

Haberman, Tionna Lael, M.A. *The Ideologies Responsible for the Presence and Absence of a Sexual Orientation Provision in Hate Crime Legislation.* (2009)  
Directed by Dr. Paul Luebke. 96 pp.

The goal of this research was to explain the presence and absence of sexual orientation provisions in hate crime legislation beyond the rhetoric of Republican or Democrat, conservative or liberal. I applied Paul Luebke's theory of traditionalist and modernizer ideologies to the legislative process of expanding bias crime legislation to include sexual orientation in Kansas and North Carolina. In an effort to uncover the relationship between legislators' voting records and political ideologies, I conducted a document analysis examining local newspaper coverage of the proposed legislation.

I concluded traditionalism was responsible for the failure of legislation proposed to include sexual orientation in North Carolina hate crime legislation during the 1999-2000 legislative session. I was unable to determine if either traditionalists or modernizers accounted for the initial inclusion of sexual orientation in Kansas bias crime legislation. Kansas modernizers were eventually successful in their efforts to expand the victims protected by and offenders punished by hate crime legislation during the 2001-2002 legislative session after similar attempts were repeatedly blocked by traditionalist legislators. Both states exhibited a pattern of legislative failures as a consequence of the presence and strength of traditionalist legislators who campaigned against modernizers' efforts to address crimes motivated by prejudice including a sexual orientation bias.

THE IDEOLOGIES RESPONSIBLE FOR THE  
PRESENCE AND ABSENCE OF A  
SEXUAL ORIENTATION  
PROVISION IN  
HATE CRIME  
LEGISLATION

by

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A Thesis Submitted to  
the Faculty of The Graduate School at  
The North Carolina at Greensboro  
in Partial Requirements for the Degree  
Master of Arts

Greensboro  
2009

Approved by

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Committee Chair

In memory of my father who was targeted by prejudiced individuals because of their personal bias against his sexual orientation, not because of his authenticity.

APPROVAL PAGE

This thesis has been approved by the following committee of the Faculty of The Graduate School at The University of North Carolina at Greensboro.

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## ACKNOWLEDGMENTS

I would like to express my gratitude to my committee chair, Dr. Paul Luebke, for his feedback and guidance throughout this endeavor. I would also like to thank Dr. David Mitchell for his constructive comments and to Dr. Shelly Brown-Jeffy for her encouragement.

A heartfelt thank you to my husband, Brandon for his support and patience during the first 5 years of our marriage – during all of which I have been a student at The University of North Carolina at Greensboro! To my son, Landon, Mommy has demonstrated that you can achieve anything you believe. I would also like to thank family and friends who have provided encouragement and research assistance throughout my educational journey.

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## CHAPTER I

### INTRODUCTION

This thesis researches the influences upon the legislative process which explain the presence or absence of sexual orientation's inclusion as a bias motivation within hate crime statutes at the state level. The examination of successful and unsuccessful legislative attempts to include a sexual orientation provision will provide an opportunity to view the legislative process of a criminological topic from a sociological perspective. I aim to explore the political ideology of the legislators who supported the legislation and the ideology of those who were publicly opposed by reviewing print media sources. In this paper, I use the terms hate crimes, bias crimes and crimes motivated by prejudice are used interchangeably. The process by which a proposed bill becomes criminal legislation and is enacted to enforce the norms and values of a society, supporting a victim while simultaneously punishing an offender will be explored as a sociological phenomenon.

Examining hate crime legislation provides an opportunity to explore the criminological existence of bias motivated crime in addition to society's reaction to the perpetrator, victim and crime itself. Much of the debate regarding hate crime legislation is largely centered on who to include and who to exclude. Hate crime legislation generally allows for a criminal offender to receive an enhanced punishment as a consequence of targeting a victim who belongs to a segment of the population the offender has a bias against. I am specifically examining two states which have chosen to

either include or not include a victim's sexual orientation as a prejudice worthy of increasing the offender's punishment. The inclusion of sexual orientation is controversial in part because granting legal recognition to non-heterosexuals subsequently equates to acknowledging that individuals, regardless of their sexual orientation, deserve to be free from discrimination.

The objective of my research is to explain the success and failure of legislative attempts to include a sexual orientation provision in hate crime legislation. An exploration of the legislative process itself will provide insight into whether a society, represented by elected members of the state legislature chooses to recognize the lesbian, gay and bisexual community as a segment of the population worthy of legal recognition. The presence of a sexual orientation provision also signifies that perpetrators who target a victim because of the victim's sexual orientation are deserving of an enhanced punishment, similar to an offender who targets a victim belonging to a specific race or religion. Conversely, the absence of a sexual orientation provision suggests that an offender who selects a victim because of the offender's prejudice against the victim's sexual orientation is not as harmful as selecting a victim because of a bias against the victim's race or religion. The inclusion of the term "sexual orientation" serves to recognize not only that non-heterosexual citizens exist within a society, but also that those individuals have been disproportionately targeted as the victims of criminal activity based solely on their sexual orientation. Furthermore, the inclusion of sexual orientation in a state's hate crime statute announces that choosing to victimize an individual based on their sexual orientation is not accepted within the society. This is similar to the message

of intolerance sent to offenders who commit a crime against an individual based on their race or ethnicity. The enhanced punishment an offender receives as the result of targeting a victim based on the offender's prejudice also serves to as an announcement that the offender's prejudice is not representative of the society as a whole. Chapter three will provide additional background information on the academic debate surrounding hate crime legislation and the inclusion of a sexual orientation provision.

With this understanding of hate crime legislation I will review the proposed, adopted, and defeated pieces of legislation which address sexual orientation prejudices by members of the Kansas and North Carolina state legislatures. I believe my research will reveal states have rejected sexual orientation provisions as a result of legislators predominantly possessing a traditionalist ideology and conversely, sexual orientation provisions are adopted due to the influence of legislators who subscribe to a modernizer ideology. Specifically, I hypothesize modernizer ideology will provide an explanation for the presence of sexual orientation in Kansas' bias crime legislation and traditionalism provided an explanation for the absence of sexual orientation in North Carolina legislation addressing bias crimes.

My research was conducted using a case study method examining the relevant legislation in the states of Kansas and North Carolina. Document analysis will provide a foundation to examine newspaper articles published in the Topeka Capital-Journal and the News & Observer. Both newspapers are printed in the capital cities of the respective states. I have chosen to focus on Kansas and North Carolina based on Kansas' presence of a sexual orientation provision in criminal sentencing guidelines and North Carolina's

absence of a sexual orientation provision in its hate crime legislation. Kansas is among 31 states and the District of Columbia that have a sexual orientation provision in their legislation addressing bias crimes (Anti-Defamation League 2009). Twenty states including North Carolina do not include crimes motivated by the offender's bias against a victim's sexual orientation in their legislation addressing hate crimes (Anti-Defamation League 2009).

I will explore the current Kansas legislation, the basis for the initial language to include a provision for sexual orientation, during the 1991-1992 legislative session and subsequent legislation aimed at amending the language during the 2001-2002 legislative session. I aim to determine the ideologies of legislators responsible for the initial legislation and subsequent successful and unsuccessful legislative amendments by reviewing newspaper coverage. Furthermore, I seek to expose the impact traditionalist and modernizer ideologies may have had upon Kansas legislators in the success of the initial legislation in addition to the subsequent success and failure or related legislation. In my attempt to understand the defeat of legislation to include a sexual orientation provision in North Carolina's general statutes addressing hate crimes, I will review the proposed legislation, the voting history of failed legislation, along with public support and opposition as portrayed in the newspaper coverage during the 1999-2000 legislative session.

Hate crime legislation lends itself to be studied sociologically due to its premise of dividing society into categories comprised of individuals based on inherent characteristics. The legislation additionally provides those who are included with

recognition and alternately fails to legitimate and protect those in excluded groups. The exclusion of a group within society is a social problem to be studied through the lens of sociology. The process of including and excluding groups of individuals within a society reveals a society's norms and values. Therefore, studying how a society decides to include and alternately exclude a segment of the population can be explored in order to better understand a society. I propose to review the legislative history of bills to gain insight into how some groups are deemed worthy of legitimation while others fail to receive legal recognition. This research has the potential to contribute to the fields of both criminology and sociology in terms of how a society acknowledges its members by enacting laws to protect victims and punish perpetrators. I intend to explore the ideologies held by elected officials which play a role in determining an individual's value in society.

## CHAPTER II

### THEORY

Using sociologist and politician Paul Luebke's explanation of politicians who demonstrate modernizer and traditionalist ideologies, I intend to explain the success and defeat of sexual orientation's inclusion in hate crime legislation beyond the common rhetoric of liberal or conservative, Democrat or Republican. *Tar Heel Politics* written by Luebke will provide the theoretical framework for my hypothesis regarding the success and failure of sexual orientation's inclusion in hate crime legislation at the state level. Luebke (1998:20-21) defined traditionalist ideology as being "rooted in the Baptist-based culture of North Carolina's small towns and rural areas" where "the ideology of patriarchy, not feminism, remains paramount." He proposes the commitment to maintaining a social order based on "the superiority of a mythical ideal past" guides the position traditionalist politicians take on legislative issues, including those of economic development (Luebke 1998:20-21). In *Tar Heel Politics* Luebke (1998:23-24) defines modernizer ideology as focused on the importance of "individual economic achievement" without regard to how the social order of the past may be altered while demonstrating a commitment to public education and "taxation" for the purposes of promoting growth.

According to Paul Luebke (1998:19), author of *Tar Heel Politics* and co-sponsor of the Matthew Shepard Memorial Act, "North Carolina's politicians and business leaders have chosen policies consistent with one of two competing ideologies:

modernism and traditionalism.” Luebke (1998:19) writes that, although there is not a precise correlation, “southern Democrats tended to be modernizers, while southern Republicans endorsed traditionalism.” Additionally, a politician’s district of representation, either urban or rural, is a factor in determining whether a registered Republican or Democrat will vote according to the ideology espoused by traditionalism or modernizers instead of along conventional party lines. Luebke (1998:78-79) refers to the most heavily populated geographical area of North Carolina as the metro Piedmont including the urban counties of Wake, Durham, Orange, Guilford, Forsyth and Mecklenburg. He declares that politicians from the metro Piedmont subscribe to “the essence of modernizer values” while political leaders who represent rural “western and eastern Piedmont areas share cultural support for traditionalist values,” similar to those outside of the Piedmont (Luebke 1998:79).

Not only does Luebke (1998:81) suggest North Carolina can be divided into political ideologies based on geography, but he also writes “the modernizer values of the metro Piedmont often stand in sharp contrast to the small town culture that remains strong across most of the state’s 100 counties.” Luebke (1998) claims higher levels of a college educated population in the metro Piedmont:

led to greater cultural gaps between the metro Piedmont and the rest of the state. The data help explain the political battles waged in the late 1990’s by traditionalist North Carolinas, primarily native-born Tar Heels, in metro Piedmont counties such as Mecklenburg and Guilford to restrict funding for the allegedly ‘pro-homosexual life-style’ arts programming (P.90).

Luebke (1998:21 and 90) writes that a majority of elected politicians in Mecklenburg and Guilford counties were publicly opposed to a “pro-homosexual life-style,” equating to their opposition of “excessive homosexual content of arts programs.” Ultimately, traditionalists on Mecklenburg’s County Commission succeeded in terminating “county funding for a series of local and visiting arts programs” (Luebke, 1998:21). In addition to geographical relationships, he proposed political ideologies of traditionalist and modernizer transcend political party affiliation. Luebke (1998) suggested:

Specifically, Democrats from the western Piedmont and Coastal Plain were most likely to adopt traditionalist positions. Democrats from the metro Piedmont and from other North Carolina cities tended to support modernizer policies as well as the occasional populist political initiative (P.53).

Luebke (1998:21) acknowledges a link between religion and politics among those who subscribe to a traditionalist ideology when he writes “Traditionalism’s ideal community is rooted in the Baptist and other fundamentalist Protestant dominations that permeate North Carolina.” He suggests social traditionalism impacts North Carolina politics in at least three ways, two of which I believe can explain traditionalists’ opposition to the Matthew Shepard Memorial Act during the 1999-2000 legislative session. Luebke (1998) describes traditionalism’s influences in the following manner:

First, for either traditionalist elites or their mass followers, egalitarian social movements promoted by blacks, women, gays, or labor organizers are anathema because they challenge the established order. Second, a political candidate who runs against specific manifestations of these movements – such as the Equal Rights Amendment (1970’s), the paid holiday honoring Dr. Martin Luther King Jr. (1980’s), or gay rights (1990’s) can be assured of a certain core support (P.21-22).

Following this theory, traditionalists would be opposed to including sexual orientation in hate crime legislation because it would require the recognition of non-heterosexuals which would disrupt the social order of traditionalism. Conversely, by opposing sexual orientation's inclusion in hate crime legislation, traditionalists were guaranteed the support of constituents who shared the same ideology.

Luebke (1998:23) often describes modernizer ideology in contrast to that of traditionalist ideology. Modernists are largely indifferent to maintaining the social order and he writes "Unlike traditionalism, modernism places no special value on existing social relations. Indeed, economic change is presumed to alter the old social order, but modernizers do not assume that change means loss of economic or political control" (Luebke, 1998:23). In terms of religious background and geography, Luebke (1998:23) writes "Modernizer ideology is more secular than traditionalism and it is rooted in the major cities of the North Carolina Piedmont." Luebke's (1998) comparisons continue:

Like traditionalism, modernizer ideology has been shaped by educated and affluent white males. Yet, unlike traditionalism, modernism does not reject demands from blacks, women, or unions out of hand. In the interests of social stability and economic gain, modernizers seek an accommodation with such groups (P.23).

Luebke (1998:24) also writes about political battles between the two ideologies indicating "issues important to blacks and women have constituted a significant point of conflict between modernizers and traditionalists. The King Holiday, the Equal Rights Amendment, and abortion rights have illustrated the controversy." He continues "Modernizers do not see the need to maintain the deferential social structure preferred by

traditionalists. Their ideal society is dynamic and growing” (Luebke 1998:24). Although Luebke (1998:19) acknowledges not all legislative issues can be decisively categorized along political party lines, he acknowledges the pattern that “southern Democrats tended to be modernizers, while southern Republicans endorsed traditionalism.” Expanding upon Luebke’s assertion that traditionalist politicians garner votes based on opposition to gay rights, it can be inferred traditionalism endorses heterosexism. Furthermore, I propose traditionalism can account for the failure to include sexual orientation in hate crime legislation during North Carolina’s 1999-2000 legislative session.

