

Sexual Orientation, Justice, and Higher Education: Student Attitudes Towards Gay Civil Rights and Hate Crimes*

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The researchers sought to identify which factors contributing to homophobia in the law appeared to play a role in college student conceptualizations towards homosexuality and, in particular, attitudes towards specific “gay rights.” A quantitative content analysis of media coverage of anti-gay hate crimes in the two years before and after the death of Matthew Shepard was conducted. After documenting increases ranging from a low of 64% in certain newspapers to a high of 1543% in magazines and journals, a series of semi-structured interviews with college freshmen and seniors were conducted. The results were compared and contrasted not only in an attempt to see if increased media attention had changed their own perceptions about gay rights, but also to uncover the bases of their perceptions regarding the specifics of gay rights ranging from gay marriage and homosexuals’ participation in the military, to anti-gay crimes of violence and living with gay friends and family members. Overall, students were generally supportive of gay rights in the abstract and with regard to various particular rights, but differences in both gender and level of education were manifest. The theoretical implications for Gordon Allport’s contact hypothesis as well as the policy implications for both the legal and educational systems are explored.

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* An earlier version of this Article was presented in November 2000 at the annual meeting of the American Society of Criminology in San Francisco, California. This Article was researched and written as part of an independent study project by a professor, a graduate teaching assistant, and two undergraduate students while all authors were affiliated with The College of New Jersey. The students collectively thank Dr. Fradella for mentoring them through this research project.

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I. INTRODUCTION

The term “gay rights” is a troubling one. First, the term is ambiguous. “The terms gay, lesbian, bisexual, sexual orientation, homosexuality, sexual identity, and sexual conduct all have meanings that matter, yet all these meanings are contested.”¹ Unlike biological male/female distinctions, the social constructions of masculinity and femininity, their corresponding gender roles, and even the notion of sexuality itself are all debatable and arguably without foundational grounds for interdisciplinary discourse. Who is gay? What does it mean to be gay? What makes one gay? The term “gay rights” also suggests that there are special rights that belong to homosexuals—a connotation seized upon by the religious right in the last decade to combat efforts to secure basic human rights that are systematically denied to gay, lesbian, bisexual, and transgendered people.² The evidence of the denial of such basic human rights is ubiquitous and should be apparent to all willing to open their eyes. Examples include the criminalization of sexual acts with same-sex partners;³ discrimination in employment, housing, and in places

1. Toni M. Massaro, *Gay Rights, Thick and Thin*, 49 STAN. L. REV. 45, 48 (1996).

2. See S. Diamond, *Change in Strategy*, 54 HUMANIST 34-37 (1994).

3. See Henry F. Fradella, *Is Your State a Peeping Tom?: An Interdisciplinary Analysis of Sodomy Laws* (1993) (unpublished masters thesis, The George Washington University) (on file with author); A.B. Goldstein, *History, Homosexuality, and Political Values: Searching for the Hidden Determinants of Bowers v. Hardwick*, 97 YALE L.J. 1073 (1988).

of public accommodation;⁴ hate crimes;⁵ the acceptance of a homosexual advance as a defense of provocation or defense of justification to homicide charges;⁶ and the exclusion of gays from military service.⁷ The coalescence of these unfortunate truths has led several scholars to go so far as to say that “homosexuality disqualifies an American for citizenship.”⁸

Some commentators may find the prior quotation easily dismissed in light of some of the major strides gay rights activists have made in the last twenty years. Without doubt, the arrival of the twenty-first century brought a new social perspective on homosexuality. No longer does it hold the social stigma that it once did. In fact, homosexuality has largely been decriminalized such that thirty-four states decriminalized sodomy from 1971 to 2000,⁹ and several more have likewise followed suit in the twenty-first century.¹⁰ Moreover, laws banning discrimination on the basis of sexual orientation have been enacted in ten states and 165 counties and cities nationwide.¹¹ Thirty-nine states and the District of Columbia have laws against hate crimes, twenty-two of which include sexual orientation.¹² Countless corporations,¹³ municipalities,¹⁴ and even five states offer domestic partnership benefits to their employees.¹⁵ Even the United States Supreme Court has recognized that “homosexuality has

4. See Vincent J. Samar, *A Moral Justification for Gay and Lesbian Civil Rights Legislation*, in *SEX, MORALITY, AND THE LAW* 64-74 (Lori Gruen & George E. Panichas eds., Routledge 1997).

5. E.g., Andrew M. Gilbert & Eric D. Marchand, Note, *Splitting The Atom or Splitting Hairs—The Hate Crimes Prevention Act of 1999*, 30 ST. MARY'S L.J. 931 (1999).

6. See Joshua Dressler, *When “Heterosexual” Men Kill “Homosexual” Men: Reflections on Provocation Law, Sexual Advances, and the “Reasonable Man” Standard*, 85 J. CRIM. L. & CRIMINOLOGY 726 (1995); Robert B. Mison, *Homophobia in Manslaughter: The Homosexual Advance As Insufficient Provocation*, 80 CAL. L. REV. 133 (1992).

7. See *GAYS AND THE MILITARY* (Marc Wolinsky & Kenneth Sherrill eds., 1993).

8. Scott D. Wiener, *Book Review: Created Equal: Why Gay Rights Matter to America*, 30 HARV. C.R.-C.L. L. REV. 267 (1995).

9. American Civil Liberties Union, *Status of U.S. Sodomy Laws* (posted July 2000), at <http://www.aclu.org/issues/gay/sodomy.html>.

10. E.g., *Doe v. Ventura*, 001 WL 543734 (No. MC 01-489, Minn. Co., May 15, 2001); ARIZ. REV. STAT. § 13-1411 *repealed by* 2001 Ariz. Legis. Ser. Ch. 382 (H.B. 2016) (West 2001).

11. American Civil Liberties Union, *State and Local Laws Protecting Lesbians and Gay Men Against Workplace Discrimination* (posted July 2000), at <http://www.aclu.org/issues/gay/gaylaws.html>.

12. Human Rights Campaign, *Fighting Anti-Gay Hate Crimes* (posted 2000), at <http://www.hrc.org/issues/hate/index.html> (last visited Nov. 17, 2000).

13. E.g., Keith Bradsher, *Big Carmakers Extend Benefits to Gay Couples*, N.Y. TIMES, June 9, 2000, at C-1.

14. American Civil Liberties Union, *Domestic Partnerships: List of cities, states and counties* (posted July 17, 2000), at <http://www.aclu.org/issues/gay/dpstate.html>.

15. *Id.*

gained greater societal acceptance,”¹⁶ a conclusion supported by all of the above facts, as well as the presence of gay and lesbian characters on television and in movies.¹⁷

On the other hand, there can also be no doubt that there has been significant putative backlash against gay rights as predicted by Conrad and Schneider in their historic work on deviance, medicalization, and social control.¹⁸ Antigay violence is alive and well, as illustrated by the tragic killings of Alan Schindler, Bill Clayton, Matthew Shepard, Barry Winchell, and Arthur “J.R.” Warren, just to name a few.¹⁹ Antigay initiatives, seeking to repeal hate crime laws, domestic partnership laws and ordinances, and nondiscrimination laws that include homosexuals are hot topics in politics.²⁰ Even the federal government enacted the Defense of Marriage Act (DOMA), refusing federal recognition of same-sex marriages that might be recognized by any given state; thirty-one states followed suit with similar state laws.²¹

In addition to such putative backlash, it is clear that even what appeared to be, at first, major victories for gay rights have turned out to be symbolic ones at best, and arguably even hollow ones with significantly bad consequences. For example, *Romer v. Evans*²² marked the first time the Supreme Court invalidated a law that discriminated on the basis of sexual orientation.²³ In *Romer*, the law in question excluded homosexuals as a class of persons from being included in nondiscrimination laws throughout the state of Colorado.²⁴ The law not only removed gays and lesbians from antidiscrimination protections already in effect, but also barred them from future inclusion in such laws until such time as the state constitution was amended to permit their

16. *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 660 (2000).

17. *E.g.*, Verne Gay, *They're Out and About: Gay Characters Are More Prominent than Ever on TV, Which Is Set to Go Where the Medium Has Never Gone Before*, *NEWSDAY*, Nov. 26, 2000, at D-6.

18. PETER CONRAD & JOSEPH W. SCHNEIDER, *DEVIANCE AND MEDICALIZATION: FROM BADNESS TO SICKNESS* (1980).

19. *See, e.g.*, Tracey A. Reeves, *A Town Searches Its Soul; After Gay Black Man Is Slain, W. Va. Residents Ask Why*, *WASH. POST*, July 20, 2000, at A-1.

20. Lambda Legal Defense and Education Fund, *Anti-Gay Initiatives* (posted 1997-2001), at <http://www.lambdalegal.org/cgi-bin/pages/issues/record?record=2> (last visited May 7, 2001).

21. American Civil Liberties Union, *A Historic Victory: Civil Unions for Same-Sex Couples—What's Next?* (posted July 2000, http://www.aclu.org/issues/gay/civil_union_publ.html).

22. 517 U.S. 620 (1996).

23. *See* Robert D. Dodson, *Homosexual Discrimination and Gender: Was Romer v. Evans Really a Victory for Gay Rights?*, 35 *CAL. W.L. REV.* 271, 272 (1999).

24. *See Romer*, 517 U.S. at 623-24.

inclusion.²⁵ In invalidating the law on equal protection clause grounds, the Court quoted language from earlier civil rights cases highlighting the fact that the federal Constitution “neither knows nor tolerates classes among citizens.”²⁶ The Court reasoned that there was no rational basis for a state’s removal of a class of its citizens from the general protection of its laws.²⁷ The case was heralded as a major victory for gay rights.²⁸

In spite of the ostensibly beneficial holding of *Romer*, its impact on lower courts’ rulings has been almost universally negative in terms of the advancement of gay rights. One commentator has noted that

[s]everal recent federal cases outline the possibility that *Romer* stands for three basic legal propositions: (1) homosexuals are not a suspect class; (2) there is no fundamental right to participate equally in the political process; and (3) rational basis is the appropriate standard of review for homosexuals’ equal protection claims.²⁹

In fact, “[i]n all but one district court case, lower courts have validated every law discriminating against homosexuals [in cases involving laws similar to the one at issue in *Romer*,] challenges to the military’s “Don’t Ask Don’t Tell” policy, and employment discrimination cases.”³⁰ These courts have relied on the *Romer* decision’s use of the rational-basis test—the lowest level of judicial constitutional scrutiny. For example, in *Equality Foundation of Greater Cincinnati, Inc. v. City of Cincinnati*,³¹ the United States Court of Appeals for the Sixth Circuit upheld a law which provided, “no special class status may be granted based upon sexual orientation, conduct or relationships.”³² The court in *Equality Foundation* reasoned that since the law at issue in *Romer* involved an amendment to a state constitution, the case had no binding precedential value on narrower laws like the Cincinnati ordinance at issue in that particular case.³³

25. *See id.*

26. *Id.* at 623 (citing *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting)).

27. *Id.* at 632.

