if it were a 19 year-old boy and 14 year-old girl—and I deal in child abuse and I deal in these cases all the time—they never really get to court. And if they do, they're misdemeanors." Facing a minimum sentence of twenty years imprisonment if convicted, O'Neil opted to plead guilty to second-degree sexual assault. His sentencing hearing was attended by a courtroom full of transgender people and other supporters organized by FTM (Female to Male) International. He was ultimately sentenced to three months in a women's prison and was required to register as a sex offender.[34]

In addition to coercive pleas and wrongful convictions, queers facing sex-related charges face disproportionate and excessive sentences. For example, Mathew Limon, who had just turned eighteen, was sentenced in 2002 to serve seventeen years in prison for having oral sex with a fourteen-year-old boy (who was a month shy of fifteen) whom he lived with in a home for developmentally disabled people in Kansas. His sentence was fifteen times longer than it would have been if he had engaged in the same conduct with a fourteen-year-old girl under a "Romeo and Juliet" statute that reduced the punishment for teenagers who engaged in consensual sex with minors of the opposite sex. Notwithstanding the U.S. Supreme Court's decision in *Lawrence,* the Kansas Court of Appeals nevertheless upheld Limon's disproportionately excessive sentence, finding that his punishment was necessary to protect and preserve "traditional sexual mores of society" and to protect "the historical sexual development of children."[35] Fortunately, the Kansas Supreme Court overruled this decision and he was released after spending an additional four years in prison.[36]

Limon's case was not as unusual as it may seem. Queer criminal archetypes all too often influence the sentence upon conviction. For example, in New Jersey, gay men convicted of loitering when suspected of "cruising" in a park were ordered by a judge to undergo psychiatric evaluation. According to a social worker in New Jersey, "Sentencing patterns are clearly stricter [for homosexual sex offenders] than [for] heterosexual sex offenders."[37]

Unfortunately, the same dynamics that serve to criminalize adults in the courts operate to damn LGBT youth in the juvenile system. A study titled *Hidden Injustice: Lesbian, Gay, Bisexual and Transgender Youth in Juvenile Courts,* completed by the National Center for Lesbian Rights (NCLR), the National Juvenile Defender Center, and Legal Services for Children in 2009 concluded that LGBT youth are "disproportionately charged with and adjudicated for sex offenses in cases that the system typically overlooks when heterosexual youth are involved. Even in cases involving nonsexual offenses, courts sometimes order LGBT youth to submit to . . . sex offender treatment programs based merely on their sexual orientation or gender identity." The study also found that LGBT youth are unnecessarily and disproportionately detained pending trial, based on the perception of LGBT youth as sexually predatory and on the lack of services and placements for LGBT youth.[38]

The pernicious criminalizing effects of queer criminal archetypes in court proceedings are particularly disturbing when examined in the context of cases involving the most severe charges and sentences in the criminal legal system—capital cases.

HOMOPHOBIA, GENDER DEVIANCE, AND THE DEATH PENALTY

Prosecutors have used a defendant's sexual orientation, gender-nonconforming appearance, or both, to obtain a capital conviction and sentence in a disturbing number of cases. As Howarth suggests, death penalty cases can reveal "the power of law to construct and condemn homosexual identity."[39]

The death penalty, society's most extreme form of legally sanctioned punishment, is ostensibly reserved for the crimes deemed most heinous by society, particularly murder. In theory, prosecutors only seek the death penalty in cases where individuals have committed an offense considered particularly violent and egregious, such as murdering multiple individuals, torturing before taking a life, or killing a police officer. Although these factors, known as aggravating circumstances, play a role in deciding who is "death eligible"—that is, who *can* be charged with a capital crime—they by no means determine who *will* ultimately be charged. Prosecutors exercise considerable discretion when deciding whom to seek to put to death, and jurors and judges have a great deal of latitude in determining who will be killed. Such broad discretion allows for individual and collective biases to permeate these life or death decisions. It is generally accepted that racism and poverty profoundly influence who is tried on capital charges, sentenced, and actually executed.[40] Less frequently discussed is the role played by homophobia, sexism, and transphobia, alone or in con-

junction with racism and poverty, in decisions to seek and impose the death penalty.

In capital cases a prosecutor must successfully undertake what should be a morally difficult, ethically complex task of convincing a jury or judge to kill another human being. To succeed, the prosecution must demonize, dehumanize, and "other" the defendant. As sociologist Craig Haney notes, it is more palatable to kill "monsters" or "'mere animals'" "because they have been excluded from the universe of morally protected entities."[41] The prosecution must also demonstrate the value of the victim's life in order to persuade the judge or jury to kill in their memory.

