

Welcome to a deep dive into this and that, I'm Reggie.

In this episode, we'll take a look at the murder trial that helped put the gay and trans panic defense on the legal map. We'll also take a look at the aftermath of that trial and the future of the gay and trans defense.

Thanks for joining me for part two and the conclusion of Panic a Killer Defense.

Music In episode one we covered the murder of Robert Chip Jackson. On April 12th, 1968 in Springfield Illinois, Jackson who ran a popular car dealership in downtown Springfield was shot and killed by a man he had given a ride to.

The 19-year-old man who shot him was arrested a few hours after the shooting. John Stephan Parisie confessed to shooting Robert Jackson and by the time the case went to trial Parisie's defense claimed that he was suffering from homosexual panic when he shot and killed Mr. Jackson, brought on by Robert Jackson's unwanted sexual advance.

music break

The Parisie murder trial wasn't the first time the gay panic defense was used but it was the most extensive use at the time.

One of the earliest examples of the use of a homosexual panic defense before the term started being used was in the murder of Richard Loeb of Leopold and Loeb infamy. In 1924, as part of a thrill killing the two well-heeled 18-year-olds lovers kidnapped and killed 14-year old Robert Franks a neighbor and relative of Loeb's in the wealthy South Side enclave of Kenwood Chicago.

At trial, they were defended by Clarence Darrow one of the most famous lawyers in the United States at the time. Darrow gave a, now famous, two-day summation which helped the two men escape the death penalty. They were both to life plus 99 years.

12 years into his sentence Richard Loeb was murdered in the prison shower at Statesville by his former cellmate, James Day. Day claimed he had killed Loeb because he feared that Loeb would rape him. Day's claims were undermined by the fact that he had cut Loeb's jugular vein by slashing his throat from behind.

When the case went to trial the state claimed Day had killed Loeb because the protection money Loeb was giving him had dried due to the great depression. Prison authorities agreed with Day's version and ruled that John Day's attack on Loeb was self-defense finding him not guilty.

It's not too surprising after all John Day had killed one of the most hated men in America. The Chicago Daily New byline read: "Richard Loeb, despite his erudition, today ended his sentence with a proposition." That's how hated they were.

When it comes to calling the gay or trans panic defense a legal defense is a bit of a misnomer. It was originally used as part of a mental illness or diminished capacity defense.

You first had to establish through a psychological examination that you were either suffering from a mental illness or some type of diminished capacity when you committed the murder.

Having established one of these you could then claim to be suffering from homosexual panic at the time of the killing.

As a legal strategy, it's quite clever, particularly when the facts of the case are inconvenient for your client. Using one of the most powerful forms of human persuasion, fear to create a level of reasonable doubt, and remember you only need one. You only need to connect with one juror's fear and phobia of gay and trans people to end up with a more favorable outcome for your client.

What makes the John Parisie murder trial unique in the life of the homosexual panic defense is how slavishly his lawyers stuck to Dr. Edward Kempf's 1920 theory of homosexual panic as it applied to Parisie's defense.

First, they wanted to demonstrate that Mr. Parisie was suffering from a mental illness, in this case, paranoid schizophrenia which helped trigger a homosexual panic.

The second part of the defense strategy was to show Robert Jackson's prior homosexual activity.

Parisie's defense hinged on persuading the jury that his fear and revulsion of his own latent homosexuality collided with Robert Jackson, a married father, scout leader, and successful businessman by day who lead a secret life of sexual deviancy at night.

A collision that culminated in an explosion of unintended violence ending in Robert Jackson's death.

That was the plan but the entirety of this defense would never be heard by a jury.

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Two months before the trial, Robert Jackson's brother Bert Jackson, a private lawyer representing the family and Jackson's widow Mrs. Jackson requested and were granted a private conversation with the trial judge. (You know, I wasn't been able to find Mrs. Jackson's name in any printed account of the trial. Another artifact from the 1950s I guess.) The family's attorney read this prepared statement to the trial judge.

“I represent the widow and three young children of the decedent. And nature — I am informed and believe that the nature of the allegations will be devastating to the character and reputation of the decedent. They are untrue.”

The family asked the judge to exclude any evidence that Robert Jackson was ever involved in homosexual activities.

The judge took the request under advisement and issued a ruling saying, although the court recognizes that evidence of "homosexuality can be very important" and "would be admissible," that it would nevertheless enter an order prohibiting defense counsel from mentioning Jackson's homosexuality in the trial.

This was a devastating blow to Parisie's defense. How do you persuade a jury that you reacted in a homosexual panic if you can't offer proof that the man you killed engaged in previous homosexual activity?

