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NAVIGATING HATE: THE PUBLIC DELIBERATION OF MATTHEW SHEPARD
AND HATE CRIME LEGISLATION

by

Abigail Barnes

A Thesis
Submitted to the Graduate School,
the College of Arts and Sciences
and the School of Communication
at The University of Southern Mississippi
in Partial Fulfillment of the Requirements
for the Degree of Master of Arts

Approved by:

Dr. Paul Strait, Committee Chair
Dr. Laura Alberti
Dr. Laura Stengrim

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ABSTRACT

Since Matthew Shepard's murder in 1998, his narrative has been recirculated to justify a federal hate crime statute and Shepard has been used as a symbol for the demand for hate crime legislation. This study seeks to evaluate how Shepard is used in public deliberation, the role of private organizations in the public deliberation of hate crime legislation, and the discursive history of the Shepard-Byrd Hate Crime Prevention Act of 2009. Through a rhetorical criticism, this study finds that the nuances of Shepard's narrative are abandoned in order to construct him as a "permissible" symbol for LGBTQ+ protections. However, if the permissibility of the symbol is violated, the discourse surrounding Shepard becomes polemic. Second, I argue that private organizations are not only used to advocate on the behalf of private citizens, but in the case of hate crime prevention organizations, they are dually asked with being the primary center of information for private citizens. Finally, I argue that the legislative discourse surrounding HCPA's communicate to the public the government's position on the inclusion of vulnerable communities.

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LIST OF ABBREVIATIONS

HCPA

Hate crime prevention act

CHAPTER I – INTRODUCTION, RELEVANT LITERATURE, AND OVERVIEW OF STUDY

In 1998, headlines of the murder of Matthew Shepard, a 21-year-old gay man in Laramie, Wyoming, were plastered across news sources throughout the country (Brooke, 1998). On October 6, 1998, Aaron McKinney and Russell Henderson encountered Shepard at the Fireside Lodge, a neighborhood bar, after a failed robbery attempt. Shepard, too drunk to drive himself home, was lured to the outskirts of Laramie, Wyoming. There, Shepard was repeatedly bludgeoned, robbed of last thirty dollars left in his wallet, robbed of his shoes, and hung nearly lifeless, to a fence post. The next day, a cyclist found Shepard, unconscious, posed like a scarecrow (Nast, 2015). Shepard would die in his hospital room five days later (Zepeda & Shapiro, 2018). Walt Boulden and Alex Trout, friends of Shepard, released various statements advocating that Shepard's death was a result of his sexual orientation (Zepeda & Shapiro, 2018). Responses to Shepard's killing would soon become the rallying cry of the LGBTQ community's need for hate crime legislation.

Although Shepard was one of many LGBTQ victims of hate crimes, Rauch suggests that he received unprecedented media attention because of his sweet, angelic appearance (Rauch, 2000). At the time of Shepard's murder, crimes that were executed on the basis on sexual orientation were not prosecutable as hate crimes, though crimes using or threatening force to against any person because of race, color, religion, or national origin had been considered as such since 1968 (Department of Justice, 2019). Jason Marsden of "The Casper Star-Tribune" stated in an ABC interview, "We knew in the newsroom the day it happened, this is going to be a huge story...I remember one of my

fellow reporters saying, ‘this kid is going to be the new poster child for gay rights’ (Zepeda & Shapiro, 2018, par. 4). LGBT Coalitions took notice of the case and used Shepard’s lifeless body to rejuvenate their own initiatives. Rebecca Issacs, political director of the National Gay and Lesbian Task Force in Washington utilized Shepard’s body as a plea to state legislatures to pass hate-crime legislation in a Vanity Fair interview when she added, “There is incredible symbolism about being tied to a fence...People have likened it to a scarecrow. But it sounded more like a crucifixion” (Brooke, 1998, par. 6). It was not just LGBTQ coalitions who publicly mourned the loss of Shepard. Universities from Denver to Maryland displayed protest and advocated that the murder of Shepard to be recognized as a hate crime (Brooke, 1998).

Ten years later, coalitions like the Human Rights Campaign (HRC) worked with the Shepard family to call for federal protections for the LGBTQ community. In a 2009 HRC video, Shepard’s mother, Judy, called for federal regulations that could have helped find justice for victims after her son’s death. Shepard pleads, “Ten years of calls for the federal government to take action, ten years of waiting, tens of thousands of more victims,” before asking for support in asking congress to update federal protections for the queer community (Human Rights Campaign, 2009). Despite President Obama signing the passage of the Matthew Shepard and James Byrd Jr. Hate Crime Prevention Act (HCPA) of 2009, the Human Rights Campaign reports that there is still a need to discuss what protections the federal HCPA entails and the current need to discuss future mandates.

