

# Mia Yamamoto and Shelby Chestnut

## *In Conversation*

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### I. INTRODUCTION

The Harvard Civil Rights and Civil Liberties (CR-CL) Law Review's readership includes academics, attorneys, activists, teachers, and students fighting for progressive causes, including many members of this journal. It has always been the CR-CL Law Review's mission to push our audience to think critically about their work. To that end, we hope to amplify the voices of people who have dedicated their careers to advancing civil rights not only through scholarship, but also through practice.

Nearly a decade and a half ago, this journal published an article by Sharon McGowan, then a staff attorney with the ACLU on a topic related to this issue's Symposium called *Working With Clients to Develop Compatible Visions of What It Means to "Win" a Case: Reflections on Schroer v. Billington*.<sup>1</sup> In that article, Ms. McGowan, then a staff attorney with the ACLU LGBT Project, grappled with the joys and difficulties of representing a transgender client, Diane Schroer, in an early victory for transgender protections under Title VII.<sup>2</sup> As Ms. Schroer's attorney, she was faced with questions about how to make Ms. Schroer's gender identity legible to a historically apathetic court,<sup>3</sup> whether discrimination against transgender people is disability discrimination,<sup>4</sup> the social and scientific relationship between sex and gender,<sup>5</sup> and how and when to prioritize a transgender client's medical and bodily privacy in high-profile litigation.<sup>6</sup>

Then and now, these are difficult questions. They are questions with which advocates still struggle, and they are questions that are well-suited to forums like this publication.

Ms. McGowan's article was just one example of this journal's long-standing commitment to bringing scholarship into the world of practice and practice into the world of scholarship. In publishing the following conversation, we hope to both preserve this tradition and expand it to encompass the voices of activists who may be titans of their respective worlds, but who

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<sup>1</sup> Sharon McGowan, *Working With Clients to Develop Compatible Visions of What It Means to "Win" a Case: Reflections on Schroer v. Billington*, 45 HARV. C.R.-C.L. L. REV. 205 (2010).

<sup>2</sup> See *Schroer v. Billington*, 577 F. Supp. 2d 293, 308 (D.D.C. 2008).

<sup>3</sup> See McGowan, *supra* note 1, at 213.

<sup>4</sup> See *id.* at 219.

<sup>5</sup> See *id.* at 234.

<sup>6</sup> See *id.* at 230.

have yet to receive the attention they deserve in formal legal scholarship. To that end, we invited two decorated activists to sit for a conversation on the topic of trans rights and advocacy, moderated by members of our editorial board. The result was both familiar and surprising, thought-provoking and inspiring. We hope that these speakers' words are as impactful for you as they were for us.

## II. BIOGRAPHIES

**Mia Yamamoto** (she/her) is a transgender Japanese American criminal defense attorney and activist based in southern California. In 2003, Ms. Yamamoto became the first openly trans trial lawyer in the state of California when she came out at 60. Ms. Yamamoto is the recipient of a number of honors for her advocacy on behalf of the LGBT community, including awards from Lambda Legal, the Christopher Street West Association, API Equality LA, and the LA County Human Relations Commission. She was awarded "Criminal Defense Attorney of the Year" by the LA County Bar Association. Prior to starting her own criminal defense practice, she was a staff attorney with Legal Aid Foundation of Los Angeles, and an attorney with the Los Angeles County and California State Public Defender's Offices. In addition to her criminal defense practice, Ms. Yamamoto serves on the board of International Bridges of Justice, an organization dedicated to bolstering legal protections for incarcerated people in developing countries.<sup>7</sup>

**Shelby Chestnut** (they/he) is a movement leader and policy expert with over 20 years of experience. Being both white and descended from the Assiniboine tribe of Montana, they grew up in a rural town with a single mom. They are the first Native trans executive director at Transgender Law Center (TLC), the largest trans-focused, trans-led organization in the U.S.<sup>8</sup> Prior to this role, Mx. Chestnut served for five years as TLC's Director of Policy and Programs, where they helped launch a number of community-focused projects aimed at protecting trans rights alongside rights for Black people, people with disabilities, and incarcerated people. Before that, they were the Director of Community Organizing and Public Advocacy at the New York City Anti-Violence Project. They are also currently the chair of the Board of Trustees at Antioch College.

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<sup>7</sup> INT'L BRIDGES OF JUST., <https://www.ibj.org/> [<https://perma.cc/E6UM-DH64>] (last visited Oct. 1, 2023).

<sup>8</sup> TRANSGENDER L. CTR., <https://transgenderlawcenter.org/> [<https://perma.cc/435N-957G>] (last visited Oct. 1, 2023).

## III. CONVERSATION

**CR-CL:** Both of you have experience fighting for the most vulnerable groups within already vulnerable groups.<sup>9</sup> Among trans people, for example, people of color, incarcerated people, young people, poor people, victims of state and interpersonal violence. We're wondering what lessons you've learned from those experiences.

**MY:** Let me just say, in the courts and in all these professional spaces, each different space carries its own traditions and its own history. And that means introducing queer voices and queer presences into some of those places is always uniquely liberating and individual. It has to be approached, I think, in its own way. I have to admit, you just sort of do what I do—being transgender, you just barge into the scene very openly.<sup>10</sup> But the fact of having occupied the space pre-transition before entering into that space makes all the difference in the world in terms of you already being an established figure so they just have to deal with you in a different incarnation.

It has to be intentional and, in that sense, you're always trying to pull into a situation and establish a presence and get whatever you need from it. At the beginning, it's absolutely the idea that you are demanding respect just by appearing and demanding whatever it is that you're there for. I'll give an example: to go into the courthouse and demand recognition for you and your client and your cause is something, all by itself, but it carries over to when you go to the jail for the same purpose. Different context, different population of people, different history and different culture in its own way. So each one of these, in my experience, has always had to be done deliberately. It really is never done casually, it's always done somewhat intentionally and that is my experience with a whole myriad of spaces.

**SC:** I think what Mia said is spot on. And for me, thinking about the history of [the] trans movement and where we've seen the arc of litigation in the last 15 to 20 years . . . rights were never given, they were really demanded.<sup>11</sup> We didn't get here on accident. I think a lot of really brave, bold, trans people just said that we're here, we're going to make space, we're going to take what is ours, and we're going to demand a seat at a table that really wasn't

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<sup>9</sup> See Sydney Bauer, *California's First Openly Trans Trial Lawyer Fights for Equality for All*, AARP (June 20, 2022), <https://www.aarp.org/home-family/friends-family/info-2022/mia-yamamoto.html> [<https://perma.cc/ZU9S-E4S6>]; John Ferrannini, *New Transgender Law Center ED 'Humbled' To Lead Organization*, Bay Area Rep. (Feb. 21, 2023), <https://www.ebar.com/story.php?ch=news&sc=news&id=323091> [<https://perma.cc/RR5W-N2M8>].

<sup>10</sup> See Zachary Drucker, *After Years of Fighting for Trans Kids, Lawyer Mia Yamamoto Came Out Herself*, VICE (Dec. 7, 2018), <https://www.vice.com/en/article/59vka8/mia-yamamoto-lawyer-transgender-history> [<https://perma.cc/9L7X-NNUG>].

<sup>11</sup> See Erin Blakemore, *How Historians Are Documenting The Lives Of Transgender People*, NAT'L GEOGRAPHIC (June 24, 2022), <https://www.nationalgeographic.com/history/article/how-historians-are-documenting-lives-of-transgender-people> [<https://perma.cc/24YL-2TBA>].

designed for us to be at.<sup>12</sup> I think if you look at the history of trans organizing, the modern LGBT movement was started by trans people, and then pushed to the side for many decades.<sup>13</sup> In the last 20 years, you've seen these LGBT litigation cases come into high profile.<sup>14</sup> But you also see then that these trans organizations that do litigation come into creation so while we're kind of older in all the senses, we're still under-resourced, we're younger in our organiz[ing].<sup>15</sup>

For TLC, something that we saw early on was—we started as a California organization, we did a lot of legal services and public accommodations cases. Post [legalization of gay] marriage nationally, as we started to branch out and grow—all of the groups that didn't want to take on public accommodations cases for trans people—they all were taking it on.<sup>16</sup> In the last 5 to 6 years<sup>17</sup> we've really shifted our focus to a lot of what Mia has lifted up, which is the way that trans people were criminalized and were not included as sort of a core fabric of society.<sup>18</sup> So we've taken on cases that people said were unwinnable, people said are not issues we should be concerned about but, whether that's immigration,<sup>19</sup> whether that's murder, whether that's criminalization of parents and young people seeking health-care,<sup>20</sup> like we've always said we have an obligation to our community to deal with the issues impacting our community the most and if you look at what I think is limiting trans people's lives right now . . . rights are one thing, I don't want to discount that, but when you can't find safe housing,<sup>21</sup>

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<sup>12</sup> See *id.*

<sup>13</sup> See Molly Horak, *The Role Of The Transgender Community In The LGBT+ Rights Movement*, LAW'S COMM. FOR C.R. UNDER L. (June 7, 2019), <https://www.lawyerscommittee.org/the-role-of-the-transgender-community-in-the-lgbt-rights-movement/> [https://perma.cc/SX9G-YUJ2].

<sup>14</sup> See *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000); *Lawrence v. Texas*, 539 U.S. 558 (2003); *U.S. v. Windsor*, 570 U.S. 744 (2013); *Obergefell v. Hodges*, 576 U.S. 644 (2015); *Masterpiece Cakeshop Ltd. v. Colorado C.R. Comm'n*, 138 S. Ct. 1719 (2018); *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731 (2020); *303 Creative LLC, v. Elenis*, 143 S. Ct. 2298 (2023).

<sup>15</sup> See *About Us*, TRANSGENDER L. CTR., <https://transgenderlawcenter.org/about/> [https://perma.cc/CX8X-YGXA] (last visited Sept. 29, 2023).

<sup>16</sup> See James Esseks, *After Obergefell, What the LGBT Movement Still Needs to Achieve*, ACLU: NEWS & COMMENT. (July 7, 2015), <https://www.aclu.org/news/lgbtq-rights/after-obergefell-what-lgbt-movement-still-needs-achieve> [https://perma.cc/M3L7-JNAV]; cf. Shannon Minter, *Do Transsexuals Dream of Gay Rights?*, 17 N.Y. L. SCH. J. HUM. RTS. 589, 591 (2000) (discussing sentiment among some gay and lesbian rights advocates of the time that trans issues should be kept separate).

<sup>17</sup> See *Impact Litigation*, TRANSGENDER L. CTR., <https://transgenderlawcenter.org/litigation/> [https://perma.cc/TJY5-HPTL] (last visited Oct. 1, 2023).

<sup>18</sup> See *id.*

<sup>19</sup> See *Archives: Cases*, TRANSGENDER L. CTR., <https://transgenderlawcenter.org/case/> [https://perma.cc/7H2Z-BCSP] (select “Immigration” from sidebar and click “Submit”).

<sup>20</sup> See *Prescott v. Rady's Children's Hosp.*, 265 F.Supp.3d 1090 (S.D. Cal 2017).

<sup>21</sup> See *Transgender Homeless Adults & Unsheltered Homelessness: What the Data Tell Us*, NAT'L ALL. TO END HOMELESSNESS (July 24, 2020), <https://endhomelessness.org/resource/transgender-homeless-adults-unsheltered-homelessness-what-the-data-tell-us/> [https://perma.cc/L62T-6QXS].

employment,<sup>22</sup> and just general respect, you're not going to have access to all these other things.