28. Katherine M. Hamill, *Romer v. Evans: Dulling the Equal Protection Gloss on Bowers v. Hardwick*, 77 B.U. L. REV. 655 (1997); Kevin G. Walsh, *Throwing Stones: Rational Basis Review Triumphs over Homophobia*, 27 SETON HALL L. REV. 1064 (1997); Akhil Reed Amar, *Attainder and Amendment 2: Romer’s Rightness*, 95 MICH. L. REV. 203 (1996); Andrew M. Jacobs, *Romer Wasn’t Built in a Day: The Subtle Transformation in Judicial Argument over Gay Rights*, 1996 WIS. L. REV. 893 (1996).

29. Mark E. Papadopoulos, Note, *Inkblot Jurisprudence: Romer v. Evans as a Great Defeat for the Gay Rights Movement*, 7 CORNELL J.L. & PUB. POL’Y, 165, 197 (1997).

30. Dodson, *supra* note 23, at 290.

31. 128 F.3d 289 (6th Cir. 1997).

32. *Id.* at 296.

33. *Id.*

Robert Dodson asserts that deeply seeded homophobia is one of the primary reasons courts have either disregarded or very narrowly construed *Romer*.³⁴ In light of the fact that subsequent cases continue to uphold discrimination on the basis of sexual orientation,³⁵ the validity of Dodson's argument seems self-evident. Unlike with other forms of discrimination, though, there are numerous moral arguments offered by well-educated, intelligent people against homosexuality that are used to justify both homophobia and heterosexism. The following review of literature that addresses these arguments, however, demonstrates their flawed rationale.

II. REVIEW OF THE LITERATURE ON THE SOURCES OF HOMOPHOBIA

A. *The Legal Condemnation of Sodomy*

Most historians agree that “no Western legal or moral tradition—civil or ecclesiastical, European, English, or Anglo-American—has ever attempted to penalize or stigmatize a ‘homosexual person’ apart from the commission of external acts.”³⁶ Thus, it has not been the status of being a homosexual per se that has been condemned throughout history, but rather the acts in which the homosexual engages. These acts, which are usually taken to include both oral and anal intercourse and subsumed under the general term “sodomy,” have been proscribed by both civil and ecclesiastical laws for centuries.³⁷

Sodomy laws have existed since biblical times; indeed, even the term “sodomy” comes from the Bible, in the story of the destruction of Sodom.³⁸ Judaic law specifically prohibited sodomy,³⁹ but there is scholarly literature which suggests that the story of Sodom in Leviticus may not be aimed at condemning sodomy, but rather at condemning inhospitality.⁴⁰ But, even if we accept the text as a condemnation of homosexuality, it is clear that sodomy has not always been considered a crime. For example, sodomy played a large part in ancient Greek and

34. Dodson, *supra* note 23, at 290.

35. *E.g.*, *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 660 (2000).

36. John Boswell, *On the History of Social Attitudes Toward Homosexuality from Ancient Greece to the Present*, in *GAYS AND THE MILITARY*, *supra* note 7, at 40-49.

37. See Fradella, *supra* note 3; Goldstein, *supra* note 3.

38. *Genesis* 19:1-29.

39. See Arthur E. Brooks, Note, *Doe and Dronenburg: Sodomy Statutes Are Constitutional*, 26 WM. & MARY L. REV. 645 (1985) (citing *Leviticus* 18:22).

40. See JOHN BOSWELL, *CHRISTIANITY, SOCIAL TOLERANCE, & HOMOSEXUALITY* (Chi. Univ. Press 1980).

Roman culture since both societies not only condoned sodomy, but also seemed to encourage it.⁴¹

Paidierastia, which should not be confused with pedophilia, . . . [involved] younger males . . . [who] had reached puberty. Such relationships were governed by centuries of tradition handed down from father to son, ratified in an extensive philosophical, heroic, and erotic literature, and, it is claimed, ordained in law by Solon the lawgiver himself, who decreed that before marrying, a citizen had the obligation to take as a lover and pupil a younger male and train him in the arts of war and citizenship.⁴²

Good “citizens” in these ancient societies performed the very acts proscribed by sodomy statutes today. Western civilization, however, especially with the spread of Christianity in Europe, was revolted by homosexuality and punished sodomy as an ecclesiastical offense.⁴³ Moreover, sodomy was made a crime against the state at common law in the sixteenth century by Henry VIII.⁴⁴ By the Victorian Era, the mass suppression of all types of sexuality led to the criminalization of sodomy, homosexual or heterosexual.⁴⁵ The Puritans brought the sodomy laws with them to the colonies,⁴⁶ and it is the remnants of those laws which are in effect in nearly twenty states today.⁴⁷

The early English law prohibited only anal sex, but as Debra Barnhart explained in her analysis of the history of sodomy laws, the definition was broadened in most U.S. jurisdictions, by either legislation or judicial construction, to include both oral sex as well as bestiality (i.e., sexual contact with an animal).⁴⁸ Barnhart points out that laws against such conduct have not only been designated as sodomy laws, but have also been labeled “the infamous crime against nature,” the “abominable and detestable crime against nature,” “buggery,” “unnatural intercourse,” and “deviate sexual intercourse.”⁴⁹ Few jurisdictions have changed their definition of sodomy since the time Barnhart wrote over twenty years ago.

Some U.S. jurisdictions invalidated their sodomy statutes on equal protection or privacy grounds as defined by state law, thereby avoiding

41. See KENNETH JAMES DOVER, GREEK HOMOSEXUALITY 86-87 (Harv. Univ. Press 1978); HAVELOCK ELLIS, THE PSYCHOLOGY OF SEX: A MANUAL FOR STUDENTS (Emerson Books 1964).

42. BYRNE R.S. FONE, HOMOPHOBIA: A HISTORY 19 (2000).

43. See Brooks, *supra* note 39, at 648.

44. See *id.* (citing 25 Hen. VIII, c. 6 (1533) (repealed by 9 Geo. 4, c. 31 (1828))).

45. See *id.*

46. See *id.*

47. See ACLU, *Sodomy*, *supra* note 9.

48. Debra McCloskey Barnhart, Note, *Commonwealth v. Bonadio: Voluntary Deviate Sexual Intercourse—A Comparative Analysis*, 43 U. PITT. L. REV. 253 (1981).

49. *Id.* at 254.

federal review.⁵⁰ In 1986, though, the Supreme Court issued a direct attack on the privacy arguments against sodomy statutes in *Bowers v. Hardwick*.⁵¹ The *Bowers* Court explicitly ruled on the constitutionality of sodomy statutes, holding that the right to privacy does not protect consensual sexual acts between homosexuals.⁵²

In *Bowers*, the police legally entered the home of the defendant, Michael Hardwick, to serve an unrelated warrant upon him.⁵³ When the police entered, they discovered him engaging in oral sex with another man, and they arrested him.⁵⁴ Hardwick was never prosecuted for the crime, but in fear of such prosecution looming over his head, he brought suit challenging the Georgia sodomy law claiming that it violated his rights to privacy, due process, and freedoms of expression and association.⁵⁵ The federal district court dismissed the case, but the United States Court of Appeals for the Eleventh Circuit reversed, holding that the Ninth Amendment and the Due Process Clause of the Fourteenth Amendment to the United States Constitution guaranteed Hardwick the privacy to engage in private consensual sexual conduct.⁵⁶ On appeal to the Supreme Court, Justice White, writing for the majority in a five to four decision, held that the right to privacy did not protect homosexual sodomy from criminal prosecution.⁵⁷

Justice White began by explaining that the situation presented in the case was not covered by what had, at that time, been generally thought of as the sexual privacy cases: *Griswold v. Connecticut*,⁵⁸ *Eisenstadt v. Baird*,⁵⁹ and *Roe v. Wade*.⁶⁰ Justice White distinguished these cases as

50. See Fradella, *supra* note 3, at 38-39 (citing *Commonwealth v. Bonadio*, 415 A.2d 47, 50 (Pa. 1980); *People v. Onfre*, 415 N.E.2d 936 (N.Y. 1980); *State v. Pilcher*, 242 N.W.2d 348 (Iowa 1976)).

51. 478 U.S. 186 (1986).

52. *Id.* at 189.

53. See Leslye M. Huff, *Deconstructing Sodomy*, 5 AM. U.J. GENDER & L. 553, 562 (1997).

54. *See id.*

55. *See id.* at 563-64.

56. *Hardwick v. Bowers*, 760 F.2d 1202, 1211-12 (11th Cir. 1985), *rev'd*, 478 U.S. 186, 189 (1986).

57. *See Bowers v. Hardwick*, 478 U.S. 186, 196.

58. *See Griswold v. Connecticut*, 381 U.S. 479, 485 (1965) (striking down an anti-contraceptive law as an "impermissible intrusion on the right of the association protecting the marital relationship, [the] enforcement of [which] threatens police intrusion into the marital bedroom").

59. 405 U.S. 438 (1972) (extending *Griswold's* holding to unmarried persons on equal protection grounds).

60. 410 U.S. 113 (1972) (holding that the right to privacy guarantees a woman's right to choose to terminate her pregnancy during the first trimester).

dealing with the family, marriage, and procreation.⁶¹ He reasoned that homosexual sodomy did not concern any of these issues, and was therefore outside the realm of the constitutional right to privacy they collectively represented.⁶²

The majority's opinion in *Bowers* has been sharply criticized as having framed the issue too narrowly.⁶³ Critics have questioned the *Bowers* majority's consideration of the issue as pertaining only to homosexual sodomy when the Georgia statute at issue prohibited all forms of sodomy, whether heterosexual or homosexual. If the Court had viewed the case as one of sexual privacy, it could easily have fit the facts into the line of precedent descending from *Griswold* and thereby held the Georgia sodomy statute unconstitutional. This is especially true because *Griswold*, *Eisenstadt*, and *Roe* can be interpreted as guaranteeing that adults have a right "to engage in non-procreative sexual relations, even outside the traditional setting of marriage."⁶⁴

These critics have also questioned the Court's definition of fundamental rights as those "deeply rooted" in history. The Supreme Court's reliance on history and tradition provides an easy target for application of Jacques Derrida's post-structuralist technique of interpretation of texts. The Constitution itself has no objective meaning in the Due Process or Equal Protection Clauses when it comes to defining the scope of privacy—a word which does not even appear in the text of the Constitution. The Supreme Court's reliance on history and tradition is found in the text as an act of interpretation, not of an inherent objective quality. For example, the right to contraceptives established in *Griswold*, and the right to choose an abortion established in *Roe*, are both notions that were found within the scope of the right to privacy despite the fact that neither contraceptives nor abortion were rights "deeply rooted" in U.S. history and tradition. This inconsistency has been deconstructed as follows:

First, merely adopting a 'traditional' notion of what constitutes a family and defining it to exclude a homosexual relationship is itself a value choice. . . .

A decision recognizing that the right of privacy encompasses decisions of consenting homosexual and heterosexual adults concerning private sexual conduct would have been consistent with the decisional focus of previous

61. See *Bowers*, 478 U.S. at 190.

62. See *id.* at 196.

63. See, e.g., Fradella, *supra* note 3; Goldstein, *supra* note 3; Note, *Right to Privacy and Consensual Sodomy: Bowers v. Hardwick*, 100 HARV. L. REV. 210-15 (1986).