## CHAPTER III

### RATIONALE FOR AND AGAINST HATE CRIME LEGISLATION

#### Opposition and Support of Hate Crime Legislation

This chapter provides a context for the existence of hate crime legislation and encompasses the scholarly debate regarding general hate crime legislation in addition to the specific inclusion of a sexual orientation provision. The study of hate crimes and by extension, the study of hate crime legislation, lends itself to be studied sociologically as a consequence of being socially constructed. According to Steen and Cohen (2004:93) “hate crime laws have at least two dimensions; one dimension defines the behavior that is wrong, and the other defines the penalties to be imposed for that behavior.” Beverly McPhail (2000:638) also notes two distinct qualities of hate crime legislation writing “Hate crime legislation often includes two components, that is, the intent of the perpetrator (bias or prejudice) and a list of protected statuses.”

Leading the argument against the passage and enactment of hate crime legislation are James Jacobs and Kimberly Potter. Jacobs and Potter (1998:27) contend “‘Hate crime’ is a social construct” and “It attempts to extend the civil rights paradigm into the world of crime and criminal law.” According to Jacobs and Potter (1998:3) “‘Hate crime’ as a term and as a legal category of crime is a product of increased race, gender, and sexual orientation consciousness in contemporary American society.”

Jacobs and Potter (1998) propose the contentious debate surrounding hate crime legislation can be understood through the perspective of identity politics. They contend:

The term 'identity politics' refers to a politics whereby individuals relate to one another as members of competing groups based upon characteristics like race, gender, religion, and sexual orientation. According to the logic of identity politics, it is strategically advantageous to be recognized as disadvantaged and victimized. The greater a group's victimization, the stronger its moral claim to the large society (Jacobs and Potter 1998:5).

Identity politics is perceived as detrimental to the cohesiveness of a society due to the competition for the title of most victimized and disenfranchised. Jacobs and Potter (1998:5) argue identity politics is intrinsic to hate crime legislation with the claim "The new hate crime laws extend identity politics to the domain of crime and punishment. In effect, they redefine the crime problem as yet another arena for conflict between races, genders, and nationality groups."

Jacobs' earlier writing also alerts readers to the potential harm such legislation could inflict upon society. He writes "Rather than defining violence as a social problem that unites all Americans in search for a solution, this new approach defines the problem as a composite of different types of intergroup hate, and so may divide the political community" (Jacobs 1993:9). He further proposes "With prejudice the key factor distinguishing hate crime from ordinary crime, the inevitable result will be the further politicization of the criminal justice process. That can only have a negative effect on racial and other intergroup relations in American society" (Jacobs 1993:8).

Jacobs (1993) adamantly opposes the passage of criminal legislation which fractures a society among group membership lines. He suggests:

The very existence of the hate crime label raises the political and social stakes in intergroup crimes. Groups are beginning to keep score cards. Applying or failing to apply the hate crime label triggers heated political battles. The result is not greater racial and ethnic harmony, but exacerbated social conflict (Jacobs 1993:9).

Following this line of reasoning, an increase in social conflict has the potential to encourage additional crimes motivated by prejudice, resulting in a continuation of the cycle of intolerance towards those who are outside one's own group.

Jacobs and Potter (1998) argue fervently against the enactment of hate crime legislation in part due to its intrinsically divisive nature and the potential harm which could be inflicted upon the larger society. While protesting accounts of a reported hate crime epidemic, Jacobs and Potter (1998:64) write the exaggeration "is likely to exacerbate societal divisions and contribute to a self-fulfilling prophesy. It distorts the discourse about crime in America, turning a social problem that used to unite Americans into one that divides us." They also contend

Using the prejudices and conduct of criminals as a gauge of society's intolerances or as an indicator of the incivility of intergroup relations may be a grave mistake. The denunciation of crime may no longer serve to unite Americans; rather highlighting criminals' racism, anti-Semitism, sexism, and homophobia may tend to redefine the crime problem along society's major fault lines (Jacobs and Potter 1998:8).

Jacobs and Potter (1998) recognize classical sociologist Emile Durkheim's contribution to the field of sociology by proclaiming that social solidarity can be strengthened through the collective condemnation of crime. However, they find grave concern with the potential for society to become polarized by groups competing for recognition of their

respective victimization and they perceive hate crime legislation to be detrimental to a cohesive and functioning society (Jacobs and Potter 1998:131).

The symbolic role of hate crime legislation is used by both opponents and proponents of the legislation to strengthen their respective arguments. Jacobs and Potter (1998:65) use the symbolism of legislation to sustain their opposition to such legislation writing, “Fundamentally, the hate crime laws are symbolic statements requested by advocacy groups for material and symbolic reasons and provided by politicians for political reasons.” They argue against such legislation in part due to its symbolic nature proposing “If all crime victims are hate crime victims, then hate crime loses its special symbolic power” (Jacobs and Potter 1998:78). Jacobs and Potter (1998) continue their argument against hate crime legislation noting prior criminal statutes were not inefficient, but instead were enacted due to their symbolic nature of condemning specific prejudices. On this topic they write “Federal, state, and local hate crime laws were passed to satisfy political and symbolic needs, not to fill gaps in criminal law, sentencing law or criminal procedures” (Jacobs and Potter 1998:92). This argument against hate crime legislation centers around the logic that hate crime legislation exists not because of the failures of criminal law, but as a result of special interest groups who use criminal law to impose their values and norms on the larger society.

Jacobs (1992) also provides insight into why legislation is introduced, passed and enforced. Returning to the theme of legislative symbolism, Jacobs (1992) contends:

Criminal law has higher symbolic content than most other kinds of legislation; however, even among criminal laws, hate crime laws may be exceptional for the extent to which they are primarily symbolic...Symbolic legislation does not

involve budgetary competition or tradeoffs...Politicians are generally pleased to pass symbolic laws that reaffirm universally revered symbols and values like ‘the flag,’ ‘patriotism,’ ‘freedom,’ and ‘tolerance.’ Indeed, in terms of job security, the cost of voting against legislation which affirms, praises, and supports such symbols and values may be prohibitive. In effect, lobbyists for hate crime laws ask politicians *to denounce* crimes motivated by hate and bigotry. Such denunciation has no significant budgetary consequences and offends no constituencies. To the contrary, practically all Americans are ‘against’ hate and prejudice, at least in principle. Therefore, it is not surprising that most legislators responded positively when asked to enhance maximum penalties for already – criminal conduct when a crime is motivated by prejudice (P.543-544).

Jacobs (1992) also addresses the constituencies which hold legislators accountable for their support and opposition of legislation. He proposes “To understand fully the symbolism and political needs that the new hate crime laws fulfill, it is necessary to identify the different audiences that hate crime laws are designed to address, and the different messages that each audience is meant to receive” (Jacobs 1992:545-546). Jacobs (1992:546-547) claims there are four such audiences: the organized groups who lobby on behalf of those who are victimized as a result of bias, members of their constituency in general, individuals who are biased, and victims of bias crimes. Accordingly, the passage of hate crime legislation sends a message to supporters that their elected official is listening to their concerns and represents their voices through legislative votes. Nolan, Akiyoma and Berhanu (2002) agree with this sentiment. However, they are also critical in writing that legislation which allows for penalty enhancements of offenders convicted of targeting a victim as the result of a bias “provide politicians with an easy way to demonstrate that they are doing something about a perceived social problem, while sidestepping the complex causes of prejudice and violence in American society” (Nolan, Akiyoma and Berhanu 2002:167).

Hate crime legislation adversaries Jacobs and Potter (1998) view legislation addressing hate crimes as primarily symbolic, while Jack McDevitt provides support for hate crime legislation by assessing the bias crime itself as being symbolic in nature (American Psychological Association 1998:5). Jack McDevitt is a criminologist who supports the argument for hate crime legislation by distinguishing between the message sent by an offender of a bias crime and an offender of a non-bias crime (American Psychological Association 1998). The symbolism or negative message sent to the victim and members of the victims' real or perceived group is often listed among the reasons why a bias crime is deserving of a harsher punishment. According to McDevitt "hate crimes are message crimes," and "they are different from other crimes in that the offender is sending a message to members of a certain group that they are unwelcome in a particular neighborhood, community, school, or workplace" (American Psychological Association, 1998:5).

Brian Levin is a legal scholar who emphatically believes bias crimes are worthy of an enhanced punishment due to their ability to result in harm beyond the initial victim. In support of hate crime legislation, he writes "The two most serious threats to the public at large from hate crimes involve a heightening of tension among fragile intergroup lines and a heightened risk of civil disorder" (Levin 1999:10). In *Hate Crimes Worse By Definition*, Levin (1999:8) reports "Studies have demonstrated that hate crimes in contrast to crimes in general are more likely to involve excessive violence, multiple offenders, serial attacks, greater psychological trauma to victims, a heightened risk of social disorder, and a greater expenditure of resources to resolve." Levin (1999) also

views hate crimes as an assault on society's morals and values as further justification for enhanced punishments of bias motivated crimes. Levin (1999:11) writes "Crimes that are affront to the vast majority of the populace and to the moral foundations of a society deserve to be punished more severe."

### The Inclusion of Sexual Orientation

Although this is an examination of hate crime legislation on the state level, I believe it is beneficial to understand how the inclusion of sexual orientation was successful at the federal level. According to Grattet and Jeness (2001:675) "after much heated debate, advocates for the inclusion of sexual orientation in hate crime law convinced legislators that the meaning of sexual orientation was more similar to than dissimilar from the meanings already attached to race, religion, and ethnicity insofar as all are core axes of systematic discrimination." Proponents of including sexual orientation also gave "empirical credibility on the violence connected with this provision (i.e. antigay violence), just as the ADL and other social movement organizations previously bestowed empirical credibility on violence around race, religion, and ethnicity" (Grattet and Jeness 2001:675).

Supporters of sexual orientation's inclusion among the protected crime victims in hate crime legislation cite the research of Dr. Franklin who reports "The most socially acceptable, and probably the most widespread, form of hate crime among teenagers and young adults are those targeting sexual minorities" (American Psychological Association 1998:8). Franklin claims offenders who target their victim based on the victim's sexual

orientation can be considered “Ideology assailants” (American Psychological Association 1998:8) This segment of offenders “report that their crimes stem from their negative beliefs and attitudes about homosexuality that they perceive other people in the community share. They see themselves as enforcing social morals” (American Psychological Association 1998:8).

Those who propose crimes targeting individuals because of their sexuality are worse than crimes motivated by other rationales are also supportive of sexual orientation’s inclusion in hate crime legislation. Supporters often draw attention to the harm caused to a victim who is targeted as a result of the offender’s bias against the victim’s sexual orientation as more traumatic than the harm suffered by a victim of a generic crime. According to the American Psychological Association (1998), proponents of the legislation claim:

Lesbian and gay victims suffer more serious psychological effects from hate crimes than they do from other kinds of criminal injury. In their case, the association between vulnerability and sexual orientation is particularly harmful. This is because sexual identity is such an important part of one’s self concept (P.8).

Jacobs and Potter’s (1998) broad argument against hate crime legislation is also relevant in the debate against a provision for sexual orientation within hate crime legislation. Speaking out against bias crime legislation, Jacobs and Potter (1998) are aware that the denial to extend additional legal protection to some groups has the potential to have profound consequences. They write “Inevitably, if some groups are left out, they will resent the selective depreciation of their victimization” (Jacobs and Potter

1998:8). The public declaration that one group of citizens is not worthy, or not as worthy, as another group to receive legal recognition translates into sending the message that members of the excluded group do not deserve equal protection under the law. Furthermore, it sends the message that there are crimes which deserve greater legal attention, resources, and punishment than their own bias victimization. While explaining the policy implications of hate crime legislation, Beverly McPhail (2000:638-639) wrote “Reluctance to recognize gay, lesbian, bisexual, and transgendered people has caused many bills to languish in their respective legislatures.” North Carolina is an example of one such legislature which will be examined later.

The contentious debate surrounding the inclusion of sexual orientation can also be explored based on the earlier discussion of identity politics. Identity politics is helpful to explain the competing claims of victimization between the inclusion of sexual orientation and gender, in addition to providing members of the lesbian, gay, bisexual and transgender community with legal recognition. Despite their opposition to hate crime legislation, Jacobs and Potter (1998) acknowledged the legal precedent set by collecting data on crimes motivated by a prejudice against a victim’s sexual orientation. They wrote that, in addition to providing homosexuals with legal recognition, “The HCSA has historic significance because it treated prejudice against homosexuals for the first time as an officially condemnable prejudice” (Jacobs and Potter 1998:78).

Jacobs (1992:54) also recognized the symbolism found in the arguments for and against the inclusion of a sexual orientation provision, writing “One major controversy that has arisen in the course of passing hate crime legislation, the inclusion of prejudice

based upon sexual orientation as a hate crime trigger, clearly demonstrates the essentially symbolic character of the debate over these laws.” Furthermore, Jacobs (1992) continues:

however, some people including some legislators, oppose inclusion of homophobia as a bias – crime trigger because it could be seen as a message (a symbolic statement) that bias against homosexuals stands on the same footing as other socially – rejected biases and, by inference, that homosexuals are as worthy of protection as other ‘legitimate’ minority groups. This is exactly the point that advocates for gays and lesbians hope to achieve through inclusion in hate crime legislation (P.544).

Jacobs (1992:544) also addresses the legal recognition provided by the passage of such legislation writing “In light of the sordid history of gay bashing, the exclusion of gays and lesbians from hate crime legislation can only be interpreted as a rejection of the legitimacy of homosexuality, while inclusion sends a message of recognition and support.” Supportive of the position that inclusion equals recognition, Jacobs (1992) points to federal legislation which laid the groundwork for legislation at the state level by writing:

In the Hate Crimes Statistics Act of 1990, the politico-symbolic controversy was resolved by including crimes motivated by sexual orientation bias as hate crimes, while also including a seeming non-sequitor supporting ‘American family life’ and disclaiming any intent to promote homosexuality. My point is that passage of the federal Hate Crime Statistics Act of 1990, and other hate crime legislation, is not primarily about crime control, but about political and moral support for the groups sponsoring the legislation. In a real sense, the purpose of such laws is fulfilled merely upon their passage (P.544-545).