In 2019, the HRC responded to the FBI’s reporting that anti-LGBTQ hate crimes are still prevalent in the US, and they are on the rise. A spokesperson explains,

In 2018, which is the most recent FBI data released, 7,120 hate crime incidents were reported — slightly less than in 2017, when 7,175 hate crime incidents were reported. Hate crimes directed at LGBTQ individuals, however, increased by almost six percent, including a significant 42% increase in crimes directed against transgender individuals — up from 119 in 2017 to 168 in 2018 (Kozuch, 2019, par. 3)

Although data suggests that the LGBTQ population is especially vulnerable, a report from the Human Rights Campaign Foundation explains that, despite the federal act, many state legislatures repeatedly block the passage of their own HCPA's. The HRC Foundation explains that twenty states still lack a hate crime law or a law specifically protecting the LGBTQ population. And while thirty states have HCPA's that protect sexual orientation, fifteen states neglect gender identity or expression in their laws' codification (Human Rights Campaign Foundation, 2019). Ultimately, a lack of protection on the state level paired with the limited parameters of the federal HCPA, the discourse of the role of hate crime legislation still exists.

While there has been an exigency for hate crime legislation outside of the executive order, there has been little analysis on how the image and story of Matthew Shepard, in particular, have affected public policy deliberation as they have circulated through the public sphere. As Ott and Aoiki (2002) note:

Though media research on agenda setting has clearly established that the news media influence which political issues are on the public's mind, few studies have

looked at how changes in the public agenda may be linked to the piggy-backing of social issues onto specific dramatic stories (Ott & Aoiki, 2002, p. 253)

This thesis aims to answer the question of how Shepard's memory has been used to move the discussion of hate crimes and HCPA's as objects of deliberation from the private to the public sphere. Through the lenses of rhetoric and social movements, new social movements, and public sphere theory, I argue that Shepard's story provides a vehicle for deliberation.

Literature Review

The current study is situated within several different bodies of existing literature. First, I will provide a brief history of rhetoric and social movements, paying special attention on the historical and social approach Griffin (1952) provides in "The Rhetoric of Historical Movements." Next, I will delve into New Social Movement theory to provide grounds to examine the struggle meaning and ideology before introducing the theoretical framework of Habermas's (1987) public and private sphere literature. From there, I will move to an overview of how Matthew Shepard's voice, identity, and memory have been used in previous scholarly discussions about LGBTQ rights and representation. Finally, I will conclude with my proposed methodology and analysis of how the murder and legacy of Matthew Shepard has been discursively transported from the private to public sphere in three chapters.

Rhetoric and Social Movements

Social movement rhetorical scholarship focuses on the arguments and rhetoric put forth by members of social movements as well as organizations and individuals who seek to provoke and respond to them. A distinctive feature of social movement rhetoric is that

it involves multiple rhetors (Burghardt & Jones, 2017, p. 375). Griffin (1952) outlines four approaches one might take to analyze a historical (and later a social) movement: a period study, a regionally based study, studies centric on theme of time, or a movement study. Further, Griffin notes that the “point of focus in the movement study” lies in the discontent with the status quo, a longing for change, and the success or failure of current effort (p. 184). Students of movements ought to “isolate the rhetorical movement within the matrix of the historical movement” (p. 185).

There are two types of movements identifiable in the field of rhetorical historical and social movements. First, *pro* movements seek to promote or perpetuate concord in public opinion. Second, *anti* movements seek to rebuff existing social or power structures. Within these movements exist two actors: *aggressors* and *defendants*. As movements develop, researchers can isolate three landmarks of development. The “period of inception” in which the exigency of a pre-existing concern or sentiment “begins to flower into public notice” or manifests within a particular event that perpetuates an aggressor as well as a movement (p.186). The “period of rhetorical crisis” where “opposing groups of rhetoricians...succeeds in irrevocably disturbing that balance between the groups which had existed in the mind of the collective audience.” And, finally, the “period of consummation” where aggressors turn away from or abandon their cause due to the climate of public opinion or a lack of interest (p. 186). Griffin proposes that students of historical and social movements ought to consider the appropriate historical background, read into supplemental and secondary works centered on the respective movement, and read discourse of the movement in chronological order. Critics

should notice and record patterns identifiable within the movement they choose (Griffin, 1952).

With the rise of college and university campus protests in the 1960s, many researchers began to analyze the accepted norms for debate and discussion and the consequences of their disruption (Burghardt & Jones, 2017). Simons (1970) argues that in order to evaluate social movements, a researcher must ground their work in theory, calling special attention to the movement's leadership. In order to persuade, leaders must have rhetorical requirements used to maintain followers and the larger social order holding the cause together. Yet, the leaders must also must "react to resistance" from the larger ideological structure as well (p. 2).

Rhetorical problems arise from the failure to meet the rhetorical demands. These conflicts can be used to cope with the demand of rhetorical requirements. Finally, a leader may adopt "moderate, intermediate" or "militant" rhetorical strategies. Simons notes that the strategy a respective leader might adopt "constitutes a primary basis for evaluating his [or her] rhetorical output" (p. 4).