64. Brett J. Williamson, Note, *The Constitutional Privacy Doctrine after Bowers v. Hardwick: Rethinking the Second Death of Substantive Due Process*, 62 S. CAL. L. REV. 1297, 1317 (1989).

privacy cases. Second, relying on history involves a value choice in that the Court selects which history it will base its decision on. The Court could have decided to rely on recent history: for example, a majority of states no longer outlaw sodomy, and homosexual leaders now occupy prominent positions in local, state, and federal elective office. The historic persecution of homosexuals should not have been used to deter the current societal trend of recognizing that individuals have a fundamental right to define their own sexual identities. Such reliance on past discrimination to justify future discrimination harkens back to the days when historical tradition was used to justify long-since condemned laws supporting slavery and the so-called separate but equal treatment of blacks.⁶⁵

In the fifteen years since *Bowers* was incorrectly decided by the United States Supreme Court, several states have decriminalized sodomy either through legislative repeal of their laws or by court invalidation of the statute on state constitutional law grounds—including the Georgia law at issue in *Bowers*.⁶⁶ Yet, the continuing effect of *Bowers* cannot be overstated, as it has continuously been used as a basis on which to justify discrimination against homosexuals, who are accordingly classified as criminals for acting on their sexual orientation.⁶⁷ Once they are labeled as criminals, rational reasons (as opposed to irrational reasons, such as the prejudices that stem from racial animus) can be asserted to explain society's hostility towards homosexuals.⁶⁸ For example, the dissent in *Romer v. Evans* argued that the majority's decision to strike down Colorado's Amendment 2 was in error because it failed to take *Bowers* into account.⁶⁹ Justice Scalia, writing for the dissent, explained that "the only sort of 'animus' at issue here [is] moral disapproval of homosexual conduct, the same sort of moral disapproval that produced the centuries-old criminal laws that we held constitutional in *Bowers*. . . . Coloradans are [therefore] *entitled* to be hostile toward homosexual conduct."⁷⁰

B. *Distinguishing Sodomy from Homosexuality*

Even if one were to accept the holding of *Bowers v. Hardwick* that acts of sodomy may be proscribed by law within the permissible limits of the Constitution (a conclusion we reject, but make here solely for the

65. Right to Privacy, *supra* note 63, at 218-19.

66. See Powell v. State, 510 S.E.2d 18 (Ga. 1998).

67. See Allan H. Terl, *An Essay on the History of Lesbian and Gay Rights in Florida*, 24 NOVA L. REV. 793 (2000).

68. See Janet E. Halley, *Gay Rights and the Courts: The Amendment 2 Controversy: Romer v. Hardwick*, 68 U. COLO. L. REV. 429 (1997).

69. See *Romer*, 517 U.S. at 636 (Scalia, J., dissenting).

70. *Id.* at 644.

sake of argument), the fact that a person is “a homosexual” does not automatically mean that that person has engaged in or will engage in acts of sodomy. Furthermore, the converse does not even hold true, as there is no evidence that sodomy is unique to homosexuals. There is a wealth of social science research that supports the proposition that heterosexual acts of sodomy are the rule and not the exception in terms of modern sexual practices. For example, the Maryland Psychological Association and four research groups that study human sexuality reported results of their studies in which oral sex was found to be a healthy activity in which that more than ninety percent of U.S. couples regularly engage.⁷¹ Singling out homosexuals because of their alleged “propensity” to engage in acts of sodomy is thus irrational and should not survive even the most deferential standard of review in constitutional adjudication.

C. Immorality of Homosexuality Separate and Apart from Sodomy

Having demonstrated that sodomy should not be the reason used to justify legalized discrimination against homosexuals, either as a matter of constitutional law or as a matter of logic, because heterosexuals engage in the same conduct, we turn our attention to the moral condemnation of homosexuality separate and apart from sodomy. It is often argued that homosexuality is immoral and thus it is permissible to criminalize homosexual conduct, exclude homosexuals from military service, and discriminate against them in other spheres. There is, however, a problem with terming homosexuality “immoral”—doing so is a descriptive and not a normative use of the term.

Richard Mohr critically analyzed the difference as applied to the issue of homosexuality in his book *Gays/Justice: A Study of Ethics, Society, and Law*.⁷² First, Mohr suggests that recent social science research demonstrates that there is no universally negative opinion about homosexuals.⁷³ Historically, varying levels of tolerance and acceptance have existed across history and cultures.⁷⁴ The same holds true for homosexual conduct. For example, sodomy played a large part in ancient Greek and Roman culture.⁷⁵ Even if it were the case that the majority of people believed that homosexuality was immoral without the need for putting that concept in some normative sense, Mohr correctly points out

71. See Lisa Leff, *Md. Court Hears Appeal of Oral Sex Conviction; Law Violates Privacy, Lawyer Argues*, WASH. POST, Apr. 28, 1990, at B-1.

72. RICHARD D. MOHR, *GAYS/JUSTICE: A STUDY OF ETHICS, SOCIETY, AND LAW* (1988).

73. See *id.*

74. See Boswell, *supra* note 36; see also BOSWELL, *supra* note 40.

75. See FONE, *supra* note 42; Dover, *supra* note 41; ELLIS, *supra* note 41.

that just because people say something is good or bad does not make it so.⁷⁶ Mohr states, “Slavery would be wrong even if nearly everyone liked it. So consistency and fairness require an abandonment of the belief that gays are immoral simply because most people dislike or disapprove of gays or gay acts, or even because gay sex acts are illegal.”⁷⁷

Second, and more importantly, we must consider the roots of such “moral” condemnation of homosexuality. Even if we set aside the scholarly research on biblical references to homosexuality which suggests that Judeo-Christian interpretation of the text as condemning homosexuality may have been flawed,⁷⁸ the root of such condemnation, according to Mohr, would still be religion. This is problematic because, as Mohr states, “[o]ne of the guiding principles of society, enshrined in the Constitution as a check against the government, is that decisions affecting social policy are not made on religious grounds.”⁷⁹

Mohr somewhat overstates this point. The legislation of morality as a legitimate function of the state has been argued for years, but no one can seriously say that morals, whether founded in religion, Kantian logic, or elsewhere, have not formed the basis of legislation throughout the history of the common law.⁸⁰ Mohr’s overstatement aside, his point is essentially that the First Amendment should be interpreted in such way as to call into question the permissibility of morality, ostensibly formed from religious beliefs, from serving as a basis to justify positive law—a point with which we whole-heartedly agree.

Furthermore, it is also contended that the alleged wide-spread sentiment of the immorality of homosexuality stems from the social construction of both the term and the concept behind it. Michael Foucault argued that the twentieth century, especially with the rise of medical orthodoxy, brought about an increase in the discourse of sex and sexuality.⁸¹ He further argued that as a result of the discourse of sex and sexuality—something that had been repressed in the age of religious orthodoxy—different definitions and categories pertaining to the sexual arose, including the term “homosexual.”⁸² According to Foucault

76. See MOHR, *supra* note 72, at 32.

77. *Id.*

78. See BOSWELL, *supra* note 40.

79. MOHR, *supra* note 72, at 33.

80. Compare H.L.A. HART, LAW, LIBERTY, AND MORALITY (Stan. Univ. Press. 1963), with Ronald M. Dworkin, *Lord Devlin and the Enforcement of Morals*, 75 YALE L.J. 986 (1966), and RONALD M. DWORKIN, TAKING RIGHTS SERIOUSLY (Harv. Univ. Press 1977).

81. See MICHEL FOUCAULT, THE HISTORY OF SEXUALITY: VOLUME I: AN INTRODUCTION (Allen Lane 1979).

82. See *id.* at 37.

[t]he nineteenth century homosexual became a personage, a past, a case-history, and a childhood, in addition to being a type of life, a life form, and a morphology, with a discrete anatomy and possibly a mysterious physiology The sodomite had been a temporary aberration; the homosexual was now a species.⁸³

Foucault's point is that the ways in which people's allegedly normative conceptualizations of homosexuality are formed should be examined critically. In what Foucault called the "multiplication of discourse," the fact that religion, then science, particularly psychiatry,⁸⁴ perpetuated a sense of "wrongness" with regard to homosexuality is largely responsible for pervasive thought regarding its immorality.

Finally, even if the alleged immorality of homosexuality were taken as a normative given for the sake of argument due to the way the concept has been socially constructed over the last two to three centuries, there is considerable research to suggest that any such moral judgment is made on the basis of an innate trait. Sexual orientation is part of someone's identity. Unlike sodomy, it is not a matter of behavior. Many scholars have argued for decades that homosexuality is genetically determined,⁸⁵ or at least genetically influenced.⁸⁶ Morally condemning a group of people (homosexuals, presuming such a "group" exists) for an inborn trait is tantamount to prejudice based on race or eye color—morally irrelevant categories. Doing so is "immoral" and "unjust" under a normative conceptualization of morality and justice as set forth by Professor Ronald Dworkin:

[J]ustice as fairness rests on the assumption of a natural right of all men and women to equality of concern and respect, a right they possess not by virtue of both or characteristic or merit or excellence, but simply as human being with the capacity to make plans and give justice.⁸⁷

Beyond philosophy, there is empirical support for Dworkin's position on this matter in society at large. In a random sample of more than 6000 adults, the greater the degree to which subjects attributed the

83. *Id.* at 43.

84. See SIGMUND FREUD, THREE ESSAYS ON THE THEORY OF SEXUALITY (Pelican Freud Libr. 1973) (originally published in 1905).

85. *E.g.*, L.L. Heston & J. Shields, *Homosexuality in Twins: A Family Study and a Registry Study*, 18 ARCHIVES GEN. PSYCHIATRY 149 (1968); F.J. Kallmann, *Comparative Twin Study on the Genetic Aspects of Male Homosexuality*, 115 J. NERVOUS & MENTAL DISEASES 283 (1952).

86. John P. DeCecco & David Allen Parker, *The Biology of Homosexuality: Sexual Orientation or Sexual Preference?*, 28 J. HOMOSEXUALITY 1 (1995); MICHAEL RUSE, HOMOSEXUALITY: A PHILOSOPHICAL INQUIRY (1988).

87. DWORKIN, TAKING RIGHTS SERIOUSLY, *supra* note 80, at 182.

causes of homosexuality to genetics, the greater was the support for extending homosexual rights in the areas of legalized domestic partnership and homosexual marriage.⁸⁸

D. *The Research Question*

As the review of the literature above should make clear, “two factors still dominate judicial responses to arguments in favor of gay rights: revulsion against homosexuality in particular, and ignorance about sexuality in general.”⁸⁹ The history of legal, religious, and moral condemnation against homosexuality described above might explain the failure of the law to adequately evolve in a manner that systematically protects the rights of gays and lesbians. Some, like Cass Sunstein, appear to deem the law’s painfully slow evolution as proper, arguing that grassroots societal changes should lead to legislatures bringing about shifts in both social and legal policy that are necessary to create real gay rights.⁹⁰ While we disagree with Sunstein’s contention that the courts should not play a major role in this process, we agree with his underlying premise that real and lasting change cannot occur without a fundamental shift in societal views on sexual identity.

Since changing social views on homosexuality would appear to be one of the most effective ways for “gay rights” to triumph over homophobia and heterosexism, the researchers sought to investigate how the future generation of our nation’s leaders currently conceptualized a wide variety of issues connected to “gay rights.” College students’ conceptualizations of gay rights arguably should be a good indicator of the future direction that gay rights might take insofar as homophobia and heterosexism, like other forms of discrimination, have their roots in ignorance.⁹¹ Because higher education should theoretically be combating ignorance and the intolerance engendered by it, it is logical, albeit arguably overly optimistic, that a college-education, which includes multidisciplinary exposure to matters of social justices should be one of the most powerful weapons in the fight against homophobia and heterosexism.⁹² The research presented in this Article tests the validity of

88. See C.E. Tygart, *Genetic Causation Attribution and Public Support of Gay Rights*, 12 INT’L J. PUB. OP. RESEARCH 259 (2000).

