# National Plea-Sure

## 1AC

#### \*\*CONTENT WARNING: Graphic Descriptions of Queer Violence\*\*

#### Let’s get to it then. Let’s meet our victims. Yes, I said victims, but put away that rhetoric K. Because we are talking about queer people. We don’t get to be survivors.

#### Brian Betts, a gay middle school principal, had his house broken into by three teenagers. He was shot to death in his own bedroom. Alante Saunders fired the shots that tore through Betts’s flesh and killed him in cold blood in his own home. Saunders and his accomplices never went to trial. They all took plea deals. Saunders’s sentence was 40 years, but he is expected to get out in 20. After those twenty years are over, Saunders’s life will go back to normal. \*

#### Brian Betts will still be dead.

#### His queer bloodstains will still mark the floor of his home.

#### No matter how hard the new owners try to expunge them.

#### The discursive praxis of the 1AC is uniquely important; discussing queerness in academic spaces like debate is imperative to materialize change and foster problem-solving skills – this turns all of your theory or topicality, just engage in the 1AC. Archiving the trauma inflicted upon queer individuals and challenging conceptions of censored nationalist history through the act of oral archiving is critical to developing ways to overcome that trauma without losing the lives tied to them.

Cvetkovich 03 Ann Cvetkovich (the Ellen Clayton Garwood Centennial Professor of English and Professor of Women's and Gender Studies at the University of Texas at Austin) “An Archive of Feelings: Trauma Sexuality and Lesbian Public Cultures” Duke University Press 2001 p.235-237 <https://www.dukeupress.edu/an-archive-of-feelings> BAO

In Femininity Played Straight, Biddy Martin uses story of mourning and trauma as the vehicle for a critique of queer theory. She describes her "hesitations about theories that elevated radical detachment, anti-societalization, and transgression to the level of reactive sublime" and articulates her "belief in the importance of something as simple and basic as attachment, investment, even love."" In addition to articulating this claim theoretically, she makes it through an account of the death of her (straight) brother and her own grieving for him. She also makes use of the model provided by Peggy Phelan's account of Tom Joslin's film Silver­ lake Life: The View From Here (1993), in which Phelan uses the story of a gay man's documentation of his lover's death from A I D S to create a space for her own (specifically lesbian) fantasy and grief Crucial to Phelan's argument is the claim that lesbians and gay men have a stronger relation to the death drive because of their experience of the social death of homophobia.z1 Martin agrees, but also finds in Phelan's account room for an understanding of trauma that does not assume "an absolutely original’ and constitutive violence to which all other traumas could be assimilated, nor any assumption that all agency can be reduced to compulsive repetition."14 Hence, in addition to articulating the relation between trauma and attachment as a critique of queer theory, Martin also implicitly offers here a critique of approaches to trauma that have a tendency to assimilate all traumas to an epistemological structure of unknowability. One such approach Cathy Caruth's model of "unclaimed experience," which trauma is marked by its temporal belatedness, its failure to leave traces by which it could be directly represented and remembered. Martin holds out for the specificity of individual trauma stories as a guard "'against the presumptions of rigid normative and antinormative binarisms; in the same vein, I insist on the idiosyncrasies of activist life that are illuminated by oral history. Martin's grieving for her brother (and love of her family) along with Phelan's imaginative use of Silverlake Life to provide a model for her own forms of melancholy can be connected to the accounts here of lesbians responding to AIDS as both activists and caretakers. The leaps of cross identification and fantasy that structure these affective processes of mourning and militancy offer a model for a response to trauma and AIDS that while it may resist sentimentality, is nonetheless of affective power. Especially important, too, is the (theoretical} claim for specificity, for the experiential detail that comes from the story of a dead brother, memoirs of attending to dying friends, or interviews with lesbian Al s activists that cannot easily be abstracted to produce a structural account of trauma. These forms of cultural expression-memoirs, novels, and interviews- constitute the unusual archive necessary to capture the queer bonds and affects of activism and caretaking. They offer a challenge to critiques of trauma culture a sentimental culture. A different trauma culture emerges om the scene of AIDS activism- one that is not about spectacles of wounded helplessness but about trauma as the provocation to create alternative life worlds. The oral histories of AIDS activists propose new ways of representing and countering trauma- modes of response that do not oppose militancy to mourning or women's work of caretaking but instead glimpse within the material specificities of queer intimacy and love the structures of feeling that can build new political cultures.