While Simon focuses on the leadership aspect of social movements, Zaeske (2002) argues that the participants make significant and unique contributions as well. While Zaeske utilizes feminist and rhetorical criticism to substantiate her argument that individuals are invaluable to the rhetorical contributions of a movement, Zaeske marries public sphere theory to nuance her claim. Through "simply" signing a petition, women were able to "insinuate" themselves into the public sphere, or become active participants within the public, societal debate of slavery (Zaeske, 2002, 147-168). Moreover, Zaeske's

argument illuminates the “public’s complex, fluid nature” and “emphasizes the dynamics of inclusion and exclusion” (Zaeske, 2002, p. 166).

New Social Movement Theory

New Social Movement (NSM) theory concerns itself with the Marxist ideological conception of struggle. Habermas provides the groundwork for NSMs and argues that while struggle is still present in modern society, the traditional struggle of the production of goods has been replaced with a struggle over the production of meaning and ideology. Habermas (1987) contends that “new conflicts” are concerned with equality, individual self-realization, and human rights and suggests:

...new conflicts arise in domains of cultural reproduction, social integration, and socialization; they are carried out in sub-institutional, or at least extraparliamentary, forms of protest; and the underlying deficits reflect a reification of communicatively structured domains of action that will not respond to the media of money and power. The issue is not primarily one of compensations that the welfare state can provide, but of defending and restoring endangered ways of life. In short, the new conflicts are ignited by distribution problems but by questions having to do with the grammar of life. (p. 392)

In contrast to the earlier materialist sites of conflict, this grammar of life is bound up with questions of identity.

Feiski (1989) argues that the public sphere no longer served as an avenue for resistance. Thus, counter-public spheres, most specifically feminist counterpublics, exist. Feiski argues that counter-public spheres “acknowledges the relative autonomy of the

cultural and ideological spheres” as well as illuminating “the communicative networks, social institutions, and political and economic structures through which ideologies are produced and disseminated” (Feiski, 1991, p. 9). Another major contribution of Feiski’s work is that NSMs are “directed towards an affirmation of specificity in relation to gender, race, ethnicity, age, sexual preference, and so on” (Feiski, 1991, p. 166).

Touraine concurs that the struggle has relocated from physical goods to culture by stating that new social movements challenge “the production of symbolic goods, that is, of information and images of culture itself” (Touraine, 1985, p. 774). In terms of symbolic goods, Melucci (1985) explains that “the organizational form of contemporary movements is not just ‘instrumental’ for their goals. It is a goal in itself. Since the action is focused on cultural codes, the form of the movement is a message, a symbolic challenge to the dominant patterns” (Melucci, 1985, p. 801).

Public and Private Sphere

Habermas (1989) defines the public sphere to consist of “private people gathered together as a public and articulating the needs of society with the state” (p. 176). The author notes that while the public sphere serves as (now) an intangible space for deliberation, that “the extent of the public and private have become intermeshed realms...a re-politicized sphere social sphere that could not be subsumed under the categories of public and private from either a sociological or a legal perspective” (Habermas, 1989, p. 176). In essence, the public’s task of deliberative rhetoric has been replaced by specialized, or technical, forces of the state. Habermas furthers in that, with the subsumption of public decision making, society is left with two options: organizations or claim to represent the direct interests of private interests and assume political agency

or through “parties which, fused with the organs of public authority, established themselves, as it were, *above* the public instruments they once were” (Habermas, 1989, p. 176).

Goodnight (1982) considers the current status of deliberative rhetoric. Goodnight argues that “deliberative rhetoric is used to create social knowledge of an event, uncover, assess, and resolve shared social problems” (Goodnight, 1999, p. 251). Further, argumentative endeavors involve the “creative resolution and resolute creation of uncertainty” (Goodnight, 1999, p. 252). Through uncertainty, arguments arise to “concert or oppose” in the personal, technical, and public spheres. Goodnight also notes that arguments that arise from the personal and technical spheres have begun to substitute actual deliberation. However, though Goodnight (and the rest of the academy) refers to separate “spheres,” the author notes that “the standards for decision which events fit into which spheres are sometimes ambiguous and shifting.” Instead of viewing spheres as separate entities, Goodnight explains that the phrase “sphere” is used to “[denote] branches of activity—the grounds upon which arguments are built and the authorities to which the arguer’s appeal” (Goodnight, 1999, p. 253).

In terms of the current (at time of publication) status of deliberative argument, Goodnight contends that the public sphere is “eroding” with the role of “personal and technical groundings of argument” (Goodnight, 1999, p. 258). With the rise of social fragmentation within audiences, the author contends that politicians no longer run campaigns based off of policy for the public, but personality that in which individuals can identify resulting in “privatism celebrated and the discourse continued” (Goodnight, 1999, p. 259). Yet, Goodnight posits one last glimmer of hope for the rejuvenation of the

public sphere by arguing that “substituting alternative modes of invention and restricting subject matter to be uncovered and critiqued” through new modes of public forum (Goodnight, 1999, p. 261).