The process of dehumanization required to obtain a death sentence is easier when the defendant is of a different race, class, sexual orientation, and/or gender identity than the jurors or judge. The prosecutor's task is also greatly facilitated when the accused belongs to a class of people stigmatized as abnormal, violent, sexually degenerate, and pathological. For instance, in many cases defendants of color are tried before all or predominantly white juries, allowing prosecutors to overtly and tacitly play on racist perceptions. Such criminalizing narratives help build a case that people of color kill intentionally, in a particularly cruel and crude manner, and are therefore more deserving of death. Criminalizing archetypes also help to ensure that mitigating factors, such as emotional disturbance or developmental disabilities, are less likely to be considered where defendants of color are concerned. Moreover, the lives of their victims, if they are white, are often portrayed as having greater value. These dynamics illustrate why a Black person is four times more likely to receive the death penalty for killing a white person than if he or she kills a person of the same race, or than a white person who kills a person of any race.[42]

Queer people, both of color and white, are also tried before juries comprised primarily of heterosexual, gender-conforming people, whose members often have beliefs that LGBT people are deviant and immoral.[43] One study found that jurors in death penalty cases—who must be "death qualified," or express a willingness to hand down a death sentence—are more likely to possess racist, sexist, and homophobic views,[44] and are therefore presumably more likely to be easily swayed by raced and queer criminalizing narratives. As the cases that follow demonstrate, prosecutors' use of queer criminal archetypes alone or in combination with others rooted in race and class often has deadly consequences.

BERNINA MATA: "THE HOMICIDAL LESBIAN MAN HATER"

"We are trying to show that [Bernina Mata] has a motive to commit this crime in that she is a *hard core lesbian,* and that is why she reacted to Mr. Draheim's behavior in this way." Thus went the argument advanced by Assistant State's Attorney Troy Owen in a 1999 capital murder trial in Boone County, Illinois.[45]

Mata, a Latina lesbian, stood accused of murdering John Draheim, a white heterosexual man. Mata met Draheim for the very first time at a local bar on the evening of June 26, 1998. After drinking at the bar, they returned to Mata's apartment.[46] Later that night, Draheim was stabbed multiple times in Mata's bedroom while Mata and her roommate, Russell Grundmeier, were both present. There was evidence to suggest both Mata and Grundmeier committed the murder.

While both appeared criminally responsible and both took steps to conceal Draheim's death, prosecutors elected to pursue the death penalty against Mata alone. The State chose to grant Grundmeier, a white man, immunity with respect to the murder and offer him a four-year sentence for the concealment of Draheim's death in exchange for his testimony against Mata.[47] Mata's race and sexuality undoubtedly played a role in this decision.

To obtain the death penalty, the State needed to prove there was an aggravating circumstance, but there was very little evidence to prove that Draheim's murder was particularly heinous. In this case the only aggravator prosecutors could claim under Illinois law was that the murder was committed in a cold, calculated, premeditated manner, pursuant to a preconceived plan. Yet the circumstances of Mata's encounter with the victim belied the notion that she killed in cold blood. Mata met Draheim only hours before the crime was committed, so there was little time for Mata to have hatched an elaborate scheme to murder him. There was also substantial evidence that Mata was not acting intentionally or rationally at the time of the crime, but was under extreme emotional distress rooted in a long history of abuse. Mata was brutally raped by her stepfather at the age of four, causing injuries so extensive she needed surgery. According to Mata,

Draheim tried to rape her at her apartment, causing her to experience flashbacks of the rape by her stepfather. A forensic psychiatrist came to the same conclusion, testifying that Mata suffered from posttraumatic stress disorder stemming from her childhood rape, and was experiencing an episode at the time of the incident. Moreover, considerable evidence indicated Mata was mentally unstable, and had a history of depression, hospitalization, and treatment with psychotropic medication.[48]

Faced with a potentially sympathetic defendant, notwithstanding her race and sexual orientation, prosecutors chose to deploy the queer criminal archetype of the homicidal man-hating lesbian, literally arguing that Mata's lesbianism caused her to kill. According to the prosecutor, Mata killed Draheim because he made an unwanted sexual advance at the bar, allegedly touching her shoulder and thigh. While "a normal heterosexual woman would not be so offended by such conduct as to murder," this was allegedly a natural response for Mata, described by prosecutors as a hard-core lesbian.[49] As in Castillo's case, this depiction also tapped into the criminalizing racial archetype that frames Latinas as hot tempered, irrational, and prone to "hysterical" violence.