Therefore, Jacobs views the passage of hate crime legislation as more meaningful to its supporters than its actual enforcement.

Regarding the consequences of legislative support and opposition, Jacobs (1993:11) proposes “Except where a particular prejudice enjoys substantial support (e.g. anti-gay sentiment in some states), politicians will almost certainly bestow hate crime victim status on practically any group that can make its voice heard; there is no political payoff in opposing such a demand.” Jacobs proposes the successful passage of hate crime legislation including provisions for specific prejudices has occurred as a result of a group asking for and receiving legal recognition. The group subsequently receives the legal recognition as long as the request does not conflict with the values of their elected officials and their constituencies’ values. Therefore, according to Jacobs (1993), a sexual orientation provision in hate crime legislation would be opposed by legislators who represent districts which do not support the legal recognition of homosexuality and supported by legislators who represent districts whose constituents approve of recognizing non-heterosexuals. This position by Jacobs relates directly to Luebke’s (1998) discussion of traditionalist legislators whose votes are constrained by their own ideology and their constituents’ traditionalist ideologies.

## CHAPTER IV

### KANSAS HATE CRIME LEGISLATION

Although Kansas has not successfully adopted legislation bearing the title “hate crime,” it does have legislation addressing crimes motivated by selected prejudices including sexual orientation. Senate Bill 479 titled “An act concerning crimes and punishment, providing for a presumptive sentencing system also known as the Kansas Sentencing Guidelines Act,” became state law as part of sweeping changes in the state sentencing reform during the 1991-1992 legislative session (Kansas Secretary of State 1992:1207). The Kansas Sentencing Commission (1990:74) recommended granting “the authority of sentencing judges to depart from the guideline sentence in exceptional cases” based on the sentencing guideline models of Minnesota, Washington and Oregon.

According to the guidelines, during the sentencing phase of a criminal trial, sentencing departures allow judges discretion to either impose a more or less severe punishment based on the presence of either aggravating or mitigating factors during the commission of a crime (Kansas Sentencing Commission 1990). An upward departure occurs when a judge declares aggravating factors were present and consequently sentences the offender to a harsher punishment than would be granted by the presumptive sentencing range. Conversely, a judge is also permitted to take into account mitigating factors and impose a more lenient sentence, known as a downward departure.

The list of aggravating factors which include sexual orientation in Senate Bill 479 was primarily based on the sentencing guidelines of Oregon (Kansas Sentencing Commission 1990:82). Kansas legislators adopted the following language as aggravating factors regarding an offender's prejudices: "The offense was motivated entirely or in part by the race, color, religion, ethnicity, national origin or sexual orientation of the victim" (Kansas Secretary of State 1992:1228). The Kansas Sentencing Commission (1990:82) determined an upward departure in sentencing should be authorized "as a matter of public policy when an offense arises from various forms of bigotry."

The "Preliminary Recommendations of the Kansas Sentencing Commission (Draft)" did not provide any additional insight into whether including sexual orientation as a protected victim category was a topic of contention among members of the Kansas Sentencing Commission (1990). The successful inclusion of sexual orientation appears to have been uncontested by both traditionalist legislators and their constituents who subscribed to traditionalism. In summary, despite the absence of language signifying a law focused on hate crimes, Kansas law does provide for offenders convicted of crimes motivated by selected prejudices, including a victim's sexual orientation to receive an enhanced punishment through an upward departure in sentencing.

As a result of the lack of media coverage to include sexual orientation in the original bias crime legislation which was part of the extensive Kansas Sentencing Guidelines Act, I have focused my attention on the 2001-2002 legislative session. On June 6, 2002 Senate Substitute for House Bill 2154 became the first law to amend Kansas' bias crime legislation. There were also multiple unsuccessful efforts related to

bias crime legislation during the 2001-2002 legislative session which I will briefly explore with the attempt to determine why one amendment was successful despite the failure of others.

Senate Substitute for HB 2154 amended K.S.A. 2000 Supp. 21-4716, expanding the possible aggravating factors which could be considered for an upward departure and restoring the constitutionality of an upward departure during the sentencing phase of a criminal trial, although it began with a far different legislative intent. According to the Journal of the House, HB 2154 was originally titled “An act concerning providers of care services; employment of persons by such providers; amending K.S.A. 39-970 and K.S.A. 2000 Supp. 65-5117 and repealing the existing sections” as introduced by the Committee on Appropriations on January 24, 2001 in the House of Representatives (Kansas Chief Clerk of the House 2001:79).

After being approved by members of the House, HB 2154 was introduced in the Senate and referred to the Senate Committee on Judiciary (Kansas Chief Clerk of the House 2001:202 and 214). Transforming HB 2154 from a primarily Health and Human Services related bill to a bill ensuring the constitutionality of criminal sentencing departures began on March 20, 2001 when members of the Senate Judiciary Committee discussed amending SB 354 into HB 2154 (Kansas Legislature 2001a). On the following day a motion was successful to amend SB 354 and HB 2154 according to the subcommittee’s recommendation to combine amendments of both bills into a substitute bill (Kansas Chief Clerk of the House 2001). Two days later, the modifications to HB 2154 were formally introduced to the full Senate in the announcement “Committee on

Judiciary recommends HB 2154 be amended by substituting a new bill to be designated as Senate Substitute for House Bill No. 2154” (Kansas Secretary of State 2001:419). The new substitute bill was titled “An Act concerning crimes, criminal procedure and punishment; relating to providers of care services, employment of persons convicted or adjudicated of certain offenses; placement of certain facilities, requirements of secretary of corrections; amending K.S.A. 39-970 and K.S.A. 2000 Supp. 65-5117 and repealing the existing sections” (Kansas Secretary of State 2001:419).

Although the Senate initially recommended HB 2154 maintain its original intent to broaden the requirements of criminal background checks for healthcare employee applicants in Senate Substitute for HB 2154, the House nonconcurred to amendments made by the Senate and a conference was requested (Kansas Chief Clerk of the House 2001:606-607; Kansas Secretary of State 2001:492-494). The first conference committee’s recommended amendment was approved in the Senate on May 3, 2001, but was defeated in the House on May 4, 2001 (Kansas Secretary of State 2001:840-841; Kansas Chief Clerk of the House 2001:1019-1020). In an attempt to keep the bill alive, a second conference committee was subsequently requested by the House and accepted by the Senate (Kansas Chief Clerk of the House 2001:1036; Kansas Secretary of State 2001:910).

According to the Conference Committee Summary Report as agreed to on May 9, 2002:

The Conference Committee in 2001 agreed to strike all but new Section 3 - the provisions regarding the siting of certain DOC facilities within communities...The 2002 Conference Committee subsequently agreed to delete

the contents of HB 2154 and insert the provisions of SB 521 dealing with upward departure procedure (Kansas Legislature 2002a:2).

I was unable to locate any testimony or committee meeting minutes which contained discussions in support or opposition of incorporating SB 521 into Senate Substitute for HB 2154. Nearly one year after the second Conference Committee was appointed, subsection 4(k) of the Joint Rules of the Senate and House were again suspended to consider Senate Substitute for HB 2154 (Kansas Secretary of State 2002:2112). The second Conference Committee Report for Senate Substitute for HB 2154 was adopted by a vote of 38 yeas and two nays (Kansas Secretary of State, 2002:2112-2115). Twenty-eight Republicans and 10 Democrats voted in favor of Senate Substitute for HB 2154, including all 13 female senators voting in support of the legislation while Republicans cast the two dissenting votes (Kansas Secretary of State 2002:2115). The amendment including changing the title to read “An Act concerning crimes, criminal procedures and punishment; relating to departure sentencing, procedures; amending K.S.A. 21-4718 and K.S.A. 2001 Supp. 21-4176 and repealing the existing sections” (Kansas Secretary of State 2002:2115). Incorporated into the bill was language broadening the list of possible aggravating factors beyond the offender’s bias against the victim’s “race, color, religion, ethnicity, national origin or sexual orientation” to include “or the offense was motivated by the defendant’s belief or perception, entirely or in part, of the race, color, religion, ethnicity, national origin or sexual orientation of the victim whether or not the defendant’s belief or perception was correct” (Kansas Secretary of State 2002:2113).

On May 14, 2002 the rules of subsection (k) of Joint Rule 4 of the Joint Rules of the Senate and House of Representatives were suspended to consider Senate Substitute for HB 2154 (Kansas Chief Clerk of the House 2002:2603). The House adopted the Conference Committee Report on Senate Substitute for HB 2154, which included the above referenced amendments by a vote of 116 yeas, five nays, zero present but not voting, and four absent or not voting (Kansas Chief Clerk of the House 2002:2610). An equal 96% of Republicans and 96% of Democrats voted in favor of Senate Substitute for HB 2154 with 73 Republicans voting to support, three Republicans opposed, three Republicans absent or not voting, 43 Democrats in favor, two Democrats voting against, and one Democrat absent or not voting (Kansas Chief Clerk of the House 2002:2610-2611). A breakdown by gender revealed one female Representative voted in favor and one female Representative did not cast a vote (Kansas Chief Clerk of the House 2002:2610-2611). Governor Graves approved Senate Substitute for HB 2154 on May 29, 2002 and the legislation took effect on June 6, 2002 (Kansas Chief Clerk of the House 2002:2788).

Similar to the passage of the initial legislation in 1992, it appears that traditionalists in 2002 did not politicize the issue of allowing a jury to enhance the punishment of a criminal offender who targets a victim based on the offender's prejudice against the victim's sexual orientation or other selected characteristics. Modernizers were successful in their support of Senate Substitute for HB 2154 as a result of focusing on restoring the constitutionality of all upward departures in sentencing, not on the aggravating factors specifically present in crimes motivated by prejudice. It is

noteworthy that the two Senators who opposed Senate Substitute for HB 2154 also opposed Senator Haley's proposed amendments to SB 132 and SB 487 which addressed bias crimes, revealing consistencies in their traditionalist ideologies.

The voting record of Senate Substitute for HB 2154 did not provide any support for Luebke's (1998) suggestion that the interests of rural citizens are generally represented by legislators who subscribe to a traditionalist ideology and urban areas are more likely to be represented by legislators who are modernizers. The legislators who voted against Senate Substitute for HB 2154 represented both urban and rural districts. The two Republican Senators who were opposed represented rural areas of Kansas; the two Democrat Representatives who voted against the legislation represented two of the most populous counties in Kansas; two of the three Republican Representatives who were opposed represented rural areas, while one Republican Representative represented an urban county (Kansas Chief Clerk of the House 2002:2115; Kansas Secretary of State 2002:2610-2611). The religious affiliations of Kansas legislators was not available for an examination to determine if a relationship existed between a legislator's religion and their political ideology as reflected in their legislative votes and remarks to the media.

Although I was unable to locate detailed accounts of any controversy surrounding the insertion of SB 521 into Senate Substitute for HB 2154, examining the failed efforts to pass SB 521 as a bill on its own merit may provide insight into the ideology of those responsible for the success of Senate Substitute for HB 2154. Despite the success of Senate Substitute for House Bill 2154 during the 2001-2002 legislative session, there were six unsuccessful legislative attempts to address crimes motivated by prejudice

during the same session. Barbara Toombs of the Kansas Sentencing Commission appeared before the Senate Judiciary Committee on January 15, 2002 requesting the Committee introduce a bill to the full Senate restoring the constitutionality of upward departure in sentencing (Kansas Legislature 2002b:1). Senate Bill 521 titled “An act concerning crimes, criminal procedure and punishment relating to departure sentencing, procedures; amending K.S.A. 21-4718 and K.S.A. Supp. 2000 21-4716 and repealing the existing sections” was subsequently introduced by The Senate Judiciary Committee on February 6, 2002 (Kansas Secretary of State 2002:1203).

SB 521 was referred to the Judiciary Committee on February 7, 2002 (Kansas Secretary of State 2002:1208). Testimony was given in both support and opposition of SB 521 during the February 21, 2002 meeting of the Senate Judiciary Committee (Kansas Legislature 2002d). Vice Chair of the Kansas Sentencing Commission and Johnson County District Attorney, Paul Morrison testified in support of SB 521. Morrison advised that as a result of both the 2000 U.S. Supreme Court ruling in *Apprendi v. New Jersey* and the 2001 Kansas Supreme Court decision in *State v. Gould*, the Kansas statute regarding upward and downward departures in sentencing was unconstitutional (Kansas Legislature 2002d). Morrison explained that the Kansas Sentencing Commission had reviewed multiple ways to rectify the statute and ultimately recommended a jury instead of a judge must find an aggravating factor existed beyond a reasonable doubt (Kansas Legislature 2002d). The Office of the Kansas Attorney General provided the following written support for SB 521 “this legislation is necessary to correct a portion of our Sentencing Guidelines that is vital to the administration of justice in the State of Kansas”

(Kansas Legislature 2002d). The lone challenger to SB 521 was provided by Ed Collister of the Kansas Bar Association who testified his opposition to SB 521 was not regarding the concept of remedying the constitutionality of upward and downward departures, but instead the manner in which the sentencing would occur via a “two-part bifurcated jury trial” (Kansas Legislature 2002d).

SB 521 was again a topic of discussion and additional amendments were made during the Senate Judiciary Committee meeting on March 7, 2002. The amendments included changing page 2, line 8, section (c) from “The offense was motivated entirely or in part by the race, color, religion, ethnicity, national origin, or sexual orientation of the victim,” to read “The offense was motivated because of the defendant’s belief or perception, entirely or in part, of the race, religion, ethnicity, national origin or sexual orientation of the victim whether or not the defendant’s belief or perception was correct” (Kansas Legislature 2002e). The majority of the Senate Judiciary Committee recommended presenting SB 521 to the Senate as amended with Senator Pugh “requesting his no vote be recorded” (Kansas Legislature 2002e). Unfortunately, there are no detailed accounts of the discussion leading up to the Senate Judiciary Committee’s vote on the amendment to include the language “the defendant’s belief or perception” and no record of Senator Pugh’s specific objections.