Replacing Shepard’s voice with the event

In examining the rhetoric of violence, Olson argues that rhetors have previously focused on “violent actors” instead of “prey,” or, victims (Olson, 2002, p. 215). Through an analysis of sport hunting, hate crimes, and stranger rape, Olson highlights the similarities in “in how sport hunters, ‘hate criminals,’ and stranger rapists symbolically construct their victims/prey and their own relationships to those victims/prey and sometimes to other violent participants as a result” (Olson, 2002, p. 216). Olson cites the rhetorical homology, or “a recurring socially held and strategically applied symbolic pattern within contemporary American culture,” as the basis of identifying how victims are portrayed within their works. Olson argues that “‘hate criminals’ symbolically construct an adversarial relationship with their victims’ group” (Olson, 2002, p. 221). She also notes that studying acts of impersonal violence, specifically hate crimes, is not a study of the violence itself; rather, it’s what the violence represents (Olson, 2002, p. 231). Olson continues, “[this insight reveals] not only recognition of dominating a sensate being, but also some attractive, interpretive meaning in the act of domination of the predator” (Olson, 2002, p. 232). In regards to Shepard, Olson also hones in on an analysis of the perpetrators rather than the victim, citing the need for dissonance between dehumanizing Shepard enough to attack him but becoming hyper aware of his identity as a gay man as well as the “bleeding together” of the expressed pleasures of sex and violence (Olson, 2002, p. 221; 232). Despite Olson’s criticism of focusing on the

“predator” rather than the “prey” when analyzing hate crimes, the researcher’s conclusions only suggest that “reformers interested in intervention...[should] advocate for frames that more pro-socially encompass the motives central to the impersonal violence homology” (Olson, 2002, 241). Despite an excellent call for researchers and social advocates to break away from the institutions that perpetuate an unhealthy portrayal of hate criminals, thus the research on Shepard remains fixated on the event of the crime rather than effects of how legislation is perceived with individuals.

Alternatively, Ott and Aoiki’s (2002) criticism focuses on how Shepard was uniquely constructed as a victim through media framing. Ott and Aoiki shed light into how media outlets utilized Shepard’s body to perpetuate a message targeting deficient hate crime legislation protecting the LGBTQ+ community. The researchers illuminate the time gap between the date of discovery of Shepard’s body, October 7, 1998, and the date of publication of feature articles in *The Washington Post*, *New York Times*, and *Los Angeles Times*, October 10, 1998 (Ott & Aoiki, 2002, p. 486-487) Rather than conjecture that the three day time interval is due to printing and production of the publications, the researchers posit that it took three days for the media to make the story (Ott & Aoiki, 2002, 486-487). “Making” the story consists of constructing a narrative from the beginning of the event in the name of “the potential for drama” (Ott & Aoiki, 486-487). Ott & Aoiki suggest the beginning of Shepard’s story starts with the local press conference when “Sheriff Gary Puls told reporters that, ‘[Matthew] may have been beaten because he was gay...[and that he] was found by a mountain biker, tied to a fence like a scarecrow’” (Ott & Aoiki, 2002, p. 487). From there, national news outlets focused on the

“anti-gay aspect of the crime and the crucifix symbolism of the scarecrow image” (Ott & Aoiki, 2002, p. 487).

Thus, Ott & Aoiki’s findings suggest that in examining the images and narrative of Matthew Shepard in the discursive history of hate crime legislation, the rhetoric of the body plays an especially important role. First, Ott & Aoiki state the event is personalized by assigning Shepard’s body to the center of the story. The researchers state, “This was not, and never would become, a story about hate crimes in which Matthew Shepard as simply an example. It was a story about Shepard, in which hate was the motive for violence” (Ott & Aoiki, 2002, p. 488). Second, the “repeated emphasis on the hideousness of the crime” served to traumatize audiences in order to perpetuate the need for “moral and social order” to be restored into society (Ott & Aoiki, 2002, p. 488). The gruesomeness of the atrocities committed by Henderson and McKinney was juxtaposed to the structure of Shepard’s body, which was described as “slight of stature, gentle of demeanor” (Ott & Aoiki, 2002, p. 487). Ultimately, even though the article emphasizes the use of Shepard’s body, not speech, as an entity used to justify and frame the news coverage of prospective hate crime legislation to include the LGBTQ+ community, Ott & Aoiki’s discussion ends by labeling him as a national, political symbol. My analysis aims to pick up where the researchers left off by showing how he has discursively been used to discuss HCPA’s (Ott & Aoiki, 2002, p. 488).

While Ott and Aoiki focus on media framing of Shepard, the researchers argue that Shepard’s death only impacted the public support of hate crime legislation or increased penalties when the legislation was framed in relation to Shepard—legislation passed posthumously that could have protected him and/or provided for increased

penalties to his agitators. Yet, after Shepard's case had stopped garnering media attention and the convictions were ruled, Ott and Aoiki argue that through "fostering symbolic resolution through narrative closure, the news media's coverage of the story re-imposed order and eliminated the self-reflective space that might serve as the basis for social and political change" (Ott & Aoiki, 2002, p. 250).