In support of their theory, the prosecutors sought to introduce evidence of Mata's lesbianism, stating, "One of our theories is that—this would be the primary theory—that she was infuriated by this conduct because she is a lesbian or she is primarily a lesbian, and we would prove that for her—because she was offended by his behavior, that is this—trying to say this nicely—trying to date her or whatnot, she lured him home under the theory, under the belief he was quote 'going to get lucky' and she killed him for that . . . We need to prove as our theory that she is a lesbian."[50]

The State then presented an avalanche of evidence of Mata's lesbianism at trial. Prosecutors paraded ten witnesses before the jury to testify that Mata was a lesbian. They read the titles of three books removed from her home: *The Lesbian Reader, Call Me Lesbian,* and *Homosexuality.* The prosecutors also referenced Mata's lesbianism on no less than seventeen occasions during their arguments to the jury, making assertions that Mata was "overtly homosexual," "flaunting" her sexuality, and "proclaiming her sexuality to anyone who would listen."[51] As Ruthann Robson explains, in order to establish the only applicable aggravating factor, the State depicted her in this fashion in an effort to capitalize on jurors' homophobia and negative stereotypes of lesbians as man haters, and to convince them that Mata acted in a cold, calculated manner.[52]

Once again, this led police, prosecutors, and jurors to disregard evidence of culpability on the part of other actors. Grundmeier, the State's star witness against Mata, testified that Mata was the one who stabbed Draheim, and claimed that she told him hours before the murder that she planned to kill Draheim. Ironically, Grundmeier also directly contradicted the State's theory as to Mata's "hard-core" lesbianism, testifying that Mata was his girlfriend, that they had a sexual relationship, and that he was in love with her. He also acknowledged that he was angry when he witnessed what he perceived to be Mata and Draheim flirting together at the bar, and he was jealous and incensed by Draheim's behavior. Most damningly, Grundmeier admitted that he attacked Draheim moments before he died, struggled with him, and held him down as he was stabbed with Grundmeier's knife.[53]

Nevertheless, the State's masterful depiction of Mata as a man-hating lesbian, driven by an unquenchable thirst to kill men, was successful. Mata was convicted of capital murder and sentenced to die. Fortunately, her death sentence was commuted to a term of natural life imprisonment by former Illinois governor George Ryan in 2003, along with that of everyone else then on Illinois' death row. She is currently serving a life sentence, while Grundmeier remains free.

Mata's case represents one of the more blatant uses of queer criminal archetypes to prosecute and punish a presumably lesbian defendant. According to death penalty scholar Victor Streib, women who receive death sentences are those who are easily dehumanized because they do not fit into heteronormative standards of womanhood: nurturing, passive, subservient, defenseless, and in need of protection. They, like Wuornos and Mata, are susceptible to being defined by criminalizing narratives painting them as aggressive, violent, sexually promiscuous, and lacking in mothering skills.[54] Black women, who by definition are excluded from existing standards of (white) womanhood, are also more likely to fall prey to such tactics. As of

2009 women of color comprised 36 percent of the women on the row. Twenty-three percent were Black, even though African American women make up only 6.4 percent of the general population.[55]

WANDA JEAN ALLEN: "LETHAL GENDER BENDER"

Wanda Jean Allen, a butch African American lesbian, was convicted of killing her lover, Gloria Leathers, in Oklahoma City in 1989. Earlier that tragic day, Allen and Leathers had an argument over a welfare check, and Leathers decided to move out. Leathers subsequently returned to their residence, accompanied by police, to recover her property, and a fight ensued. At the suggestion of one of the officers, Leathers went to the police station. Allen followed her there, and shot her once in the stomach, killing her.

The State sought the death penalty for Allen on the grounds that she was a continuing threat to society and that she had been convicted of murdering a woman ten years earlier. Both are aggravating factors under Oklahoma law. Prosecutors argued that Allen should be found guilty of Leathers' murder and sentenced to die on the theory that she acted intentionally as part of a continuing course of domestic violence.

Allen claimed she acted in self-defense after Leathers slashed her with a gardening rake during the fight at their home earlier that day. According to Allen, when she arrived at the police station, Leathers approached her with the rake in hand, prompting Allen to shoot to protect herself. Allen claimed that she feared Leathers, who had also previously killed a woman in Tulsa, Oklahoma.