The Senate Committee on Judiciary ultimately recommended amendments to SB 521 restoring the constitutionality of an upward departure in sentencing, requiring a jury instead of a judge determine the presence of aggravating factors beyond a reasonable doubt, before imposing a harsher sentence than allowed by the presumptive sentence

(Kansas Secretary of State 2002:1346). Relevant to bias victim selection, the Committee on Judiciary also recommended SB 521 be amended to include the following language “or the offense was motivated by the defendant’s belief or perception, entirely or in part, of the race, color, religion, ethnicity, national origin or sexual orientation of the victim whether or not the defendant’s belief or perception was correct” (Kansas Secretary of State 2002:1347). On March 13, 2002 Senator Haley unsuccessfully motioned to amend SB 521 mandating imprisonment and doubling the prison sentence if the defendant targets his or her victim based in whole or part on the defendant’s prejudice. (Kansas Secretary of State 2002:1379). I was unable to locate the exact vote of Senator Haley’s failed amendment. Without Senator Haley’s amendment aimed at doubling the length of incarceration for prejudiced offenders, SB 521 passed by a vote of 38 yeas, two nays, zero present and passing, and zero absent or not voting with Senator Pugh remaining opposed (Kansas Secretary of State 2002:1380). Senator Huelskamp was the only other Senator who opposed SB 521 and he also opposed the Senate Substitute for HB 2154. It is not evident whether Senator Pugh and Senator Huelskamp’s opposition can be attributed to the language “perception of” or the concept of creating a so-called two part bifurcated jury trial. Therefore their political ideology remains unclear.

The passage of SB 521 by the Senate was announced in the House of Representatives on March 14, 2002 and SB 521 was introduced into the House later the same day (Kansas Chief Clerk of the House 2002:1706). Testimony on SB 521 was given in the form of a hearing during a meeting of the House Judiciary Committee on March 25, 2002 regarding the need to ensure the constitutionality of sentences which

depart above the statutory limit (Kansas Legislature 2002f). Both Barbara Toombs, the Executive Director of the Kansas Sentencing Commission, and Paul Morrison, Vice Chair of the Kansas Sentencing Commission and Johnson County District Attorney, provided support for SB 521 as it was proposed. Ed Collister of the Kansas Bar Association and Representative Jim Garner opposed the manner in which upward departures would occur according to SB 521 (Kansas Legislature 2002f). Both Collister and Representative Garner proposed alternative methods to ensure the constitutionality of upward departures (Kansas Legislature 2002f).

The last record of SB 521 progressing as a bill on its own merit occurred when Barbara Tombs, the Executive Director of the Kansas Sentencing Commission, was instructed to continue revising SB 521 following discussions in the House Judiciary Committee meeting on April 12, 2002 (Kansas Legislature 2002g). An announcement was made on May 31, 2002 reporting SB 521 died in the House Judiciary Committee, despite its steady progress earlier through the Senate (Kansas Secretary of State 2002:2306-2307). Senate Substitute for HB 2154 which included the issues central to SB 521 had already been approved in both chambers of the Kansas legislature and signed by the governor by the date SB 521 was formally recorded as having died in committee on May 31, 2002. The ease of SB 521's passage through the Senate as opposed to its lack of progress in the House Judiciary Committee appears to be a reflection of the House being comprised of traditionalists who were unwilling to discuss the bill.

Prior to the successful adoption of selected portions of Senate Bill 521 into Senate Substitute for HB 2154, Senator Haley also attempted to modify K.S.A. 2000 Supp. 21-

4716 by amending Senate Bill 132 and introducing Senate Bill 230, extending the protection of bias crime legislation to additional victims. On February 5, 2001 Senator Haley introduced Senate Bill 230 titled “An act concerning crimes, criminal procedure and penalties; relating to sentencing; hate crimes; amending K.S.A. 2000 Supp. 21-4716 and repealing the existing sections” (Kansas Secretary of State 2001:113). SB 230 was referred to the Senate Judiciary Committee on February 6, 2001 (Kansas Secretary of State 2001:3). Progress on SB 230 was stalled until the Senate Judiciary Committee meeting on January 28, 2002. Eight speakers including Senator Haley and Dr. Brian Levin, Professor of Criminal Justice at California State University, San Bernadino, testified in support of Senate Bill 230, without any testimony from opponents (Kansas Legislature 2002c).

Dr. Levin documented multiple Supreme Court cases which reaffirmed the government’s constitutional ability to punish bias motivated criminal offenses more severely (Kansas Legislature 2002d). Dr. Levin also gave assurances that SB 230 met the requirements set forth in previous anti-discrimination cases heard by the U.S. Supreme Court (Kansas Legislature 2002c). Dr. Levin informed the committee “reported bias crimes appear to be more violent than non-bias motivated offenses” (Kansas Legislature 2002c). Dr. Levin recommended SB 230 be broadened in scope to additionally include gender discrimination, punishment enhancements for offenders convicted of committing bias misdemeanor offenses, allowing victims to pursue civil action against offenders, providing education for youthful offenders who remain in the community, protecting the identity of those who report being the victim of a bias offense, not deport non-citizen

victims who report a bias crime, and improving data collection through training (Kansas Legislature 2002c).

Sandy Barnett, the Executive Director of the Kansas Coalition Against Sexual and Domestic Violence, provided the following written testimony “By increasing the penalties for hate crimes, the legislature sends a message that the criminal justice system takes these crimes seriously. In turn, law enforcement officers, prosecutors, judges, and society in general begin to take these crimes more seriously” (Kansas Legislature 2002c). Additional testimony was provided by the Chair of Washburn University’s Political Science Department, President of the Kansas NAACP, Director of the U.S. Commission on Civil Rights and Marcia Drake, a hate crime victim. Chairman Vratil requested the Kansas Sentencing Commission prepare a report to provide the Senate Judiciary Committee with more information concerning a “bed-impact study” (Kansas Legislature 2002d). Despite the supportive testimony from the academic community, special interest groups, and a hate crime victim, SB 230 died in committee (Kansas Legislative Information System 2002:26). The failure of SB 230 cannot be attributed to traditionalism through an examination of the legislative history alone due to a lack of information from either a formal vote or testimony from opponents. A review of relevant articles published in the Topeka Capital-Journal will provide additional information to explore the roles of traditionalists and modernizers in the defeat of SB 230.

On February 22, 2001 Senator Haley introduced an amendment to SB 132 modifying the title of K.S.A. 2000 Supp. 21-4716 to include the specific term “hate crimes” (Kansas Secretary of State 2001:204-206). SB 230 was proposed to expand the

offenses of aggravated battery to include unintentional acts resulting in bodily harm.

Senator Haley's proposed amendment would have also added the following new section:

If the trier of fact in a trial in which the defendant is charged with a felony finds beyond a reasonable doubt that the defendant intentionally selected the person against whom the felony is committed or selected the property that is damaged or otherwise affected by such felony committed by the defendant in whole or in part because of the defendant's belief or perception regarding the race, color, religion, disability, sexual orientation, national origin, ethnicity or ancestry of that person or the owner or occupant of that property, whether or not the defendant's belief or perception was correct, the defendant's sentence shall be up to double the maximum duration of the presumptive imprisonment term for the underlying felony (Kansas Secretary of State 2001:204).

The proposed amendment to SB 132 would have additionally allowed the victim to pursue civil charges against the defendant, required the attorney general to gather and publish incidents of bias crimes, and mandated bias crime training to all law enforcement officers (Kansas Secretary of State 2001:204-206). Senator Haley's proposed amendment to SB 132 was defeated during roll call with 12 yeas, 27 nays, one present and passing and zero absent or not voting (Kansas Secretary of State 2001:206). SB 132 was also defeated on February 22, 2001 with a vote of 16 yeas, 23 nays, one present and passing and none absent or not voting (Kansas Secretary of State 2001:208-210). The failure to approve Senator Haley's amendments modifying the language of bias crime legislation can be attributed to traditionalists' refusal to acknowledge crimes, that target groups whom traditionalists fail to recognize as worthy within society. It is significant to note only three of the 12 Senators who supported Senator Haley's amendment to SB 132 were among the 16 who also supported SB 132 without the amendment. Conversely, nine Senators who supported Senator Haley's unsuccessful amendment subsequently

voted against SB 132, contributing to its failure. Therefore, traditionalists can account for the failure of Senator Haley's proposed amendment to SB 132, but traditionalists alone are not responsible for the subsequent failure of SB 132.

On February 28, 2002 Senator Haley attempted to amend SB 487 mandating imprisonment for a defendant convicted of targeting his or her victim based on the victim's real or perceived race, color, religion, disability, sexual orientation, national origin, ethnicity or ancestry to include "sentence enhancement for certain motivations" into the bill's title (Kansas Secretary of State 2002:1321-1323). The proposed amendment would also have allowed victims of such crimes to pursue a civil suit against the defendant, required the attorney general to collect and publish data on bias crimes, and train all Kansas law enforcement officers on bias crimes (Kansas Secretary of State 2002:1321-1323). Senator Haley's amendment to SB 487 was defeated by a vote of 12 yeas, 27 nays, zero present and passing, and one absent or not voting (Kansas Secretary of State 2002:1323). Traditionalist legislators were yet again successful in blocking the expansion of hate crime legislation to protect additional victims.

Despite a lack of legislative history exposing opposition from traditionalists or support from modernizers, it is significant to note Senator Haley's failed amendments to both SB 132 and SB 487 failed by votes of 12 to 27. Although the legislators' votes were not identical, 10 of the 12 Senators who voted in favor of Senator Haley's unsuccessful proposed amendment to SB 487 also voted in favor of Senator Haley's proposed amendment to SB 132. It is also informative that the same 10 supporters of both amendments were a mix of Republicans and Democrats, suggesting that their ideologies

could more accurately be described as modernizers than Republicans or Democrats. Similarly, 25 of the 27 Senators who opposed Senator Haley's amendments to SB 487 also opposed his amendment to SB 132, exposing their ideologies of traditionalism.

In addition to the above bills, which were initially introduced in the Senate attempting to amend the language of hate crime legislation, two attempts to amend bias crime legislation were introduced in the House. House Bill 2435 entitled "Hate crimes, presumed imprisonment, civil remedies, reporting and training" was introduced in the House on February 7, 2001 and referred to the Judiciary Committee on February 8, 2001 (Kansas Legislative Information System 2002:47). On May 31, 2002, the bill was recorded as having died in committee without any action being taken (Kansas Legislative Information System 2002:46-47). Again, the lack of legislative history including testimony given in support or opposition and absence of a vote contributes to the difficulty in determining the role played by either traditionalists or modernizers in the demise of HB 2435. Although it is significant that the bill did not even garner a formal discussion.

A related debate surrounding crimes motivated by prejudice transpired in the House during this same period of time. HB 2328 was originally proposed to address the possession of toxic vapors as controlled substances and the sentencing of juvenile offenders (Kansas Chief Clerk of the House 2001c). Representative Crow made an unsuccessful motion to amend HB 2328 adding a section to address the sentencing guidelines for non-drug crimes to K.S.A. 2000 Supp 21-4704, doubling the prison sentence of an offender who was convicted of selecting a victim or victim's property

based on “the offender’s belief or perception regarding the victim’s race, color, religion, disability, sexual orientation, national origin, ethnicity or ancestry” (Kansas Chief Clerk of the House 2001:254-259). Representative Crow’s proposed amendment to HB 2328 would have strengthened penalties for hate crimes.

Representative Crow’s proposed amendment to HB 2328 was defeated by a vote of 46 yeas, 75 nays, zero present but not voting and four absent or not voting (Kansas Chief Clerk of the House 2001:254-259). Without Representative Crow’s amendment, HB 2328 passed with a vote of 119 yeas, five nays and one absent or not voting on February 22, 2001 (Kansas Chief Clerk of the House 2001:282-283). The following paradoxical explanation of vote was recorded in the Journal of the House regarding the bill’s passage:

Mr. Speaker: I vote ‘yes’ on HB 2328. Democrats attempted to politicize the debate by offering an unnecessary amendment related to mandatory sentencing for crimes motivated by ‘hate.’ We addressed hate crimes responsibly several years ago when we gave sentencing judges the power to enhance sentences where they find the crime was motivated by race, color, religion, ethnicity, national origin, or sexual orientation of the victim. The proposed amendment would have limited that discretion and was totally unnecessary.-Michael R. O’Neal, Ward Lloyd, Clay Aurand (Kansas Chief Clerk of the House 2001:282-283).

Despite being one of three authors of the above explanation of vote supporting HB 2328, Representative Aurand was recorded as voting in opposition to HB 2328 in the Journal of the House on February 22, 2001 (Kansas Chief Clerk of the House 2002:282-283). All three Representatives voted in opposition to Representative Crow’s earlier proposed amendment on February 21, 2001 (Kansas Chief Clerk of the House 2001:254-259). The joint reaction from Representatives O’Neal, Lloyd and Aurand is an example of

traditionalists being resistant to social changes which have the potential to impact their social order by recognizing non-heterosexuals. The three lone Republicans who voted against Senate Substitute to HB 2154 also opposed Representative Crow's proposed amendment to HB 2328, revealing that their traditionalist ideology was stronger than their affiliation to the Republican Party. Traditionalists were again resistant to broaden the protection granted by hate crime legislation in the proposed amendment to HB 2328.

In summary, although HB 2154 was initially introduced in 2001 as legislation aimed at expanding the criminal background checks required for potential healthcare employees, prohibiting the hiring of prospective applicants with selected criminal convictions and specifying the agencies who could conduct the required background checks, the resulting bill was stripped of its original content. Senate Substitute for HB 2154 ultimately included the issues central to SB 521, ensuring offenders could be subject to an upward departure at the time of sentencing if a jury determined the presence of an aggravating factor beyond a reasonable doubt. Restoring the constitutionality of upward departures in sentencing was accomplished primarily by shifting the burden of proof from a judge to a jury to determine the presence of an aggravating factor.

Traditionalist legislators did not oppose the proposed legislation due to its introduction as a technical change that ensured the continued implementation of upward departures in sentencing by enhancing the punishments of criminal offenders. Relevant to the discussion of hate crimes, Senate Substitute for HB 2154 broadened the list of aggravating factors for which an offender could receive an enhanced punishment with the language "perception of."