The comparisons allow me to make two claims: First, the field of rhetoric has, historically, focused on the relationship between perpetrator and victim when using hate crimes as an artifact. Second, Shepard's case provides a unique case-study in how a victim is portrayed through media in that Shepard's story was carefully constructed to initiate societal discourse. However, despite the works providing a dynamic approach to studying hate crimes through the view of the victim's body and the expressed relationship from the hate criminal, there still remains a glaring question: how has the memory of Shepard been reproduced and reused within the public sphere in order to act as a reference for the justification of hate crime legislation, particularly through the media? Within the next section, I will explore how Shepard's plight of his gay identity was displayed after his death and used to enact change.

Shepard's identity on display

Thornycraft and Asquith (2017) echo Ott and Aoiki in that the media portrayal of Shepard's murder was "instantaneous and sustained, emotionally charged and pervasive" (Thornycraft & Asquith, 2017, p. 485). However, Thornycraft and Asquith provide the link between the Human Rights Commission (HRC) releasing a press statement advocating for The Hate Crimes Prevention Act to pass in congress; thus, the media provided a relationship between Shepard's identity as a gay man with the term "hate

crime” to the public (Thorneycraft & Asquith, 2017, p. 485). The researchers also posit that Shepard’s death was timely, with “the U.S. political and social climate in relationship to sexuality was changing” (Thorneycraft & Asquith, 2017, p. 245). With events such as the death of Rock Hudson’s AIDs-related death, the HIV/Aids panic, and the documentary of the life of Harvey Milk, activism in support and opposition of the LGBTQ+ community perpetuated discourse within the public sphere (Thorneycraft & Asquith, 2017, p. 486).

In addition to the context of framed construction and the social timeliness of Shepard’s sensationalized death, Thorneycraft and Asquith provide two points that justify the need for analyzing Shepard as a case study for how hate crimes are portrayed in the public sphere: his narrative delivered through his surviving family members as well as the uniqueness of his constructed identity. First, Shepard’s mother, Judy, was key in continuing his narrative after his death. Shepard’s mother, the co-founder of The Matthew Shepard Foundation, pledged to “set the record straight” in addressing the specifics of Shepard’s death and the labeling of the hate crime (Cart, 1999, par. 2). Further, Judy Shepard taped messages for the HRC after his death in order to mobilize Shepard’s story through a living body (Cart, 1999). Thorneycraft and Asquith note not only the presence of Shepard’s mother (alongside other family members), but the magnitude in which they echoed his death (Thorneycraft & Asquith, 1999). Shepard’s father, Dennis Shepard, marched alongside celebrities such as Ellen Degeneres and Melissa Etheridge during the Millennium March on Washington in 2000, which (at the time), was the first LGBTQ+ march on the National Mall since 1993 (Armas, 2000). The couple created The Matthew Shepard Foundation, which provides resources for public advocacy of protected

minorities. The website reads, “The life and death of Matthew Shepard changed the way we talk about, and deal with, hate in America....His legacy lives on in thousands of people who actively fight to replace hate with understanding, compassion, and acceptance” (The Matthew Shepard Foundation, 2018, para. 10).

Second, Shepard’s sexual identity was carefully, uniquely communicated in that Shepard “... became the perfect representation of a nonthreatening face for homosexuality to be juxtaposed against the predatory disease-ridden pedophiles that the religious right created and condemned” (Munro, 2014, p. 11). Thorneycraft and Asquith echo Ott and Aoiki’s description of Shepard’s “vulnerable” appearance while providing the analysis that Shepard being “‘straight-acting’ or *normal* [makes] public consumption and compassion permissible (Thorneycraft & Asquith, 2017, p. 486). Through Shepard’s voice being virtually translated through his family members as figureheads as well as the mediated, acceptable gay identity of Shepard, it is obvious that there are further grounds to explore how he is granted rhetorical agency and further utilized through the media to reform discourse surrounding hate crime legislation.

However, Spieldenner and Glenn (2014) shed insight into the moralization of queer bodies within media narratives of hate crimes and respective legislation. The researchers call particular attention to the scripting of bodies within these narratives, “where the body both *is* and carries the text (Spieldenner & Glenn, 2014, p. 126). Further, these scripts “become shorthand to interpret an event” as they require audiences to associate “worldviews, or ascriptions” onto them (Spieldenner & Glenn, 2014). With Spieldenner and Glenn’s analysis, it is important to answer why Shepard’s story was able to be transported from the private to the public sphere. Especially when comparing the

scripts to black, queer counterparts, Spieldenner and Glenn argue that black men are scripted to be “violent; incompetent and uneducated; sexual; exploitable” (Spieldenner and Glenn, 2014, p. 126). In comparison to Thorneycraft and Asquith’s analysis that Shepard’s script was “homonormative” (Thorneycraft & Asquith, 2017, p. 426), and thus more palatable to public perception, it appears that Shepard fulfills all the requirements for reinforcing a media message. Throughout the next section of analysis, I will address how Shepard’s “palatable” identity became forever entwined with talk of legislation.