89. Massaro, *supra* note 1, at 52-53.

90. See Cass R. Sunstein, *Homosexuality and the Constitution*, 70 IND. L.J. 1 (1994).

91. See HOMOPHOBIA: HOW WE ALL PAY THE PRICE (Warren J. Blumenfeld ed., 1992).

92. See, e.g., A.M. Bowne & M.J. Bourgeois, *Attitudes Toward Lesbian, Gay, and Bisexual College Students: The Contribution of Pluralistic Ignorance, Dynamic Social Impact, and Contact Theories*, 50 J. AM. COLL. HEALTH 91-96, 91 (2001) (“developing mutually positive attitudes between heterosexual and LGB students has implications for the future as all groups of

this assumption in the microcosm of one liberal arts college campus. Our goal is a simple one: do college students perceive homosexuality as being “wrong” in the same way the legal establishment through the actions of the judiciary appears to view it? If so, why? If not, how do college students’ conceptualizations of alternate sexual identities differ from those of the law, and why?

III. RESEARCH METHODOLOGY

A. *Quantitative Content Analysis*

College students were of particular interest to the researchers. First, they provided for a population upon which study was made easy, as the current research took place in an academic setting. Second, and more importantly, each of the researchers were struck by the powerful depictions in the media following the beating and death of Matthew Shepard, who was a college student himself at the time of his brutal death. We were curious to see if his death, and the intense media coverage that accompanied it, had any impact on the views of Matthew Shepard’s contemporaries.

Before assessing college students’ views on several gay rights issues, we sought to document the media impact of Matthew Shepard’s death as that coverage was central to our inquiry. We did so by running three searches in various Lexis-Nexis databases. All three searches targeted the two years prior to the beating (which occurred on October 6, 1998) and death of Matthew Shepard (which occurred on October 12, 1998), and the two years following these events. Accordingly, the date restriction between October 5, 1996 to October 5, 1998, was used for the former time period, and the date restriction of October 6, 1998, to October 12, 2000, was used for the latter.

All three searches were run in three different Lexis-Nexis news databases: the first searched for the terms in the headline and/or lead paragraph of major newspapers; the second searched for the terms in the full-text of all magazines and journals; and the third searched for the terms in the full-text of all Time, Inc. publications (e.g., *Time*, *People*, *Sports Illustrated*, *Life*) as they are not contained in the general magazine and journal database. The results from the last two databases were then collapsed to report descriptive statistics applicable to all major magazines and journals that included those published by Time-Warner, Inc.

students become leaders in society.”); T. Lynn Hogan & Andrey L. Rentz, *Homophobia in the Academy*, 37 J. COLL. STUDENT DEV. 309-14 (1996).

The three boolean searches run in each of these three databases in the relevant time frames included: “(gay or homosexual) /s (violence or bashing)”; “anti-gay /s violent!”; and “‘hate crime’ /s (gay or lesbian or homosex!).”

B. Qualitative Inquiry

This study is a qualitative one. As such, it is “an inquiry process of understanding a social or human problem, based on building a complex, holistic picture, formed with words, reporting detailed views of informants, and conducted in a natural setting.”⁹³ The qualitative paradigm is primarily one of inductive logic used to gain deeper understanding into social phenomenon via the study of “the subtle nuances of attitudes and behaviors and for examining social processes over time.”⁹⁴ Qualitative inquiry is appropriate because our research goal was to explore not only people’s feelings and beliefs about abstractions regarding homosexuals—“gay rights,” and “hate crimes”—but also the varying contexts in which these beliefs were held and the explanations people offer in support of their contextualized belief systems.

C. Subjects

Forty undergraduate students from a selective, public, mid-Atlantic liberal arts college were recruited for participation in this ethnographic study. Participants volunteered for the study. By purposeful design, twenty of the subjects were first-year students (i.e., freshmen) and twenty were seniors.

D. Data Gathering Using Semi-Structured Interviews

Because this study was designed to explore “the nature of particular social phenomena, rather than [to] test hypotheses about them,” ethnographic interviewing seemed a particularly appropriate methodology.⁹⁵ This is especially true because the researchers sought to get at highly contextualized data within a rhetorical framework, but

93. JOHN W. CRESWELL, RESEARCH DESIGN: QUALITATIVE AND QUANTITATIVE APPROACHES 1-2 (1994).

94. EARL R. BABBIE, THE PRACTICE OF SOCIAL RESEARCH (6th ed., Wadsworth Pub. Co. 1992).

95. Paul Atkinson & Martyn Hammersley, *Ethnography and Participant Observation*, in HANDBOOK OF QUALITATIVE RESEARCH 248, 248 (Norman K. Denzin & Yvonna S. Lincoln eds., 1994).

wanted to accomplish this goal not within a pre-defined set of parameters, but rather through human interaction.⁹⁶

The researchers jointly developed fifteen questions that would be asked of all participants in the study. The interview form is best described as semi-structured because all participants were given a standard explanation regarding the study and were asked the same questions in the same sequence.⁹⁷ However, unlike in structured interviews, many of the questions were open-ended and follow-up questions particularized to the respondent's answer to one of the standardized questions were routinely used. Consistent with the overall qualitative ethnographic paradigm, this method was used because we wanted to understand the complexities of the participants' responses "without imposing any *a priori* categorization that may [have limited] the field of inquiry."⁹⁸

E. Data Analysis Using Narrative Discourse Analysis

Narrative discourse analysis is hermeneutic because it is aimed at developing joint constructions via a dialectic process. It has an interpretive nature in which divergent views can be compared and contrasted in the hope of achieving a coherent synthesis.

Discourse analysis is somewhat loosely formulated, almost intuitive, using terms defined by the analyst.⁹⁹ This is accomplished by critically analyzing the narrative responses offered by the subjects in the interview process. The responses of each participant were compared and contrasted with those of all other participants in an attempt to discover emergent patterns and differing emphases among and between the responses.¹⁰⁰ The principle themes, metaphors, definitions, and defining structures that emerge from such analysis allow for both categorical and unique data to be reported. This was achieved in two phases in the current study.

First, the narrative data gathered with respect to each subject's responses to the semi-structured interview questions were analyzed and separated into groups that emerged based upon their stated responses to the questions. In the second phase, comparisons among and between the

96. See Andrea Fontana & James H. Frey, *Interviewing: The Art of Science*, in HANDBOOK OF QUALITATIVE RESEARCH, *supra* note 95, at 361.

97. See *id.* at 364.

98. *Id.* at 366.

99. See Peter K. Manning & Betsy Cullum-Swan, *Narrative, Content, and Semiotic Analysis*, in HANDBOOK OF QUALITATIVE RESEARCH, *supra* note 95, at 465.

100. See DAVID L. ALTHEIDE, QUALITATIVE MEDIA ANALYSIS (1996).

cases that fell into each of the emergent categories were made and if any central themes emerged, they were explored.

F. Limitations

Obviously, given the small sample size drawn from only a single college campus, the results of this study may or may not be generalizable to other college campuses. The study should therefore be used for the limited purpose of inductive theory building.¹⁰¹

There are inherent limitations as to the reliability and validity of any ethnographic study, and the current research is no exception to that rule. Social research is a reflexive process.¹⁰² The researchers undoubtedly brought their own beliefs and experiences to the ethnographic process. Although every attempt was made to be neutral, the knowledge gained from this type of study is a function of the researcher-subject interaction. The conclusions drawn are a product of this interaction between observer and observed. Accordingly, we acknowledge our belief that it is impossible for us as researchers to be “value-free.” As Egon Guba and Yvonna Lincoln aptly explained:

Inquirers are human, and cannot escape their humanness. That is, they cannot, as an act of will, set aside their own subjectivity, nor can they stand outside the arena of humanness created by the other persons involved. The values of the inquirer (and those who influence him or her, especially funders, sponsors, and professional peers), inevitably enter the inquiry in connection with the whole series of decisions involved in designing, mounting, and monitoring.¹⁰³

IV. RESULTS AND DISCUSSION

A. Content Analysis Data

As the data in Table 1 demonstrate, Matthew Shepard’s murder brought about a significant increase in media attention to hate crimes against gays and lesbians.

101. See BARNEY G. GLASER & ANSELM L. STRAUSS, *THE DISCOVERY OF GROUNDED THEORY: STRATEGIES FOR QUALITATIVE RESEARCH* (1967).

102. See, e.g., ALTHEIDE, *supra* note 100, at 79-81.

103. EGON G. GUBA & YVONNA S. LINCOLN, *FOURTH GENERATION EVALUATION* 85 (1989).

Table 1: Media Coverage of Sexuality-Related Violence Pre- and Post-Shepard Murder

	Search Terms in Headline and/or Lead Paragraph of Major Newspapers			Search Terms Anywhere in Full-Text of Magazines and Journals		
	10/05/96-10/05/98	10/06/98-10/12/00	Percent Increase	10/05/96-10/05/98	10/06/98-10/12/00	Percent Increase
(gay or homosexual) /s (violence or bashing)	286	470	64.3%	09	49	544%
“anti-gay” /s violen!	103	218	111.7%	05	16	320%
“hate crime” /s (gay or lesbian or homosex!)	414	>1000*	>141.5 %	07	108	1542.9 %

* Lexis-Nexis could not return all of the documents the search retrieved since the number was greater than 1000 articles, its maximum return value.

Of the articles found in the above search, those that specifically addressed hate crimes from the perspective of students were then purposefully sampled by the researchers. Prior to the death of Matthew Shepard, there were very few such articles. When they were published, there were three recurrent themes: (1) lack of educational programming with respect to the plight of gay students,¹⁰⁴ (2) a lack of knowledge regarding the handling and reporting of hate crimes on college and university campuses,¹⁰⁵ and (3) the lack of a “safe place” where gay, lesbian, bisexual, and transgender (GLBT) students could have a sense of community without having to worry about being victimized.¹⁰⁶

In the two years following the death of Matthew Shepard, a plethora of articles appeared that discussed how each of the above deficiencies were being met by college administrators, staff, faculty, and student groups. Many schools implemented diversity training for faculty, administration, and staff, as well as a wide variety of programs for

104. *E.g.*, Dave Curtin, *Students Urge C.U. to Deliver Diversity, School Response Coming Monday*, DENV. POST, Feb. 26, 1998, at B-03.

105. *See, e.g.*, Charles Devarics, *Bill Targets Reporting of Hate Crimes*, 14 BLACK ISSUES IN HIGHER EDUC. 7-9 (1997); Martin Miller, *Ex-Student Suspected in Email Threats Against Asians*, L.A. TIMES, Sept. 28, 1996, at A-20; Mayrav Saar, *Student Fight Divides Campus*, L.A. TIMES, Apr. 27, 1996, at B-1.