Pursuant to the passage of Senate Substitute for HB 2154 an offender can be subjected to a harsher punishment if the offender selected the victim based on the offender's bias against the victim's real or perceived color, religion, ethnicity, national origin or sexual orientation (Kansas Chief Clerk of the House 2002:2607-2610). The amendment's language strengthened the criteria for an upward departure by requiring that a jury must establish the presence of an aggravating factor beyond a reasonable doubt. The offender's bias may be found by a jury to have been one factor among multiple reasons the offender committed the felony against the victim. The offender may be subjected to a more severe punishment for targeting a victim whom the offender perceived as belonging to a specific group under the law, despite the victim not being a member of such a group. For example, an offender who commits a felony offense against a victim because the offender perceives the victim to be homosexual will be eligible to receive a harsher punishment even if the victim is not homosexual provided that there is sufficient evidence of the offender's prejudice against homosexuals.

The failures of attempts to broaden victims protected from crimes motivated by prejudice through SB 521, SB 230, SB 132, SB 487, HB 2435 and HB 2328 reflect a pattern of traditionalist legislators who used the authority of their vote to reject addressing hate crimes during the 2001-2002 legislative session. The success of Senate Substitute for HB 2154 to include "perception of" was a non-politicized change to upward departures in sentencing that was supported by modernizers who did not face substantial opposition from traditionalists. I did not observe a relationship between the geographical location of legislators' districts who opposed Senate Substitute for HB 2154

and the districts of legislators who supported Senate Substitute for HB 2154. Therefore, Luebke's theory of rural legislators upholding traditionalism's social values and urban legislators adhering to a modernizer ideology in North Carolina politics did not transfer to the ideologies of legislators involved in the success of Senate Substitute for HB 2154 in Kansas.

CHAPTER V  
NORTH CAROLINA HATE CRIME LEGISLATION

North Carolina currently has three pieces of legislation which address crimes motivated by prejudice; however none includes a provision for the victim's sexual orientation. Crimes motivated by race, color, religion, nationality and country of origin are recognized between the three general statutes. North Carolina General Statute 15A-1340.16 includes the following related aggravating factors: "the victim was very young or very old, or mentally or physically infirm, or handicapped" and "the offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin." Criminal acts of ethnic intimidation and ethnic animosity against a person or property is specifically addressed in North Carolina General Statute 14-401.14. The law reads in part "If a person shall, because of race, color, religion, nationality, or country of origin, assault another person, or damage or deface the property of another person, or threaten to do any such act, he shall be guilty of a Class 1 misdemeanor." Also relevant to the discussion is North Carolina General Statute 14-3 which reads in part "If any Class 2 or Class 3 misdemeanor is committed because of the victim's race, color, religion, nationality, or county of origin, the offender shall be guilty of a Class 1 misdemeanor. If any Class A1 of Class 1 misdemeanor offense is committed because of the victim's race, color, religion, nationality, or country of origin, the offender shall be guilty of a Class 1 felony."

Although North Carolina's current bias crime legislation does not include crimes motivated by prejudice against a victim's sexual orientation, insight into the ideologies of legislators can be gained by reviewing the failed attempts to include a sexual orientation provision. During the 1999-2000 legislation session House Bill 884 entitled "An act to honor the memory of Matthew Shepard by expanding the scope of the hate crime laws and increasing the criminal penalty for committing a hate crime" was introduced by sponsor, North Carolina State Representative Paul Luebke (General Assembly of North Carolina 1999b). The title of the proposed legislation was in memory of Matthew Shepard, who once lived in North Carolina and attended a local college prior to transferring to the University of Wyoming where he was savagely beaten by two men who targeted him as a result of their bias against his homosexuality. Its counterpart, Senate Bill 814 was sponsored by North Carolina State Senator Gulley and was referred to the Judiciary Committee on April 12, 1999 (General Assembly of North Carolina 1999d). On April 1, 1999 House Bill 884 was referred to the Judiciary Committee and subsequently failed during its second reading in the North Carolina House of Representatives on April 22, 1999 (General Assembly of North Carolina 1999a).

The Matthew Shepard Memorial Act was defeated by a vote of 58 opposed, 48 approved, eight not voting, and six excused absences (General Assembly of North Carolina 1999c). Among the 58 North Carolina members of the House of Representatives who voted against the Matthew Shepard Act, 48 were from outside the metro Piedmont, 18 reported belonging to or attending a Baptist church, 50 were male and eight were female (General Assembly of North Carolina 1999c; North Carolina

Secretary of State 1999). Among the 48 supporters of the Matthew Shepard Memorial Act, 20 represented a county within the metro Piedmont, 17 reported an affiliation with a Baptist church, 38 were male and 10 were female (General Assembly of North Carolina 1999c; North Carolina Secretary of State 1999). Due to Luebke's (1998:20) attention given to traditionalism's association with a "Baptist-based culture" I noted that Baptist was the most common denomination among all Representatives who acknowledged their religious affiliation. However, Baptist legislators were split on their votes in support and opposition of HB 884 (North Carolina Secretary of State 1999). Race and conventional political party affiliation appear to also have played a significant factor, as indicated by 16 out of 18 African American members of the House of Representatives voting in favor of the Matthew Shepard Memorial Act (General Assembly of North Carolina 1999c; North Carolina Secretary of State 1999). Republicans demonstrated their solidarity with 47 voting against and two in favor of the proposed legislation (General Assembly of North Carolina 1999c; North Carolina Secretary of State 1999). Democrats also voted largely along party lines as 46 Democrats voted to support the inclusion of sexual orientation and 11 voted in opposition (General Assembly of North Carolina 1999c; North Carolina Secretary of State).

An explicit traditionalist explanation of HB 884's failure can be found in the *North Carolina Manual 1999-2000*. The Republican Party's platform for the 1999-2000 legislative session included the following:

We offer our Party as an alternative to conservative Democrats who are concerned about the breakdown of the American Family. The Party believes that homosexuality should not be presented as an acceptable alternative lifestyle in our

public education and policy. We are opposed to any granting of special recognition, or privileges including, but not limited to, marriage between persons of the same sex, and custody or adoption of children. (North Carolina Secretary of State 1999:859).

This condemnation of homosexuality by the North Carolina Republican Party clarifies that anyone who supported the legal recognition of homosexuality did so against the traditionalist ideology held by the majority of Republicans. The Republican Party also extended an open invitation to individuals affiliated with the Democratic Party to align with Republicans on social topics which seek to alter the social order revered by traditionalism. The majority of Republican Representatives who opposed HB 884 can be viewed as demonstrating their allegiance to both their Party's platform and their own traditionalist values which reinforces their social structure. Democrats who opposed HB 884 also revealed their traditionalist ideology by accepting the invitation to align with the majority of Republicans, refusing to recognize non-heterosexuals as members of society and as citizens worthy of protection from discrimination.

Both the Senate and House bills proposed in 1999 condemned bias crimes and the effect they have on society with the preface "Whereas violent crime is abhorrent, and violent criminal acts based on a person's group membership are particularly unacceptable in a civil society" (General Assembly of North Carolina 1999b; General Assembly of North Carolina 1999e). The bills sought to enhance the punishment of bias motivated offenders and expand categories of bias crime victims beyond race, color, religion, and nationality to include "gender, sexual orientation, disability, and age" while also increasing an offender's punishment (General Assembly of North Carolina 1999b;

General Assembly of North Carolina 1999e). They also included the following definition of prejudice: “the offense arises out of the offender’s generalized hatred of that category of persons” (General Assembly of North Carolina 1999b; General Assembly of North Carolina 1999e). The proposed sentence enhancement included providing for a Class 2 or Class 3 misdemeanor to be enhanced to a Class 1 misdemeanor, for a Class A1 or Class 1 misdemeanor be enhanced to a Class I felony and for a felony to be enhanced one level higher (General Assembly of North Carolina 1999b; General Assembly of North Carolina 1999e).

During the legislative session of 2003-2004 Senate Bill 736 was introduced sharing the same title as previously proposed House Bill 884 during the 1999-2000 legislative session (General Assembly of North Carolina 2003). Senate Bill 736 also sought to both expand the scope of bias crime motivations and to enhance the penalty for offenders convicted of a bias crime. Proposed language modifications included crimes motivated by “animosity based upon ethnicity, gender or gender expression, age, sexual orientation, or disability; punishment of felony committed with animosity based upon ethnicity, gender, or gender expression, age, sexual orientation or disability” (General Assembly of North Carolina 2003). It should also be noted an attempt was made by the bill’s authors to add the wording “real or perceived” prior to the list of bias motivations, similar to the successful Kansas legislation. Therefore offenders could be prosecuted under the statute for targeting a victim because the offender thought the victim belonged to a specific segment of the general population even if the victim in fact did not.

Senate Bill 485 also titled “An act to honor the memory of Matthew Shepard by expanding the scope of the hate crime laws and increasing the criminal penalty for committing a hate crime” was introduced during the 2005-2006 legislative session (General Assembly of North Carolina 2005). The proposed wording included “animosity based upon ethnicity, gender, age, sexual orientation, or disability; punishment of felony committed with animosity based upon ethnicity, gender, age, sexual orientation, or disability” (General Assembly of North Carolina 2005). Gender expression was omitted from the previously proposed bill with the same title during the legislative session in 2003-2004. Senate Bill 485 also included the language “real or perceived” and sought to increase the penalty for offenders convicted of such bias crimes (General Assembly of North Carolina 2005).

The most apparent difference between Senate Bill 485 and the previously proposed legislation addressing crimes motivated by prejudice was the inclusion of a definition for sexual orientation. The definition read as follows “For the purposes of this section, the term ‘sexual orientation’ means actual or perceived heterosexuality, homosexuality, bisexuality, or gender-related identity or expression. The term does not include a physical or sexual attraction to a minor by an adult” (General Assembly of North Carolina 2005). The explicit explanation of which groups were and were not intended to be protected by the proposed legislation provides insight into the legislative process of attempting to secure a broad enough support base to successfully pass this piece of legislation. The definition included people who the term did and did not warrant protection under the bill. The distinction between an adult who is sexually attracted to

another consenting adult regardless of gender and an adult who is sexually attracted to a child below the age of consent firmly established that the legislation was not to be used as a means of protection for offenders who commit sexual acts against minors, a segment of the population commonly referred to as pedophiles. It is plausible that this explicit definition was included to remove the rationale for some legislators who previously reported that they could not vote for a bill which condoned the sexual victimization of children, regardless of the understanding that sexual orientation is not synonymous with pedophilia.

Both SB 736 in the 2003-2004 legislative session and SB 485 in the 2005-2006 legislative session died in committees. The absence of legislative votes and floor discussions reveals the overall lack of support for the subject addressed in both bills. The previous examples of a traditionalist ideology in the North Carolina legislature are reflected in the failures of SB 736 and SB 485 to progress beyond their respective Judiciary Committees.

The defeat of HB 884 can be attributed to Luebke's (1998) theory of traditionalism's influence as supported by voting records, legislators' geographical districts of representation and commentary from legislators. Examining the coverage by the News & Observer will provide additional evidence of the role played by traditionalist legislators in HB 884's demise. The failure of the Matthew Shepard Memorial Act was achieved by the collaboration of registered Republicans and Democrats, the majority of whom voted to maintain the social structure of their traditionalist ideology beyond their respective political parties. A review of the unsuccessful legislative attempts to include

sexual orientation in hate crime legislation from 1999 through 2006 reflects a pattern of traditionalist ideology that was embraced by a majority of the members of the North Carolina legislature.

## CHAPTER VI

### RELATED NEWSPAPER COVERAGE

#### The Topeka Capital-Journal

An online search of the Topeka Capital-Journal archives for newspaper articles related to bias crime legislation during the legislative session of 2001-2002 yielded only a handful of relevant articles. Two articles provided direct coverage of specific bills aimed at expanding hate crime legislation while another article reported on the first meeting of the Democratic Gay, Lesbian, Bisexual and Transgender caucus and the issues the caucus sought to pursue including hate crime legislation. A fourth article profiled Senator Haley, who was an active supporter of the effort to broaden the language of bias crime legislation. The final article covered a rally at the statehouse aimed at bringing attention to the issue of sexual orientation discrimination and captured reactions from some members of the legislature. The profile article and the article covering the rally were included due to their ability to provide a more comprehensive portrayal of Senator Haley's political philosophy, despite being published after the conclusion of the 2000-2001 legislative session. A chronological summary of each of the articles printed in the Topeka Capital-Journal follows, including comments from legislators, which I will attempt to categorize as a reflection of either a traditionalist or modernizer ideology.

“Drunken driving, hate crime measures fail” was written by the Associated Press and published in the Topeka Capital-Journal on February 23, 2001. Although the

legislation discussed in the article is not addressed by title or bill number, I concluded the article provided coverage of Senate Bill 132 by cross-referencing the subject of the legislation with the Journal of the Senate. The article reported “In the Senate, members rejected a proposal from David Haley, D-Kansas City, on hate crimes. Haley wanted to allow juries to consider whether a crime victim was targeted only because of race, gender, nationality, religion or sexual orientation” (The Associated Press 2001). The article continued: “State law allows judges to consider whether an offense was a hate crime when they sentence a defendant, but the U.S. Supreme Court has ruled that a jury must make that determination” (The Associated Press 2001). Senator Haley was quoted as saying “Currently, Kansas statute will not adequately address hate crimes,” while Senator John Vratil opposed the amendment “because the committee hadn’t had time to explore whether Kansas needs a hate crimes law” (The Associated Press 2001). The Associated Press reported Senators Tim Huelskamp and Ed Pugh, both Republicans “voted against the bill because it allowed all unintentional accidents to be treated as aggravated batteries” (The Associated Press 2001). According to Democratic Senator Paul Feleciano, “Democrats voted against the bill partly because the hate crime amendment was not added” (The Associated Press 2001). Both Senators Pugh and Huelskamp also voted against bias crime legislation in amendments to SB 487 and SB 521 and Senator Huelskamp also opposed Senate Substitute for HB 2154.

“Gay caucus meets for first time” provided coverage of the initial meeting of the Gay Lesbian Bisexual Transgender caucus within the Kansas Democratic Party. There were approximately one dozen people in attendance including U.S. Representative

Dennis Moore and the Kansas Democratic Chairman. Attendee Kathy Greenlee suggested the newly formed caucus' "agenda should include repealing a state law that makes sex between two consenting adults of the same sex illegal, adding sexual orientation to the state's antidiscrimination policy and supporting legislation against hate crimes" (Hull 2001). However, Greenlee stated "these are things the state Legislature does not want to talk about. It's awkward. I think there is strength in this state, it's just not at the capitol" (Hull 2001).

