminate harm across the board for all groups.

Speaking as a non-Black person of color, I asked Janetta a hypothetical question: if you could point your finger at everyone in this country who is not a Black trans woman and tell them this is your responsibility, what are some of the things you would say? She began by sharing a vision for centering Black trans women to create justice from within. Through a strategy of community care and listening, she affirmed that in order to effect structural change and confront abusive power dynamics, interpersonal communications between individuals must occur that

\(^{114}\) Emphasis mine.
rehumanize trans women of color. In this way, our tools for justice must be reconfigured in order to prioritize and center the experiences of individual Black trans women:

Ooooooo. What I can share with you is my next project and my project that I am working on. I’m looking for money so I can bring Black trans women and Black cis folks into a space of like anywhere between 70 and 100 people and this is going to be a healing space. We would have healers in the community, we would have mental health professionals, I mean we would try to be as comprehensive as we possibly can to make sure everybody feels like they’re being cared for and we will begin the dialogue of violence against Black trans women. And we will take the opportunity for everybody to share. It’s kind of really transgender-centered. And it will give us an opportunity to center and talk about the violence and make sure that they have the information that they need in order to go out and talk to cis Black men and say, “Hey, stop the violence.” We need to be rehumanized.115 Because I don’t think people are seeing us as human. I think they are seeing us as a target practice. At the end of the day, I’m just trying to put together a space so we could all sit down together and have a conversation. So each person can hear each person’s struggle and do the best that we can to create a different dynamic and so people can have what they need to go back and talk to their people and say, “Hey, stop killing the Black trans folks. Those are our family members. We’re putting the T back in the Black family dynamic.”

Janetta’s vision for healing and change is based in the conviction that Black trans women need to be rehumanized. What this means to Janetta is that coming together as Black folks in open and honest dialogue is key for first addressing violence from within before uniting to dismantle violence beyond.

At this point, I asked Janetta about solutions. Given the array of false promises and failed solutions that have come from people in positions of power instead of from Black trans women, I needed to hear from Janetta her working theory of justice in order for us to practice those strategies ourselves. Discouraging reliance on the criminal punishment system and other institutions with oppressive interests, she turned my attention to the urgent need for community engagement and dialogue, especially among those who aspire toward hegemonic masculinity at the cost of trans women of color, and non-Black people of color who engage in anti-Black
racism. In particular, she highlighted interlocking systems of oppression as they force
disempowered folks to turn on each other:

That’s a really complicated question because I don’t want to put nobody in jail. I don’t
wanna punish nobody. People are being punished enough. My only solution is that we
befriend it in a way that we can make this happen and so that people can go back,
particularly the guys can go back to their communities. One of my colleagues, she’s an
African American cis woman, and she lives in a predominantly Latinx neighborhood and
someone in her neighborhood wrote N***** all over her door, you know? And it was one
of her neighbors who was from the immigrant community, you know? That’s why we
need to TALK! Excuse me honey, we ALL need to listen. We’re all in the same struggle.

Finally, we returned to TGIJP and its future. As a young person who isn’t a trans woman of
color, I asked Janetta about what I should do to stop the violence and where I should go.

Immediately she stressed the importance of self-protection and safety:

I would say find an organization in your neighborhood or in your town or in your city and
do the best you can to get them to connect with you and organize with you. I would say
reach out to the broader transgender community to ensure that you get your needs met.
You getting your needs met and your safety is very important. The most important thing
is I want people to try to really organize in their communities because we all can’t keep
leaving our communities. Some of us calling is to stay home and organize. But if that
doesn’t work, your safety is most important. And if you do any running, make sure
you’re running to a safe space.

In the context of TGIJP, I asked Janetta how carrying the torch from Miss Major has healed her.