106. *See, e.g.*, Elaine Herscher, *S.F. Schools Get “A” from Gay Group; But Oakland Gets “C” in Safety Rating*, S.F. CHRON., Sept. 10, 1988, at A-20; D. Price, *Novi Teen Exemplifies Next Generation of Gay Activism*, DETROIT NEWS, May 8, 1988, at E-1.

students designed to increase awareness of multi-cultural issues.¹⁰⁷ For example, an article in the *New York Times* explained how the University of Connecticut was attempting to cope with a variety of bias incidents that led to their campus being listed by the *Princeton Review* as the twelfth most homophobic school in the United States.¹⁰⁸ The article detailed how the school was considering “changing the general education requirements to incorporate diversity education, combining new class offerings with current classes,”¹⁰⁹ as well as providing training for university workers and residential life staff. Schools also increased their support for GLBT student groups.¹¹⁰

While the tremendous increase in media attention to gay and lesbian issues in the wake of Matthew Shepard’s murder is calculable, the systemic effect this attention had on college and university campuses is not. The researchers hoped the interview data would shed some light on the impact such diversity programming may have had on a select group of college students. As the data in the next Part of this Article reveals, it would appear that we have begun to move in the right direction.

B. Interview Data

1. What term do you use to refer to people who are sexually attracted to members of the same sex?

Overwhelmingly, the respondents refer to people who are attracted to members of the same sex as being “gay” (N=19; 47.5%). Some used the more formal term “homosexual” (N=13; 32.5%) Two subjects (5%) admitted to using the term “homo.” Several of the respondents, however, indicated that the term they use would vary depending upon the persons to whom they were speaking. Four students (10%) specifically noted that they tried to use the term “homosexual” in classes and when talking with older people since they considered it to be a more “politically correct” or “professional” term.

It is interesting to note that all of the participants in the study classified attraction to members of the same sex as falling within the definition of homosexuality. Not a single student used the term

107. See Anna Gorman, *Schools Step Up Effort to Protect Gay Students’ Rights*, L.A. TIMES, Sept. 11, 2000, at A-1; Lynne Meredith Cohn, *Diversity Club Lets Students Speak Out: Views on Racism, Tolerance Are Group’s Focus*, DETROIT NEWS, Feb. 21, 2000, at C-3.

108. See M. Lang, *Countering Gay Bias Incidents at UConn*, N.Y. TIMES, Dec. 5, 1999, at CN-14.

109. *Id.*

110. See, e.g., Gorman, *supra* note 107, at A-1; Benoit Denizet-Lewis, *It Could Have Been Me*, ADVOCATE, Oct. 12, 1999, at 50.

“bisexual” or made any reference to bisexuality when asked this question even though the question was devoid of any specific language that would have suggested exclusive attraction to those of the same sex.

2. You have probably heard the term “gay rights” used in the media: what does that term mean to you?

“Gay rights” was synonymous with such concepts as “nondiscrimination” and “equal opportunity” or “equal rights” under the law for the overwhelming number of interviewees (N=31; 77.5%). Some participants defined gay rights within the context of a specific right, such as the right to marry (N=4; 10%), or the right to the economic benefits that traditionally accompany marriage (N=1; 2.5%).

Only one person in the research sample thought the term gay rights meant “special rights.” This freshman male said, “That general term has become the rally cry of gay groups who want special privileges . . . rights that heterosexuals do not have.” This respondent, who considers himself to be moderately conservative and religious, could not elaborate on the specific special rights he thought the gay rights movement was seeking that heterosexuals did not enjoy.

3. What do you think about “hate crime” legislation?

One of the more surprising findings of this study was the fact that all forty interviewees (100%) agreed that if there were hate crimes legislation on the books, then such laws ought to include sexual orientation. Even those who were opposed to hate crimes legislation in general believed, as the following respondent stated, that if such laws are enacted, “there is no reason not to include sexual orientation since it, like race and religion, is frequently the basis of hatred.”

There was, however, a wide difference of opinion in regard to the students’ feelings on whether hate crimes ought to be legislatively defined. The overwhelming majority (N=36; 90%) were supportive of hate crime legislation. One of the reasons most frequently cited in support of hate crime laws was the empirically questionable belief that such laws actually prevent hate crimes from occurring. Interestingly, all of the students offering this rationale were freshmen (N=12; 60% of freshmen; 30% of total). Others recognized the deterrent limits of hate crime laws but thought they were important nonetheless because they symbolically call attention to the problem of hate-motivated crime and, further, allow for real and demonstrably harsh punishment of those who commit them.

The four students (10%) opposed to hate-crime legislation were all freshmen. The reason they offered was that the laws, although well-intentioned, “overly complicate trials and the judicial process.” When asked to explain how, subjects had two main responses. First, these students thought it was too difficult for the prosecution to prove that hate motivated a crime as opposed to simply proving that the crime occurred. The other primary concern was that higher penalties might inappropriately be placed upon someone who committed a crime that appeared to be motivated by hate when in fact it was not. Four seniors also expressed similar concerns, one by telling this story:

Suppose two people got into an argument that had nothing to do with sexuality and the fight eventually led to physical violence. If the person who was attacked happened to be homosexual, I wouldn't want to see the attacker get penalized according to hate-crime legislation because the attack was not motivated by hate of the victim or the victim's sexuality. The assault was motivated by some other, non-sexuality related issue.

In spite of this concern articulated by four of the seniors, none of them opposed hate crime laws. In contrast to the freshmen opponents of hate crime laws, these four seniors thought the normal judicial process would allow for the “sorting out” of violence motivated by hate as opposed to “normal” violence.

One respondent (2.5%), a female first-year student, could not offer an opinion on hate crime laws. She stated, “That legislation doesn't really affect me.” When asked to expound upon her answer, she explained that as a heterosexual who knows no gay or lesbian people, she has never had to think about the impact of such laws and doubted she ever would. In contrast, even those seniors who did not know a gay person all had thought about the issue.

There was only one interviewee, a male freshman, who was opposed to hate crime laws as a matter of principle. He said, “It's not a crime to hate someone; you shouldn't be reactionary.” When asked what he thought was “reactionary” about hate crime laws, he refused to explain his response, saying instead, “I think I'll just leave it at that.”

4. Do you have any gay friends?

Thirty-three (82.5%) of the students said they either currently have, or at one time had, a gay friend. Several of the freshmen, however, made a distinction between close and trusted friends as opposed to mere acquaintances. All twenty of the seniors said they were comfortable having gay friends. As one respondent put it, “Friends are friends. You

aren't friends with your friends because of their sexuality, you are friends with your friends because you get along with them."

The seven students who claimed to have no gay friends were asked a follow-up question regarding whether they would be comfortable having a gay friend. Six of these seven students (15%) said they were "unaware" of whether any of their friends were gay. Five of these seven said they would be "totally cool" with having gay friends "so long as they didn't make me uncomfortable by hitting on me; they have to respect my heterosexuality." One of the seven, a freshman male, gave a "qualified yes" as a response. He said he would be comfortable having a lesbian as a friend, but not with a gay male as a friend. When asked to explain, he said, "My friends and I go to the gym together. I would not be able to change my clothes in front of a gay male friend." Apparently, his fear of being viewed as a sexual object by another male is sufficiently strong that it would prevent him from becoming friends with a gay male.

Only one respondent in the study (2.5%) responded outright that he would not be comfortable having a gay friend. This freshman male said he did not want any gay friends because he "disagre[ed] with the lifestyle."

5(a). Is anyone in your family gay?

The students responded to this question in a very cut and dry manner, usually stating yes or no. However, some of them went on to make a distinction that they might have a gay relative and they are just unsure of whether that person is gay. Nine students (22.5%) stated that they had gay family members or relatives, although only one (2.5%) said the gay person was a member of their immediate family. Most students (N=31; 77.5%) were unaware of whether they had a gay family member. It is interesting to note that nearly all of those responding in the negative did not provide an outright "no" as an answer, but instead said something along the lines of "I do not know enough about the sexual orientation of my extended family members to be able to offer a definitive answer."

5(b). How would you feel if your son or daughter was gay?

More than any other question, this one provoked the longest period of reflection before interviewees gave an answer. Nine seniors and eleven freshmen (N=20, 50%) would be accepting of a gay child. Typical of the reasoning offered in support of this response was this answer: "It would still be my child and I would love that child unconditionally." Nearly half of these students, however, were fairly certain that there

would be an initial period of adjustment while they came to terms with their child's sexuality, but were confident in their abilities to have a loving and accepting relationship with them.

Two students could not answer the question, explaining "You just don't know how you would feel unless or until you're placed in that situation." The remaining eighteen students indicated they would have a problem accepting a gay or lesbian child. Nearly all of them (N=14; 35%), however, did so not out of a rejection of the child's sexual identity, but rather out of fear for the hardships a gay child would have to face. "I know how society is and how hard it is to come to terms with your sexuality," as one senior put it. "You just don't want your kid to go through something that difficult."

Four interviewees (10%)—all of whom were first-year students—declared that they could not accept a gay child. One freshman stated, "A brother or sister would not be a problem, but having a gay child would upset me." Another agreed, but added the qualifier, "I wouldn't disown them or anything; I just wouldn't like it." Another was more forceful when she said, "I would be very upset. It goes against my moral values and standards." One male freshman, whose answer indicated he thought one's sexual identity was a choice, said, "I would be strongly opposed to my child's decision to be gay. I would try to stop it and help them find a better way." All four of these students indicated moderate to strong religious beliefs, which may explain, in part, their responses.

6. Would you be comfortable with a gay roommate?

Only four of the respondents (10%), all of whom were seniors, indicated they would "not have any issues or problems" with having a gay roommate. Accordingly, thirty-six students (90%) had some reservations about sharing their living space with a gay or lesbian roommate. Seven of these of these thirty-six (19.4% of those answering no; 17.5% of total) people simply did not want to live under such circumstances. All seven of these students were freshmen. They explained that such a living situation would be too uncomfortable for them, not only in sharing close quarters with a gay person, but also in what other people would think about them for doing so. In contrast to these first-year students, none of the seniors felt so uncomfortable with the notion of a gay roommate that they would not have one under any circumstances.

The remaining respondents all gave a qualified response to the question. The recurrent theme running through these answers was a respect for boundaries. Two male freshmen specifically explained that

their discomfort would stem from having to change in front of their roommates. Three students, two males and one female, voiced concerns about unwanted sexual advances. One said, "It would be fine so long as my roommate didn't go after me or hit on me." Another respondent, who indicated he actually had a gay roommate, said "It was fine other than the fact that there was gay porn in the room. That kinda bothered me."

One senior said she would "feel bad if the person I was living with was attracted to me and I couldn't reciprocate those feelings." Another senior said he was "pretty sure" he would be "fine" having a gay roommate, although he was also "pretty sure it would take some getting used to for about a month or so." Interestingly, this senior noted that "[I]t usually takes about a month or so to adjust to any new roommate anyway."

7. How would you feel about having one of your elected public officials being gay?

Eighteen of the twenty seniors (90% of seniors) and twelve of the first-year students (60%) answered that they would either be supportive or indifferent to having a gay public official represent them (75% of total). One female senior "really wanted" to see a gay person in office, explaining it would "jive things up a bit." In contrast, only three freshmen (7.5%), all of whom said they were "very religious," were opposed to having a gay elected official. "I just couldn't deal with it," one male said, as if he had a choice but to "deal with it" if one were elected.