In the article titled "Capitol briefs" published in the Topeka Capital-Journal on March 1, 2002, the Associated Press summarized the progress of multiple legislative bills, but failed to include the bill numbers or formal titles of the bills. Upon review of corresponding legislative bills and amendments proposed by Senator Haley during the 2001-2002 legislative session, I determined the article included references to Senate Bill 487. Under the subtitle "Hate crimes amendment fails" the Associated Press article quoted Senator Haley as stating "We need to have a distinction for these crimes. It would be an embarrassment for Kansas to be the last state to enact meaningful hate crimes legislation" (The Associated Press 2002). "We do what's right because it's right, not because we're guaranteed success. I will bring it up again" said Senator Haley regarding the intent to "offer the legislation again this session" (The Associated Press 2002). Senator Haley's role of introducing the legislation and his comments regarding the commitment to provide protection to victims of bias crimes while also punishing the offenders is a demonstration of his political ideology which is more closely aligned with modernizers than traditionalists on issues of social equality.

The article also reported that “Opponents questioned the need for Haley’s measure, arguing that hate crimes are already covered under laws that allow discretion in sentencing” (The Associated Press 2002). The article quoted Senator John Vratil, who opposed the proposed amendment, stating “All this amendment would do is cloud a situation which is very clear” (The Associated Press 2002). The response by Wichita Democratic Senator Rip Gooch could be categorized as a modernist willing to extend access for equal rights to individuals outside of the social order that is highly regarded by traditionalists. Senator Gooch remarked “I don’t think anybody is confused by this. Maybe we don’t want to be in line with 40 other states; maybe we just want everything to stay the same” (The Associated Press 2002). This statement acknowledges Senator Gooch understands that expanding protection to individuals based on the offenders’ perception of the victims’ “race, religion, disability, sexual orientation, national origin, ethnicity or ancestry” would force traditionalists to alter their valued social order. According to the Journal of the Senate, Senator Gooch voted in favor of the amendment along with Senator Haley and 10 other Senators while Senator Vratil voted against the proposed amendment with 26 other Senators (Kansas Legislature 2002:1323).

The Topeka Capitol-Journal article “Haley calling for clean sweep” profiles Senator Haley’s ambition to become Secretary of State in 2002. When asked to address his political ambitions, “Haley said he began his political career to bring better advocacy to Wyandotte County and the issues that affect an often-neglected population. Highlights of his career include legislation concerning animal cruelty and hate crimes” (Richardson 2002). Former Representative and current Senator David Haley was the most vocal

legislative supporter and proponent of the expansion of hate crime legislation. Senator Haley's introduction of bills and amendments in addition to his comments in the Topeka Capital-Journal are evidence of his opposition to traditionalism on social issues, although they do not definitively categorize him as a modernizer.

The profile article reported Haley ran unsuccessfully as a Republican for the Senate in 1988 and House in 1990 before switching to the Democratic Political Party during his 1992 Senate run and was finally elected to the Kansas legislature in his 1994 campaign for the House (Richardson 2002). At press time, Haley had held the elected office of state representative from 1994-2000 and state senator from 2000-2002 (Richardson 2002). When questioned about abandoning his original political party, Haley responded "Many of the same values that I held as a Republican I continue to hold as a Democrat. I am a fiscal conservative. That's not rhetoric. That's how I live" (Richardson 2002). Senator Haley expressed a desire to be fiscally responsible to the citizens by stating "whenever we spend a taxpayer – generated dollar, it should be with the expectation of getting something back for that dollar that will hopefully enhance our society and our democracy" (Richardson 2002). The article also reported "Haley said he values the progressive ideas of the Democratic Party, but still holds some Republican philosophies" and the political party switch occurred "after the Democrats 'matured' and began talking about reform and accountability" (Richardson 2002). Haley expressed disappointment in his constituents' lack of participation in the political process stating "low voter turnout causes the elderly and the wealthy to disproportionately make decisions for the rest of Kansas" (Richardson 2002). Senator Janis Lee, the assistant

minority leader, described Senator Haley as “sometimes conservative, and is a leader when dealing with issues of equality and opportunity” (Richardson 2002).

Although Senator Haley’s comments generally reflect modernizer views on topics of promoting social change, he does not appear to be committed to promoting “economic expansion” which Luebke (1998:19-24) suggests is paramount to modernizers. Instead, Senator Haley holds values associated with economic populism. According to Luebke (1998:26) “Democratic populists oppose tax breaks for the wealthy and big corporations and advocate more direct tax benefits and government spending for middle- and low-income citizens.”

The article published in the Topeka Capital-Journal on February 15, 2003 titled “Prospects for change in laws appear poor” provided coverage of The Womyn’s Empowerment Action Coalition rally at the Kansas Statehouse. Although the article did not reference the laws by their formal titles, it did discuss the coalition’s attempt to draw attention to its perception of the biased manner in which Kansas law “treats sex acts between same sex-partners differently than those between members of opposite sexes” (Grenz 2003). Among the legislators interviewed for a response to the rally’s efforts was the chairman of the Senate Judiciary Committee, Senator John Vratil who stated “I can say that I have not had one constituent contact me on that issue. I think that it’s only of interest to a very small group of people” (Grenz 2003). The chairman of the House Judiciary Committee, Representative Mike O’Neal, was in agreement with Senator Vratil: “I don’t know of anybody who sees that we have a problem in our current law or

that's terribly sympathetic to those who are suggesting that there be a change in the law" (Grenz 2003).

Disagreeing with both Senator Vratil and Representative O'Neal was Senator Haley, a Democratic member of the Senate Judiciary Committee who reported the inequality in legislation has led to a "witch hunt" for the purposes of "political vendettas" (Grenz 2003). Senator Haley defined his position further, stating "I consider criminal sodomy laws to discriminate against those of differing sexual orientations and perhaps it's time to ensure that there's a more uniform application of law. This would be one of those areas where we need to move with the times to better reflect what has happened or is occurring in our society" (Grenz 2003). Again, Senator Haley expresses his opposition to traditionalism's rigid social order by embracing a society whose laws reflect the diversity of its citizens. This philosophy is more closely aligned with the social views of modernizers. According to Luebke (1998:24), "Modernizers do not see the need to maintain the deferential social structure preferred by traditionalists. Their ideal society is dynamic and growing."

In summary, I was unable to gain any insight into possible conflicting ideologies held by legislators who initially approved the inclusion of sexual orientation in the Kansas Sentencing Guidelines Act during the 1991-1992 legislative session due to the Topeka Capital-Journal's lack of coverage. The existing articles written during the 2001-2002 legislative session focused on describing those involved in the legislative process as either Republicans or Democrats. However, I believe traditionalists or modernizers are more accurate terms to use when describing their political ideologies on the topic of

expanding protection to victims of crimes motivated by prejudice. The success of Senate Substitute for HB 2154 was not politicized in the Topeka Capital-Journal's coverage as challenging the social structure of traditionalists in the same manner that related legislation was, including SB 521. Traditionalist legislators' failure to perceive Senate Substitute for HB 2154 as a threat to their social order resulted in the ability of modernizers to expand hate crime legislation, while appearing focused on restoring the constitutionality of punishing all offenses with aggravating factors more severely.

#### The News and Observer

Fourteen articles related to the inclusion of sexual orientation in North Carolina hate crime legislation were found as the result of an online search of the News & Observer archives. The News & Observer published the articles as part of their legislative news coverage, opinion and editorial viewpoints with a focus on the 1999-2000 North Carolina legislative session. Although a few of the articles did not address the relevant legislation by title, The Matthew Shepard Memorial Act was the only possible piece of legislation at the root of the News & Observer's print media coverage. I have assembled the pertinent articles in chronological order by their date of publication. The News & Observer's coverage of proposed legislation to include sexual orientation in hate crime legislation provides additional examples of the legislative debate between traditionalists and modernizers using direct quotes from vocal opponents and supporters. In further support of the link between traditionalist opponents and supportive modernizers of the Matthew Shepard Memorial Act, the legislators who publicly

expressed their voting rationale in the News & Observer can be categorized as generally subscribing to either a traditionalist or modernizer ideology. It is important to recognize the News & Observer did not use the labels of traditionalists and modernizers, but instead Republicans and Democrats, in their print media coverage of the proposed legislation.

The first relevant article “N. C. gays call for crime bill” addressed the 1999-2000 legislative session and was published on October 14, 1998 (Lee 1998). The article highlighted the connection between the homicide of Matthew Shepard and the absence of North Carolina legislation addressing crimes motivated by a sexual orientation bias. In response to North Carolina’s lack of legislation providing legal recognition to gays, lesbians, bisexuals, and transgender people, M.K. Cullen of Pride PAC stated “We want hate crime protection for sexual orientation, gender, gender identity and disability... We proposed this in early 1997 but it did not make it through (a General Assembly) committee, but in January of 1999, when representatives come back for the long session, we will work with people to try and get it through” (Lee 1998). Pride PAC was reported in the article as “an advocacy group for the lesbian, gay, bisexual, and transgender community of North Carolina” (Lee 1998). In an effort to broaden North Carolina law to include bias against sexual orientation, M.K. Cullen of Pride PAC reported collaborating “with three representatives in the North Carolina House –Paul Luebke, Mickey Michaux and George Miller all of Durham” (Lee 1998).

According to Representative Michaux, Shepard’s bias motivated murder provided additional incentive to expand North Carolina hate crime law to include sexual orientation commenting “We are going to have to take a real close look at the current

statute and see what can be done” (Lee 1998). Representative Michaux also stated “I think sexual orientation should have been included some time ago” (Lee 1998).

Representative Michaux’s comments reflect his reluctance to conform to the rigid social order of traditionalism whereby non-heterosexuals are regarded as outcasts not worthy of inclusion in the social hierarchy of traditionalism. M.K. Cullen of Pride PAC supported the inclusion of sexual orientation for the following three reasons: “It makes it easier for a person to come forward and speak to the police, the perpetrator may receive a harsher sentence, and it helps authorities document what is really happening” (Lee 1998).

A critic of hate crime legislation, John Hood, president of Raleigh’s John Locke Foundation, responded “I don’t think there should be a hate-crime bill at all because it doesn’t punish crime, only thought...There are already laws on the books that punish people for murder” (Lee 1998). Also opposing the specific inclusion of sexual orientation, Hood continued “No one has the right to attack gay people, but you do have the right not to like gay people. We already have laws to handle crime. A hate bill just piles laws on top of laws” (Lee 1998). Pastor Wayne Lindsey, of St. John’s Metropolitan Church in Raleigh, disagreed with the suggestion that thoughts don’t lead to harmful actions and compared the changing political and social climate of racial bigotry to discrimination based on sexual orientation. Pastor Lindsey remarked that although people who harbor racist philosophies no longer publicly harass black people, “that’s not the case when it comes to gays and lesbians. People still feel that they can say and do anything they want” (Lee 1998).

The article titled “Democrats face Libertarian in House District 23” advised readers of the challenge Libertarian Robert Dorsey faced in campaigning against Democratic incumbents George Miller, Mickey Michaux and Paul Luebke in the 1998 election to represent District 23 in the North Carolina House of Representatives. Each of the incumbents revealed their past legislative accomplishments and issues they intended to focus on in future legislative sessions if re-elected in the article. Regarding North Carolina’s absence of a sexual orientation provision in legislation aimed at addressing hate crimes, the article read “If re-elected, Luebke said, he would push for hate-crimes legislation that protects gays and lesbians, improving truck safety and making health care more available for the state’s uninsured” (Kane 1998). No other candidates’ interviews either mentioned the support of or opposition to hate crime legislation as a priority in future sessions or as a specific campaign pledge.

As the primary sponsor of the Matthew Shepard Memorial Act, I believe Representative Luebke aligns himself closer to modernizers than traditionalists, but like Senator Haley of Kansas, he espouses an economic populist philosophy which affects his support and opposition for legislation on issues of social equality. Although there was not a wealth of comments to review from Representative Luebke in the News & Observer coverage, Representative Luebke portrayed himself politically as a “Progressive Populist Democrat” during the campaign for his re-election in 2008, which was also reflected in his support of the Matthew Shepard Memorial Act during the 1999-2000 legislative session (Independent Weekly 2008).

On January 24, 1999 the News & Observer provided print media coverage of the North Carolina Episcopal Diocese's annual convention in the article "Diocese push to include gays under hate crime law." Action taken by delegates at the annual convention included the passage of "a resolution urging the state General Assembly to amend its hate-crime act to include crimes committed because of prejudice against gays" (Shimron 1999). Although the article reported the resolution was approved "with a show of hands and without much discussion," it was met with opposition from George Rose, a delegate from Charlotte (Shimron 1999). Rose was quoted as saying "The thrust here is to make homosexuals a protected minority status by law. We know very little about homosexuality. To give it a legal status equivalent to being a black person is premature" (Shimron 1999). Rose's statement is another example of an individual who opposes the legitimating of non-heterosexual sexualities because it distorts the social order he believes to be true according to his traditionalist ideology.

The article reported that the savage murder of Matthew Shepard; a gay Episcopalian, was the catalyst for the proposed resolution. Although the convention's resolution itself would not alter the laws governing North Carolina, it "will be forwarded to the speaker of the House of Representatives and the president pro tem of the Senate" where supporters hoped it would influence legislators to expand the criteria of those protected under the umbrella of hate crime laws (Shimron 1999). The article also pointed to the North Carolina Episcopalian annual convention's passage of the aforementioned resolution as following the precedent set by the Episcopalian Executive Council to include sexual orientation in federal hate crime legislation.

On March 10, 1999 the News & Observer published an article titled “Hate crimes can happen here, too” by Dennis Rogers who wrote in support of legislation to include sexual orientation in North Carolina hate crime statutes (Rogers 1999). The article focused on the victimization suffered by Rogers’ gay friend, John Adams, and compared it to that of racial, religious and anti-Semitic discrimination. Rogers continued the comparison “Yet, gays and lesbians are not protected by the hate-crime laws that give refuge and redress to those attacked because of their gender, religion or race. Those opposed to such laws say gays are looking for special protection” (Rogers 1999). Rogers’ assessment of traditionalists’ rationale for opposing the inclusion of sexual orientation highlights the push for victims to receive equal treatment, not special protection as claimed by opponents. However, recognition of non-heterosexuals would disrupt any traditionalist’s social order. Regarding Adams own victimization and North Carolina’s narrow hate crime laws, Adams stated “It is time to confront this abherrant behavior – the killers’, not the victims’ – by extending the definition of hate crimes to include those committed because of a person’s sexual orientation, before another gay man dies” (Rogers 1999).