Although there was substantial evidence to undermine Allen's claims of self-defense, the State nonetheless took the extra step of deploying criminalizing, racist archetypal narratives about gender deviance to defeminize, and thereby dehumanize, Allen in jurors' eyes in order to secure a capital conviction. In some cases involving actual or perceived lesbians, it is sufficient for the prosecution to allude to the woman's sexual orientation in order to prejudice her before the jury, as was the case with Mata. In Allen's case, to do so would undermine the State's project of valorizing Leathers, who was also a Black lesbian. Instead, the State seized upon Allen's gender "transgression" to mark her as deviant, distinguish her from Leathers, and justify her death sentence.

At trial the prosecution highlighted Allen's butch identity and masculine appearance to accentuate her gender nonconformity. The prosecutors literally argued that Allen was the "man" in the "homosexual relationship" and that she "wore the pants in the family." They introduced a card she wrote to Leathers, in part to emphasize that she spelled her middle name in a "masculine" way: "G-E-N-E."[56] The State argued that the evidence was relevant to its claim that Allen was "dominant," and Leathers the passive party, in the relationship, thereby establishing that Allen must have been the aggressor at the time of Leather's murder. Such arguments, however, were a mere pretext to justify the injection of Allen's masculine appearance and butch identity into the trial. Judge James F. Lane, dissenting to Allen's death sentence on appeal, said as much: "I also take exception to the majority finding the evidence the appellant was the 'man' in her lesbian relationship has any probative value at all. Were this a case involving a heterosexual couple, the fact that a male defendant was the 'man' in the relationship likewise would tell me nothing. I find no proper purpose for this evidence, and believe its only purpose was to present the defendant as less sympathetic to the jury than the victim."[57]

As legal scholar Kendall Thomas argues, the prosecution not only deployed the stock narrative of the "murderous lesbian"—this time turned against her lover instead of a man—as a "homophobic projection," but also used what Thomas terms *a racist projection* by injecting the iconic image of Black people in white America as "dangerous" and embodying "deadly hypermasculinity." Thomas quotes the prosecutor's argument at Allen's trial: "She is a hunter when she kills . . . She hunts her victims down and then she kills them," and concludes that, "by the end of the trial, Allen has been remade into the very figure of black 'female masculinity.'"[58] Capitalizing on Allen's racialized gender nonconformity served not only to persuade the jury that she was guilty of murder, but also to establish the aggravating circumstance that she was a continuing threat to society who must be executed.

The State's exploitation of Allen's gender identity was never officially condemned or rectified. Despite numerous appeals and a national clemency campaign spearheaded by the National Coalition to Abolish the Death Penalty (NCADP), culminating in the arrest of twenty-eight people (including Reverend Jesse Jackson) for acts of nonviolent civil disobedience outside the facility where Allen was

incarcerated and a march opposing her execution attended by hundreds, Allen was killed on January 11, 2001.[59]

Allen's case demonstrates the ways in which homophobic, sexist narratives are deeply embedded in and intertwined with racist narratives in criminal cases. Only the manner in which they are raised may differ. As Thomas notes, "Race can be injected into trials through imagery, even when the word isn't spoken,"[60] whereas prosecutors seeking to exploit a defendant's sexual orientation or gender nonconformity must often take additional steps to highlight these characteristics. They must actively depict the accused as deviant and verbally describe their difference to the jury in order to tap into their homophobic and transphobic biases. In so doing a prosecutor's use of prejudicial words and descriptions are documented in court transcripts. The documentation of such arguments (the "textual prejudice") can provide advocates with opportunities to raise and challenge the bias in courts and the community. Today, the same documentation unfortunately does not often exist in the same transparent ways in cases where racist arguments are nevertheless mobilized to damn defendants of color.

JAY WESLEY NEILL: "THE GLEEFUL GAY KILLER"

In 1984, Jay Wesley Neill, a nineteen-year-old white gay man, killed four people and injured three others in the course of an armed bank robbery in Geronimo, Oklahoma. Three of those he killed were white women he worked with at the bank. He repeatedly stabbed them in the head, neck, and abdomen, and attempted to decapitate them. He also killed one white customer and injured three others when he forced them to lay face down on the ground and shot them in the back of the head. The robbery was clearly premeditated: Neill and his lover Robert Grady Johnson purchased weapons and ammunition days beforehand in preparation for the heist. After the robbery, the two flew to San Francisco, where they spent part of the $17,000 in proceeds on hotels, jewelry, clothing, limousines, alcohol, and cocaine.[61]

Neill did not contest his guilt at his 1992 trial. In fact, he expressed sincere remorse for his actions, and apologized personally and publicly to several victims and members of their families on the evangelical Christian television program *The 700 Club*. Neill argued that he should not be executed because he acted under "extreme emotional or mental disturbance," a mitigating circumstance under Oklahoma law, because he feared Johnson would leave him if he couldn't purchase the luxury items and narcotics his lover desired. He also introduced evidence of other mitigating circumstances, including severe physical abuse he suffered as a child, which in one instance left him in a coma after his father threw him against the wall, splitting his head open.