But things would get worse for the defense.

During the first day of voir dire, the trial court asked members of the potential jury pool the following question:

"There may be some evidence in this case of homosexuality. If the evidence should show any person whose name comes up during the trial of this case was involved in acts of homosexuality, would that fact alone create prejudice or sympathy for that person?" According to court records, one juror said: "You can't expect me to say this isn't going to make any difference to me if this man was a homosexual." The newspaper account said, "No jurors were choice one the first day of the trial.

Which was just as well because on the second day of jury selection the trial court reversed itself and announced that it would no longer ask the jury about their ability to be objective in a case involving homosexuality.

Meaning none of the twelve jurors chosen were asked about their views on homosexuality and the trial got underway. The defense opened with this statement:

"Ladies and gentlemen of the Jury, our client, John Parisie, the 19-year-old boy that sits here at the table, has authorized us to tell you that his hand pulled the trigger of the gun that killed Robert Jackson when John Parisie pulled the trigger of the gun that killed Robert Jackson he did so while repulsing a homosexual attack.

Despite the judge's prohibition, he permitted this opening statement.

A court-appointed clinical psychologist who examined Parisie found him to be a highly delusional paranoid schizophrenic who was a bisexual loner with a basic distrust of people and who suppressed his emotions causing periodical blow-ups. He found Parisie to be a highly latent homosexual (who would avoid homosexual situations like the plague) with strong feelings of inferiority and testified that severe stress of any type could result in an acute schizophrenic reaction with accompanying amnesia. During this schizophrenic reaction, "the individual comes apart and becomes insane for a period of time." (That description is right out of Dr. Kempf Homosexual Panic theory almost to the letter.)

A second court-appointed psychiatrist defined homosexual panic as a fear reaction precipitated by psychological trauma such as a homosexual advance. He testified that he found Parisie to be a highly latent homosexual (who would avoid homosexual situations like the plague.)

When asked how Parisie would respond in such circumstances, the psychiatrist told the court, the person, because of his own repressed homosexual feelings, loses control and acts purely instinctively, "almost like an animal," causing the person to be unable to control the nature of his acts.

This "out of control reaction would be followed by the mind disassociating from the act of murder which could lead to a state of amnesia as a way of coping with their actions.

Homosexual panic, the psychiatrist stated, is a mental defect and symptomatic of a mental disease.

This last bit of summation is directly lifted from Dr. Kempf's theory of homosexual panic.

On redirect the prosecution got the homosexual panic psychiatrist to admit that homosexual panic was not a mental illness nor was it part of the psychiatric nomenclature.

Parisie's defense was able to lay out his state of mind at the time of the crime but because of the trial court's exclusionary ruling, the jury was being asked to believe Parisie's testimony alone as to Robert Jackson's homosexual impulses as the reason Parisie was forced to kill him. The state put on Parisie's best friend William Watson on the stand to testify to having had a conversation with Parisie a few days before the murder when Parisie came to his house asking to borrow money to pay the rest of his hotel bill.

Watson didn't have any money to loan him. In response, Parisie said, "If nothin else I can always roll a queer for money."

Aside from being arrested or being physically assaulted one of the inherent dangers of being a gay or lesbian person at this time was the possibility of being "rolled or robbed for money."

Think about it, you're almost certainly not going to go to the police and the robbers knew it. On cross-examination, Parisie's lawyer got Watson to acknowledge that he and Parisie both had used the expression "roll (or rob) a queer" in a joking manner in the past. Watson also agreed that at the time he thought Parisie was joking.

Then the moment everyone was waiting for John Parisie took the stand to testified in his own defense. As he had from the night of his arrest Parisie told the same story with a few more details.

He said as he walked along downtown Springfield street at about 9:00 in the evening on April 12, 1968, when Robert Jackson pulled up next to him and offered him a lift which Parisie accepted. Parisie said he recognized Jackson because they had talked about sports cars at Jackson's automobile dealership a few days earlier.

Parisie testified that Jackson soon stopped, purchased gasoline, and paid cash from a large roll of bills, and after driving around the streets, Jackson drove to a secluded gravel road and stopped in a dark driveway. He turned off the lights of the car, moved in the front seat toward Parisie, putting his hand on Parisie's crotch and said: "John, I'd like to blow you." Parisie said he turned him down.

When asked what was Jackson's response was Parisie said, He turned to me and he was smiling and he said, "If you don't let me do it you're gonna have to walk back to town." Parisie testified, "That made me mad," His attorney asked, "What made you mad" Parisie responded, "His smiling and tellin me that."