“Mixing legislators, Leviticus” was the title of the article published March 24, 1999 in the News & Observer providing coverage of the rally held outside the North Carolina Legislative Building on Tuesday, March 23, 1999. It was reported “more than 100 people” gathered to “protect homosexuals from harassment” (Christensen 1999). The laws which were targeted for change included broadening North Carolina’s “anti-hate crime law to include offenses based on sexual orientation” and decriminalizing

sodomy (Christensen 1999). The article's author, Rob Christensen noted "homosexuality is still one of those politically radioactive issues that most politicians don't want to touch, which is why the campaign to decriminalize sodomy is likely to be a marathon rather than a sprint" (Christensen 1999). He continued "It takes guts to even introduce the legislation – as Sen. Ellie Kinnaird of Carrboro and Rep. Paul Luebke of Durham plan to do" (Christensen 1999).

The author pointed to the inclusion of sexual orientation as a challenge to the established social order which alarms those who prescribe to a traditionalist ideology. Although the author wrote in terms of Democrats and Republicans, the issues he discussed are those which received support and met opposition from modernizers and traditionalists. According to Luebke's (1998) theory, traditionalists would oppose efforts to include sexual orientation in hate crime legislation and efforts to decriminalize sodomy. They perceive both as condoning homosexuality, which is offensive to their religious beliefs and would challenge their established social order. Modernizers would support both proposals in attempts to ensure all citizens are not discriminated against because they are not attached to a rigid social order (Luebke 1998). Drawing on the recurring theme of partisan politics, Christensen writes "Republican conservatives, in particular, have used homosexuality as a political symbol for social trends that trouble many people – from the high rate of divorces to out-of-wedlock births, although these are clearly boy-girl problems" (Christensen 1999).

"Panel backs bill to widen definition of hate crime" highlights opponents' fears that passage of the Matthew Shepard Memorial Act will protect homosexuals from biased

crimes and initiate a dialogue insisting that all individuals should be free from discrimination regardless of sexual orientation. The possibility of legitimizing homosexuality and bisexuality, thereby acknowledging sexual orientations other than heterosexuality, was preposterous to traditionalists because condoning homosexuality and bisexuality would be contrary to their religious beliefs and the recognition of multiple sexualities would upset the carefully constructed social order of heterosexual patriarchy. The article reported the proposed bill “would expand the definition of hate crimes in North Carolina to include acts committed because of the victim’s sexual orientation, sex, disability or age” (Rawlins 1999d). Representative Paul Luebke, co-sponsor of the legislation stated, “It is a bill that centers on the question of whether we will be a state that does not hate” (Rawlins 1999d). Luebke’s comment does not draw attention to the contentious debate of whether or not to include sexual orientation which would infuriate traditionalists, but rather focuses on condoning prejudices in general. His choice of language puts traditionalists on the defensive having to explain why they would support individuals harboring hate.

“Panel backs bill to widen definition of hate crime” focused on the debate surrounding the sexual orientation provision. Opponents of the bill pointed to both the threat of altering society’s social order and the harm caused by all crimes regardless of motivation as reasons to block the proposed legislation. John Rustin of the North Carolina Family Policy Council alleged the proposed legislation was a disguise at “attempting to legitimate the homosexual lifestyle by legally recognizing ‘sexual orientation’ as a protected classification under the law” (Rawlins 1999d). Rustin was

quoted as saying “The obvious question raised by such legislation is: Should not all the citizens of our state be provided equal protection under the law?” (Rawlins 1999d).

According to this philosophy, instead of expanding the designation of hate crime victims to include those targeted because of their sexual orientation, hate crime legislation should be repealed; all crime victims should receive equal protection and all defendants should receive equal punishments regardless of their bias motivations. However, the North Carolina Family Policy Council did not introduce such legislation and instead focused their efforts on fighting against the demise of their fragile social order by espousing traditionalist ideology and refusing to acknowledge non-heterosexuals as their fellow citizens worthy of being granted victim status.

The article reported that Janet Joyner, a homosexual who supported the expansion of victim categories in hate crime legislation, spoke to the House Judiciary Committee. Joyner challenged the notion all crimes and victims are equal and gave the following statement “The generalized hatred of a category, as history now repeating itself shows, does give license, in our species, to kill” (Rawlins 1999d). Joyner’s testimony warned legislators of the potentially lethal dangers of condoning homophobia by failing to pass the Matthew Shepard Memorial Act. Opposition testimony was given by Dick Adams, the father of a murder victim. Mr. Adams informed the House Judiciary Committee members “they were devaluing the life of his son by legislating more compassion under the law for a special class of victims” (Rawlins 1999d). Adams’ comments supported the repeal of all hate crime legislation and he continued his stance by stating “Dead is dead. We have laws that cover every citizen who is a victim of violent crimes” (Rawlins

1999d). In response to the passage of the Matthew Shepard Memorial Act by the House Judiciary Committee, M.K. Cullen of Equality North Carolina, stated “This is truly a concrete victory for gays and lesbians across North Carolina” (Rawlins 1999d). The article concluded with Rawlins predicting the proposed legislation would “encounter strong opposition from conservative Democrats and Republicans when it gets to the House floor” returning to the role played by partisan politics (Rawlins 1999d). Rawlins’ coverage of HB 884’s previous success in the House Judiciary Committee and prediction for its future did not include the role of legislators’ traditionalist and modernizer ideologies.

The News & Observer continued to follow the progress of the Matthew Shepard Memorial Act in the article “Measure to widen definition of hate crimes defeated in House” published on April 23, 1999. The article advised readers the proposed bill would expand current North Carolina’s hate crime legislation to include victims targeted because of their “sexual orientation, sex, disability or age” and was named in memory of Matthew Shepard (Rawlins 1999c). Co-sponsor of the bill, Democrat Verla Insko, was credited with supporting the legislation in part because the effects of hate crimes reach beyond the initial victim as she stated “hate crimes have two victims – the person who is targeted and the community” (Rawlins 1999c). This rationale is also expressed by academic proponents of the legislation as referenced in the literature review.

Representative Insko affirmed her support for the legislation by stating “Hate crimes are acts of terrorism directed toward groups that we value less. By passing this bill, North Carolina will make a statement that it will not tolerate hate crimes” (Rawlins 1999c). In

this brief remark, Insko does not subscribe to a rigid social order espoused by traditionalists, but instead calls for all citizens to be treated with equality.

Representative Michaux, a Democratic supporter of the proposed legislation, drew upon the experiences of bias crime victims when he stated “I have experienced hate, venomous hate. I’m black. You can’t ignore that” (Rawlins 1999c). The movement to expand the categories of victims protected under federal hate crime legislation was successful in part due to linking shared victim experiences, particularly the similarities between victims of racially motivated crimes and crimes motivated by a victim’s sexual orientation as referenced in the literature review. Representative Michaux also cast aside skeptics who may have believed he had an allegiance to a mythical social order when he was quoted as saying “The whole thing about this bill is people. I don’t care if you’re gay, black, white. I don’t care if you’re polka-dot. We’re people. We ought to have some civility in ourselves to not allow this to occur in North Carolina” (Rawlins 1999c). Representative Michaux’s comments provide an example of statements characteristic of a modernizer with his ability to place a priority on valuing individuals above maintaining the rigid social order of traditionalism.

Democratic Representative Zeno Edwards expressed opposition to the bill solely because it sought to include sexual orientation. During debate of the bill, Representative Edwards directed his comments at co-sponsor of the bill, Representative Paul Luebke with the statement “You do realize that many of us can support 90 percent of this bill. The sexual orientation is a deep-founded conviction of many of us who cannot support the bill for that reason” (Rawlins 1999c). Representative Edwards’ comment regarding

the legal recognition and legitimizing of sexual orientations other than heterosexuality is counter to the religious foundation and social order of traditionalist ideology. His explanation of opposition clearly demonstrates his inability to overcome the recognition of multiple sexual orientations due to traditionalism, not his affiliation with the Democratic Political Party.

The News & Observer also highlighted the role played by partisan politics with the breakdown of votes by party affiliation. The article reported the Matthew Shepard Memorial Act “fell short with 48 votes in favor, 58 against. Forty-eight Republicans and 10 Democrats voted to defeat it. Forty-six Democrats and two Republicans voted yes” (Rawlins 1999c). The article’s author did not attempt to explain why 10 registered Democrats broke allegiance with their fellow Democrats to oppose the bill, nor why two Republicans voted to support the bill. I believe the Representatives who cast their votes outside of the majority of their respective political parties can reveal more about their political ideology’s alignment with either traditionalism or modernism than the label of Republican or Democrat. Traditionalist would have been a more accurate description of legislators who voted against HB 884 and modernizer would have provided a more informative explanation of supporters.

Despite the bill’s defeat in the House, M.K. Cullen of Equality North Carolina, was able to remain positive as she reportedly commented that the failed legislation “was the first time that Democrats and some Republicans had voted for pro-active hate-crime legislation in North Carolina” (Rawlins 1999c). The bill’s failure was greeted with relief from Bill Brooks of the North Carolina Family Policy Council. The News & Observer

reported the North Carolina Family Policy Council “opposed the bill because all citizens should be offered equal protection under the law and because the bill raised certain groups to a special status” (Rawlins 1999c). Rawlins did not specify the inclusion of which category of victims was the most offensive to the North Carolina Family Policy Council.

On the following day, the News & Observer published an article titled “Measure to codify gay rights defeated,” which clarified the position of the North Carolina Family Policy Council (Rawlins 1999b). The article covered the 36-67 failure of a bill introduced by Democratic Representative Verla Insko, that “would have allowed Orange County commissioners to bar discrimination based on sexual orientation in employment, housing and public accommodations” (Rawlins 1999b). North Carolina Family Policy Council’s executive director, Bill Brooks, remarked on the bill’s defeat “It signifies that a majority of members of the House are not ready or don’t agree to giving special rights to people who self-define themselves by their sexual behavior” (Rawlins 1999b). This traditionalist rhetoric provides further explanation of the North Carolina Family Policy Council’s successful efforts to lobby against the previously proposed Matthew Shepard Memorial Act. M.K. Cullen of Equality North Carolina was blunter in her observation of the legislation’s defeat, declaring “There is an underlying level of homophobia and ignorance pervasive in the General Assembly” (Rawlins 1999b). Cullen’s frustration with traditionalist legislators supporting the continued discrimination of non-heterosexuals is evident.

In “Measure to codify gay rights defeated” Republican Representative, Leo Daughtry, stated Republicans were opposed to legislation punishing offenders who target victims based on their sexual orientation and legislation aimed at banning sexual orientation discrimination in Orange County, in favor of “the constitutional protection where everybody is protected equally” (Rawlins 1999b). This rationale for opposing the expansion of anti-discrimination and hate crime legislation is often cited by opponents of hate crime legislation in academia as previously referenced in chapter three.

Representative Daughtry did not announce the Republican Party’s intent to introduce a bill aimed at repealing North Carolina’s hate crime law to ensure all offenders receive an equal punishment regardless of their biased motivations. Instead, the News & Observer reported “Daughtry said some Republicans objected to the recognition of homosexuality” (Rawlins 1999b). The News & Observer did not provide a direct quote from Representative Daughtry confirming Republicans’ opposition to enhancing the punishment of offenders convicted of targeting their victims based on the victim’s age or disability. However, there was no mention of any legislators opposing the protection of the disabled, youth or elderly; instead the focus remained on the controversy initiated by the proposal to include sexual orientation.

The April 27, 1999 Editorial/Opinion section of the News & Observer also contained an article focused on the General Assembly’s failure to pass expanded hate crime legislation. “Chipping at hate” was submitted by an unknown author who predicted passage of the Matthew Shepard Memorial Act “would have sent a clear message that the justice system does not tolerate violence against someone simply

because of the person's membership in a group" (The News & Observer 1999). The article's author concentrated on homophobic violence with the statement "North Carolina isn't awash in reports of anti-gay violence, but it's likely to exist here to some degree. The bill's defeat simply underscores the need for vigilance" (The News & Observer 1999). Combining an enhanced punishment for offenders convicted of committing a bias crime with "vigorous enforcement of homicide and criminal assault laws already on the books" was among the author's recommendations for stopping crimes motivated by prejudice (The News & Observer 1999).

Using the argument which was successful in the expansion of victims included in federal hate crime legislation, the author suggested:

The full weight of the law, coupled with unmistakable public pressure, is what turned the tide against a related kind of violence, the lynching of African-Americans, earlier this century. The same ingredients are key to stopping violence against homosexuals and members of other groups. Bringing the ingredients to bear is the real challenge (News & Observer 1999).

Drawing on the similarities between crimes committed against blacks and homosexuals, the author was appealing to traditionalists who supported earlier civil rights movements. However, for some traditionalists connecting the victimization of blacks and homosexuals is not an effective argument because they reject both past and present efforts to distort their social order. The suggestion that the current law fails to condemn the injustices committed against homosexuals is not acceptable because "For some traditionalists, blacks should never have challenged white authority. Gains of the civil rights movement have forced traditionalist ideology to tolerate racial desegregation"

(Luebke 1998:21). As a result of some traditionalists' continued resentment of the success of the civil rights movement, equating sexual orientation and racial discrimination will not attract their support. Traditionalists also fight proposals recognizing an individual's sexual orientation as an inherent characteristic rather than a choice, which is an impediment to its inclusion in anti-discrimination legislation.

A News & Observer article published on April 29, 1999 titled "High-level backing for gun bills" also provided coverage of the partisan votes cast in the proposed Matthew Shepard Memorial Act. Republican Representative David Miner was referred to as "An inclusive elephant" for voting in favor of proposed "bills to broaden protection for gay people" (Rawlins 1999a). The News & Observer pointed out Representative Miner was only "one of two Republicans who voted for a proposal to expand the definition of hate crimes to include acts committed because of the victim's age, sexual orientation or disability" (Rawlins 1999a). The article also stated Representative Miner "was the only Republican who voted for a local bill that would have allowed Orange County commissioners to bar discrimination based on sexual orientation in employment, housing and public accommodations" (Rawlins 1999a).