Shepard’s memory and legislation

Spieldenner and Glenn argue that, “hate crime legislation is a social pact between larger mainstream society and the marginal group, and can therefore signify some form of institutional acceptance” (Spieldenner & Glenn, 2014, p. 124). Further, cite the American Civil Liberties Union (ACLU) and their analysis that “without federal provisions, criminal prosecution is left up to local and state jurisdictions. In some crimes, the local police may not investigate certain crimes due to their own biases or beliefs about certain groups” (Spieldenner & Glenn, 2014, p. 124). With the reliance of marginalized groups on this legislation for their livelihoods, Husselbee and Elliot argue that the media portrayal of hate crimes plays a key role in how the public understands loss (Husselbee & Elliot, 2002).

In an analysis of the death of Matthew Shepard and James Byrd Jr., Walter (2013) furthers this analysis by positing, “media coverage of [hate] crimes...[digs] deeper into the ‘politics of public feeling’” (Walter, 2013, p. 181). In doing so, “emotion/affect/feeling is always part of the mediascape, and the news is certainly no exception. It mobilizes and produces publics, it organizes response, and it creates

narratives of citizenship and redemption” (Walter, 2013, p. 182). With the aforementioned voice assigned to Shepard, how the voice was carried posthumously, and, now, with the analysis of the emotional, formative role the media can have in constructing public opinion on hate crime legislation, it is evident that Shepard’s agency is utilized.

Shepard’s relationship with hate crime legislation is one that is constituted through alternative public memories. Dunn states that the public memory of the LGBTQ+ community is vernacular memory. While Dunn notes that public memory is reshaped over time, the LGBTQ+ vernacular memory is unique in that it consists of “an array of public interests” that “[conveys] what social reality feels like rather than what it should look like” (Dunn, 2010, p. 614). Further, the researcher adds. “the queer ‘turn toward’ memory traced to the memorialized gay men during the AIDs crisis” (Dunn, 2010, p. 615). I argue that these two attributes contribute to what makes Shepard case study unique to examining the role of hate crimes and hate crime legislation within the public and private sphere. First, there is a duality to Shepard within the vernacular memory. Dunn notes that Shepard was able to penetrate the sphere of the LGBTQ+ community as well as the public sphere (Dunn, 2010, p. 615). The murder of Shepard served as a reminder of the harsh reality that members of the LGBTQ sphere faced regarding their safety as well as signifying to the public sphere of the actions that needed to happen next: hate crime legislation. Second, Shepard did not only serve the LGBTQ+ community as a memory to “turn toward” (Dunn, 2010, p.615). Rather, Shepard’s agency called for all communities to reference him as the next step of their political agendas. So, when assessing how hate crimes “dig deeper” into the “politics of public understanding”

(Walters, 2013, p. 181) it is important to call attention to Shepard's effect on public memory.

Considering the literature in rhetoric and social movements, new social movements, public sphere theory, and the relationship between representations of Shepard and discourse surrounding policy representing the protections of the LGBTQ community, as outlined above, three research questions guide this study:

RQ1: How was the discourse about Shepard constructed in the process of deliberation?

RQ2: How is the discourse of Shepard's memory and hate crime legislation deliberated by interest groups and legislators in the public sphere?

RQ3: How does public deliberation of the Shepard-Byrd Hate Crimes Prevention Act of 2009 affect the public perception of certainty regarding hate crime discourse?

With an understanding of the theoretical frameworks, my criticism will utilize and the literature that situates the Shepard case study as a viable vehicle for discussing how hate crimes and hate crime legislation is transported as an object of deliberation from the private to the public sphere, my next section will outline my methodology and analysis.

Research Design

Data

In selecting texts to be included in this research, I applied a number of criteria for text selection. First, I wanted to locate texts circulated after Shepard's death and up to Henderson and Mckinney's trial, artifacts calling for legislation leading to the Matthew Shepard and James Byrd Jr. Act of 2009, and finally deliberation after the passage of the

federal HCPA. By selecting texts in chronological order, I will scope my study to follow the progression of discourse from the private to the public sphere. Second, I wanted to analyze texts that were easily accessible to the general public, such as interviews, news footage, and campaign speeches, as opposed to texts that would be difficult for the general public to locate, such as committee speeches and congressional debates. In order to examine how a phenomenon is transported from the private to public sphere, then it is necessary to select texts that are intended for public consumption.