#### The oral history, such as what is provided by the AC, keeps the dead with us. Without acts of revival, the lives become nothing but insignificant marks on a history that denies their existence. The aff carries with it the lives of the dead that the world is trying to make us forget.

Cvetkovich 2 Ann Cvetkovich (the Ellen Clayton Garwood Centennial Professor of English and Professor of Women's and Gender Studies at the University of Texas at Austin) “An Archive of Feelings: Trauma Sexuality and Lesbian Public Cultures” Duke University Press 2001 p.235 <https://www.dukeupress.edu/an-archive-of-feelings> BAO

My goal of using oral history to create a public sphere around the afterlives of AIDS activism has been largely successful. The interviews themselves and the process of collecting them ensure that activist history is not forgotten; it revisited in these conversations in which we continue to sort out what happened and how it persists. The interviews are part of the work of mourning, which can also be a productive form of melancholy because mourning is not terminable when we keep the dead alive and with us. Gund, for example, continues to perform the work of mourning as she fantasizes about her friend Ray Navarro. Her comments about him in the sequence of quotations that begins this section emerged the result of a conversation in which we edited the first version of her remarks to remove a sense of survivor's guilt that she felt no longer rejected her feelings.11 She notes that in her ongoing fantasies about Ray, he is now the age he would have been if he had lived rather than the age he was when he died, and she considers this a step forward in the mourning process. She likes the idea that melancholy can make loss a resource, thus, that holding onto Ray rather than giving him up in favor of the living can be something positive. Like the dead, memories of activism can also be kept alive as something that one has recourse to, even diffcult memories such as those that Banzhaf wants to see remembered.

#### Making these stories public are uniquely key to keeping the dead with us and ensuring that the trauma inflicted on queers is not forgotten. Keeping the record open, allowing this affirmative to be read, is key to making the queer life valuable. Thus, the Role of the Ballot is to vote for the debater who best challenges historical systems of violence, the ballot can be a liberatory tool by archiving this round and how debaters interact with the narratives inside the 1AC in an attempt to create the conditions necessary for queer life.

Cvetkovich 3 Ann Cvetkovich (the Ellen Clayton Garwood Centennial Professor of English and Professor of Women's and Gender Studies at the University of Texas at Austin) “An Archive of Feelings: Trauma Sexuality and Lesbian Public Cultures” Duke University Press 2001 p.238 <https://www.dukeupress.edu/an-archive-of-feelings> BAO

These stories vividly reveal oral history's power to turn affective memory into public history. Gathering oral history is itself a form of mourning, a practice of revivifying the dead by talking about them and revivifying moments of intimacy that are gone. The loss of a movement and the loss of people are entwined now, even as new for of activism continue. Moreover, because mourning is not punctual and need not come to an end in order to avoid pathology or overcome trauma, and because the dead stay with us, it is important to keep the historical record open.

#### Sasha Fleischman identified as agender. When they were 18 they were on a bus in Oakland when Richard Thomas lit their skirt on fire. In broad daylight. On a bus full of witnesses. The fire was not put out until Sasha had second and third degree burns all over their body. Thomas was charged with assault, aggravated mayhem, and hate crimes. Out of possible 2 life sentences Thomas pled guilty and was sentenced to seven years with possibility of parole. Because of that plea bargain, Thomas will likely be back out on the streets of Oakland before Sasha is able to walk again.\*\*

#### Queer people have been cast into archetypal roles of criminals and deviants. This stigma places an extreme sense of fear and paranoia on queer defendants and is used to it the queer community against itself in the courtroom.