Parisie continued, "And that's where it ended right there. I remember struggling. I just kind of blew up, went crazy. I don't remember exactly or in any way, anything that happened after that, except we were struggling and I remember driving in circles in his car and there just wasn't anything to it, nothing I can pinpoint or tell you direct." His attorney asked if he remembered robbing Jackson. "No, sir," Parisie said. When asked if he intended to kill Robert Jackson Parisie responded, "No, sir."

On cross-examination, the prosecution called Parisie's reputation into question by getting him to admit he had lied on a job application. They also presented the jury with Parisie's divorce decree.

The aim of the case by the prosecution was to prove to the jury that John Parisie was a failure as a citizen, a liar, and a thief. It seems the defense was saying to the jury, the facts speak for themselves.

As for Parisie, other than admitting to the killing itself one of the most damaging things he had stolen the gun used to kill Robert Jackson just a few days earlier when he broke into a garage, he also admitted to shooting the gun off in his hotel room to "Make sure it worked."

Remember I said Parisie's defense had two parts, The second part of Parisie's defense was to dirty Robert Jackson up a bit by offering proof of his hidden sexual activity with other men.

Parisie's attorneys were prepared to have three former inmates testify to either having had sex with Robert Jackson or to witnessing Jackson holding hands and kissing other men in places were "homosexuals gathered." But due to the judge's exclusionary ruling, none of the witnesses were allowed in court leaving the jury with the impression that Parisie had shot Robert Jackson in a failed attempt to rob him.

For the prosecution, Parisie set out to Rob Jackson and the murder was a product of that and that alone. Any claims of mental illness or homosexual panic were Jackson's attempt to avoid responsibility for the taking of a human life.

The last witness to testify was Mrs. Jackson who was asked about their married life and the three children she and the deceased shared leaving the juror with the cold light of day reality of a family bereft.

After five days and 35 witnesses, both sides rested. It took more time for both sides to present their summations than it did for the jury to come back with a verdict.

On January 17, 1969, after deliberating for 2 1/2 hours, John Stephan Parisie was found guilty of manslaughter in the death of Robert Jackson.

The state asked for a sentence of 50 to 90 years. Parisie received a sentence of 40 to 70 years instead. Somewhere along the way, the death penalty had been taken off the table.

One newspaper account noted: "On hearing the verdict the youth who had been stoic throughout the trial slumped in his chair and his head bumped one of the pillars in the courtroom." Maybe the weight of the verdict settled in for Parisie in those final minutes. Now, 20 years old sentenced to prison for 70 years. If Parisie could have seen into his future he might have maintained his stoicism.

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John Parisie researched and wrote his own appeals and at first, they all fell on deaf ears. One attempt was rejected out of hand because the justices refused to hear a case that involved homosexuality and the homosexual panic defense.

Parisie's luck would change in 1983 when the US Court of Appeals for the seventh circuit in Illinois took a look at his case and ruled that John Parisie's rights had been violated on multiple grounds.

The court found that Parisie had been denied an extension to file documents needed to have his case reviewed, a courtesy extended to inmates writing pro se appeals.

But all the other findings involved the trial itself.

The Justices called the trial judge's decision to always the family's in chambers request to excluded reference to Robt Jackson's sexual activity with other men "ill-advised." I think when an appeals court calls a decision ill-advised it's the same as one of us calling it a boneheaded thing to do.

The justices found the trial judge's decision to exclude the testimony of the three character witnesses to be particularly damaging to Parisie's defense because during closing argument the prosecutor stated "No evidence had been presented that this man, Mr. Jackson, is or was a homosexual. You know, it is very easy to accuse somebody of being a homosexual."

In a dissenting opinion, one of the circuit court judges wrote, although it would violate the due process clause of the Fourteenth Amendment for the state to prevent Parisie from putting on a defense at his trial it does not follow that any exclusion of relevant evidence is a denial of due process.

The dissent went further. "Parisie wants the evidence admitted in order to bolster his defense of "homosexual panic." It is no business of mine whether the State of Illinois chooses to recognize a defense of "homosexual panic" as a subcategory of the insanity defense, but I cannot believe that the Constitution of the United States requires a state to allow defense counsel in a murder case to defame the murderer's victim as a homosexual.

Evidence of reputation should be gathered based upon contact with the subject's neighbors and associates rather than upon the personal opinion of the witness."

I think this decent gives you the clearest view of the thinking of the trial judge and the community at large in 1968.

Your right to present a robust defense stops at the water's edge of homosexuality. Not to mention that the notion of reputation should only be gathered from people who are your social peers.