For us, we've seen [not only] a focus on litigation but [also] resource allocation and just naming the lack of access to resources, [and] then thinking how do we do movement building? How do we remind trans people and help trans people organize so they know that the issues that are important to them, they can drive the decisions about them. So that's where I think there's just a lot of overlap. I know a couple days ago was Marsha P. Johnson's<sup>23</sup> birthday and there was like a lot of footage of famous things she said. And she was just really unapologetic. She and Sylvia<sup>24</sup> both said, 'we're not going to take it. You all don't respect us and we're going to demand a world in which we are not only centered but all of our people are respected. And that's low-income people, incarcerated people, people who are criminalized—and it's not just about trans people, it's about everyone.'

**MY:** I watched . . . the Marsha P. Johnson documentary<sup>25</sup> [too] and just absolutely loved that. But you know, it's kind of like—all of us—we make ourselves targets in a way. . . . [A] whole lot of our brothers and sisters [are] still being taken down . . . especially, I have to say—transgender women of color, who appear to be the target of the day and they always have been. The interesting intersection when I think about this particular issue, when I think about the violence that comes from that, the . . . issues that come up when you're from a community of color add another layer of disapprobation and discuss[ion] from [a] community that is trying to present itself in a way that doesn't incorporate queer presence and queer people.

I've seen a lot from my own community—the Asian American community—somehow or other that when you . . . bring shame to your community by being queer that you deserve some kind of punishment and I think what I'm also seeing in another level of the oversight or another level of the community is that our allies—the people who are standing up for us, are becoming targets. The people that are not trans and not queer—our allies in the community are being targeted and being murdered. We see people

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<sup>22</sup> See David Baboolal, Sarah Greenberg, Maurice Obeid, & Jill Zucker, *Being Transgender at Work*, MCKINSEY & Co. (Nov. 10, 2021), <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/being-transgender-at-work> [<https://perma.cc/J5GS-C9XN>]; Brad Sears, Christy Mallory, Andrew R. Flores, & Kerith J. Conron, *LGBT People's Experiences of Workplace Discrimination and Harassment*, UCLA WILLIAMS INST. (SEPT. 2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Workplace-Discrimination-Sep-2021.pdf> [<https://perma.cc/WL8D-D48R>].

<sup>23</sup> See Emma Rothberg, *Marsha P. Johnson*, NAT'L WOMEN'S HIST. MUSEUM, <https://www.womenshistory.org/education-resources/biographies/marsha-p-johnson> [<https://perma.cc/7W9M-3R3H>].

<sup>24</sup> See Emma Rothberg, *Sylvia Rivera*, NAT'L WOMEN'S HIST. MUSEUM, <https://www.womenshistory.org/education-resources/biographies/sylvia-rivera> [<https://perma.cc/2C9C-6PYU>].

<sup>25</sup> THE DEATH AND LIFE OF MARSHA P. JOHNSON (Pub. Square Films 2017).

being murdered simply for flying a pride flag.<sup>26</sup> And it just looks to me like every single one of us needs to get out there and fly our flags because this poor woman—this ally, this person that saw the justice in our cause and decided to stand up for us—and she died because of it, she got killed because of it. . . . That act, that life should be remembered. And the reason why it was taken should be remembered. And all these causes come up. The man who murdered her was a Japanese-American—an Asian American.<sup>27</sup> And we have all of these things that exist in our community as well as in every place else. And I often wondered whether . . . there is any of that coming from a white queer person—that somehow [being queer] reflects badly on their community. I don't think they look at it that way. But I know that emerging communities with aspirations to the American mainstream do feel that, do express that, certainly, and do react to queer people in ways that, in my opinion, are even more severe because they're already communities of color.

**SC:** The one thing I would say too, before we move on is that, look at the [trans] health care debate right now.<sup>28</sup> People want to think of it as a trans-only issue<sup>29</sup> but, basically, what the far right, MAGA republicans and judges in these high positions are [deciding] is that only certain people are deserving of health care,<sup>30</sup> whether you're looking at the high rates of poverty and health issues among Black communities, migrant communities, AAPI communities.<sup>31</sup> [They are deciding that] if you're not cis, white, straight, and healthy, you're not deserving of a health care system. And people always want to say, "Well this access to gender-affirming care is just really hard to comprehend for young people."<sup>32</sup> Well basically everyone needs access to gender-affirming care because we all go to the doctor for specific reasons,<sup>33</sup> and you're basically saying a whole swath

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<sup>26</sup> See Christopher Weber & Richard Vogel, *California Shop Owner Killed Over Pride Flag Was Adamant She Would Never Take It Down, Friend Says*, AP NEWS (Aug. 23, 2023, 5:25 PM), <https://apnews.com/article/pride-flag-store-shooting-california-b2bd4f89e992356f35d2101cdf665acb> [<https://perma.cc/42AJ-8FH5>].

<sup>27</sup> See *id.*

<sup>28</sup> See, e.g., *Brandt v. Rutledge*, 551 F. Supp. 3d 882, 887–88 (E.D. Ark. 2021), *aff'd sub nom. Brandt by & through Brandt v. Rutledge*, 47 F.4th 661 (8th Cir. 2022).

<sup>29</sup> See, e.g., *L.W. by & through Williams v. Skrmetti*, 73 F.4th 408, 413 (6th Cir. 2023) (staying preliminary injunction barring Tennessee from enforcing its ban on gender affirming care for youth).

<sup>30</sup> Cf. Eli Coleman et al., *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8*, 23 INT'L J. TRANSGENDER HEALTH S1, S16 (2022) (recommendation from World Professional Association for Transgender Health that health care systems should provide medically necessary gender-affirming health care for transgender and gender diverse people).

<sup>31</sup> See generally NAT'L ACADS. SCI., ENG'G, & MED., COMMUNITIES IN ACTION: PATHWAYS TO HEALTH EQUITY 59–64 (Alina Baciu, Yamrot Negussie, Amy Geller, & James N. Weinstein eds., 2017).

<sup>32</sup> Maggie Astor, *How a Few Stories of Regret Fuel the Push to Restrict Gender Transition Care*, N.Y. TIMES (May 16, 2023), <https://www.nytimes.com/2023/05/16/us/politics/transgender-care-detransitioners.html> [<https://perma.cc/Q2CR-XWVV>].

<sup>33</sup> Cf. Coleman et al., *supra* note 30, at S16.

of society doesn't deserve health care right now,<sup>34</sup> which . . . look where that's gotten us in our country's history. If COVID has taught us [anything], it's that our healthcare system is deeply flawed and needs a makeover to say the least.<sup>35</sup>

**MY:** There are political forces that benefit greatly from targeting vulnerable minorities that don't have a critical mass to fight back or certainly not on the same scale. Those political forces are gathering for the elections that are coming up.<sup>36</sup> And it's interesting how people can seem to organize around things like hate. I like to think that the left doesn't do it that way. I like to think that it's a tradition in the fascist right to find different ways to target people to rally around hatred, exclusion, all of the things that they like to rally around, and one of them is transgender people, in general, transgender children in particular.<sup>37</sup> And you're right that these attacks are taking place just about everywhere<sup>38</sup> and it's interesting that these are the target du jour. People from minority communities, people from queer communities are certainly not unused to being targeted, being disparaged, and even being used politically for the advantage of politicians who would seek to profit from our division. The techniques, the style is unmistakable, it's absolutely the same, and it goes all the way back to 1930s Germany. We have to look around and see what the overall picture is. How are the means being employed for the political parties who are using these issues to gain power? Because ultimately, it is always about the acquisition of power. The unprincipled, targeted scapegoating of any particular group of people, whether it's Black people, whether it's immigrants, whether it's indigenous people, is always to the advantage of the unprincipled, the unwholesome, and in my particular opinion, the undesirable.

**CR-CL:** As people who hold many intersecting identities—trans, non-white, and more—what do you wish other leaders in the trans rights movement would understand about those other identities, and what do you wish leaders in the other movements of which you consider yourself a part would understand about being queer, trans, or non-binary?

**MY:** Let me just say this, I feel like in every endeavor I've ever lived through, organized and worked in, it's always been about reaching out to

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<sup>34</sup> *See id.*

<sup>35</sup> *See, e.g., Daniella Silva, Coronavirus Exposes Major Flaws in Health Care System, Experts Say*, NBC NEWS (Apr. 29, 2020, 6:00 AM), <https://www.nbcnews.com/news/us-news/health-care-experts-say-coronavirus-exposes-major-flaws-medical-system-n1194391> [<https://perma.cc/C3UX-CCEG>].

<sup>36</sup> *See Adam Nagourney & Jeremy W. Peters, How a Campaign Against Transgender Rights Mobilized Conservatives*, N.Y. TIMES (Apr. 16, 2023), <https://www.nytimes.com/2023/04/16/us/politics/transgender-conservative-campaign.html> [<https://perma.cc/XP69-Y6NB>].

<sup>37</sup> *See id.*

<sup>38</sup> *See generally* Fadeke Banjo, *5 Human Rights Trans Activists Are Still Fighting for Around the World*, GLOB. CITIZEN (Mar. 23, 2023), <https://www.globalcitizen.org/en/content/human-rights-trans-people-are-fighting-for/> [<https://perma.cc/XLM7-H8PF>].

other communities, it's always been about adding your voice to others', but it's also been [that] we have our interests in common, this bloc of people has interests in common, and sometimes it's not specifically in any individual group's interest, it's in the interest of the whole, it's something that benefits all societies. Sometimes, and this happens when you're trying to organize in places where there are deep-seated feelings of right-wing religion, for instance, you come across Christian nationalists and they are . . . against gay people, against trans people,<sup>39</sup> coming across people whose ideological cultures don't allow them to see past their dogma is a real struggle. It does require much more of a unified voice, so I have to bring my unique experience and history to the room, and to bring everybody else that needs a place in the mainstream society that [is] still fighting for it, that is trying to get some justice for their community, and their whole ethnicity or their religion or their tribe, whatever it is, to make sure they're given an equitable place in this room, in this table, in this location.

That conversation has to continue to take place, because I feel like this is something that people don't understand and that they're always being led not to believe: that we all have our interests in common, and that the common good is the reason why we're here in the first place, and that which we do for our own communities is meaningless unless it benefits society as a whole. It can't just be for white boys only, which is how it's always been. And there are remnants of that, and as vestigial as it is, they are still here, they are still on the bench,<sup>40</sup> they're still in power, they're still in possession of most of the wealth of this country and every other country. There are patterns and there are positions and perceptions that we can change, but we can't do it by ourselves.

That's what I've learned all these years of advocacy, it has to be done in coalition, and that means we always have to protect our allies. We have to stand up for each other, it can't always just be for our own little communities whether it's my community: queer, Asian, leftist, old people. I have various positions I'm speaking for right now, but we all have interests in common because our interests are really in equity and justice and making sure that the inequality that we have grown up with and that we have been studying all these years in all these law schools, that there is something we can do to address it, change it, make it better. So yeah, that's how I have approached it, in a very multicultural approach, it's the only way to do it in my point of view. You do have to organize in your community, but the only way to make a difference, really, is to make your voice get out into the larger community.

**SC:** I think we're in an interesting moment. I think right now what folks need to understand is that there is more trans power than there has ever

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<sup>39</sup> See, e.g., Melissa Gira Grant, *Christian Nationalism Has Prevailed in Texas. Trans Teens Will Suffer*, THE NEW REPUBLIC (May 19, 2023), <https://newrepublic.com/article/172861/christian-nationalism-prevailed-texas-trans-teens-will-suffer> [<https://perma.cc/2EBU-ENKF>].