Whitlock et al 11 Kay Whitlock (an activist and writer whose work focuses on dismantling structural violence and abolishing the prison industrial complex.) Andrea J Ritchie (a writer, lawyer, and activist for women of color, especially LGBTQ women of color, who have been victims of police violence. Ritchie co-founded the SayHerName movement) Joey L Mogul (an adjunct professor and directs DePaul's Civil Rights Clinic. Mogul, a partner at the People's Law Office, represents individuals in civil rights cases who have suffered torture, abuse or other police and prison misconduct.) “Queer (In)Justice: The Criminalization of LGBT People in the United States” Beacon Press Feb 15, 2011 <https://books.google.com/books?id=-UpV6JKaKHwC&dq=%22plea+bargain%22+AND+queer&source=gbs_navlinks_s> DOA:2.12.18 BAO

The presumption of criminality stemming from laws expressly punishing homosexuality and gender nonconformity, courtroom practices further stigmatizing LGBT people, and the promulgation of archetypal narratives that brand queers as deceptive has effectively eroded the credibility of queer people in the court system. Thirty-nine percent of gay and lesbian respondents in the California State survey believed their sexual orientation was used to devalue their credibility." In one instance "jury members suggested that [a] witness was gay and therefore his testimony could not be trusted," and another in which a gay respondent said, "I was discredited as a witness because they said I was probably out at a club or something' before I witnessed the accident In Chicago in August 2007 a Black transgender woman named Monica James was charged with attempted murder and a host of other crimes against a white, gay, off-duty police officer. The prosecution deployed the archetype of transgender people as inherently deceptive by asking the jury point blank, "How can you trust this person? He tells you he is a woman; he is clearly a man," and insisted on referring to James using male pronouns throughout the trial. The state also argued that James' self-defense claim was "insane" because the off-duty police officer was gay. Owen Daniel-McCarter, an attorney with the Transformative Justice Law Project (TJLP), later remarked, "That argument ignores the intricacies of race and gender . . . in the gay community." As James explained on the stand, "He [the officer] doesn't like my kind of faggot." Ultimately, James was acquitted of the more serious criminal charges, but found guilty of aggravated battery.79

#### Plea bargaining is used as a tool to coerce these queer defendants into avoiding court appearances out of fear. This coercion is not only oppressive to the queer body, but the exclusion of queer narratives in criminal law harms the queer psyche. It leads us into the walls of false justice only to betray us by outing our identity to be used against us as a bargaining chip to shave months off of our freedom.

Whitlock et al 2 Kay Whitlock (an activist and writer whose work focuses on dismantling structural violence and abolishing the prison industrial complex.) Andrea J Ritchie (a writer, lawyer, and activist for women of color, especially LGBTQ women of color, who have been victims of police violence. Ritchie co-founded the SayHerName movement) Joey L Mogul (an adjunct professor and directs DePaul's Civil Rights Clinic. Mogul, a partner at the People's Law Office, represents individuals in civil rights cases who have suffered torture, abuse or other police and prison misconduct.) “Queer (In)Justice: The Criminalization of LGBT People in the United States” Beacon Press Feb 15, 2011 <https://books.google.com/books?id=-UpV6JKaKHwC&dq=%22plea+bargain%22+AND+queer&source=gbs_navlinks_s> DOA:1.4.18 MKO

Similarly, the archetypal narrative that casts queers as inherently deceptive undermines LGBT defendants' ability to challenge sex-related charges based on arrests by undercover officers. In such cases, 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. In light of these circumstances, queer defendants often accept less than equitable guilty pleas to escape the humiliation of defending against such charges and the harsher punishments they risk if convicted after a trial. The acceptance of such deals is also driven by shame, fear of family or community members' discovery of sexual orientation or gender identity, or simply a desire to put the entire incident behind them. According to Thomas Andrew, a defense attorney in San Antonio, Texas, "'The biggest problem we are having from the standpoint of wrongfully charged defendants is that 95 percent of them are so embarrassed by the [sex-related] charge .. . they are afraid to fight."32 Regardless of whether a queer defendant receives a favorable or unfair plea bargain, the arrest and subsequent conviction leaves a mark, in the form of a criminal record, that silently follows many queers for the rest of their lives, impacting employment opportunities, professional licenses, the ability to overcome considerable barriers faced by LGBT people seeking to become foster or adoptive parents, and immigration status. For instance, immigrants can be removed from the United States if "convicted of a crime involving moral turpitude:33

#### Queer violence and the way it is portrayed in the status quo absolutely must be challenged or the lives of the queer will continue to be erased. Every moment that passes more lives are being purged from our history by heterosexual rejections of the notion of queer violence.