The other ten respondents who had concerns about having a gay public official expressed qualified support. Nearly all of these ten students expressed something akin to what this freshman said, "As long as their personal life didn't interfere with their job, and as long as they are qualified and capable, then I wouldn't mind a gay person holding office." One senior qualified her support by saying, "I think it would be hard for that person. They might always be under 'attack' for being gay," something she thought as being largely extraneous to the issues of holding office.

8. In the workforce, how would you feel if your boss/close colleague was gay?

There were thirteen first-year students (65%) who responded that "it would be okay" or "fine" with them for their colleague or boss to be gay; sixteen of the seniors felt the same way (80%), such that overall

twenty-nine (72.5%) students were either indifferent or supportive of working with gays. Five people qualified their responses by saying something along the lines of this respondent's answer: "As long as it didn't affect our job performance or our working relationship, it would be fine."

Two of the people responding positively to the question, both of whom were women, specifically explained that they thought it would be fun to have a gay coworker. As one said, "I am not trying to be stereotypical, but gay people are generally more open and friendly, and I like to work with people like that." The other woman said, "I enjoy working with my gay colleagues most!"

The two seniors who expressed discomfort over having a gay colleague did so because they feared offending the co-worker. "I wouldn't be sure how to act or what to say in front of him," one declared. The first-year students who responded negatively to the question also feared uncomfortable situations. Unlike the seniors, though, the rationale repeatedly offered for the feelings of discomfort stemmed from their not wanting to deal with being attractive to a co-worker of the same sex. One such student, a male freshman, explained that he had encountered this situation just the previous summer. He said he "felt threatened by the guy," and that he felt even more uncomfortable once a friend at work told him that the gay male co-worker found him to be attractive. He said, "I couldn't work with him anymore. It was too uncomfortable." This type of homophobia was not limited to male respondents. One female freshman said, "I would feel very comfortable having a gay male as a co-worker or boss, but not a gay female as one."

9(a). If someone of the same sex approached you in a general social setting and "hit on you," how would you react to that?

This question sparked a wide range of responses. Twelve students (30%), six freshmen and six seniors, responded that they would be flattered by a homosexual advance made toward them even though they were heterosexual. Sixteen students (40%), ten seniors and six freshmen, indicated that they would either ignore the advance, or politely tell the person that they were straight and assume that would take care of the situation. Five (25%) freshmen said they would be "shocked" if someone approached them and hit on them. One of these students said, "I would be appalled, and I would tell them that I feel it's not moral, and that they should seek counseling." In contrast, no seniors responded in such a manner. Instead, the remaining four seniors expressed that they would initially feel a little "uncomfortable," "nervous," or "taken off-

guard” but “wouldn’t make a big deal out of it.” Two of the remaining three first-year students, both of whom were male, said being hit on by someone of the same sex would make them so uncomfortable that they would leave the location to avoid the situation. Interestingly, neither one considered himself to be politically conservative nor religious. One female first-year student said she could not respond to the question because she had never considered the scenario before and could not do so in a thoughtful manner during the interview.

9(b). Would your response to being hit on differ in any way if it occurred when none of your friends were around?

Overall, the interviewees’ responses did not change, regardless of whether they were hit on in front of their friends or not. Nevertheless, about half of the first-year students said that the presence of friends might add a little embarrassment to the situation, though their responses to the advance would not change. Four students, all seniors, had the opposite response, reasoning that it would be less uncomfortable with friends around because their friends could serve as an “escape,” or because their friends would “help them out.” These students assumed the presence of friends could diffuse an otherwise awkward situation. In contrast, two students, both male seniors, responded that they would be more aggressive in letting their heterosexuality be known if their friends were around. When asked why, one said, “My friends would expect me to make it clear I wasn’t gay,” the other responded “Out of conformity.”

10. What are your views on gay marriage?

Three main responses were elicited to this question. The overwhelming response (N=23; 57.5%) was one of indifferent support. As one male freshman stated, “If they want to get married, it’s cool with me. It’s not as if it hurts me or anyone else if gays marry.”

Only two subjects (5%) in the study objected to same-sex marriage. Both of these respondents were freshmen who objected on religious grounds. One said that “being gay is an action, as in the case of what child molesters do. It’s all a choice. We should not choose to allow recognition of a lifestyle in which people choose to be so deviant.” In contrast, no seniors opposed gay marriage.

The remaining nineteen students (47.5%) were supportive of gay marriage, three enthusiastically so. One senior was “surprised it hasn’t been accepted yet.” Another felt, “it isn’t fair that gays aren’t given that right like everyone else.” Another senior said, “Gay marriage is a great

thing If two people love each other and want to be committed in this way, that only strengthens a relationship.” The other sixteen students were supportive, although not as enthusiastic. In fact, five of these sixteen expressed opinions similar to this senior’s: “I cannot be totally for it because of my religion. But I don’t think my religious beliefs ought to be forced on the next person. The views of my church shouldn’t stand in the way of gay marriages being legalized.” Two freshmen had no opinion on the matter.

11. What are your views on the “Defense of Marriage Act”?

In spite of the fact that ninety-five percent of the subjects supported gay marriage, nearly all of the students had no idea what the Defense of Marriage Act (DOMA)¹¹¹ was. The only freshman who knew about DOMA was himself gay and considered himself to be “knowledgeable” about gay rights issues.

Once DOMA was explained to the students who were unaware of what it was, the response was overwhelmingly negative. Seventeen freshmen and seventeen seniors (N=34; 85%) condemned DOMA as “wrong,” “dumb,” or “ridiculous.” All thirty-four of these students felt that same-sex marriage laws should be universal across the country. As one senior put it, “You shouldn’t have to fight for your right to marry in one state, move to another, and have to fight again.” Another senior paralleled DOMA to drivers’ licenses. “If you get your driver’s license in New Jersey and then go to California, you are still granted your right to drive. So if you get married in Vermont, and then move to California, you should still be able to be married.” Another echoed this sentiment, “If you are married under the law of one state, another state can’t tell you you’re not married under their law. It’s like saying you can’t move out of your states which is unjust.”

Of the three first-year students who supported DOMA (7.5%), their religious beliefs were cited as their reason for agreeing with the law. In contrast, the three seniors who agreed with DOMA offered arguments in support of state’s rights under the notion of federalism such that for individual states to enact those laws is merely reflective of the desires of their respective electorates.

12. Under current law, a person who is homosexual or bisexual can be terminated from his or her employment because of his or her sexuality. About ten states have passed laws banning such

111. See 1 U.S.C. § 7 (Supp. V 1999).

discrimination on the basis of sexual orientation. The other forty states and the federal government, however, have no laws targeting discrimination on the basis of sexual orientation. What do you think about such nondiscrimination laws?

Thirty-six (90%) of the students interviewed fully supported nondiscrimination laws. This freshman's response was typical: "Discrimination in the workplace is not acceptable. If they are doing their job and they're qualified, there is no need for discussion." Two of these thirty-six people made it clear that in no way did they support affirmative action or "reverse-discrimination" for gays and lesbians, only laws that "protected them from bigotry." An additional student explained that nondiscrimination laws should only be applicable to governmental jobs, but that "private business owners should be able to hire and fire whomever they choose."

The remaining three students (7.5%) thought there were just reasons to discriminate against homosexuals and bisexuals in the workplace. One male freshman stated, "Being gay is a conscious choice; employees can be fired for their actions and being gay is action-based." The other two students who did not support nondiscrimination laws were not necessarily opposed to protecting gays and lesbians per se, but rather thought that certain jobs required a consideration of sexuality. Positions in the military and in medicine were offered as examples. One senior explained, "A hospital should have the right not to hire a doctor, for example, because of his/her sexuality. It may make patients feel uncomfortable and that wouldn't be good for the hospital or its patients." Aside from these three dissenters, the remaining respondents all supported a unified national standard, such as the Employment Non-Discrimination Act (ENDA),¹¹² as a positive means of helping to end discrimination on the basis of sexual orientation.

13. Up until 1993, homosexuals were not permitted to serve in the U.S. military. Since 1993, they are only permitted to serve if they do not tell anyone about their sexuality. What do you think about this so-called "Don't Ask, Don't Tell" (DADT) policy?

Four common responses were given to this question. The most common response (N=16; 40%) was one supporting the DADT policy

112. See H.R. 1863, 104th Cong. (1995) (introducing an early draft of ENDA in the House by Rep. Gerry E. Studds (D-MA); see also Human Rights Campaign, The Employment Non-Discrimination Act, *available at* http://www.hrc.org/issues/Federal_leglenda/index.asp (last visited Feb. 21, 2002).

because these students perceived it as protecting servicemembers who are not heterosexual. As one student said, "Since it would bother some people, in looking out for the well being of the organization to do their job well, maybe gays shouldn't be able to be open about their sexuality." The students ascribing to this view characterized the policy as allowing GLBT individuals to serve in the military while simultaneously helping them to keep their jobs by not exposing them to outward prejudice whereby others would not know of their sexual orientation. For example, one student who felt this way was a marine. He said, "Unfortunately everyone isn't as open-minded about the issue as I am. That can create tension within a unit and in the military; you need the unity of everyone in the unit. To avoid such tension, it's better that people's homosexuality or bisexuality isn't known."

This response shows the level of ignorance among college students regarding the actual effect of the policy, which has clearly increased harassment of GLBT servicemembers.¹¹³ By way of examples, one study reported that harassment against GLBT servicemembers has more than doubled since the DADT policy was adopted, and that violations of the policy increased in 1999 and 2000.¹¹⁴

The other answer that was repeated the most frequently (N=21; 52.5%) condemned the DADT policy because it forces GLBT servicemembers to hide who they really are. One student stated, "This perpetuates a lack of understanding;" another said, "How can trust and cohesion be built if someone has to lie about who they are?" One freshman cited an episode of *Sixty Minutes* in support of his argument that the policy is not an effective means of protecting nonheterosexual servicemembers, but rather encourages and perpetuates "witch hunts" and further discrimination.

The remaining three students (7.5%) supported the policy, saying, "homosexuals should keep their lifestyles to themselves, and not tell anyone." Another echoed this sentiment, saying, "They should keep it a secret. It doesn't necessarily need telling." When confronted about whether heterosexual students "tell" about their sexuality when they engage in holding hands in public, exchanging a kiss, or other public

113. P. Richter, *Pentagon Reworks Policy on Treatment of Gays in Military*, L.A. TIMES, July 22, 2000, at A-1.

114. Stacey L. SOBEL, JEFFERY M. CLEGHORN, & C. DIXON OSBORN, CONDUCT UNBECOMING: THE SEVENTH ANNUAL REPORT ON "DON'T ASK, DON'T TELL, DON'T PURSUE, DON'T HARASS" (Servicemembers Legal Defense Network 2001), available at http://www.sldn.org/binary-data/SLDN_ARTICLES/pdf_file/256.pdf; Gregory Vistica, *One, Two, Three, Out*, NEWSWEEK, Mar. 20, 2000, at 57-58.

displays of affection, these students argued that it was “different,” but could not offer an explanation other than to say, “because it is.”

14(a). Approximately fifteen states have criminal laws against consensual “sodomy,” defined as oral or anal sex performed in private between consenting adults. Most of these laws criminalize such acts whether the sodomy is homosexual or heterosexual, and apply whether the participants are married or single. Terms of incarceration in prison are authorized under many of these laws. What do you think about sodomy laws?