The State countered this evidence by repeatedly highlighting Neill's sexual orientation, casting him as the archetypal gleeful gay killer. According to Howarth, author of *The Geronimo Bank Murders: A Gay Tragedy,* both police and prosecutors acted on pernicious stereotypes of gay men throughout the criminal investigation and prosecution, painting Neill as "woman-hating, materialistic, flamboyant, flighty, superficial and selfish."[62]

As was the case in Chinea's homicide investigation, police played a pivotal role in constructing the narrative ultimately played out in court. The chief inspector of the Oklahoma State Bureau of Investigation reported to the press that he assumed the killer was a gay man because, he claimed, "most cases of overkill . . . the perpetrator turns out to be a homosexual." According to the Grady County district attorney, the perpetrator had to be gay because "there had to be sexual overtones towards the women. It had to be someone with an emotional problem towards women and (who) needed to feel superior to them."[63] This time, the "homosexual murder" was characterized as an expression of gay men's inherent, twisted misogyny, and played on perceptions that violence is a natural by-product of depraved "homosexual" relationships.

At trial, the prosecutors introduced evidence that Neill called one of the bank employees and other women "bitch." Neighbors were called to testify that Neill was a homosexual who was not religious. Prosecutors also resurrected the ghosts of Leopold and Loeb by introducing the damning specifics of Neill and Johnson's getaway trip to San Francisco. To this end prosecutors called a limousine driver who testified at trial that he drove the two to "expensive stores," and to "the gay area of San Francisco" and that they picked up a man at a gay bar and brought him back to their hotel, presumably for sex. The State also introduced evidence of Neill's and Johnson's drug use and shopping spree, which involved buying jewelry and matching leather jackets. As Howarth argues, "The prejudice to Neill was not merely

the decadence of the story, but the likely abhorrence of the jurors—and the rest of the participants in the trial—to the specifically gay depravity of the story," which she characterized as a "depraved pilgrimage to a Mecca of gay culture."[64]

At the sentencing hearing, although unnecessary in light of the unquestionably violent and gruesome nature of the crime, the prosecutor nevertheless explicitly cited Neill's sexual orientation as a justification for imposing the death sentence:

> I want you to think briefly about the man you're setting [*sic*] in judgment. . . . I'd like to go through some things that to me depict the true person, what kind of person he is. He is a homosexual. The person you're sitting in judgment on—disregard Jay Neill. You're deciding life or death on a person that's a vowed [*sic*] homosexual.[65]

As Judge Carlos F. Lucero of the Tenth Circuit Court of Appeals deplored when ruling on Neill's appeal, "The prosecutor deviously and despicably incited the jury with the statement," noting that it was "susceptible of only one possible interpretation: among other factors, Neill should be put to death because he is gay."[66] Although the appellate court eventually found the prosecutor's comments to be improper, it did not find that they rendered Neill's sentence fundamentally unfair. Neill was executed in December 2002.[67]

Neill's case is one of many in which the prosecution's evocation of a queer criminal archetype is gratuitous given the severity of the crime. Perhaps the State simply wanted to win at all costs. Yet reinforcement of the false notion that gay men are intrinsically selfish, narcissistic, woman hating, and materialistic throughout the public spectacle of a capital trial also serves the larger purpose of further stigmatizing gay men in society.

Neill's case is also not alone with respect to prosecutors raising irrelevant evidence of a gay defendant's sexual orientation merely to damn him or her before the jury. Stanley Lingar was prosecuted for the murder of sixteen-year-old Thomas Scott Allen in Missouri in 1986. During the penalty phase, prosecutors revealed to jurors that Lingar and his codefendant David Smith were engaged in "a homosexual relationship" for the two years preceding the crime. They argued that it was evidence of his "bad character" that the jury was entitled to consider when deciding whether to mete out a death sentence.[68] Despite the efforts of Lingar's defense counsel at the Public Interest Litigation Clinic in Kansas City, Missouri, on appeal, as well as a clemency campaign led by the ACLU Gay Rights Project, Amnesty International, and Queer Watch, Stanley Lingar was executed by the State of Missouri in February 2001.