Stanley 11 Eric Stanley (assistant professor in the Department of Gender and Sexuality Studies at the University of California, Riverside) “Near Life, Queer Death Overkill and Ontological Capture” *Duke University Press Vol 29 No 2* Summer 2011 p. 7 <https://queerhistory.files.wordpress.com/2011/06/near-life-queer-death-eric-stanley.pdf> DOA: 8.30.17 BAO

Where statistics fail, scars rise to tell other histories. From the phenomenological vault of growing up different, to the flickers of brutal details, one would not have to dig deep to uncover a corpse. Yet even with the horrific details, antiqueer violence is written as an outlaw practice, a random event, and an unexpected tragedy. Dominant culture’s necessity to disappear the enormity of antiqueer violence seems unsurprising. Yet I suggest that mainstream LGBT discourse also works in de-politicized collusion with the erasure of a structural recognition. Through this privatization the enormity of antiqueer violence is vanished. Thinking violence as individual acts versus epistemic force works to support the normative and normalizing structuring of public pain. In other words, privatizing antiqueer violence is one of the ways in which the national body and its trauma are heterosexualized, or in which the relegation of antiqueer violence, not unlike violence against women, racist violence, violence against animals (none of which are mutually exclusive), casts the national stage of violence and its ways of mourning as always human, masculinist, able-bodied, white, gender-conforming, and hetero- sexual. For national violence to have value it must be produced through the tangled exclusion of bodies whose death is valueless. To this end, as mainstream LGBT groups clambe for dominant power through attachment of a teleological narrative of progress, they too reproduce the argument that antiqueer violence is something out of the ordinary.

#### Homophobia becomes not only permissible, but rewarded under plea bargaining, an institution in which a victim or survivor’s orientation can be used as an excuse to get time off of your sentence. The institution of plea bargaining props up this claim of “gay panic” to be used without external checks from juries or peers. This means that the aff is try or die, plea bargains are always going to be used to promote homophobia behind closed doors. Plea bargains in any capacity facilitate the growth of hate, thus abolition is key.

Flaherty 10 James Joseph Flaherty (American scholar and queer theorist) “If I Could Choose: Internalized Homophobia of the Queer Cinema Movement” p.14 SJSU ScholarWorks Spring 2010 <http://scholarworks.sjsu.edu/cgi/viewcontent.cgi?article=4756&context=etd_theses> DOA:1.4.18 BAO

Keller adds that Kristeva’s theory of abjection is beneficial to understanding the social hysteria incited by homophobia. This theory likens itself to the “gay panic defense,” a plea bargaining tactic that has been used in courts of law with the intent to mitigate punishment for violent acts perpetrated against non-heteronormativity. The gay panic defense assumes that the governance of the self is temporarily destabilized in response to the rejection of these abject manifestations. Instead of accepting responsibility for their actions, the perpetrator professes a “[momentary] rage and fear initiated by the revelation of [the] victim’s sexual orientation” (Keller 175). The claim of gay panic is assumed to incite temporary insanity because the thing itself is too horrible to exist, “effectively render[ing] the victim guilty of his [or her] own injury or death” (176). Homophobia therefore becomes permissible when homosexuality signifies “the return of all that the heterosexual male has suppressed in the process of forming a normative sexual identity” (176). This was the rationalization given by the defense in the Matthew Shepherd murder trial, as well as the trial of Jonathan Schmitz, the man who murdered his friend Scott Amedure after he learned of the latter’s homosexual crush on The Jenny Jones Show.

#### Not only do our attackers get off easy, but we don’t get access to the same benefits. Plea bargaining destroys queer individuals from all directions, it doesn’t matter if we are killed, beat, or accused of perversion, the plea bargaining stage is used as a vehicle for homophobia to seep into legal discourse in areas thought to be a site of liberatory legal relief. But that relief is not allowed for the queer. Thus I affirm an abolishment of plea bargaining as a multidirectional method to combat the erasure of queer violence in legal narratives in favor of hearing and archiving their stories of injustice

#### Queer visibility is a problem right now in court rooms, increasing discernibility and taking these trials to court, once plea bargaining is abolished, has the unique spillover to educating the court about their experience and making them more tolerant, thus our advocacy is that plea bargaining should be abolished in the United States criminal justice system as a method of fostering queer legal visibility.