The first set of artifacts I will analyze will share the common theme of naming Shepard's death as a hate crime. For this section, I will focus on interviews with Alex Tout and Walt Boulden, friends of Shepard who contacted media outlets to label his death a hate crime based off of sexual orientation (ABC News, 2006). Further, I will look at news coverage of the marches and rallies on college campuses supporting Shepard following his attack as well as anti-gay counter protests (Sheerin, 2018). By first looking at the responses from the private sphere affirming that Shepard's death was a hate crime, I will then juxtapose that analysis with the novel *The Book of Matt: The Truth About the Murder of Matthew Shepard*. In the book, Jimenez argues that Shepard's legacy of martyrdom was fabricated. To rectify this "wrong", Jimenez proposes multiple accounts arguing that Shepard's identity had nothing to do with his death. In order to locate the controversy of discrepancies of labeling between the private and public sphere, I will provide a comparative analysis of the alleged mistake in labeling transported from the private sphere to the public.

The second set of texts I will analyze will come from the Matthew Shepard Foundation (MSF). The foundation, founded by Shepard's parents, is a private

organization that provides resources for the public on hate crime reporting and statistics and community outreach. By using the MSF as a text, I will apply Habermas's (1989) contention that this private organization perpetuates technical, specialized discourse that allows the state to avoid specific legislation protecting the LGBTQ community. To substantiate this claim, I will juxtapose the mission of the MSF with texts showcasing the deliberative rhetoric from politicians such as former presidents Bill Clinton and then-candidate Al Gore. At a Democratic National Committee meeting, Gore proposed federal hate crime policy by bringing Byrd and Shepard to the center of the discussion by stating, "...when Matthew Shepard is crucified on a split rail fence by bigots, how can any political leader in either party say that there is no difference between hate crimes and other crimes...We need to come together as a people" (Burns, 2008, par. 2). Like Gore, Obama and Clinton also use emotional language surrounding Shepard as compared to the precise approach from the Matthew Shepard Foundation.

The third set of artifacts I will analyze will showcase texts featuring discourse surrounding the Shepard-Byrd Hate Crimes Prevention Act of 2009. While I supplement the analysis with news coverage of the federal HCPA, I will also focus on texts outlining opposition to the act. Representative Mike Pence argued that the protections outlined in the policy would come at the expense of free speech while representative John A. Boehner likened any violation of the act to a thought-crime (Stout, 2007). By examining texts featuring discourse of the Shepard-Byrd HCPA, my analysis will focus on the arguments focusing on uncertainty of the act's effectiveness. In addition to discourse focusing on opposition to the act, I also analyze texts that categorize the act as well intentioned, but failing to meet procedures such as reporting and naming a hate crime

with local law enforcement agencies (The Human Rights Campaign Foundation, 2019). Ultimately, the comparisons of the two types of discourse provide grounds to examine Goodnight's contention of weighing certainty (Goodnight, 1999).

Data Analysis

In order to to examine how Shepard and the adjacent debate of hate crime legislation was used discursively in the private and public sphere, I will use the method of rhetorical criticism. Foss (2009) defines rhetoric as “the human use of symbols to communicate. This definition includes three primary dimensions: (1) humans as the creators of rhetoric; (2) symbols as the medium for rhetoric; and (3) communication as the purpose for rhetoric” (Foss, 2009, p. 3). In terms of methodology, rhetorical criticism requires researchers (rhetoricians) to investigate texts, acts, movements, and other artifacts in a systematic manner and in an in depth definition, Foss advocates that rhetorical criticism is

a qualitative research method that is designed for the systematic investigation and explanation of symbolic acts and artifacts for the purpose of understanding rhetorical processes. Thus, definition includes three primary dimensions: (1) systematic analysis as the act of criticism: (2) acts and artifacts as the objects of analysis in criticism; and (3) understanding rhetorical processes as the purpose of criticism. (Foss, 2009, p. 6)

While rhetorical criticism is embedded with a rich understanding of the text and respective ramifications, Foss reminds rhetorical critics that the “rhetorician engages in rhetorical criticism to make a contribution to rhetorical theory” (Foss, 2009, p. 7).

With Foss's definition of rhetorical criticism coupled with an understanding of the intersection of rhetorical social movement theory, New Social Movement theory, and public and private sphere theory, my analysis will proceed in three parts. First, I intend to locate the controversy of Shepard's death and surrounding discourse to explain how the Shepard case study serves as reference in public deliberation of hate crimes and hate crime legislation. Second, I assess the rhetorical dimensions of the rhetorical dimensions of Matthew Shepard that circulated through the public sphere. And, finally, I analyze the relationship between certainty and legislation through the discourse of the lack of reporting accountability associated with the federal HCPA and the consequential debate over the validity of hate crimes themselves.