<sup>40</sup> See *ABA Profile of the Legal Profession 2022*, AMERICAN BAR ASSOCIATION (2022) (as of 2022, 70 percent of sitting Article III federal judges were men and 78 percent were white).

been.<sup>41</sup> And people are building it daily, and I think we're at a moment where we have real privilege to look at inter-generational work and how we move things forward. I'm not an elder but I'm certainly not a young person anymore and to me, looking at how young people are meeting this moment and showing up is pretty incredible.<sup>42</sup> What needs to happen and would be helpful as a movement is for . . . LGB groups to understand that we need to be prioritizing trans people in this moment above all. We need to think about getting resources, whether that's changing material lived conditions, whether that's resourcing their organizations,<sup>43</sup> whether that's preparing them to go on to be lawyers. I've often wondered why there isn't a fellowship for trans people to go to law school. If they're going to be dealing with these cases, why shouldn't there be a fellowship to pay for them to get educated for that? I think just being creative about how we're willing to break down these barriers, and then I think the biggest thing from an organizing perspective, and from philanthropy right now is, of LGBT philanthropy, a very minimal [percentage] goes to trans-specific work,<sup>44</sup> and that needs to change. There is so much money in philanthropy to solve the world's problems and we're not I think holding people to task to move those resources. I think we're at a day and age where if you don't have [Black, Indigenous, or people of color] trans representation in your work, or see it as a priority, then you're probably not doing the right work.

I've seen a ton of great learnings with the repro and abortion world, thinking about how . . . we engage and center trans people in this, because it's not that [trans rights are] the only issue, but [they are] connected. It's about bodily autonomy and who has access to care.<sup>45</sup> For us too, we've been

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<sup>41</sup> See, e.g., *Out for America 2022: A Census of Out LGBTQ Elected Officials Nationwide*, LGBTQ VICTORY INSTITUTE (Sept. 2022), [https://perma.cc/6TUT-ZACT] (transgender elected officials in the United States grew by almost 10 percent to a total of forty-five in 2022).

<sup>42</sup> *10 Transgender and Gender Fluid Youth Who are Working to Change the World*, HUM. RTS. CAMPAIGN (Mar. 3, 2017), https://www.hrc.org/news/meet-10-emerging-young-transgender-advocates-who-are-working-to-change-the [https://perma.cc/6TDZ-2ZAX].

<sup>43</sup> See TRANSGENDER L. CTR., https://transgenderlawcenter.org/ [https://perma.cc/435N-957G] (last visited Oct. 1, 2023); TRANSGENDER LEGAL DEF. & EDUC. FUND, https://transgenderlegal.org/ (last visited Oct. 1, 2023); NAT'L CTR. FOR TRANSGENDER EQUALITY, https://transequality.org/ [https://perma.cc/9FPJ-PCJG] (last visited Oct. 1, 2023); BLACK TRANS ADVOC. COAL., https://blacktrans.org/ [https://perma.cc/JLS2-FXZL] (last visited Oct. 1, 2023); SYLVIA RIVERA L. PROJECT, https://srp.org/ [https://perma.cc/9AVW-RY28] (last visited Oct. 1, 2023).

<sup>44</sup> This number was about 13% in 2018. See Andrew Wallace & Lyle Matthew Kan, *2018 Tracking Report: Lesbian, Gay, Bisexual, Transgender and Queer Grantmaking by U.S. Foundations*, FUNDERS FOR LGBTQ ISSUES 2–3 (Mar. 30, 2020) (summarizing trends in philanthropic funding for LGBTQ causes and finding that over \$209 million was invested in 2018, of which \$28.6 million comprised funding for trans communities).

<sup>45</sup> See Juliana Kim, *How Gender-Affirming Care May Be Impacted When Clinics That Offer Abortions Close*, NPR (Aug. 14, 2022, 6:59AMET), https://www.npr.org/2022/08/14/1115875421/gender-affirming-care-abortion-clinics [https://perma.cc/Q6TK-3RWB]; Josia Klein & Sharita Gruberg, *Bans on Abortion and Gender-Affirming Care Harm the LGBTQ+ Community*, NAT'L P'SHIP FOR WOMEN & FAMS.: BLOG (July 11, 2023), https://nationalpartnership.org/bans-abortion-gender-affirming-care-harm-lgbtq-community/ [https://perma.cc/2TYN-2N6F]; cf. Chase

intentional about doing learnings with other movements, whether that's the immigrant justice movement, whether that's climate, whether that's racial justice, whether that's looking at democracy more largely and this moment of authoritarianism more globally. Just taking a pause and looking around the room is a simple thing that everyone can do. Why aren't there trans people at the table? And why aren't the most marginalized within trans communities at the table? And it's the same reason why we have a lot of isms, and oppression in this country. There's systematic erasure and exclusion of people, but trans people are experiencing it at the intersection of so many identities. Just seizing this moment that we're in, and bringing especially young people to the table is what gets us all to a point where we can begin to envision a world that's collective liberation, not just singular, one-group liberation.

**MY:** I agree with all that, and specifically I think the part talking about the right of bodily autonomy is exactly an issue that is just as international in its scope as transgender rights,<sup>46</sup> as the right for transgender people to exist. And we're in a moment where both those issues are elevated high enough for people to see them.<sup>47</sup> So whatever we do in this country, and we're having our problems with the people in the legislature and everything else, but these two unified human rights issues are as absolutely universal as you're going to find and it's exactly the reason why I say we fight these struggles in these small places, and sometimes with small victories, and small losses on behalf of what seem to be small issues, but those have resonance all across the country, all across the nation, and people in places where the oppression is even worse than here find out and hear about these things and it gives them hope that there is some place where people live up to their principles and are not oppressing people because it's politically advantageous.

Again, the rights of women, half the world . . . the right of women to their autonomy, not just physically, but socially, religiously, all the different issues and onuses that are placed upon women all across this country need to be alleviated so we can be examples for the rest of the world about human rights, about democracy, about what we can do when we vote for ourselves. It seems to me that that's the message that I find some resonance in: that

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Strangio, *Can Reproductive Trans Bodies Exist?*, 19 CUNY L. REV. 223, 229 (2016) (arguing that cisgender reproductive-rights activists have resisted the inclusion of trans people and how reproductive justice has historically been a "uterus owner's issue").

<sup>46</sup> See *State of World Population 2021: My Body is My Own—Claiming the Right to Autonomy and Self-determination*, UNFPA (Apr. 2021), [https://wcaro.unfpa.org/sites/default/files/pub-pdf/sowp2021\\_report\\_-\\_en\\_web\\_23.3.21\\_4.pdf](https://wcaro.unfpa.org/sites/default/files/pub-pdf/sowp2021_report_-_en_web_23.3.21_4.pdf) [<https://perma.cc/L9FF-PK2K>] (noting the international nature of the fight over bodily autonomy and how the inconsistency between international legal frameworks and national laws in some countries creates gaps in services that can contribute to maternal mortality and morbidity).

<sup>47</sup> See Tal Axelrod, *Republicans Eye Culture Wars on Trans Community, Education as 2024 Election Looms*, ABC NEWS (Feb. 24, 2023, 5:08 AM), <https://abcnews.go.com/Politics/republicans-eye-culture-wars-trans-community-education-2024/story?id=97013356> [<https://perma.cc/MFE9-BK42>].

we're all connected, we're connected with all women, anyone who cares about your right to your body, your right to your lover, your right to have your own children, the rights to the freedoms that every other person enjoys should not be curtailed because race, gender, or all the other issues that we know about.<sup>48</sup> From my point of view, that's where it all comes together. In this political place, we are here with women, with trans people, people of color. We are all in the crosshairs right now and we always have been.

This battle is a place where we have to be united to make [the] difference that we need to make and we have to reach out to each other and say, "My community understands the justice in your community's cause for equality. We are with you, we stand with you, we will walk with you, we will speak for you." And every community fighting for each other is what it comes down to, people of principle see that this is a much wider issue and it's not just us. And I guess that's what I want people to look at and say yes, being trans is important to me, being Asian American is important to me, I don't want it to be important to you, just recognize it, look at it, acknowledge it and let's go forward together. There's something called the common good that we actually have in mind for each other and for this world it is a worthy cause, and it is something that we feel proud to take forward and it does have to do with everybody. And that's the message that I would have for the larger community and even just within the gay community, within the queer community there has not been acceptance of trans people. We all know that we've all come across some people, we've come across anti-male gay women, anti-women gay men. They don't represent the majority of our communities, but we've got problems in our own little communities. . . . It's not just about advancing our own little group because that does nothing for the rest of us.

**CR-CL:** How have your upbringings and lived experiences outside of your work influenced your activism and theories of how change does and should happen?

**SC:** I was talking to some people this week in a different setting and they were like, "Why are you interested in this thing?" And for me it's because I don't want people to feel so isolated. I've always been the first in a lot of arenas, whether that's being trans, whether that's being Native, whether that's growing up in a rural area, growing up with a single parent and living in poverty most of my life. All of these have shaped who I am, and I don't think I'm all that special by any stretch of the imagination, but I do think I want to live in a world where people who want access to things and to go to school and to be a lawyer or to be a community organizer, to do whatever

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<sup>48</sup> See sources cited *supra* note 45 for commentators drawing a connection between abortion rights and gender affirming care. See also Alexander Chen, *Gay Rights and Trans Rights Are Indivisible. SCOTUS Just Showed Why*, SLATE (June 18, 2020, 10:31 AM), <https://slate.com/news-and-politics/2020/06/gay-transgender-rights-indivisible-supreme-court.html> [<https://perma.cc/ZPN2-8AJR>].

they want, really, is just accessible to them. I think we're living in a time where young people are demanding that world, and I think people who have been in power and repressing people's livelihoods for decades—they're pushing back—and I do think we're at that crossroads where I think a lot of things are going to get harder before they get better, but I've always taken a little bit from the playbook of the disability rights movement, and they have a saying, which is like, "Nothing about us or for us without us." And I think that is [one of] the ways that I see society shifting.

You see more equity and justice work in all sectors, even if they're met with resistance. It's going to mean that some people are going to be uncomfortable with the power shifts in the next probably three decades, but I also think it's going to be the only thing that is going to get us to the other side. Take for example the climate: we have climate deniers right now, and if they keep denying it, there's going to be nothing left. It doesn't matter if we support climate change and what needs to happen, none of us are going to be here if we don't take some serious drastic actions to change the course of the global climate and where we're taking it, with the U.S. being a major driver. That's a big example, and I don't know if that's a theory of change as much as it's just [that] I really felt like I had to at times.

I feel like a little bit of a dork saying this to you, Mia: to be that first, it's super isolating and it's lonely but I also think to look around and see so many people like me now being able to claim who they are and being able to lead full lives and to go on to do things they want to do, it makes me feel a lot less scared about the future that we're headed in. . . . [S]omething that I've always enjoyed and felt like is something that has informed how I approach all my work is [that] you need to have relationships with a lot of different people and you need to be able to pivot and change depending on who you're talking to and being mixed race, being trans, being queer, coming from a rural area, those were all just very natural skills to adapt but turns out a lot of people don't have those skills so if I can impart some of that in some of my own leadership to others, then I feel like I'm doing what I can to contribute to this larger, communal framework that we're working towards.