Barrett 2k Barrett, Beth (2000) "DEFINING QUEER: LESBIAN AND GAY VISIBILITY IN THE COURTROOM," Yale Journal of Law & Feminism: Vol. 12: Iss. 1, Article 5. Bett is a Yale Law School Scholarship Recipient, Member of the National Gay and Lesbian Task Force <http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1161&context=yjlf> pg. 151-153// KE

One of the anti-gay lobby's most powerful weapons is what we might call "the gay abstraction" - the unknown homosexual other. Just as political and legal abstractions like "civil rights" and "special rights" can be exploited and made into terms of opprobrium, so can the abstract class of invisible homosexuals [can] be molded in the image of hate. -- Jane S. Schacter, The Gay Civil Rights Debate in the States: Decoding the Discourse of Equivalents 64 One consequence of forgetting homophobia is that we may overestimate the level of knowledge and understanding in the mainstream world. In fact, the existence, achievements, and everyday life of gay men and lesbians is largely invisible or little understood outside gay circles.65 As the authors of After the Ball quipped, "straights know very little about homosexuality and would prefer to know even less.",66 This desire for ignorance is evident in the near blackout of gay and lesbian news events and the ongoing struggle over gay and lesbian visibility.67 Straight America, it seems, would rather know nothing about gays and lesbians than accommodate their worldview to make room for an authentic homosexual existence. Activist and social theorist Suzanne Pharr suggests that the invisibility of gay men and lesbians is part of a larger pattern keeping members of nondominant groups from public awareness. When minorities are neither seen nor heard, writes Pharr, "there is a reinforcement of the idea that the Norm is the majority and others either do not exist or do not count." 68 As a matter of principle then, increasing the visibility of gay and lesbian experiences counteracts efforts to make us invisible. We can, in effect, take space in the world by remaining visible even in the midst of efforts to erase gays and lesbians. **In the courtroom context, remaining visible means making legal arguments that educate courts and address the unique experience of gay life in a homophobic society.** If invisibility alone were the problem, as litigators we could simply undergo the task of explaining gay life to an ignorant but unbiased court. This, of course, is not the case. Straight America has taken the liberty of filling in the holes in reality left by the invisibility of gays and lesbians. This background set of presumed familiarity has been called "pre-understanding”. Pre-understanding includes whatever stereotypes, mischaracterizations, or other distortions the listener believes he or she knows about gay and lesbian experience.70 Litigators must face and overcome this pre-understanding when entering the courtroom. Research continues to demonstrate that as more gays, lesbians, and bisexuals come out of the closet, support for gay rights increases. 71 Thus, **a litigation approach that counteracts gay and lesbian invisibility has a strategic purpose as well. Making visibly pro-gay and educational arguments in the courtroom is, in effect, "coming out" in the courtroom setting**. As pioneering psychologist Gregory Herek has confirmed, people with limited contact with lesbians and gays are the most hostile towards them.72 These findings suggest that as judges and juries see and learn more about gays and lesbians, tolerance will also improve within the courtroom. Thus, if gay rights advocates educate judges and juries on gay experience, we may win more cases.

#### Queer trauma is frightening and maddening. Legislators who don’t understand our existence pass laws rooted in queer ignorance. Reforms that don’t start from the positionality of queerness undermines our safety inside of the constantly volatile and homophobic legal system. Thus Visibility is essential to making system hospitable for queer life.