CALVIN BURDINE AND EDDIE HARTMAN: "THE SEXUALLY DEGRADED PREDATORS"

Calvin Burdine, a white gay man, was convicted of killing his lover, W. T. Wise, and sentenced to die in Texas in 1994. His case gained notoriety when the Fifth Circuit Court of Appeals found that his court-appointed attorney was not ineffective per se, and therefore his death sentence could stand, despite the fact that he fell asleep on two to five separate occasions during the course of the trial.[69] But something else happened that seems to have escaped most LGBT and anti–death penalty organizations. During the sentencing hearing, the prosecutor evoked the sexually degraded predator archetype in order to tilt the decision against life imprisonment and in favor of execution, arguing that "sending a homosexual to the penitentiary certainly isn't a very bad punishment for a homosexual."[70] In so doing, he insinuated that sending Burdine, a gay man driven only by sex, to prison—the ultimate queer environment—would constitute a lifelong, pleasurable reward. Death represented the only possibility for real punishment. Not only is this argument sinister in its own right, but it also misrepresents the brutal reality of gay men's experiences as targets of sexual violence in prison.

The prosecutor was also able to introduce Burdine's 1971 conviction for "consensual sodomy" as evidence of "future dangerousness"—another evocation of the sexually degraded predator archetype to suggest Burdine was intrinsically criminal and driven by uncontrollable violent and sexual impulses. Therefore, unless he was put to death, the State argued, society would not be safe. Finally, Burdine's own attorney was openly homophobic, asserting that gay people have incurable medical or mental problems. He frequently referred to gay men as "tush hogs" and used terms like "fairy" and "queer."[71] Undoubtedly, the defense attorney's deeply ingrained homophobia contributed to his failure to object to the prosecutor's arguments, or

to argue that three people who openly admitted they were prejudiced against gay people should be removed from the jury.

Fortunately, Burdine's conviction was vacated (on grounds other than homophobia) and he agreed to a guilty plea in exchange for a life sentence. Nevertheless, his prosecutor has never been censured for his homophobic statements. Moreover, the prosecutorial framing of Burdine as the archetypal sexually degraded predator has far-reaching consequences beyond the circumstances of his case. Not only does it frame prisons as inherently pleasurable environments for queers, it also serves to undermine complaints made by gay men who are sexually assaulted, fueling the notion that there is no such thing as nonconsensual sex when it comes to gay men.

The deployment of the sexually degraded predator archetype in order to obtain harsher punishment is not unique to Burdine's case. The same archetype was used by a North Carolina prosecutor for this very purpose in Eddie Hartman's capital trial in 1995. Hartman presented evidence at his sentencing hearing that he was sexually abused when he was eight and eleven by older male relatives. Seeking to blunt the impact of this mitigating evidence, the prosecutor injected Hartman's sexual orientation into the proceedings, specifically asking Hartman's mother: "Is your son not a homosexual?" When the prosecutor was subsequently asked at a postconviction hearing if he suggested that Hartman's sexual orientation lessened the impact of the child sexual abuse, he inarticulately responded, "I don't know if it would or wouldn't . . . or whether or not he was a homosexual as a child."[72] The prosecutor thus suggested that, because Hartman was gay, he was hypersexual, even as a child, and therefore his sexual abuse may not really have been abuse. The jury did not find the sexual abuse Hartman suffered as a child to be a mitigating factor, and Eddie Hartman was executed in October 2003.

* * *

The homophobia and transphobia that permeates the criminal legal system should compel urgent attention—and probably would if these cases did not involve criminal defendants. After all, the purposeful evocation of queer criminal archetypes reveals the State's willingness to deprive litigants of a fair trial by deliberately discriminating against

them on the basis of their real or perceived sexual orientation and gender identity or expression.

At the same time, the construction and reinforcement of queer criminal archetypes plays into the systemic raced, classed, and gendered devaluation of queer lives in countless other arenas. By painting all queers as ultimately infected with the same violent, sexually degraded, and pathological tendencies, the archetypes reinforce the concept that queers are inherently unworthy of citizenship, parenting, protection against discrimination, and even the right to live in our communities. No amount of distancing ourselves and refusing to be involved in these cases will mitigate the power of queer criminal archetypes. Rather, we must challenge ourselves toward a more complicated analysis of, and more powerful, public responses to, the far-ranging impact of queer criminalizing representations.