**MY:** When we're talking about outside influences, I was brought up Roman Catholic but I got rid of that one really early, [I] wasn't going to live that way. . . . And it's interesting how in later years when I was trying to get involved in human rights work, the organization that I was involved with was clergy out of the Harvard Divinity School. As a matter of fact, the board for the International Bridges of Justice came out of that school for the most part with a graduating student [being] our founding CEO.<sup>49</sup> The main thing is this: it starts off [and] all we're trying to do is bring human rights to China and [after] 25 years we've finally made inroads all over the world now:

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<sup>49</sup> See Karen Tse, *To Hear the Cries of the World*, HARVARD DIVINITY SCH. (Mar. 28, 2018), <https://hds.harvard.edu/news/2018/03/28/hear-cries-world> [<https://perma.cc/9MLP-37WQ>].

Cambodia, we're in Africa, Central Asia, and the Middle East.<sup>50</sup> The key thing is that that's my "outside," my work is for prisoners all over the world, that's always been my non-profit—that we try to administer to the needs of prisoners, people behind bars all over the world. And because of that outside perspective I feel like I've got a view of human rights all over the world, the way governments treat people is an absolute bellwether and an example for how people are going to treat each other.

It very much has to do with context, culture, history, all these sorts of things that you have to look at when you're talking to and trying to make a difference in systems of incarceration wherever they are. How people are put in prison and how they are selected and imprisoned and for what reasons, and how long, all the different things that you all are learning in criminal law and procedure and constitutional law are tested when we look at them all over the world.<sup>51</sup> The context of these human rights issues is a very, very large context but it's really as small as you and me and how we speak to each other and how much we care about each other and how much we are willing to defend each other and how much we want to know about each other, how much we want to understand, have some deep understanding of one another. Where does that come from? A lot of that has come from that wider context.

I may have been born in a concentration camp because of my race.<sup>52</sup> That has absolutely affected the trajectory of my career as a criminal defense attorney, serving as a[n] [Asian American] community activist . . . and a queer community activist, all these things are communities that whenever I get a platform like this one, for instance, [I make sure] that it is a platform to make some possible good come out of the conversation, come out of the example, come out of the life that we live.

Shelby talked about being the "first" something, I actually think that it really does kind of suck. I've always wanted to be the third or fourth trans lawyer to come out, to have a little bit of screen, a little cover. [But] I think we have to do it, these things have to be done, we have to intrude upon these spaces from which we've been excluded, and hopefully we do it joyfully, but the key thing is that we can't shrink away from it, and when we come into these places we come into them with great integrity. We're ready with the education that we got, with the experience that we have, with the goal of what we're trying to achieve in mind, and we've taken these spaces with great integrity, that we're ready for them, that we're overqualified for them, and that we are trying to bring the very best that we can to both the system

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<sup>50</sup> See *Mission, Vision and Origins*, INT'L BRIDGES TO JUST. (last visited Sept. 18, 2023), <https://www.ibj.org/who-we-are/mission-vision-and-origins/> [<https://perma.cc/E2T5-UXBM>].

<sup>51</sup> See *What the Data Says About Criminal Justice Systems Around the World*, WORLD JUST. PROJECT (Feb. 13, 2019), <https://worldjusticeproject.org/news/what-data-says-about-criminal-justice-systems-around-world> [<https://perma.cc/PA98-8QXF>].

<sup>52</sup> Sterling Cruz-Herr, "Born Behind Barbed Wire": How Mia Yamamoto Became a Legendary Defense Attorney, THEM (July 31, 2023), <https://www.them.us/story/mia-yamamoto-southern-california-attorney-trans-elder-project#:~:text=She%20was%20born%20in%201943,and%20the%20Army%20Commendation%20Medal> [<https://perma.cc/8Q5Z-EWVW>].

and ourselves. So I look at the outside work that we're doing with law and profession and everything else. I'm also involved in a lot of left-wing politics, and there's that too. So trying to effect change on a whole bunch of different fronts, in every possible organization, and every possible issue is a preoccupation that certainly I have been obsessed with my whole career.

**CR-CL:** You have both worked with many lawyers in your various roles. What are some blind spots you have observed in lawyers involved in social justice movements, *e.g.*, overlooked issue areas or under/overvalued tools for change?

**SC:** I can say this as the non-lawyer. . . . I would say we're living in a time where particularly in the last five to six years there has been so much weight put on lawyers and litigation as if it's the end-all be-all and it's going to save humanity, and I think actually a lot of the groups doing litigation on behalf of trans people or the trans litigators are very clear around a couple of things: litigation is harm reduction to this current moment, it's not going to be the thing that preserves people's rights. Two, at this juncture, it's pretty dangerous to put certain cases in front of certain circuit courts,<sup>53</sup> and we need to be deferring to organizers on the ground about what needs to happen in this moment. I also think something I see commonly in my career working with a bunch of lawyers, working with a bunch of litigators who are really brilliant people is they don't take the time to get to know the plaintiffs and the communities that they're litigating on behalf of in a way that's going to get these people through the case. When all these cases are said and done—some won, some lost—the communities stay where they're from, and they have to keep living that reality, and it's coming with a lot of great consequences right now.

I would instead lift up [the trans litigators who are doing the work on the ground]. We just got a temporary injunction in our Texas health care case, which is a big deal, that's a case with TLC, Lambda Legal, and [the] ACLU.<sup>54</sup> The number of trans litigators on that case is unprecedented.<sup>55</sup> That moment where we've done a lot of work as a trans organization to support the families and the people and the organizations on the ground to our plaintiffs in this case to be like, "What do you need to show up for this? What is going to be what your community needs in this moment and how can we support that?" which is not necessarily a litigation team's job but it's the

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<sup>53</sup> See Daniel Wiessner, *5th Circuit Rejects Title VII Coverage for Transgender Workers*, Reuters (Feb. 7, 2019, 5:32 PM), <https://www.reuters.com/article/employment-transgender/5th-circuit-rejects-title-vii-coverage-for-transgender-workers-idUSL1N202214> [<https://perma.cc/YQ45-HB7Z>].

<sup>54</sup> See *Loe v. State*, No. D-1-GN-23-003616 (Tex. Dist., Travis County).

<sup>55</sup> See Kristi Gross, *Texas District Court Grants Injunction to Pause Transgender Youth Medical Care Ban*, ACLU TEX. (Aug. 25, 2023), <https://www.aclutx.org/en/press-releases/texas-district-court-grants-injunction-pause-transgender-youth-medical-care-ban> [<https://perma.cc/KZ5H-D879>] (collecting interview quotes from the plaintiffs' litigation team).

reality that we're living in. If we're going to ask people to risk their lives and their well-being, we need to be willing to ask what they need to come to this as a whole person. So that's an area [that] I think all lawyering should think about—almost like what's your bedside manner[.] Mia, it sounds like your career has been helping the underdogs, and being like, nothing is too big or too small, so I'd be curious to hear what you have to say.

**MY:** When we're talking about blind spots that I feel like exist, all through the entire system, in terms of law school, there are things that, because it's not necessary for the person who's dealing with it, doesn't have to face that squarely in that particular moment, they can ignore it. The issue that we're talking about much more seriously—implicit bias<sup>56</sup>—[says] we have to examine some of the decisions that we make to see whether or not there are some underlying issues that we don't readily want to examine that are contributing to an unequal distribution in whatever equation you're dealing with—in courts, as lawyers, as evaluators, as mediators, as arbitrators, as judges. Decisions are made all the time with people overlooking their blind spots—the things that they're not looking at. From my point of view as a defense attorney, we look at everything holistically.<sup>57</sup> I'm worried about where my client's next welfare check will come out, and, “Will this conviction affect whether or not he can get a certain kind of license?”

There are all these things you're concerned about: many of my clients have got undiagnosed mental illness. I'm not even talking about the ones who have been diagnosed. These are places where we're not as readily educated as the professionals who have to deal with it on a daily basis and to some extent, these are blind spots as well. Lawyers have a tendency to examine facts, the law, and look[] for the issue and the outcome, and in many ways, they're overlooking what's happening with the client, and the consequences in a whole bunch of different areas of their life which, certainly when I first started practicing, were blind spots—things like immigration, child custody—all these things are consequences of criminal cases that criminal lawyers are certainly not trained to have a good level of awareness about.

When we talk about blind spots, racism [is a] blind spot. Probably less so, but I think people do make assumptions about us, depending on how we look, about where we come from, what our background is, what our perspective is, what our politics are. A lot of non-thought . . . happens to decision-making, connection-making, and service, which should always incorporate all of those things which we don't readily see . . . because we are not trained to see them. It is our experience that teaches us why these issues and why these areas of inquiry are critically important to the outcome of the

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<sup>56</sup> See Jerry Kang, Mark Bennett, Devon Carbado, Pam Casey, Nilanjana Dasgupta, David Faigman, Rachel Godsil, Anthony G. Greenwald, Justin Levinson & Jennifer Mookin, *Implicit Bias in the Courtroom*, 59 UCLA L. REV. 1124, 1151 (2012).

<sup>57</sup> See James M. Anderson, Maya Buenaventura & Paul Heaton, *The Effects of Holistic Defense on Criminal Justice Outcomes*, 132 HARV. L. REV. 819, 821, 826 (2019).

case and to your collaboration in the case. I'm always looking around for blind spots, I'm always looking for things I haven't noticed, haven't looked at, that might have been significant or resonant, just something that might have had some kind of a touch for an individual juror for a case, or even an individual judge who is making a decision about your client. There are a whole bunch of things that you can utilize once you've taken the time and the effort to examine the issues that might have slipped past you, but you go back and look at the situation and think about, "What's the best way to handle this?" and whether or not you used all that data at the time.

**CR-CL:** What advice would you give aspiring trans rights advocates, whether lawyers or not?

**MY:** Well let me just say this, the one thing that I think everybody here understands, is that, if you are going to be the first one there, you better be spectacular. You better be really good. If you want other employers to employ transgender lawyers. If you want clients to hire transgender lawyers, you better be a really great lawyer. Really better go after it because people are going to want you to fail—people that have had the monopoly . . . on all the different positions that are available in a particular profession, in a particular system. And you have to be, I've always believed this . . . better than good. [My father and I] were some of the first Asian Americans ever to walk into a courtroom<sup>58</sup> and I've always felt that you know, we better be good. We better be better than good because there are people counting on us that have been excluded for generations, [people] who, if we don't make the difference that we can make, we're not really making room for. You have the obligation you've got to work harder than everybody else. You have to prove to them what your people can do. And I just feel like that's always been my feeling about . . . being Asian American, [and] about being a transgender woman. That I want people to walk into a courtroom, and [think,] "I do believe I can do as good a job as anybody else," but you've got to do it. You've got to bring your A-game every single time. There's never going to be a time where you can kick back and pretend that you're a white male and get by on your looks.

I always feel like every day is that kind of a challenge, and it is a worthy challenge and it's worth doing it. And I always feel like the only thing you have to think about, is that there [are] going to be people coming after you, you're never even going to meet them, and they're not going to know you or anybody else, but the impression you make is going to be helpful, and it's going to resonate, and it's going to last a while *only if* you make a good difference. If you are able to get in there and absolutely deliver a fantastic excellent product. A good argument, a good case, every single time. If you do

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<sup>58</sup> See Tae Hong, *APAHM 2018: Mia Yamamoto on Her Unending Fight for the Poor and Marginalized*, CHARACTER MEDIA (May 1, 2018), <https://charactermedia.com/apahm-2018-mia-yamamoto/> [<https://perma.cc/7LYT-PZ5S>].

that, then I feel like you've served us all. You've broken through and you've done what you should do, which is absolutely pave a way for the others to come up and be expected at the same level for their work. That's what I've always felt about being the first one. . . . It's a huge responsibility to try to overcome certain stereotypes about who I am, what I can do, and where I belong. So, all those things are in my mind, certainly when I am first going into a situation. But I've been at it a while now, after my transition, and I feel like I can actually go at it without worrying about it that much.