The majority concludes that the Illinois trial court deprived Parisie of his right to present competent and relevant testimony in his defense, and, therefore, deprived him of due process, by excluding the testimony of three witnesses concerning the alleged homosexual proclivities of the victim.

I think this dissent is pretty illuminating and it seems to echo the attitude of the trial judge in that the right to present a full-throated defense stops at the water's edge of homosexuality.

The majority decision summed up with this:

Because the federal district court apparently failed to consider the issue of homosexuality at all and because the proffered testimony was apparently rejected by the Illinois trial court for procedural reasons.

The majority concedes that remand would ordinarily be the better practice, but concludes that "judicial expediency" and the "furtherance of justice" suggest disposition without remand.

With that, after spending 14 years of a 40-70 year sentence John Parisie was freed.

Homosexual panic seems to have been woven throughout the entire trial starting with the trial judge and the community at large. Reputation and character over possible proof to the contrary. If a trial is where responsibility for a crime is adjudicated, appeals are were precedent and law are made.

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The court found that Parisie had been denied an extension to file documents needed to have his case reviewed, the other findings involved the trial itself. Paraphrasing from the appeal ruling.

The trial judges "ill-advised" in chambers conversation with the family and their lawyer should not have informed his decision to exclude references to Robert Jackson's sexual encounters.

The judge's decision to exclude the testimony of the three-character witnesses was particularly damaging to Parisie's defense because during closing argument the prosecutor stated "No evidence had been presented that this man, Mr. Jackson, is or was a homosexual. You know, it is very easy to accuse somebody of being a homosexual."

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In 1973, APA Removed Homosexuality From List of Mental Illnesses the defense that Parisie used in his case quickly morphed into a provocation defense an affirmative defense. (<https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1014&context=cjlp>)

The perpetrator's fear was no longer his own internalized homophobia now the threat was externalized. A fear of death, sexual molestation, or some other form of physical violence became the catalyst for murder. Sort of a stand your ground law for killing gay people.

In 1999, when lawyers for one of the two killers of Mathew Shepard made it known that they would use the gay panic defense Judge Barton Voigt, put them on notice telling them that their efforts to use the gay panic defense was little more than an attempt to prove Aaron McKinney had suffered temporary insanity or diminished capacity when he admittedly killed Matthew Shepard by beating him with a pistol in a fit of rage.

"Even if relevant," the judge said of gay panic as a defense, "the evidence will mislead and confuse the jury." Aaron McKinney and Russell Henderson his codefendant were sentenced to life in prison for the torture and murder of 21-year-old Mathew Shepard. This was one of the first times a judge stepped in to call out the use of the gay panic defense.

So, is the gay panic defense on the way out? It's a mixed bag really.

In May 2018 a Texas jury recommended that 69-year-old former police officer James Miller only receive 6 months in jail time followed by 10 years of probation for killing his neighbor, 32-year-old Daniel Spencer in a gay panic.

The outcome of this trial really shocked those working to get rid of the gay panic defense.

Violence and death of trans women of color especially continue to rise with the defendants in these cases often using the trans panic defense for violent assaults and murders. As of this podcast in 2018 California, Rhode Island, and Illinois have banned the use of gay and trans panic as a defense. Around the world, Southern Australia is moving towards a ban, New Zealand has banned the use of the defense.

As for John Stephan Parisie, after being freed he moved to Georgia and in 2003 he was arrested after a shootout with police. He was convicted of being a public menace and jailed for life.

As for the Jackson family, Bert Jackson proved to be quite the salesman often showing in the newspaper with publicity stunts.

After the trial, Robert Jackson's wife and children faded from public view which I'm sure they were grateful for.

You know, the recurring thought I've had while researching and writing this episode is what would have happened if the American Psychological Association, the justice system, our religious and civil institutions had focused their considerable influence on examining and sharing the root causes of fear and intolerance. Think of the suffering that could have been avoided the lives saved right up to today.

Then I think about the resilient nature of us human folk which puts me in mind of a quote by Maya Angelou.

Audio

We could all do with some of that.

Thanks so much for joining me for this first episode. Please subscribe to the podcast to make so you don't miss the diverse range of deep dives I can't wait to share with you, everything from singers and their songs to men and the color pink and a bunch of cool stuff in between.

If you'd like a transcript of the Gay Panic defense episode along with newspaper accounts of the trial, Dr. Kempf's original Homosexual Panic theory, photos of Robert Jackson and John Parisie, and ads for Chetson Motors you can find them all at the Deep Dive website at www.reggiedeepdive.com.

Thanks again for listening.

See ya next time.

Music