Far from self-interest, political gain, prestige, or money, she identifies the most gratifying
aspects of her job in the people, in the family, in the community. She emphasized the power of
her community as a family:

I think the biggest part is we get to humanize people, we get to teach people the value in
their work, we get to help people understand systems of oppression and how they can
hold you down and create a false belief system about who we are. And we just have to
help people evolve in a way that they would traditionally not evolve without the support
of TGIJP, even if they were, it would be much harder. We just get to be…. TGIJP, we
have a family dynamic! We’re all related. We are like siblings. Trans people don’t have
people to come home to from prisons or jails. We’re their families. We have aunties, big
mamas, and big sisters. Like Miss Major is not even there and for a lot of trans women
I’m Auntie, or I’m Mama, and Miss Major’s Grandma. And she’s coming to San
Francisco. There’s like new additions to our family and they’ve been waiting to meet
Grandma. Especially [name omitted]. She’s a Black trans woman that did 30 years in prison and she’s been out for almost 90 days now. She went in when she was fifteen. But you know, the years before me working at TGIJP was Miss Major. So now she’s like, she’s finally getting an opportunity to meet her Grandma, who she sat in prison reading about and knowing and now she’s finally going to get to meet her. It’s pretty amazing.

Because so many trans people experience family rejection, triggering their susceptibility for economic marginalized, criminalized survival reactions, and entrapment in the criminal punishment system, finding alternative sources of familial love and support are crucial. As she puts its, “we have a family dynamic!” This has everything to do with resisting dominant violent constructions that render trans women of color disposable to the world around them. Given a shared history surviving interlocking systems of oppression, the parameters of this alternative family diverge from traditional, conventional, biologically-determined families bound by blood from birth.

Finally, after transitioning from an informal interview to a casual chat between two trans people of color, we talked about ourselves, and how we were doing, and after many thanks, I let Janetta go to take a well-deserved nap in the early evening. Lasting over an hour, I learned arguably more from my conversation with Janetta than I did throughout the process of writing the rest of this thesis. Most importantly, I felt that I had made a new friend who was willing to care for me and support me despite never having met me.

As I put the phone down, I reflected on Janetta’s selflessness, courage, and resilience as she survived ongoing experiences of trauma and abuse. I continue to be deeply moved and inspired by Janetta’s will to pursue liberation and justice through fierce self-determination, building community, restoring access to humanity, and leaving no girl behind. From their alternative sentencing program to to their re-entry program, their goals of abolition and safety, a harm-reduction strategy, and a family-style culture (see Figure 4), TGIJP’s strategies for justice
contrast noticeably with common practices within non-profits and social justice entities that abandon so many for the benefit of a few. Unlike HRC and NCTE, I observed that the way that TGJJP operates has everything to do with “looking to the bottom” (Matsuda 1996). I see Janetta’s vision and work as foundational to ending the abuse of the criminal punishment system. We don’t need neoliberal white saviors like Clinton and McBride to “combat violence against transgender women of color… once and for all.” We need to learn from Janetta. We need to learn from trans women of color whose lived experiences carry the answers and solutions. Her vision for change is one we must listen to, learn from, and get behind. Our stubborn blind spots are costing trans women of color their lives. As academics, I charge us with seeking answers not in our own theories, but through the theory in the flesh, through the lives and work of those who survive the most aggressive assaults of the criminal punishment system. I charge us to make room and to stop dehumanizing those we relegate to the back of the bumper. I charge us to simply labor in a way that clears the roads for trans women of color. I charge us to trust trans women of color to take the wheel.
Figure 4. TGIJP Melenie Eleneke Grassroots Re-entry Program\textsuperscript{116}

\textsuperscript{116} (Johnson 2015, 11).
Figure 5. TGIJP Stiletto December 2015

Pictured from left to right are Miss Major Griffin-Gracy and Janetta Johnson (TGIJP 2015).
Happy Trans Liberation Tuesday

Brief history to mark the importance of TUESDAY

Transgender Tuesdays
Many years ago, Mark Freeman of the Tom Waddell Clinic in San Francisco, CA designated Transgender Tuesday to hold a transgender clinic.