**SC:** [My] advice is, you deserve to be here. If you don't see the thing that needs to be happening, you should make it happen. And I think we're in a moment where people have been conditioned to be complacent . . . just get in line and wait and see what happens, but we don't have time for that. There [are] thousands and thousands of people everywhere in this world that are trans that are fighting every day just for basic survival,<sup>59</sup> and you're not alone and you should join them and, I don't know, make history. . . . I was talking to some folks at the National Center for Trans Equality, which we partner with a lot, and they said they had more respondents to their U.S. trans survey than ever before.<sup>60</sup> It's taking them longer to analyze the data, and that's just amazing. People are out here being their authentic selves. Also, realizing they need to be factored into the decisions and the policies that are going to impact us for decades to come.

**MY:** I think one [other] piece of advice I would have is, you've always got to fight back. They are not going to drop this into your lap, you're not going to be welcomed just because of your pedigree or anything else. You're going to have to fight back. There [are] going to be times like right now when every single country,<sup>61</sup> every single state in this country is elevating the anti-trans rhetoric, anti-trans legislation. All I'm saying really is, fight back. Stand up, speak out. You may be just one voice some place, but this issue is a righteous issue. This is a just cause, and it's worth fighting for, and it's worth speaking out about. So I think that's the advice I would give to certainly young trans lawyers and law students and I always give them that. You can't rely upon your allies. Your allies are great, but this is your fight, you can't just leave it to others. You have to stand up, speak up, you have to actually develop the skills to be as persuasive and powerful in a public forum as the opponents of

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<sup>59</sup> See Neela Ghoshal & Kyle Knight, *World Report 2016: Rights in Transition—Making Legal Recognition for Transgender People a Global Priority*, HUMAN RIGHTS WATCH (2016), <https://www.hrw.org/world-report/2016/country-chapters/africa-americas-asia-europe/central-asia-middle-east/north-0> [<https://perma.cc/P8R9-VNXJ>].

<sup>60</sup> See *About the Survey*, 2022 U.S. TRANS SURVEY, <https://www.ustranssurvey.org/about> [<https://perma.cc/RM45-WZUW>] (last visited Sept. 21, 2023).

<sup>61</sup> See Tamara Evdokimova, *The Global Rise of Anti-Trans Legislation*, CODA (July 10, 2023), <https://www.codastory.com/waronscience/lgbtq-trans-rights-2023/> [<https://perma.cc/5TY6-6LAP>].

trans rights are. . . . You have to be as organized as them. There's a whole lot that's not there that we have to create.

I remember when [the National Center for Lesbian Rights]<sup>62</sup> was fighting for trans rights back in the day before TLC. It was always our allies fighting for us. We've got no place without allies, we never will. It's always a necessary component of any minority movement, the idea of justice for that community. And as long as that idea is real and is held by others [who] can be convinced by us, then I feel like we can get some place. And there will only be justice for everybody when there's justice for trans people. And that's exactly the challenge today that's dropped into everybody's lap. It's here, it's facing us, it's absolutely confronting us. We've got to fight back, we can't just sit back and hope that this will go away, that people will all of a sudden become tolerant, and that this won't be a political issue that will be used against young trans kids.<sup>63</sup> And this conversation has to be very much about them, and what kind of a path we can lead for them, and what kind of fight we can lead for them, so they can find their rightful place in the mainstream of American society and every place else.

**CR-CL:** What has the impact of the right-wing-led culture war on trans rights issues been on your fight, and how should advocates respond?

**MY:** The assault upon trans kids<sup>64</sup> especially has been extraordinarily disheartening because I just realize the human cost of that with the kids who are getting put under the microscope and in the crosshairs right now—and their parents. So I guess what I'm saying is these issues are here, we can't evade them, and that's what I'm talking about [when I say] fighting back, because I'm talking about what's going on right now. We are the Jews of this particular rise of the Third Reich, we are the people that are being targeted, that they're trying to find somebody that everybody can hate because they don't know anything about them. Any bully finds the most miniscule minority that they can find in order to attack and overwhelm them for the purpose of entertainment and asserting their superiority. I feel like my reaction to all of this has been that I have to take every single opportunity I get now to denounce all of this, and elevating the issue, and the harm it's doing to innocent children,<sup>65</sup> and the harm it's doing to their valiant parents, the

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<sup>62</sup> See *About Us*, NAT'L CTR. FOR LESBIAN RTS., <https://www.nclrights.org/about-us/> [https://perma.cc/N75A-NBL5] (last visited Sept. 19, 2023)).

<sup>63</sup> See Katelyn Burns, *The GOP's Attack on Trans Kids' Health Care, Explained*, Vox (Mar. 31, 2021, 5:10 PM), <https://www.vox.com/22360030/trans-kids-health-care-arkansas-explained> [https://perma.cc/BMW3-RWD4].

<sup>64</sup> See *id.*

<sup>65</sup> See Hannah Schoenbaum & Sean Murphy, *Transgender Youth: 'Forced Outing' Bills Make Schools Unsafe*, AP NEWS (Mar. 22, 2023, 8:20 PM), <https://apnews.com/article/transgender-students-pronouns-names-ec0b2c5de329d82c563ffb95262935f3> [https://perma.cc/6PLD-G6XH].

parents who've had to stand up to their kids in the face of all this irrational sloganeering.<sup>66</sup> That's really the thing that's the most difficult, is you hear these things about, "Well we can't have Muhammad Ali fighting girls in boxing," or whatever, "You can't have girls swimming against transgender athletes," all of these fallacies being put out there—they work.<sup>67</sup> People are buying into it and they are [going] along with this particular issue, deciding that . . . they're against the humanity of an individual.

I can tell you that being a transgender person, people denying your gender identity is a lifelong annoyance, irritation. It is a lifelong thorn in the side of you that you have to . . . keep on explaining over and over to people. And the people who are not willing to listen, the people that are using the issue of trans bathrooms,<sup>68</sup> trans people in athletics,<sup>69</sup> in clubs,<sup>70</sup> or anything else. Those people have no interest in gender identity issues at all, it is just a way to advance the Republican agenda. I'm going to call it like it is. . . . They're doing it for their political advantage, they are appealing to bigotry, hatred, homophobia.<sup>71</sup> None of these kinds of vices are going to lead any place good. They have not historically led any place good. So when I look at what's happening, this volley of things coming down, I can't say I welcome it, but I welcome the opportunity to stand up and speak out against it[.] I'm going to take full advantage of it, to talk about the inhumanity of this political action, this political campaign that's being waged against this miniscule minority and again, their valiant parents [who] have had to stand up against this firestorm of a combination of religious, self-righteous[] dogma, and any number of cultural assumptions and traditions that people are clinging to that have no rational reason for continuing.

That is what I'm seeing in this onslaught of anti-trans legislation and all the anti-trans rhetoric that's going on across the media and across the country. There have to be voices speaking out against it, speaking the truth,

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<sup>66</sup> See Laura Barrón-López, Sam Lane & Tess Conciatori, *Families with Transgender Children Struggle to Navigate Wave of Anti-Trans Politics*, PBS (June 12, 2023, 6:20 PM), <https://www.pbs.org/newshour/show/families-with-transgender-children-struggle-to-navigate-wave-of-anti-trans-politics> [https://perma.cc/TX2S-8XQ2].

<sup>67</sup> See Jeffrey M. Jones, *More Say Birth Gender Should Dictate Sports Participation*, GALLUP (June 12, 2023), <https://news.gallup.com/poll/507023/say-birth-gender-dictate-sports-participation.aspx> [https://perma.cc/V6AA-4Y8U].

<sup>68</sup> See, e.g., Facility Requirements Based on Sex, H.B. 1521, 2023 Leg., (Fla. 2023).

<sup>69</sup> See, e.g., Protection of Women and Girls in Sports Act of 2023, H.R. 734, 118th Cong. (2023).

<sup>70</sup> See, e.g., Christine Hauser, *Girl Scouts Face Opposition From St. Louis Archbishop*, N.Y. TIMES (Feb. 25, 2016), <https://www.nytimes.com/2016/02/26/us/girl-scout-cookies-st-louis-catholics.html> [https://perma.cc/79MB-6YWT].

<sup>71</sup> See Kate Sosin, *Why is the GOP Escalating Attacks on Trans Rights? Experts Say the Goal is to Make Sure Evangelicals Vote*, PBS (May 20, 2022, 3:37 PM), <https://www.pbs.org/newshour/politics/why-is-the-gop-escalating-attacks-on-trans-rights-experts-say-the-goal-is-to-make-sure-evangelicals-vote> [https://perma.cc/Q9A9-A7E7]; Laura Meckler & Scott Clement, *Most Americans Support Anti-Trans Policies Favored by GOP, Poll Shows*, WASH. POST (May 6, 2023, 6:42 PM), <https://www.washingtonpost.com/education/2023/05/05/trans-poll-gop-politics-laws/> [https://perma.cc/T5DK-N7XT].

because there are certain outlets out there that I wouldn't even bother to talk to because they are not concerned about the truth. They are only concerned about advancing their disinformation and political interest, and none of us should be a part of that conversation, because you can't argue with people who have no connection to the evidence, the facts, and the truth.

**SC:** Let's just call it what it is. There [is an] extreme Christian right, some of them Republicans, I don't know if you can call them Republicans, the new term is the MAGA Republicans. And there are a handful of family foundations, [one of them being the Heritage Foundation,<sup>72</sup>] that are pouring millions of dollars into modern-day eugenics.<sup>73</sup> They're trying to exterminate people from existence and it's not going to work. It's sad because they don't know anything about trans people, to Mia's point, it's based on a lot of misinformation, lies, and fear mongering tactics, and suddenly trans people have become the wedge issue of the Republican party to advance [its] hate-filled agenda,<sup>74</sup> whether it's attacking immigrants,<sup>75</sup> whether it's attacking and denying climate,<sup>76</sup> whether it's attacking abortion,<sup>77</sup> it's all the same, it's just their version of, "We're going to create a world that's only for a very small group of people."

I think what we need to be doing in our movement, whether that's through lawyering or organizing or education is being very bold and calling out what it is—that this is an attempt to deem us out of existence. But we are not going to let that happen because we're not going anywhere. We're deserving of all the things that people want to deny us of. I want to lift up Mia's hinting back to the 1980s' ACT UP movement around the AIDS crisis.<sup>78</sup> I think we as people need to be understanding, we need to be mobilizing and organizing in those ways right now.

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<sup>72</sup> *Gender*, HERITAGE FOUNDATION, <https://www.heritage.org/gender> (last visited Oct. 1, 2023).

<sup>73</sup> See Nick Vachon & Matt Cohen, *The Dark Money Funding Conservative Anti-Trans Groups*, AM. INDEP. (May 31, 2023), <https://americanindependent.com/dark-money-conservative-anti-trans-movement/> [<https://perma.cc/9LP2-HABN>].