Despite the defeat of both bills, Representative Miner stated "I think we're making progress" (Rawlins 1999a). Representative Miner specifically addressed the exclusionary position taken by a majority of his colleagues in the Republican Party when he remarked "I feel very strongly the Republican Party is sending the wrong message on sexual orientation. I'm a Republican who believes discrimination in any form is an outrage" (Rawlins 1999a). Representative Miner's voting record on the two bills in

question and his comments reflecting a commitment towards equality instead of patriarchy are a reflection of his political ideology as a modernizer, not a Republican as the article referenced. Unfortunately, the article did not provide any insight into the rationale behind the other Representative who was a registered Republican and also voted in support of the Matthew Shepard Memorial Act.

The News & Observer published an article titled “Bills leave brand on Bull City” on June 5, 1999 which summarized the proposed legislation’s potential impact on Durham. The article compared the progress of local bills to those which could affect a broader segment of North Carolinians. The article’s author declared “The defeat of the Matthew Shepard Memorial Act, aimed at broadening local anti-discrimination ordinances, prompted an outcry from gay-rights groups” (Carmichael 1999a). The author alleged the unsuccessful legislation was a bill which had the potential to impact a larger faction of citizens and as a result had “languished in committees or been the subject of debate” (Carmichael 1999a). The article implied Durham Democratic Representatives attempted to pass another bill aimed at the expansion of civil rights by a different method as a result of the Matthew Shepard Memorial Act being “struck down in a recent legislative battle that angered gay-rights groups” (Carmichael 1999a).

The article informed readers the new legislation was proposed with the goal of permitting Durham “to expand the scope of its anti-discrimination ordinance” (Carmichael 1999a). Durham Democratic Representative Luebke referred to the legislation as “a ‘no-subject’ human relations bill authorizing the Durham City Council to establish protective categories” (Carmichael 1999a). The proposed legislation could

potentially avoid the “previous controversy” of the Matthew Shepard Memorial Act because “it would not directly identify specific groups” (Carmichael 1999a). Although the article did not focus on the Matthew Shepard Memorial Act, it did reference its defeat and those disappointed by its failure as a backdrop for the new legislation aimed at expanding protection from discrimination to Durham residents in an attempt to avoid a similar fate.

“Gays see the glass half full” focused on the optimism expressed by members of the North Carolina gay, lesbian, bisexual and transgender community as a result of the introduction of two bills aimed at protecting citizens in the North Carolina legislature (Sheehan 1999). Sheehan (1999) reported Joe Herzenberg was not dismayed at the defeat of both bills, but instead pleased as he stated “Gay rights were discussed by the full House. That is a big step.” Herzenberg was optimistic of the progress and predicted “There are people who want to make a radical change in a hurry. That’s not always the best approach” (Sheehan 1999). Herzenberg did not specify who had pushed for a more rapid reform or what his timeline for progress entailed, instead he focused on the positive. He exposed his intention to celebrate “A very good year” during Pride weekend in recognition of the gay, lesbian, bisexual and transgender legislative success (Sheehan 1999).

The article’s author, Ruth Sheehan, disagreed with Herzenberg’s assessment of the year in terms of gay, lesbian, bisexual and transgender progress (Sheehan 1999). She pointed out non-heterosexuals were not protected from employment or housing discrimination, could not legally engage in sexual relations with a partner of the same sex

and received no protection from North Carolina hate crime legislation (Sheehan 1999). Sheehan (1999) wrote “It all amounts to legal discrimination against one final unprotected group of people. So to me, the fact that the state House heard, and promptly quashed, two mostly symbolic bills to protect gay civil rights is more an outrage than a cause for optimism.” Sheehan (1999) reported that despite Herzenberg claiming a visible increase in members of the North Carolina gay, lesbian, bisexual and transgender community who are no longer intimidated to disclose their sexual orientation, “Getting the laws to acknowledge this social reality is the next step. And getting gay-rights legislation heard on the House floor is obviously a crucial part of that process.”

“Legislation hasn’t given up the ghost” was written to explain the defeat of legislation proposed by Durham Democratic Representatives. The article referenced the defeat of the Matthew Shepard Memorial Act which met its demise prior to the bill proposed to expand the groups of citizens protected by Durham’s “anti-discrimination ordinance” (Carmichael 1999b). Carmichael (1999b) wrote “Luebke said the latter bill was stuck in a subcommittee for the same reasons that the Matthew Shepard bill was struck down” and “he thought other legislators might view the Durham faction as concentrating too much on gay rights.” Regarding this possible reason for a lack of progress Luebke stated “Because the legislators have that perception, they slowed up the bill by sending it to a subcommittee” (Carmichael 1999b). Representative Luebke did not hold all legislators responsible for preventing progress of the Matthew Shepard Memorial Act. Instead, he targeted those legislators who prescribed to a traditionalist

ideology and were unwilling to recognize non-heterosexuals and discuss providing them with equal legal protection.

Representative Insko elaborated on her support of sexual orientation's inclusion in North Carolina hate crime legislation with her comments published in the News & Observer article titled "Gay Pride march in Durham drawing wide support" on June 9, 2000. The News & Observer reported Representative Insko was one public official who accepted an invitation to participate in the 15th annual parade of the "N.C. Pride march for gay, lesbian, bisexual and transgender rights as a signal of support to ensure "that leaders in the state recognize that hate crimes are not OK" (Cheng 2000). Co-sponsor of the Matthew Shepard Memorial Act, Durham Democratic Representative Verla Insko, voiced her support of the 2000 Pride March, remarking "This is an effort to gain equal rights, and I'm an advocate of Martin Luther King Jr.'s position that, until we're all free, none of us is free" (Cheng 2000). She continued to express support for individuals regardless of their sexual orientation by stating "Any time we have a group that suffers discrimination and is not protected, everyone is vulnerable to that situation" (Cheng 2000).

Invoking the mission of Martin Luther King Jr., Representative Insko's comments connect a desire for racial equality to freedom from all prejudice regardless of sexual orientation. This perspective can be attributed to modernizer ideology. According to Luebke (1998:22), in North Carolina, "a political candidate who runs against specific manifestations of these movements – such as the Equal Rights Amendment (1970s), the paid holiday honoring Dr. Martin Luther King Jr. (1980s), or gay rights (1990s) - can be

assured of a core support” among fellow traditionalists. Representative Insko’s comments portray a modernizer denouncing the core values of traditionalism.

Representative Insko reflects her modernist ideology of inclusiveness towards an “ideal society” which is “dynamic and growing” (Luebke 1998:24). Beyond Representative Insko’s remarks regarding hate crimes there was no specific mention of including sexual orientation in North Carolina bias crime legislation in the coverage of the 15th annual parade. Instead, the article focused on the march’s inclusion of public officials as an effort to recognize “the struggle for civil rights and fairness for all” (Cheng 2000).

In summary, the News & Observer provided coverage of the controversy surrounding the inclusion of sexual orientation in North Carolina hate crime legislation. The News & Observer used the labels of Republican and Democrat to describe legislators who vocally opposed and supported the legislation. The articles were written in anticipation of, during, and in review of the 1999-2000 legislative session when the Matthew Shepard Memorial Act progressed through the Senate Judiciary Committee and was voted on by the full House of Representatives. Several of the articles drew attention to the divisive nature of the proposed legislation which polarized members of the General Assembly largely along political party lines. Although two articles hinted at the legislation’s potential to challenge the established social order by legally recognizing non-heterosexuals, both remained focused on describing the bills’ defeats as a result of Republican and Democratic politics instead of examining the roles played by traditionalists and modernizers.

A more thorough explanation of HB 884's demise during the 1999-2000 legislative session is possible by describing supporters as modernists and opponents as traditionalists. The ideologies of modernizer and traditionalist provide a framework to understand why granting legal recognition to non-heterosexuals was a divisive issue for the majority of North Carolina Representatives. Traditionalists were adamantly opposed to acknowledging sexual orientations other than heterosexuality as expressed in the News & Observer's coverage. Modernizers provided support for the proposed legislation through their public comments and votes as they remained focused on HB 884's ability to fight against discrimination.

## CHAPTER VII

### CONCLUSION

I am unable to determine the role traditionalist and modernizer ideologies played in the inclusion of sexual orientation in Kansas legislation addressing bias crimes during the 1991-1992 legislative session. The difficulty is due to both a lack of media coverage and the inclusion of sexual orientation in the initial legislation granting upward departures during the sentencing of perpetrators of bias crimes as part of the Kansas Sentencing Guidelines. Through the examination of unsuccessful legislation proposed during the 2001-2002 legislative session to further enhance the punishment of perpetrators who selected their victims based on a prejudice against the victim's sexual orientation, improved law enforcement training, increased civil victim compensation, and expanded protection to victims of biased misdemeanor crimes, I believe traditionalism was a strong factor in the legislation's failure. My conclusion is based on the Topeka Capital-Journal's coverage of legislators who opposed the bills and voting records.

Despite Senator Haley's introduction of multiple pieces of legislation and legislative amendments aimed at pushing the boundaries of traditionalism's rigid social order, he ultimately accepted less significant changes to hate crime legislation. The modification was overwhelmingly supported by traditionalists and modernizers alike in a bill which restored the constitutionality of upward departures in sentencing and affected both perpetrators and victims of bias crimes. Senate Substitute for HB 2154 included the

minor change of expanding the victims protected from crimes motivated by prejudice, although it was primarily focused on restoring the constitutionality of upward departures in sentencing. The technical change to the bias crime legislation was supported by both traditionalists and modernizers, as only seven legislators in both the Senate and House opposed the changes. It would be unfair to suggest that the opposition of seven legislators was due to the amended language “perception of” instead of another aspect of the bill which may not necessarily expose a legislator’s modernizer or traditionalist ideology. However, modernizers were essential to the success of Senate Substitute for HB 2154 because they focused on the legislation’s effect on departures in sentencing and not on crimes motivated by prejudice. Before SB 521 was incorporated into Senate Substitute for HB 2154, it became mired in the controversy of hate crime legislation that modernizers were able to avoid with Senate Substitute for HB 2154. It is clear that traditionalists opposed all explicit efforts to expand punishments for offenders of crimes related to sexual orientation.

It is more complex to explain Kansas’ successful inclusion of sexual orientation and the language “perception of” in upward departures in sentencing than the failure to include sexual orientation in North Carolina’s hate crime legislation for three reasons. The challenge is due to the lack of newspaper coverage by the Topeka Capital-Journal, the limited quantity of direct statements from legislators included in the available newspaper articles, and the unconventional manner that Kansas hate crime legislation was amended to broaden the categories of protected victims. Additionally, because Kansas initially included a sexual orientation provision in hate crime legislation and

North Carolina attempted to include the language after the legislation had already been established, they were not identical situations to compare. It appears that framing sexual orientation protection as a technical change was key to the success in Kansas.

I believe Luebke's (1998) depiction of traditionalism's effect on North Carolina politics prior to 1998 can be expanded to explain the defeat of the Matthew Shepard Memorial Act during the 1999-2000 legislative session as supported by legislative voting records and legislators' remarks in the News & Observer. I conclude that legislators who held traditionalist ideologies were directly responsible for the defeat of HB 884 during the 1999-2000 legislative session. Luebke's (1998:22) assertion that "North Carolina traditionalists have promoted an antichange ideology in both economic and social policy" and historically "traditionalists have enjoyed more political success in the General Assembly implementing their social views" supports North Carolina traditionalist legislators' defeat of sexual orientation's inclusion in hate crime legislation. I believe the failure to pass the Matthew Shepard Memorial Act during the 1999-2000 legislative session is one such example of traditionalists' social views which was reinforced by the votes cast by members of the House of Representatives. Legislators belonging to both the Republican and Democratic political parties were unwilling to provide their fellow non-heterosexual citizens with protection from the atrocities of hate crimes due to a fear of jeopardizing their alliance to a "Baptist-based social order" and "superiority of a mythical ideal past" (Luebke 1998:20).

I initially intended to explain Kansas legislation's success and North Carolina legislation's failure regarding sexual orientation in terms of the roles played by

traditionalists and modernizers. However, it became apparent that neither piece of legislation would have advanced to the extent it did without the groundwork achieved by Kansas Senator David Haley and North Carolina Representative Paul Luebke, both registered Democratic legislators who demonstrated populist ideologies. Both legislators were vital to the introduction and progress of expanded hate crime legislation in Kansas and North Carolina. Luebke (1998:25) acknowledged “populists in the recent past have constituted a left wing within the Democratic Party.

In summary, although the hate crime legislation proposed to extend protection to victims targeted by biased offenders was introduced by Democratic populist-leaning legislators in Kansas and North Carolina, the legislation’s respective failures can be attributed to the ideologies held by traditionalists in both states. The subsequent successful amendment in Kansas can be linked to modernizers’ ability to incorporate additional victims protected by hate crime legislation in a bill primarily aimed at technical changes to departures in sentencing. Kansas modernizers did not draw attention to the change affecting perpetrators and victims of bias crimes in Senate Substitute for HB 2154. The majority of Kansas traditionalist legislators perceived the technical change as an insignificant threat to their social order, not worthy of jeopardizing the larger issue of restoring the constitutionality of departures in sentencing and subsequently voted in favor of Senate Substitute for HB 2154. I conclude that the failure of hate crime legislation to include a sexual orientation provision in North Carolina and for related legislation to be expanded beyond technical changes in Kansas is a reflection of

traditionalist legislators voting in a manner which maintains the social inequality necessary to reinforce their social status in the hierarchy of society.

Suggestions for future research in this area include expanding the scope of print media coverage beyond the Topeka Capital-Journal and News & Observer. I believe it would also be beneficial to examine the voting records of legislators on other bills related to similar proposed social changes during the same legislative session. The availability of newspaper coverage of Kansas' initial legislation would have ensured a more equal comparison between the roles played by traditionalists and modernizers in the inclusion of sexual orientation in Kansas and North Carolina hate crime legislation. I would also recommend examining North Carolina's failure to include sexual orientation in hate crime legislation along with a state that included a sexual orientation provision after the initial legislation was passed.

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