There was near universal condemnation of consensual sodomy laws in the research sample. All of the students, with the exception of one freshman (N=39; 97.5%) who thought gay sex should be criminalized because it was “deviant,” said that these laws should not exist and those that do exist should be repealed. The rationale offered in support of this overwhelmingly negative response to sodomy laws was nearly universal as well: “It’s wrong; privacy is very important. If you can’t have sex in your own home, where can you do it?” Another student said, “It’s a couple’s business what they do behind closed doors.” Even those who were strongly opposed to homosexuality on religious or moral grounds were in agreement that the “law ought to stay out of people’s sex lives so long as it is consensual and between adults.” The one first-year student whose response differed from all others was based on her “never [having] had contact with these concepts before.” She was therefore uncomfortable discussing the matter and declined to answer the question.

14(b). Would your view change if the laws permitted sodomy between heterosexual couples and only criminalized such acts between members of the same sex?

Every student in the research sample maintained their original condemnation of sodomy laws when asked this follow-up question. Three (7.5%) people asserted that a sodomy law that discriminated on the basis of sexual orientation would be more offensive than the existence of general sodomy statutes.

15. When you hear the name Matthew Shepard, what is your reaction?

Amazingly, nine out of the twenty first-year students did not know who Matthew Shepard was. Considering the amount of media coverage devoted to his murder, this fact is startling. Two of the students, once it was explained who Matthew Shepard was and how he died, offered

identical unsolicited comments that Matthew Shepard was “never discussed” in their homes or in their respective high schools. In contrast, all of the seniors knew who Matthew Shepard was. This may be attributable to the fact that he was slain while these students were in college.

The reactions to the Matthew Shepard story from the freshmen were all very similar. As one freshman stated, “It’s sickening. It boggles my mind that people would kill someone from that motivation.” Another student said, “It’s a tragedy to all mankind, and if we’re all going to love each other, then we have to start acting in a different way.” Interestingly, though, the freshmen condemned the death as “tragic,” but did so in a detached way. It was not something that provoked deep emotion in them.

Conversely, the seniors gave very visceral reactions, although usually quite brief, using terms such as “sadness,” “awful,” “disgusted,” “pathetic,” “anger,” “horrific,” and “horrible.” They described how the killing made them feel, something the first-year students did not do. One senior said, “I feel sorry for what happened and why it happened.” Another said, “I feel horrible for what happened. It’s disgusting people could be so cruel.” Yet another said, “People need to get better educated.” One senior made it very personal: “I feel for him. It could have been a family member of mine. People are so ignorant.”

16. When someone in your social circle makes an antigay joke, remark, or slur, what do you do?

There were four primary answers students provided to this question. The most common response (N=17; 42.5%) was that the student would laugh. The questionable propriety of laughing at such a comment was acknowledged in some of these students’ answers. For example, one freshman male said, “I would laugh if the joke was funny—it wouldn’t necessarily bother me.” A first-year female said, “It doesn’t happen too often, but I usually laugh.”

Another popular answer (N=11; 27.5%) was that the comment or joke would be ignored. One such respondent said that when she is in such a situation, she “abstain[s] from partaking in laughter.” Another student said he does not “do or say anything because it’s not personally offensive.”

Two students responded to this question (5%) with an acknowledgment of passive disapproval. “I wouldn’t ‘go off,’ but I would have a problem with it.” Another student who also felt this way expressed herself in this manner: “I wouldn’t say anything, but I would

lose a certain amount of respect for the person making the statement or joke.”

Finally, there were ten respondents (25%) who said they would confront the person who made such a comment or joke: “I would yell at them in a polite way and say ‘that’s not very nice!’” Another explained that she “gets ‘pissed off’ when people say those things, and would retaliate if someone said something like that.”

17. Have your views on homosexuality changed at all since your freshman year?

This question was asked only to the seniors. Eight of the twenty said “no” (40%). Their main reason was because they either had friends in high school that made them more open-minded before coming to college, or they were raised in very open-minded households in which they grew up without strong homophobic influences. None of the seniors who answered the question in the negative did so because they had clung to a homophobic mindset.

The remaining twelve seniors said that their views on homosexuality had changed over the course of their undergraduate education. Each of these students explained that their views had changed because they had gained more exposure to homosexuality since attending college. One said,

I grew up very sheltered, and homosexuality was frowned upon. When I came to college, I was very close-minded about the issue. But then I met some gay and bisexual people here and was able to form my own opinion on the issue.

Furthermore, some of the seniors specifically credited campus programming in residence life and student life, especially those events sponsored by the college’s GLBT student group.

V. CONCLUSION

A. *Summary of Findings*

The responses elicited in this study clearly evince distinct differences among respondents as to levels of awareness, understanding, and acceptance of homosexuality as well as the legal issues surrounding it. The most significant differences the study revealed were, as was expected, between freshman and senior respondents. However, before remarking on those differences, it is important to note that there were several questions presented in the study that elicited overwhelming

agreement among the vast majority of respondents. Furthermore, all of the questions that revealed such agreement concerned the law and its treatment of gay rights issues.

When subjects were asked about their feelings toward DOMA, there was agreement among eighty-five percent of the respondents that DOMA is “wrong,” “dumb,” and “ridiculous.” Furthermore, three of the six students who supported DOMA cited as their reasoning the theory of federalism, stating that such decisions are for the state to enact in a manner consistent with the will of its electorate. All three of these respondents were seniors. The remaining three respondents who support DOMA cited their religious beliefs as the reason. All three of these respondents were freshmen. These responses are consistent with the finding that ninety-five percent of the subjects supported the right of homosexuals to marry.

Similarly, when subjects were asked about their feelings toward the inclusion of sexual orientation in nondiscrimination laws, there was ninety percent agreement that sexual orientation should be so included. This number rises to 97.5% agreement among subjects that consensual sodomy laws criminalizing private sexual conduct between consenting adults should not exist, and those that do ought to be repealed. Finally, there was 100% agreement among the subjects that hate crime legislation, if it is to exist at all, should include sexual orientation.

These findings are significant because there is overwhelming agreement as to the role the law should play in regulating societal responses to homosexuality. This agreement was unaffected by such expected variables of race, gender, age, sexual orientation, political conservativeness, or religion. The vast majority of respondents in the present study, including respondents that had some reservations about homosexuality, believed that it is not the proper role of the law to interfere with the private lives of the citizenry. This is a significant finding in light of the fact that over thirty percent of the states in this country currently criminalize consensual sodomy.

While the respondents in this study were opposed to the law’s interference in private, consensual, sexual conduct, there was unanimity in their agreement that the law should interfere when the goal is to protect homosexuals from discrimination and criminal behavior. All respondents agreed that should hate crime laws be enacted, the inclusion of sexual orientation as a protected class would be appropriate. Combined with the fact that thirty-six of the forty subjects agreed that employment discrimination laws should include sexual orientation, it is apparent that there is a common understanding that homosexuals are

discriminated against; that crimes are committed against homosexuals that are driven by a hatred of homosexuality; and that the law should attempt to protect such individuals through legislation.

In contrast to the questions dealing strictly with the law, the questions concerning personal relationships with GLBT people evidenced a number of disagreements between freshmen and seniors and, to a lesser extent, between males and females. The two questions that saw a gendered difference in the elicited responses probed the subjects' feelings about having a gay friend and co-worker. The general response among those who qualified their answers seemed to be that males had no issue with a gay female friend or co-worker and that females had no issue with a gay male friend or co-worker. It is safe to assume that these qualified responses are evidence of a perceived threat or, at minimum, a level of uncomfortableness with being close to a gay person of the same sex.

Differences between freshman and senior attitudes toward homosexuality were more dramatic. The first of the personal relationship questions concerned respondents' attitudes towards being "hit on" by a member of the same sex. While responses varied among all respondents, the only subjects who had a strong negative reaction, such as being "shocked" and "appalled," were freshmen. Two freshman respondents indicated that they would be so uncomfortable they would have to leave, and one freshman went so far as to recommend counseling to the gay person. None of the seniors responded with such negativity or discomfort.

The second question that revealed a clear difference between freshmen and seniors asked about feelings regarding a gay roommate. Again, as much as responses to this question varied, the seven respondents who indicated that under no circumstances would they tolerate living with a gay roommate were all first-year students. None of the seniors gave such an unwavering response.

The last question that displayed a significant difference between freshman and senior responses asked about feelings regarding the possibility of having a gay son or daughter. It should be noted that this question, arguably the most personal of the questions in this study, caused the longest pause before an answer was provided. More significantly, the four respondents who said they could not accept a gay child were all freshmen. None of the seniors responded in such a manner.

B. Theoretical Implications and Policy Recommendations

It appears that the education received over the course of one's time in college creates a sense of awareness regarding homosexuality that makes students more open-minded to the diversity that surrounds them. Whenever an issue directly affected the students in this study (e.g., having a gay friend, co-worker, or roommate, as opposed to legal abstractions), some students, primarily freshmen, invoked religious beliefs in support of what might appear to be close-minded responses. Others forthrightly told the interviewer that their lack of personal knowledge and inexperience with interacting with GLBT people impacted the reasoning underlying their responses to various questions. The less the issue was personalized, the less likely the students were to display discomfort with homosexuality. In contrast, the more personalized the issue, only those students who had personal relationships with GLBT people were able to answer questions in a manner that was consistently supportive of gays and lesbians. These findings, coupled with the fact that sixty percent of seniors admitted that their views of homosexuality have changed (i.e., became more accepting) over the course of their college careers, is strong evidence that the college experience positively impacts students' beliefs regarding both social and criminal justice for gays and lesbians.

Given the limitations of this study, more research is undoubtedly necessary before policy recommendations are acted upon. That being said, the data presented in this Article can be used as empirical support for a number policy initiatives, as well as in support of Gordon Allport's contact hypothesis.¹¹⁵

1. Legal Initiatives

It would appear that highly publicized hate crimes, such as the killings of Matthew Shepard, Barry Winchell, Billy Jack Gaither, and J.R. Warren, have increased public awareness of the victimization experienced by gays and lesbians. This increased awareness has, in turn, translated into a widespread understanding that discrimination against gays and lesbians is a serious social problem.¹¹⁶ While society at large

115. See GORDON W. ALLPORT, *THE NATURE OF PREJUDICE* (Addison-Wesley Pub. Co. 1954).

116. See Gregory M. Herek, *The Psychology of Sexual Prejudice*, 9 CURRENT DIRECTIONS IN PSYCHOL. SCI. 19 (2000); BETH LOFFREDA, *LOSING MATTHEW SHEPARD: LIFE AND POLITICS IN THE AFTERMATH OF ANTI-GAY MURDER* (2000); see also VALERIE JENNESS & KENDAL BROAD, *HATE CRIMES: NEW SOCIAL MOVEMENTS AND THE POLITICS OF VIOLENCE* (1997).

may still hold beliefs that homosexuality is “wrong” or “unnatural,”¹¹⁷ it appears that such attitudes are changing with the times. Attitudes toward gays and lesbians have become more accepting through the 1990s,¹¹⁸ and the data from the present study suggests that, over the last few years, the level of acceptance has continued to rise, especially in student populations.¹¹⁹

Even for those, however, whose attitudes have not positively changed towards gays and lesbians, Gregory Herek¹²⁰ has demonstrated that people often hold different attitudes about homosexuality on one hand, and support for GLBT rights on the other. The two are mutually exclusive. For example, despite negative attitudes, most Americans feel that a gay person should not be denied employment or basic civil liberties. . . . Most Americans favor giving same-sex domestic partners limited recognition (e.g., employee health benefits, hospital visitation rights). . . . And . . . the public generally supports the employment rights of gay teachers.¹²¹

Similar to the findings of Herek¹²² and others,¹²³ nearly all of those subjects in the present study who held negative personal attitudes towards homosexuality did not support legalized discrimination against homosexuals. There was tremendous support for the passage of ENDA at the federal level; the open-inclusion of GLBT people in the military; the repeal of DOMA; and the legal recognition of same-sex marriages. Moreover, there was near unanimous agreement on the repeal of sodomy laws and the inclusion of sexual orientation in hate crime legislation. It appears that the mantra of the far right—that gay rights are “special rights”—has failed in the wake of high media attention to hate crimes perpetrated against gays.