<sup>74</sup> See Lauren Gambino, *Anti-Trans Rhetoric Took Center Stage at CPAC Amid Hostile Republican Efforts*, GUARDIAN (Mar. 7, 2023, 9:19 AM), <https://www.theguardian.com/us-news/2023/mar/07/cpac-anti-trans-rhetoric> [<https://perma.cc/FB35-7H5E>].

<sup>75</sup> See Joel Rose, *Talk of 'Invasion' Moves From the Fringe to the Mainstream of GOP Immigration Message*, NPR (Aug. 3, 2022, 5:10 AM), <https://www.npr.org/2022/08/03/1115175247/talk-of-invasion-moves-from-the-fringe-to-the-mainstream-of-gop-immigration-mess> [<https://perma.cc/B8FC-P2NZ>].

<sup>76</sup> See Rebecca Leber, *The First GOP Debate Reveals a Disturbing Level of Climate Change Denial*, VOX (Aug. 24, 2023, 11:05 AM), <https://www.vox.com/climate/23815966/republicans-climate-change-denial-trees> [<https://perma.cc/VQ3W-34Y9>].

<sup>77</sup> See Sarah Jones, *Republicans' Extreme Abortion Rhetoric Isn't Just Wrong, It's Dangerous*, N.Y. MAG. (Feb. 28, 2019), <https://nymag.com/intelligencer/2019/02/republicans-extreme-abortion-rhetoric-wrong-and-dangerous.html> [<https://perma.cc/D4ZE-QV6T>].

<sup>78</sup> Michael Specter, *How ACT UP Changed America*, NEW YORKER (June 7, 2021), <https://www.newyorker.com/magazine/2021/06/14/how-act-up-changed-america> [<https://perma.cc/JP56-GLEA>].

We need to prioritize communities of color, we need to prioritize young people, low-income communities, and we need to just say enough is enough. People can't continue to move these things forward if we don't participate, so let's target these people, let's call them out for . . . the lies that they're spreading. Let's start to call out major media conglomerates who are aiding in this. Anyone can turn on the news right now and hear some garbage about trans people that is just fundamentally not true, the New York Times being one of them.<sup>79</sup> . . . We really need to stop coalescing and acting like we can [only] get table scraps and start demanding that we want a table that we want to set, and they can't keep us down.

**MY:** I just want to say that ACT UP was something that I really enjoyed. I also thought that was absolutely the most effective means of communicating the issue that needed to be dealt with that the entire country was hiding from at the time.<sup>80</sup> The only way was to do it in a really rowdy, raucous fashion. The 80s is exactly when I left the public defender's office so I could have a practice where I could represent people for political causes.<sup>81</sup> It was a whole change of direction for me after being a public defender being my only ambition. There were a whole lot of things I had to do in the community and I couldn't do it from there. And so the 80s, and what you're talking about with ACT UP and a bunch of other people, you're first looking at them and you're thinking this is a little bit extreme.<sup>82</sup> Then I thought about it for a second, because I was involved with the anti-war movement as well, and all of these things were places where you learned tactics,<sup>83</sup> you learned what works, what gets attention, what gets action, what gets you heard, all those things were part of essentially the civil rights movement.<sup>84</sup>

The civil rights movement was a movement that had incorporated the anti-war movement.<sup>85</sup> The people that were marching with us were talking

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<sup>79</sup> See Elizabeth Bibi, *Human Rights Campaign Calls Out New York Times for Publishing Transphobic Column One Day After an Open Letter Condemning its Anti-Transgender Coverage*, HUM. RTS. CAMPAIGN (Feb. 16, 2023), <https://www.hrc.org/press-releases/human-rights-campaign-calls-out-new-york-times-for-publishing-transphobic-column-one-day-after-an-open-letter-condemning-its-anti-transgender-coverage> [<https://perma.cc/LH8E-43Z6>].

<sup>80</sup> Joseph Bennington-Castro, *How AIDS Remained an Unspoken—But Deadly—Epidemic for Years*, HISTORY, <https://www.history.com/news/aids-epidemic-ronald-reagan> [<https://perma.cc/6C5C-RZUJ>] (updated Aug. 22, 2023).

<sup>81</sup> See, e.g., *History*, NAT'L LAWS. GUILD, <https://www.nlg.org/about/history/> [<https://perma.cc/D9Q3-HEKE>].

<sup>82</sup> Nurith Aizenman, *How To Demand A Medical Breakthrough: Lessons From The AIDS Fight*, NPR (Feb. 9, 2019), <https://www.npr.org/sections/health-shots/2019/02/09/689924838/how-to-demand-a-medical-breakthrough-lessons-from-the-aids-fight> [<https://perma.cc/G5Q8-47YB>].

<sup>83</sup> Jessie Kindig, *Northwest Antiwar Activism: A Brief History*, U. WASH. C.R. & LAB. HIST. CONSORTIUM (2008), [https://depts.washington.edu/antiwar/vietnam\\_history.shtml](https://depts.washington.edu/antiwar/vietnam_history.shtml) [<https://perma.cc/NC6B-GQME>].

<sup>84</sup> See *id.*

<sup>85</sup> See Simon Hall, "On the Tail of the Panther": Black Power and the 1967 Convention of the National Conference for New Politics, 37 J. AM. STUD. 59, 61 (2003).

about injustices that were taking place not in the south, but here in Los Angeles, in California,<sup>86</sup> in places like that, so there was the mixture of the people who had been marching for decades already before the Vietnam War became a flash point.<sup>87</sup> When I started getting involved in political activism in those days, which was ultimately, [the] 70s and 80s, that direct action and that civil disobedience and a whole bunch of other actions—which I would have never considered when I was in law school—became important instruments of social change and social protest.<sup>88</sup> It became my specialty—representing demonstrators and protestors.

The dynamic of the movements of that time absolutely have informed, from my point of view, the movements that I'm involved in today that are basically trying to do the same things, that are trying to coalesce around the issues, which are always going to be progressive issues, and which are always going to be a part of the civil rights movement. That movement, the movement for Black liberation, has been the engine that has driven the movement against the war and the movements for inclusion, diversity and equity that are still being waged today.<sup>89</sup> So we got our impetus and our example, our role modeling from the civil rights movement, and that takes it all the way back, because my dad was a member of the NAACP and the ACLU so of course all those kinds of things were a part of my family tradition as well.<sup>90</sup>

All those things, when we talk about outside forces and outside activities and involvement, have been a part of my advocacy on behalf of queer people, trans people, and trans kids. I always feel like it's really the same movement, it's all the same struggle for human rights, for equity, for justice, for equality, it's really all the same struggle from my point of view. It just has different phases, it has different facets, but it's the same movement, it all comes together in the same place, it all goes through the same place.

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<sup>86</sup> M. Keith Claybrook, Jr., *CORE and the Early Civil Rights Movement in Los Angeles*, BLACK PERSPECTIVES BLOG (May 9, 2023), <https://www.aaihs.org/core-and-the-early-civil-rights-movement-in-los-angeles/> [<https://perma.cc/LKK4-NCKP>].

<sup>87</sup> See Hall, “*On the Tail of the Panther*,” *supra* note 85, at 61.

<sup>88</sup> See *Introduction to the Civil Rights Movement*, KHAN ACAD., <https://www.khanacademy.org/humanities/us-history/postwarera/civil-rights-movement/a/introduction-to-the-civil-rights-movement> [<https://perma.cc/N4WM-JK4C>] (last visited Sept. 12, 2023); See David Montalvo, *How AIDS Activists Used ‘Die-Ins’ to Demand Attention to the Growing Epidemic*, HISTORY (June 2, 2021), <https://www.history.com/news/aids-activism-protests-act-up-die-ins> [<https://perma.cc/NE9V-DUMB>].

<sup>89</sup> See *How the Civil Rights Movement Launched the Fight for LGBT, Women’s Equality*, PBS NEWS HOUR (Sept. 2, 2013), <https://www.pbs.org/newshour/show/civil-rights-launched-the-fight-for-lgbt-women-s-equality#transcript> [<https://perma.cc/FZF7-X35Y>]; Jo Yurcaba, *Different Fight, ‘Same Goal’: How the Black Freedom Movement Inspired Early Gay Activists*, NBC NEWS (Feb. 28, 2021), <https://www.nbcnews.com/feature/nbc-out/different-fight-same-goal-how-black-freedom-movement-inspired-early-n1259072> [<https://perma.cc/R62E-44HD>].

<sup>90</sup> Mia has stated that the ACLU was the only organization that would hire an Asian American lawyer. See Hong, *supra* note 58.

Completely different rates of progress with all of them,<sup>91</sup> but to understand they're all unified is the way I do my organizing, making sure everybody understands we're in everybody's community, we're in yours, your community, we will always be in your community, and we want you to be in ours.<sup>92</sup> That was my organizing pitch, and it always has been from the outset. If I get anything accomplished at all, it's hopefully with that ticket or approach.

**CR-CL:** What lessons can today's trans rights activists take from earlier eras of the LGBT rights movement, from Stonewall to AIDS activism to Lawrence and Obergefell?

**MY:** When we're talking about the lessons that we have learned from people like Marsha P. Johnson and Sylvia Rivera and a number of different activists, I'm not going to go through the litany of them right now. Every single one of them expressed one thing, that is something really extraordinary, it doesn't sound like it, but it really is true, it really is courage. It is great courage, because great courage can overcome great fear. Any queer person . . . understand[s] that coming out requires courage. The truth requires courage, and that's what Sylvia Rivera, that's what Marsha P. Johnson, that's what every single gay activist who is out right now is showing us that there is no great fear that can't be overcome by great courage. The fear that you have for being real—for being something that you have a right to be—does not have its own right to exist, that fear does not have a right to exist. That fear does not have a right to continue oppressing, silencing you, and putting you in a place where you should not be. And therefore, the one thing that I've always felt you've got to have is enough courage to overcome that great fear, and that thing is so worthwhile. Liberate yourself, liberate the world, come out, come out publicly, come out openly, come out repeatedly, because you're going to have to, and educate the world, move the world. It's going to take that kind of repetition. . . . It's kind of like when you're a lawyer, kind of like when you're a student. When you've done something a whole bunch of times, hey, you've memorized it, you've gotten really good at it. So sometimes overcoming your fears walking into a place and telling them who you are, which is what Sylvia and Marsha P. Johnson had to do, and they had to do it in a way that showed they had no fear at all.

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<sup>91</sup> See, e.g., Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. L. FORUM 139, 140 (arguing that antidiscrimination law tended to treat race and sex as wholly distinct forms of discrimination and thus privileged the experiences of white women and Black men while erasing the experiences of Black women).

<sup>92</sup> Cf. Dana Fisher & Stella Rouse, *Intersectionality Within the Racial Justice Movement in the Summer of 2020*, PROC. NAT'L ACAD. SCI., July 26, 2022, at 4 (finding that participants in the summer 2020 racial justice movement were mobilized by appeals to overlapping subgroup identities, including women's rights, LGBTQ rights, and immigration rights).

The other part of it is, don't ever expect this world to be welcoming of you. This is a tough place, and it requires that kind of courage, because there is that kind of danger. I still think that transgender women of color are the most endangered species on the planet.<sup>93</sup> We are murdered at a rate higher than any other victim of hate crimes in any other place.<sup>94</sup> We are targets, and we can be targeted and we can be eliminated, and we have to have enough . . . to live ourselves before that happens . . . That's the one lesson both of them gave us: live your lives freely, live your lives authentically, live your lives with courage, even if your life isn't going to be that long, maybe.<sup>95</sup> But you have to face life authentically, and it's worth it, it's absolutely worth it, to fight for it, to be yourself at least at some point in your life, even if people hate it enough to want to snuff you. It does take courage to be yourself, but it is well worth the courage, it is well worth the step. So that is what I'd say I've learned from them, that even in the face of great danger, disapproval, shame, and absolute exclusion from the places and people that you may love, this is something worth fighting for, [that] there are people who are going to benefit from this that you have never known and never met, that you can change lives doing this.<sup>96</sup> And that is worth doing.