Barrett 2 Barrett, Beth (2000) "DEFINING QUEER: LESBIAN AND GAY VISIBILITY IN THE COURTROOM," Yale Journal of Law & Feminism: Vol. 12: Iss. 1, Article 5. Bett is a Yale Law School Scholarship Recipient, Member of the National Gay and Lesbian Task Force <http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1161&context=yjlf> pg.149-151//KE

It should be self-evident that gay rights cases are about homophobia. After all, there would rarely be a conflict if not for some original act of homophobia. Nevertheless, court opinions too often ignore the underlying homophobia in a gay rights conflict. Furthermore, depictions of real gay and lesbian lives are equally rare. In Part II, I demonstrate how a tendency to forget homophobia or make purely legalistic arguments undermines our legal position and creates a dangerous opportunity for misinformation. A. Don't Forget They Hate Us The well-adjusted homosexual comes to view her or his romantic feelings and sexual practices as perfectly natural-just a mirror image of straight love and sex.... It is easy to forget, then, that most straights lump homosexuality into the "creepy weirdo" class - alongside necrophilia, bestiality, pedophilia, feces, fetishism, and snuff sex. As an advocate for gay and lesbian liberation, I find that I frequently make the intellectual mistake of forgetting that homophobia exists. I am not alone in this.5 4 The pattern among gays and lesbians to forget homophobia and imagine that we are accepted in society is a coping mechanism many of us use. 5 I suspect this "forgetting" is especially common among those of us living in urban centers. 6 By "forgetting" homophobia, we avoid the exhaustion and despair we would encounter were we to truly feel every stare, see every sneer, and hear every snicker lobbed at us by the straight world. As activist Urvashi Vaid writes, "the notion that homosexuality has been mainstreamed is an illusion we yearn to believe because we are so tired of being vilified, loathed, and marginalized. 5 7 When I forget homophobia it is for one reason only: who wants to remember? Who wants to remember that the most common emotional reaction to homosexuals is disgust, discomfort, and confusion?58 Why remember that 46 percent of the American public disapproves of homosexuality? 59 Why do we need to be reminded that gays and lesbians are the second most unpopular group in the United States? 60 To paraphrase Minnie Bruce Pratt, hey, "that's 61 our lives you’re talking about!” Ironically, this tendency to know and yet "forget" homophobia may be especially common among gay and lesbian activists. As activists and litigators, a belief in our ability to create change is the motivating root of our work. Thus, we may intellectualize or "forget" the obstacle of homophobia in order to find energy to continue our work. But such forgetting comes at a great price. Many litigation strategists argue that this is no time to be forgetting homophobia. Some authors suggest that highlighting homophobia and drawing attention to gay and lesbian experience is an absolute necessity for success in the courtroom.62 For example, Marc Fajer argues that a critical step in any gay rights case is identifying the underlying homophobia that triggered the conflict. 63 In an employment discrimination case, for instance, an advocate might highlight the faulty homophobic assumptions of the firing manager, which motivated the discrimination being challenged. Such an approach provides a means of educating courts on the context of homophobia and gay and lesbian experiences. Thus, it seems that a well-equipped advocate must come to court ready to address and deflate the homophobic assumptions surrounding every gay rights case. This will require a keen awareness of the constant presence of homophobia in gay and lesbian life.

#### Finally, Paul Broussard. Paul was a 27-year-old banker in Houston. One night as he was leaving a gay nightclub when he was stopped by 10 young men. Broussard ran from the group once he realized they were wearing steel-toed boots and one was holding a pocket knife. He was caught by the other men. They beat, kicked and stabbed Broussard several times before leaving him behind in a dark alleyway. Paul Broussard laid there in his own blood for an indeterminate amount of time before bleeding to death alone and scared. All ten men were caught and all ten took plea bargains. Five served no jail time. The others served varied amounts, the most being 23 years served by the man who delivered the fatal stab wounds. Paul lived longer than any of his murderers served in jail. 23 years for beating a 27-year-old gay man to death. That is what a queer individual is worth in the current US criminal justice system. \*\*\*

#### But we must not let that be our reality any longer.

#### Thus I affirm.

\*http://www.washingtonblade.com/2010/11/23/family-calls-for-hate-crime-probe-in-betts-murder-case/

\*\* <https://www.lgbtqnation.com/2014/10/teen-who-set-agender-man-on-fire-will-serve-7-years-under-plea-agreement/>

\*\*\* <http://www.chron.com/news/houston-texas/houston/article/Man-convicted-in-Montrose-gay-murder-freed-on-6728569.php> 1991