117. Herek, *supra* note 116, at 20 (citing Alan S. Yang, *Trends: Attitudes Towards Homosexuality*, 61 PUB. OP. Q. 477-507 (1997)).

118. *Id.*

119. See also Gregory M. Herek, *Gender Gaps in Public Opinion About Lesbians and Gay Men*, 66 PUB. OP. Q. (forthcoming 2002).

120. Gregory M. Herek, *Myths About Sexual Orientation: A Lawyers Guide to Social Science Research*, 1 TUL. J.L. & SEXUALITY 133-72 (1991).

121. Herek, *supra* note 116, at 20 (citing Alan S. Yang, *Trends: Attitudes Towards Homosexuality*, 61 PUB. OP. Q. 477-507 (1997)).

122. *Id.*; see also Herek, *supra* note 120; Gregory M. Herek & John P. Capitanio, “Some of My Best Friends”: *Intergroup Contact, Concealable Stigma, and Heterosexuals’ Attitudes Toward Gay Men and Lesbians*, 22 PERSONALITY & SOC. PSYCHOL. BULL. 412-24 (1996).

123. E.g., M. Bernstein & C. Kostelac, *Lavender and Blue: Attitudes About Homosexuality and Behavior Towards Lesbians and Gay Men Among Police Officers*, J. CONTEMP. CRIM. JUST. (forthcoming 2002) (on file with author); Armando X. Estrada & David J. Weiss, *Attitudes of Military Personnel Towards Homosexuals*, 37 J. HOMOSEXUALITY 83-97 (1999).

Moreover, as society moves towards greater acceptance of homosexuality, those who cling to highly vocal homophobic attitudes seemingly find themselves more and more out of the mainstream of society. For example, when Jerry Falwell attempted to blame the September 11, 2001, terrorist attacks on the United States on gays and lesbians, among others,¹²⁴ it drew the criticism of even those who are largely considered not to be gay-friendly, such as President George W. Bush and commentators Rush Limbaugh and William F. Buckley.¹²⁵ Perhaps one of the positive outcomes of the tragic anti-gay hate crimes of the last few years is an end to the days of general public acceptance of the rhetoric of those who blame the GLBT communities as scapegoats for that which is perceived to be wrong with society at large. Even if such a hope is overly optimistic in 2002, it seems a fair conclusion that homophobia in the law is now “beyond the limits of tolerance”¹²⁶ of the American public. Accordingly, ENDA should be enacted; the DADT policy of the United States military and state sodomy laws should be repealed; DOMA should be repealed and same-sex marriages should be legally recognized; and hate crime legislation should be inclusive of sexual orientation.

2. Educational Initiatives

In light of the conclusions reached in this study, two public policy recommendations seem worthy of immediate experimentation. As the comparison of first-year students’ attitudes and behaviors to those of seniors in the present study demonstrates, attitudes towards gays and lesbians, as well as corresponding views on equal rights for the GLBT communities, can be changed through education and through positive personal contact with gays and lesbians. Allport has argued that contact with members of a negatively perceived group would decrease negative attitudes toward that group.¹²⁷ The change in attitudes over the course of a college education described in the results section of this Article

124. See John F. Harris, *God Gave Us ‘What We Deserve,’ Falwell Says*, WASH. POST, Sept. 14, 2001, at C-3.

125. See Jonathon Alter, *Falwell’s Still in Business*, NEWSWEEK WEB EXCLUSIVE (Dec. 14, 2001), at 2001 WL 24139197; see also Peter Carlson, *Jerry Falwell’s Awkward Apology: What Did He Mean and When Did He Mean It? Huh?*, WASH. POST, Nov. 18, 2001, at F-1.

126. The phrase “beyond the limits of tolerance” was used to justify the legislation of morality by Lord Patrick Devlin. See PATRICK DEVLIN, *THE ENFORCEMENT OF MORALS* (1965); cf. H.L.A. HART, *LAW, LIBERTY AND MORALITY* (1963) (advocating the use of the utilitarian harm principle in criminal law, rather than legislating morality into criminal law).

127. See Allport, *supra* note 115.

supports Allport's theory.¹²⁸ Students in this study who came to college without having been exposed to issues surrounding homosexuality, homophobia, and heterosexism were not only more likely to hold sexually prejudiced views themselves, but were also more likely to engage in sexually prejudiced behaviors, including being nonsupportive of equal rights for members of the GLBT communities. Some students in the sample were so sheltered from issues regarding sexual identity that they were unable to even engage in a discourse on the topic! In contrast, however, those students who arrived at college having been sensitized to such issues went beyond mere tolerance towards gays and lesbians; they actually accepted their fellow GLBT students as peers and supported equal rights under the law for them.

In accordance with Allport's contact hypothesis and the data in support of it found in this study, educational efforts to sensitize students to issues of sexual identity should be supported at all educational levels. No system of secondary education should exist in which students are graduated not having been exposed to discourse on racism, sexism, and sexual prejudices.

Accordingly, teachers and educational administrators should support and encourage educational programming that focuses on sexual identity in our schools, such as those sponsored by The Gay, Lesbian, and Straight Educational Network (GLSEN).¹²⁹ This is especially important in light of the fact that Allport's contact hypothesis appears to work only when the contact is supported by sanctioned authority.¹³⁰ When done with such support, research has demonstrated the effectiveness of campus-wide, contact-based interventions to combat sexual prejudice.¹³¹

It would be naive to think, however, that mere educational programming in junior high schools, secondary schools, and colleges can erase sexual prejudice. R.J. Brown found that contact with members of a group was ineffective in changing attitudes and behaviors towards that group unless those in that out-group with whom contact is made are

128. See generally Bowne & Bourgeois, *supra* note 92.

129. See generally <http://www.glsen.org>. For literature that addresses changing stereotypes through education, see E.G. Cohen, *From Theory to Practice: The Development of an Applied Research Program*, in THEORETICAL RESEARCH PROGRAMS: STUDIES IN THE GROWTH OF THEORY 385-415 (Joseph Berger & Morris Zelditch, Jr. eds., 1993); Elizabeth G. Cohen et al., *Can Expectations for Competence Be Altered in the Classroom?*, in STATUS GENERALIZATION: NEW THEORY AND RESEARCH 27-54 (Murray Webster, Jr. & Martha Foschi eds., 1998).

130. See Bowne & Bourgeois, *supra* note 92 (citing S.W. Cook, *Cooperative Interaction in Multi-Ethnic Contexts*, in GROUPS IN CONTACT: THE PSYCHOLOGY OF DESEGREGATION (Norman Miller & Marilyn B. Brewer eds., 1984)).

131. See William W. Geller, *Lesbian and Gay Topics: Awakening A Campus*, 32 J.C. STUDENT DEV. 91-91 (1991).

perceived as being of equal status.¹³² This is all the more reason why the causes and perpetuation of homophobia in the law, such as sodomy laws and DOMA—laws that by their very nature tell gays and lesbians that they are not equal to others in society—must be repealed.

Beyond fostering and heightening sensitivity through educational programming, it is important for gay and lesbian people, especially those who affect the lives of children in positive ways, be “out.” Scholars have repeatedly found that heterosexuals who know someone who is gay are more likely to hold positive attitudes about gays and lesbians.¹³³ This finding was replicated in the current study, whereby students who had come to know a gay or lesbian person not only displayed less sexual prejudice, but were also more supportive of gay rights. In other words, positive contact with GLBT people changed both attitudes and behaviors for the better.

Finally, to further sensitize students at the college level, diversity issues centered around sexual identity should be integrated into the first-year experience of college students, and reinforced throughout the college years. Programs in athletic departments that target men seem particularly important as the male students in the current study, like men in the general population,¹³⁴ exhibited less tolerance for gays and lesbians than the female interviewees did, especially when in the company of peers in front of whom they felt a need to assert their heterosexual masculinity. Hopefully, exposure to social justice issues for gays and lesbians—both in the classroom¹³⁵ and, arguably more importantly, in

132. R.J. Brown, *The Effects of Intergroup Similarity and Cooperative vs. Competitive Orientation on Intergroup Discrimination*, 23 BRITISH J. SOC. PSYCHOL. 21-33 (1984).

133. See, e.g., Herek & Capitanio, *supra* note 122, at 413; see also, e.g., Gregory M. Herek & Erik K. Glunt, *Interpersonal Contact and Heterosexuals' Attitudes Towards Gay Men: Results from a National Survey*, 30 J. SEX RESEARCH 239-44 (1993).

134. Research has shown that men respond more negatively to homosexuality than women do. See, e.g., Bernard E. Whitley, Jr. & Mary E. Kite, *Sex Differences in Attitudes Toward Homosexuality: A Comment on Oliver and Hyde*, 117 PSYCHOL. BULL. 146-54 (1995); Linda D. Garnets & Douglas C. Kimmel, *Lesbian and Gay Male Dimensions in the Psychological Study of Human Diversity*, in PSYCHOLOGICAL PERSPECTIVES ON LESBIAN AND GAY MALE EXPERIENCES 1-52, 52 (Linda Garnets & Douglas C. Kimmel eds., 1993); Herek & Glunt, *supra* note 133.

135. Academic work that exposes students to homosexuality has been shown to improve attitudes toward gays and lesbians. See Bowne & Bourgeois, *supra* note 92 (citing Carla Lee Anderson, *The Effect of a Workshop on Attitudes of Female Nursing Students Toward Male Homosexuality*, 1 J. HOMOSEXUALITY 57 (1981); R. Goldberg, *Attitude Change Among College Students Toward Homosexuality*, 30 J. AM. COLL. HEALTH 260-68 (1982); J.A. Cerny & J. Polyson, *Changing Homonegative Attitudes*, 2 J. SOC. & CLINICAL PSYCHOL. 366-71 (1984); Yuruk Iyriboz & J.A. Carter, *Attitudes of a Southern University Human Sexuality Class Toward Sexual Variance, Abortion, and Homosexuality*, 20 COLL. STUDENT J. 89-93 (1986)).

general campus life (especially in residence life),¹³⁶ will bring about increased sensitivity earlier on in the college experience. The earlier tolerance is learned, the fewer Matthew Shepards there will be.

136. See Bowne & Bourgeois, *supra* note 92 (finding that the establishment of living arrangements in which GLBT college students experience a safe and supportive atmosphere for expressing their sexual orientations decreases sexual prejudice).