**SC:** All of that. I would also say I think as much as social media has been a good thing in some people's lives,<sup>97</sup> I also think that it's really limited our abilities to engage and move progress forward in that it's just a veneer instead of a real, rooted-in-community strategy. We need to come out of the shadows and build community and understand that we're everywhere, in all factions of society,<sup>98</sup> and a lot of these policies and legislation and litigation, they're just one tool in a tool box, they're not the thing that is going to define us.<sup>99</sup> We're

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<sup>93</sup> See Andrew R. Flores, Ilan H. Meyer, Lynn Langton, & Jody L. Herman, *Gender Identity Disparities in Criminal Victimization: National Crime Victimization Survey, 2017-2018*, 111 AM. J. PUB. HEALTH 726, 726 (2021).

<sup>94</sup> See Alexis Dinno, *Homicide Rates of Transgender Individuals in the United States: 2010-2014*, 107 AM. J. PUB. HEALTH 1441, 1446 (2017).

<sup>95</sup> See, e.g., Carolyn Simon, *The Cold Case of an LGBTQ Pioneer Marsha P. Johnson*, HUM. RTS. CAMPAIGN (Sept. 29, 2017), <https://www.hrc.org/news/the-cold-case-of-an-lgbtq-pioneer-marsha-p-johnson> [<https://perma.cc/KDQ5-7VB5>].

<sup>96</sup> See Colleen Walsh, *Stonewall Then and Now*, HARV. GAZETTE (June 27, 2019), <https://news.harvard.edu/gazette/story/2019/06/harvard-scholars-reflect-on-the-history-and-legacy-of-the-stonewall-riots/> [<https://perma.cc/AKD6-U3CN>].

<sup>97</sup> See Matthew N. Berger, Melody Taba, Jennifer L. Marino, Megan S. C. Lim & S Rachel Skinner, *Social Media Use and Health and Well-being of Lesbian, Gay, Bisexual, Transgender, and Queer Youth: Systematic Review*, 24 J. MED. INTERNET RESCH., Sept. 2022, at 15; see generally Zeynep Tufekci, TWITTER AND TEAR GAS: THE POWER AND FRAGILITY OF NETWORKED PROTEST (2017).

<sup>98</sup> See, e.g., *Out for America 2020*, LGBTQ+ VICTORY INST., <https://victoryinstitute.org/out-for-america-2020/> [<https://perma.cc/UD7U-REFQ>] (last visited Sept. 13, 2023); *Report on Diversity in U.S. Law Firms*, NAT'L ASS'N FOR L. PLACEMENT (2023), [https://www.theiilp.com/resources/Documents/IILP\\_2019\\_FINAL\\_web.pdf](https://www.theiilp.com/resources/Documents/IILP_2019_FINAL_web.pdf).

<sup>99</sup> Cf. Gwendolyn Leachman, *From Protest to Perry: How Litigation Shaped the LGBT Movement's Agenda*, 47 U.C. DAVIS L. REV. 1667, 1744-49 (noting how the substantive

going to continue to exist, and we can't put all of our time and resources into that being our mechanism for liberation.

**MY:** All of those things have a place though. You have to keep all that stuff going in my opinion. Any kind of battle is fought on multiple fronts. Even if it looks like you're in a stalemate, it seems like people are intransigent, and you're hearing the same kinds of stupidity, the same kinds of slogans and soundbites that people send to you, which substitute for . . . actual dialogue and conversation. Despite all of that, the engagement is still absolutely worthwhile. Continue to do it, despite what reactions might seem like, keep speaking truth. It seems to me that you continue with that, because there's a whole lot of disinformation out there.<sup>100</sup> There [are] a whole lot of people who are spouting disinformation and fraud in order to discredit transgender people, and to discredit the entire queer community.<sup>101</sup> From my perspective, you have to react to it. That's the key thing.

I really do think apathy is our enemy, [when] people kick back and say, "Well, Lambda Legal is going to do it. Shelby is going to take some cases. People are going to do something."<sup>102</sup> But it's really better to go out to whoever your community is, your clique, whoever they are, and to raise these issues with them. And say, "Where are you on this? Are you with us or are you against us?" There are a whole bunch of people who feel like this is a just cause, and if you don't think it is, please tell me why. And I'll try to come up with the answers on this, but we're going to try to get to the truth, and the truth in this particular instance, is extraordinarily human.

It's a whole bunch of transgender people who are just trying to survive out there. It's certain voices, certain lives. It's what's happening around them, it's what's being done to them, it's what's being said to them, it's whether they're being included, whether they're excluded. It's a whole

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priorities of impact litigators influence and set the agenda of LGBT protest movements, due in part to a media bias toward legal reform efforts, which tends to privilege assimilationist goals over more radical elements of the LGBT rights movement).

<sup>100</sup> See, e.g., Susan Boulware, Rebecca Kamody, Laura Kuper, Meredith McNamara, Christy Olezeski, Nathalie Szilagyi & Anne Alstott, *Biased Science: The Texas and Alabama Measures Criminalizing Medical Treatment for Transgender Children and Adolescents Rely on Inaccurate and Misleading Scientific Claims* 4–5, YALE L. SCH. PUB. L. & LEGAL THEORY WORKING PAPER (2022); Amira Hasenbush, Andrew R. Flores, & Jody L. Herman, *Gender Identity Nondiscrimination Laws in Public Accommodations: a Review of Evidence Regarding Safety and Privacy in Public Restrooms, Locker Rooms, and Changing Rooms*, 16 SEXUAL RSCH. & SOC. POL'Y 70, 78 (finding that public accommodations ordinances that prohibit discrimination based on gender identity do not correlate with criminal incidents in bathrooms, in response to pervasive right-wing myth that allowing trans people to use sex-segregated bathrooms that align with their gender identities would invite abuse and sexual assault).

<sup>101</sup> See *id.*

<sup>102</sup> See, e.g., *Loe v. State*, No. D-1-GN-23-003616, 2023 WL 5519799 (Tex. Dist., Travis County Aug. 25, 2023) (granting preliminary injunction against Texas' ban on gender affirming care, Senate Bill 14, on a motion litigated by ACLU, ACLU of Texas, Lambda Legal, and Transgender Law Center).

bunch of policies that are flying around out there[.]<sup>103</sup> [T]hese poor kids. If I thought I had it bad, I think they have it worse, because . . . there were no transgender people when I was coming up, at least none that were open.<sup>104</sup> So today, it's become an issue, and unfortunately, the people who are rising to power on fascist politics have found their target, and it's them.<sup>105</sup>

**CR-CL:** What are the advantages and pitfalls of mainstream visibility in the media and the law?

**SC:** I think it's both, and. With anything, with greater access comes greater responsibility. We're living in a time where, for context, I grew up as queer and trans and the internet didn't exist. Mia, I'm sure you were trying to find resources . . . I was a young kid in the suburbs of Minnesota taking the bus to these gay coffee shops just to find anything close to what I was. I think we've made major advances in certain regards: access to health-care and gender-affirming care, more broadly.<sup>106</sup> I think the thing I want to name is that even with that visibility, a majority of Americans are living in states that don't have explicit protections,<sup>107</sup> that don't have readily available LGBT health clinics or community centers,<sup>108</sup> and people are driving hours to get medical care.<sup>109</sup> People are sometimes the only trans person in their small town.<sup>110</sup> They're being ridiculed, they're being targeted, [having] hate spewed at them, which may or may not be because there's more visibility of trans people. But I think part of it is that we have to grapple as a movement, whether that's lawyering or policy advocacy, with the fact that [for] a lot of trans people, these [court orders] are going to do very little to change their

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<sup>103</sup> See, e.g., *Mapping Attacks on LGBTQ Rights in U.S. State Legislatures*, ACLU, <https://www.aclu.org/legislative-attacks-on-lgbtq-rights> [<https://perma.cc/XYG3-TF5V>] (last visited Sept. 17, 2023).

<sup>104</sup> See Bauer, *supra* note 9 (noting that Mia Yamamoto became the first openly trans trial lawyer in California when she came out in 2003 at age 60).

<sup>105</sup> See *Mapping Attacks*, *supra* note 103.

<sup>106</sup> See Jeremi M. Carswella, Ximena Lopez, & Stephen M. Rosenthal, *The Evolution of Adolescent Gender Affirming Care: An Historical Perspective*, 95 HORMONE RSCH. PAEDIATRICS 649, 652–53 (2022).

<sup>107</sup> See Kerith J. Conron & Shoshana K. Goldberg, *LGBT People in the U.S. Not Protected by State Non-Discrimination Statutes*, UCLA SCH. L. WILLIAMS INST. 1 (2020).

<sup>108</sup> See Alexander J. Martos, Patrick A. Wilson, & Ilan H. Meyer, *Lesbian, Gay, Bisexual, and Transgender (LGBT) Health Services in the United States: Origins, Evolution, and Contemporary Landscape*, 12 PLOS ONE, July 2017, at 12.

<sup>109</sup> See Luca Borah et al., *State Restrictions and Geographic Access to Gender-Affirming Care for Transgender Youth*, 330 JAMA 375, 376 (2023).

<sup>110</sup> Cf. MOVEMENT ADVANCEMENT PROJECT, *WHERE WE CALL HOME: TRANSGENDER PEOPLE IN RURAL AMERICA* 9 (2019) (noting that trans people living in rural communities may experience heightened isolation and have access to fewer support structures than their urban counterparts).

day-to-day lived experience.<sup>111</sup> They're still not going to have access to the things they never had access to.<sup>112</sup> In fact, it will just make it harder.<sup>113</sup>

The internet is [a] resource—most people have a cell phone, or a laptop, or some sort of device to get on the internet and google something related to a trans identity.<sup>114</sup> I can't even imagine what it would be like to be a young person right now and to be able to find communities. I know a lot of young trans people are on Discord building community across the globe with each other and hanging out.<sup>115</sup> I would have loved that. I never had that. I often felt like there was something wrong with me, I'll never find people like me. Just to be very blunt, I was 27 years old before I met my first trans-masculine Native person. We looked at each other and were like, "Oh my god, we're best friends, we don't even have to say anything." What that isolation means particularly for communities of color. There's such a broad swath of networking that can happen through social media and the age of the internet, but we need to be careful in this moment too because of the . . . right-wing trolls and the doxing [that is] happening to our communities.

To link back to the violence conversation: We have to do a deep reckoning as a society to understand that much of the violence that is happening within communities of color is a direct result of state-based violence that has happened for centuries, whether that's in the Black community, whether that's in Native communities, whether that's in [Asian American and Pacific Islander] communities. You see right now the huge influx of migrants being put in major cities across the country and people don't understand poverty and homelessness, so they're seeing people on the streets so they immediately adopt this anti-immigrant sentiment.<sup>116</sup> When really, it's like, what are these cities doing to fail the very communities who have been there for decades who don't have access to healthcare, housing, jobs? But then you're bringing in new groups of community who don't have those things and then you're pitting them against each other.<sup>117</sup> People also have shied away for a long time [from] the fact that many of the people causing harm against trans women of color, who are brutalized by violence at a higher rate than anyone,

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<sup>111</sup> See, e.g., Nico Lang, *Winning His Landmark Lawsuit Didn't Make Gavin Grimm Rich. He's Barely Getting By*, THEM (Sept. 2, 2021), <https://www.them.us/story/gavin-grimm-activist-lawsuit-interview> [<https://perma.cc/5VAK-PPKZ>].