TGI Justice Project TUESDAY’S Mail Night
TGI Justice Project’s Mail Night meets on Tuesday from the hours of 4:30pm to 8:30pm to correspond with incarcerated trans women of color and remind them that they are not forgotten. Tuesday is the day we send extra love to our folks that are in prisons. With that said, many more people have been joining us as the holidays are approaching, because we’d like to collectively let our folks that are imprisoned know that we’re still fighting for their freedom and waiting for their safe return home—and we will always be fighting the systems of oppression that separate us from our family/friends ones.

Trans Liberation Tuesday
February 10th 2015: TRANS LIBERATION TUESDAY in response to the murder of Latina trans woman Taja Gabrielle DeJesus.

Black Trans Liberation Tuesday
National call from Black trans women of color and Black Lives Matter organizing to turn up on the police sanctioned violence and police brutality and not turn on each other. cis folks supported us in putting the T back in the Black family dynamics and focus on Black love, Black solidarity, Black liberation and brilliance, and together we will win. When they say BLACK LIVES MATTER that means ALL Black Lives.

Figure 6. Trans Liberation Tuesday118

118 (TGIJP 2015, 8).
Conclusion

We Must Fight Like Hell for the Living

*I’m still fucking here!*
– Miss Major Griffin-Gracy\textsuperscript{119}

*Seeing trans people, especially trans women, especially trans people of color, especially Black trans people, especially Black trans women, doesn’t just mean seeing us. It means seeing that we are worth listening to, worth hiring, worth loving and worth supporting.*
– Venus Selenite\textsuperscript{120}

It has been a long year of researching, listening, thinking, and writing this thesis. Right now, as I write this on March 31, 2017, people all around the world are celebrating the Transgender Day of Visibility. I titled the introduction of my thesis “Invisible Violence in Visible Times” with burgeoning feelings in my heart and thoughts in my head, while admittedly before I fully understood the complex scope of transgender visibility and its implications for transgender justice. It would be daft to claim I do now. Coming full circle, I still struggle to articulate why ostensibly celebratory days like these fill me with apprehension and anxiety in the warmth and safety of my dorm room. My troubling relationship with visibility has a lot to do with the ways I have inadvertently killed myself to become marketable and palatable to a non-trans audience. It has a lot to do with presenting more normatively vis-à-vis my gender in situations where I am vulnerable. It has a lot to do with the feeling of being looked at without being seen. As Nael Bhanji (2013) asks of the “embodied homeliness” I mention in my introduction, “Does this mean that a reprieve from this sort of gender dysphoric ‘home work’ is possible only through a disembodied homeliness” (516)?

\textsuperscript{119} (Ophelian 2015).
\textsuperscript{120} (Selenite 2017).
This hegemonic construction of linear time and space has obvious implications for the
gender liminal body; progress becomes a linear narrative that dictates the body’s
teleological transition from one gender to another. (518)

In public, I feel most safe when my self-perception reduces itself to a fleeting image,
because that means I will never be around long enough for somebody to decide to judge me as
expendable. Invisibility, and the erasure that accompanies it, engenders pain. But invisibility is
not the same thing as erasure. Because I am light-skinned, my invisibility affords protection. In
other words, my invisibility has a lot to do with someone else’s visibility. When I am invisible, I
am never the first raising heads in a store, never the first targeted by the police, never the first to
die. My invisibility has everything to do with the hypervisibility and vulnerability of someone
else.

And perhaps it is my own shifting relationship with in/visibility that allows me to see the
ways that it has protected me or endangered me. But it is real. And important. Because
those who are most visible have every right to demand the most protection. (Binaohan
2012)

My invisibility coercively participates in someone else’s nonconsensual relationship with
visibility, vulnerability, and violence. A Yale study investigating economic inequality suggests
that when rich subjects knew their neighbors were poorer, they cooperated less whereas the poor
kept cooperating at their own expense. Yet when rich subjects didn’t know the wealth of their
neighbors, they were more likely to cooperate (Nishi et al. 2015). As one of the researchers
stated, “Making wealth visible was a very corrosive force. It resulted in the rich exploiting the
poor” (Semuels 2015). This study makes compelling suggestions about our attitudes toward
inequality that mirror much of the material I covered in this thesis. More and more people
participate to increase public awareness about transgender people. Yet more and more news turn
up of trans people dying.
Princess Harmony asserts that “Hypervisibility is what turns trans women’s lives into spectacle” (Rodriguez 2015). Indeed, as their bodies are objectified, as their struggles are commodified, as their narratives are rewritten and sold as inspirational stories of progress, “this increased visibility has come, and continues to come at a cost” (Ehren 2016). So it is clear at this point that visibility is not enough. The entire contents of this thesis were captured by my very first epigraph by South Asian trans femme Alok Vaid-Menon who asserted “trans visibility is not trans justice” (Vaid-Menon 2016). In the wake of deadly violence targeting trans women of color, Sarah Lamble (2008) puts it like this:

Our task is to move from sympathy to responsibility, from complicity to reflexivity, from witnessing to action. It is not enough to simply honor the memory of the dead – we must transform the practices of the living. (38)

This responsibility must take the form of action. The most harrowing realization I’ve had is that we all participate in a legal killing machine. With regard to the law, “The dissonance of combining deep criticism of law with an aspirational vision of law is part of the experience of people of color” (Matsuda 1996, 65). I couldn’t agree more with Mari Matsuda. However, I feel that it is not only discomforting but also necessary for all of us to carry deep scrutiny of law. I had once considered it the avenue of justice par excellence. This was before I understood how the prison industrial complex strategically partners with the medical-industrial complex and the military-industrial complex to create a particular rhetoric about the deviance, criminality, transience, bodies, and disposability of trans people of color. Until we normalize the practice of identifying, confronting, and abolishing murderous state interests, I can no longer defend the law’s claim for justice. I can no longer trust it to hold individuals accountable when it refuses to extend that practice to itself. I can no longer justify its use of prisons. I can no longer accept the lives that prisons devour, nor the embodied transience that it regurgitates.
I do not yet believe that it is my place to advise the best policy interventions or legal reform strategies to reduce penal and carceral violence against trans people of color. Several people and organizations have done the important work of carving out institutional recommendations for reform and change for police departments, legislatures, the U.S. government, clinical and advocacy organizations, religious and spiritual organizations (Bassichis, Lee, and Spade 2015; Ware 2010; Birrell and Phillips 2011; Human Rights Watch 2012; Caraves and Salcedo 2016; Singh and McKleroy 2011; Graham 2014; Shah 2010; Briggs 2016; Sherouse, Broadus, and Griffin 2015; Talusan 2016; Andrews et al. 2015; Grant et al. 2011; S. E. James et al. 2016; Hanssens et al. 2014; Woods, Sears, and Mallory 2016; Fitzgerald, Elspeth, and Hickey 2015). This is valuable work founded on research, analysis, and strategy.

But we shouldn’t need statistics, reports, status, and credentials to know where to look and listen. I’m not trying to wait around for the next Marsha P. Johnson or Sylvia Rivera to ascend to legendary status only through death. I’m not trying to wait around for the next Google Alert containing Janetta’s name in it. That is to say that we must make it a priority to affirm, value, love, protect, and learn from the trans women of color around us. That is to say that we must center their lives and leadership. That is to say that we must locate the answers, the experience, the knowledge, and the insight from within. That is to say that we must do better. “We can win true liberation” (Feinberg 2006a, 220). And when we find ourselves asking Why? in the face of injustice, we should now know where the answer resides.

If you have read up to this point of my thesis, I want to thank you for joining me on the never-ending path to acknowledge, understand, and challenge the epidemic of anti-transgender violence as it emerges from the criminal punishment system and as it reproduces in everyday interpersonal interactions. Humanizing trans people of color is an immediate, urgent need. But
we cannot address this need without understanding the dehumanizing nature of the evil criminal punishment system. And we certainly cannot address this need without obliterating the pernicious cycle of embodied transience. We cannot stop dreaming for justice. We cannot stop demanding, in the words of Sylvia, *BUT WHY?* If there’s anything I’ve learned, it is that we cannot wait.

We must fight like hell for the living.
Figure 7. Free Cece!\textsuperscript{121}

\textsuperscript{121} (Bazant 2013).
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