<sup>112</sup> See *id.*

<sup>113</sup> See *id.*

<sup>114</sup> See Berger et al., *supra* note 97, at 15.

<sup>115</sup> Fei Lu, *How Discord Is Creating Safe Spaces for Trans People*, HUFFINGTON POST (Sept. 20, 2022), [https://www.huffpost.com/entry/transgender-safe-space-discord\\_n\\_632350cbe4b027aa4063c7e1](https://www.huffpost.com/entry/transgender-safe-space-discord_n_632350cbe4b027aa4063c7e1) [<https://perma.cc/5CNU-B8G5>].

<sup>116</sup> See Josephine Stratman, *New Yorkers Frustrated, Lashing Out as Emergency Shelters for Migrants Expand Across City*, N.Y. DAILY NEWS (Aug. 12, 2023, 5:52 PM), <https://www.nytimes.com/2023/09/15/nyregion/migrant-protests-nyc.html> [<https://perma.cc/SJN7-K5K5>].

<sup>117</sup> See Emma G. Fitzsimmons, *In Escalation, Adams Says Migrant Crisis 'Will Destroy New York City'*, N.Y. TIMES (Sept. 7, 2023), <https://www.nytimes.com/2023/09/07/nyregion/adams-migrants-destroy-nyc.html> [<https://perma.cc/89RC-DA73>].

particularly Black trans women, are people within their very own community.<sup>118</sup> So let's have a conversation around how violence is created, because the state has created conditions where people are not well, they don't have adequate resources, and they're inflicting violence on each other.<sup>119</sup>

I don't think oftentimes it's about that narrative of . . . "I didn't know she was trans, and then I found out," this 'overkill.'<sup>120</sup> We need to start at a young age in all of our communities to understand that there's truly nothing wrong with being attracted to trans people,<sup>121</sup> and it should never mean that you're getting made fun of, taunted, ostracized in your community, and that it's really, really harmful to our own communities when we start to inflict that violence on each other. It's not so much about someone being trans, it's about intra-community violence, which largely goes ignored by people in power, whether that's police,<sup>122</sup> whether that's state policymakers, whether that's Congressional representatives. They just don't want to talk about the very things that are plaguing our communities, and it's on us to start doing that, and having those conversations[.]

**MY:** I think that having the internet is an advantage, if there's anything to talk about as an advantage in this situation. Regardless of whatever else happens in the world, or in a person's life, the internet does give you access to other transgender people, and gets you in contact with people that you can have dialogue with, compare experiences with, and I think it is a much more vivid form of education for the individuals who are connecting over the internet.<sup>123</sup> From my point of view certainly, I was able to get information about other communities of trans people and getting to the surgeons that I needed, the resources that I needed.<sup>124</sup> I was able to access them through

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<sup>118</sup> See Leigh S. Goodmark, *Transgender People, Intimate People, Intimate Partner Abuse, and the Legal System*, 48 HARV. C.R.-C.L. L. REV. 51, 54 (2013).

<sup>119</sup> Cf. MOVEMENT ADVANCEMENT PROJECT, POLICY SPOTLIGHT: HATE CRIME LAWS 30–31 (2021) (addressing criticisms of hate crime laws, including that they fail to address the root causes of violence and result in disproportionate incarceration of Black men); see also JOEY L. MOGUL, ANDREA J. RITCHIE AND KAY WHITLOCK, *QUEER (IN)JUSTICE: THE CRIMINALIZATION OF LGBT PEOPLE IN THE UNITED STATES* 118 (2011) (critiquing carceral solutions to hate-motivated crimes).

<sup>120</sup> Cf. W. Carsten Anderson, *Research Note: Comparing the Gay and Trans Panic Defenses*, WOMEN & CRIM. JUST. 219, 230–33 (2022) (finding that although homicides of trans women mostly involved men seeking them out for sex and killing them in reaction to discovering they were trans, known as the "trans panic defense," the defense is most often unsuccessful).

<sup>121</sup> See Janet Mock, *How Society Shames Men Dating Trans Women & How This Affects Our Lives*, JANET MOCK: WRITINGS, <https://janetmock.com/2013/09/12/men-who-date-attracted-to-trans-women-stigma/> [<https://perma.cc/5D4A-2EHV>] (last visited Sept. 26, 2023).

<sup>122</sup> See Christy Mallory, Brad Sears, Luis A. Vasquez, *Banning the Use of Gay and Trans Panic Defenses*, UCLA SCH. L. WILLIAMS INST. 1, 16–17 (2021), (surveying reports of LGBT attitudes toward police, and finding that LGBT victims of violent crimes, including intimate partner violence, feel uncomfortable seeking help from police and often find police to be dismissive or unhelpful when they do report).

<sup>123</sup> See Berger et al., *supra* note 97, at 15.

<sup>124</sup> See Carswella, Lopez, & Rosenthal, *supra* note 106, at 652.

the internet much more readily through any other source that was available before the internet, so I give the internet credit for that. There are certainly toxic elements to the internet. People seem to be able to say rude things without any accountability.<sup>125</sup> It's like Mike Tyson [said], "y'all way too used to being able to say stuff to people and not [getting] punched in the face for it." So we get a lot of hostility on the internet sometimes, from people who can get away with it because they're trolling you.<sup>126</sup> But it does give people the chance to engage with each other and I feel like if there's any advantage at all it's that.<sup>127</sup>

The other part of it is the recognition of a transgender community, period, by places like Harvard Law School,<sup>128</sup> and other places, provides us with a platform from which we can speak our truth and at least share that with the community out there. For those people [for whom] their own experiences seem narrow because they have no voices to hear from, they can at least, now, because of forums like this one, hear from other people who have lived their lives and gotten to old age even of being a queer person. And that you can have your own career and your own platform. The key thing is that we have the opportunity to be heard. That our voices can be heard and that our protests and our disobedience and our rage can be expressed publicly and that it can be heard widely, whether or not people agree with it, we have a point of view, we have a truth, we have a lived experience, which we're trying to share with other people for the purpose of opening up their minds and absolutely expanding their awareness about these issues, about our community.

I have to say this education, this outreach is extraordinarily important, and not just for this particular project, but for the world. For everybody else that can listen to and hear from transgender people who are advocating for their communities, whether they are transgender people of color, coming from indigenous communities, that the message is the same, we really are everywhere. This idea that you could somehow stamp us out from legislation or even through rules, regulations, the rigid dichotomy of gender being imposed upon institutions and entire societies [is] without any rational reason. The message, I think, is that it is advantageous to have something like this, like Zoom, like students who actually care enough about this issue to inquire as deeply as they can, to investigate people's lives and see what

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<sup>125</sup> See Rachel Keighley, *Hate Hurts: Exploring the Impact of Online Hate on LGBTQ+ Young People* 32 WOMEN & CRIM. J., 29, 31–32 (2022).

<sup>126</sup> See *id.* at 31–32.

<sup>127</sup> See Berger et al., *supra* note 97, at 15.

<sup>128</sup> See Carolyn Kelley, *LGBTQ+ Advocacy Clinic launches at Harvard Law School*, HARV. L. TODAY (Jan. 28, 2020), <https://hls.harvard.edu/today/lgbtq-advocacy-clinic-launches-at-harvard-law-school/> [<https://perma.cc/PX3Z-8FYT>]; see also HARVARD LAW SCHOOL LGBTQ+ ADVOCACY CLINIC, <https://hlslgbtq.org/> [<https://perma.cc/DEK2-EUX2>] (last visited Sept. 26, 2023).

they're about, what they've ever done, what they think, where they're going, what they hope for.

In this particular instance, I always hope for, in all communities I've ever dealt with and advocated for, I advocate for complete inclusion, and that the issue goes away. Every other element of the minority movement, that if we make ourselves progressively less necessary and make this a place where we don't have to continue to do this, to keep beating on doors to get people in, is the objective at some point that I would like to see. I don't think it's going to happen right away, certainly not in my lifetime, because I haven't got that much left, but that is the objective, that's the goal, that's what we're searching for. This is a matter of equity not just for my own little group, whoever they are, but for everybody.<sup>129</sup> Once that reaches out to everybody, then we can know that we've achieved what we sought to achieve, which was the ideals that we're here for: equal justice under the law. That's a pretty good ideal. That's a pretty good objective. I still think that this dialogue, this conversation, focusing on this issue and on this community that's under attack couldn't be more timely and couldn't be more relevant. This is an important issue that affects all of society, right now all of politics, inclusion in ... every element of our society, education[],<sup>130</sup> in the military.<sup>131</sup>

In the educational institutions across the country, this issue is being presented and people are debating about it, and that's why I think that I see this as advantageous, that transgender voices are now here at the Harvard [Civil Rights and Civil Liberties] Law Review. If we're making these inroads, then hopefully we're making a difference.

**CR-CL:** What makes you hopeful about the current state of trans activism?

**MY:** There are communities where transgender people are leading social justice causes, I might mention Trans Latin@ in Los Angeles for immigrant Latina women,<sup>132</sup> advancing communities that have been traditionally excluded even from the mainstream conversation, so that trans women of color are not only being heard in conversations with queer umbrella groups, but they're speaking out in public forums before our state legislatures, and

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<sup>129</sup> See, e.g., Kate Redburn, *All Americans Have the Right to Dress Exactly How They Want*, N.Y. Times (May 24, 2023), <https://www.nytimes.com/2023/05/24/opinion/anti-drag-laws-anti-trans-law-suits.html> [<https://perma.cc/QK9Y-U4Z2>].

<sup>130</sup> See *Soule by Stanescu v. Connecticut Ass'n of Sch., Inc.*, 57 F.4th 43 (2d Cir. 2022) (challenge to Connecticut policy allowing transgender high school athletes to compete on teams that align with their gender identities); *M.A. v. Fla. State Bd. of Educ.*, No. 4:22-CV-134-AW-MJF, 2023 WL 2631071 (N.D. Fla. Feb. 15, 2023) (challenge under Title IX and U.S. Constitution to Florida's "Don't Say Gay" law).

<sup>131</sup> See *Karnoski v. Trump*, No. C17-1297-MJP, 2017 WL 6311305 (W.D. Wash. Dec. 11, 2017) (federal constitutional challenge to Trump administration's ban on trans people serving in military).

<sup>132</sup> TRANSLATIN@ COAL., <https://www.translatinacoalition.org/> [<https://perma.cc/C5WK-TVZX>] (last visited Oct. 1, 2023).

even across the country. We certainly didn't get invited to anything from the Trump administration, thank goodness. We won't have to go to jail with that fool. We were invited under Obama; we were invited under Biden. We were being recognized for those reasons I am hopeful. I am also hopeful that all of you who are allies of ours in giving us this platform are hearing us and are with us[.]

**SC:** I would say it's conversations like this. You all are emerging leaders in your own right and we're doing our own work and how do we talk about this at the intersections of everyone's identities, not just trans activism. I will say the number of trans organizations that [have] been created in the last decade alone is pretty remarkable. People have said, "I don't see myself and my community reflected, so I'm going to do something about it," it's amazing.