Research Significance

This study into how discourse surrounding Matthew Shepard and the Shepard-Byrd Hate Crimes Prevention Act of 2009 is important for the following reasons. First, it examines how Shepard has not only been used in media framing of hate crimes, but also in deliberative rhetoric surrounding hate crime legislation. By focusing on how Shepard's story affects the public agenda, this study exemplifies how marginalized populations can be construed in public deliberation. Second, this project assesses the best ways issues that are constructed as "private concerns" (i.e., sexual orientation and gender identity) can be best maintained through public deliberation. And, third, this study assesses the gaps of certainty that are prevalent between the private and public sphere. While previous research has provided clear arguments for how Shepard's narrative is used in media framing of hate crimes (Ott & Aoiki, 2002), how Shepard's memory is marked in the LGBTQ+ community (Dunn, 2010), and why Shepard's body was deemed most

permissible as a text (Thorney & Asquith, 2017), this research is significant in that it focuses on the deliberative rhetoric of the legislation that previous scholarship has called for through their own analyses.

By utilizing a rhetorical criticism that uses the theoretical framework of rhetorical social movements, New Social Movement theory, and public sphere literature, the current project seeks to contribute to discussions about the representations of figurehead hate crime cases, such as Matthew Shepard's, contribute to the transportation of discussion and deliberation of hate crimes and hate crime legislation from the private to the public sphere. Through Foss's methodological approach to rhetorical criticism, I aim to fully discuss three areas of analysis that start from private articulations of hate crimes that will inevitably build to the public deliberation of the Shepard-Byrd Hate Crimes Prevention Act.

I position this research in the rich history of scholars before me who have analyzed Shepard and hate-crimes against the LGBTQ+ community. By engaging with literature that focuses on the media framing of Matthew Shepard, I engage the public perception of the victim associated with the figurehead case of hate-crime legislation. Further, by marrying rhetorical theory, New Social Movement theory, and public sphere literature, I seek to gain a multi-faceted understanding that articulates the lasting impact of an act of hatred used by both the private and public sphere in hopes to provide future protections.

Outline of the Study

In the first chapter, I identify the purpose of the study, research questions, a review of relevant literature, research design, and an outline of the study. Chapters 2, 3, and 4 focus

on answering specific research questions. Chapter 2 will answer RQ1: How was the discourse about Shepard constructed in the process of deliberation?? In this chapter, I locate the controversy and explain how the defining of a hate crime in the private sphere, without a public consensus, leads to controversy later on. Chapter 3 will answer RQ2: How is the discourse of Shepard's memory and hate crime legislation deliberated by interest groups and legislators in the public sphere? Through this section, I assess the rhetorical dimensions of the Shepard case study to examine how discussions in the private and technical sphere contribute to substitution of deliberation within the public sphere through an analysis of the role of the Matthew Shepard Foundation. In the same section, I also re-articulate Goodnight's argument that the quality of policy deliberation and articulation from political candidates has been diluted (especially in regards to hate-crime legislation) by co-opting the pathos attached to Shepard's story and identity. And chapter 4 will answer RQ3:] How does public deliberation of the Shepard-Byrd Hate Crimes Prevention Act of 2009 affect the public perception of certainty regarding hate crime discourse? In this last chapter of analysis, I address certainty and legislation by analyzing the controversy of the Shepard-Byrd Hate Crimes Prevention Act of 2009. In the final chapter, I synthesize the findings from the previous three chapters in order to assess the effects of the transportation of discourse from private to public on the LGTBQ+ community. In this chapter, I will also discuss the theoretical takeaways from this study before proposing paths for future research.

CHAPTER II – LOCATING SHEPARD IN PUBLIC DELIBERATION

In order to examine the public deliberation of Matthew Shepard and hate crime legislation, it is imperative to examine where the controversy unfolds within the narrative. In the previous literature review, scholars have pointed to Shepard being a national symbol for hate crimes and the face of the call for respective legislation (Ott & Aoiki, 2002; Spieldenner & Glenn, 2014; Thorney & Asquith, 2017). Through this chapter, I attempt to join the previous discussions of how Shepard was viewed as a revolutionary symbol as well as asserting the ways in which he was used to carry a national dialogue—both supportively and antagonistically. Through a close examination of the construction of Shepard’s narrative, the deconstruction of the narrative present in Jimenez’s *The Book of Matt: Hidden Truths About the Murder of Matthew Shepard*, and the demands of national and local movements, the purpose of this chapter is to locate and track the controversy surrounding Shepard’s death and to answer

RQ1: How was the discourse about Shepard constructed in the process of deliberation?

Naming a Hate Crime

As Ott and Aoiki (2002) note, national newspapers such as *The Washington Post*, *The New York Times*, and *The Los Angeles Times* did not circulate articles about Shepard until nearly three days after his death. The researchers recall that the first public statement given about the nature of the crime was from Sheriff Gary Puls who stated that Matthew “may have been beaten because he was gay” (Bennett, 1998). This section of Chapter 2 tracks the discourse in labeling Shepard’s death a hate crime. First, I will recount the production and circulation of the case’s hate crime status before examining the reception of *The Book of Matthew*, the most popular narrative dispelling the “myth”

of Shepard's murder. As the media capitalized on the fact that the murderers targeted Shepard because of his sexuality, Ott and Aoiki point out that

The qualifier "gay" that begins each headline constructs the victim's sexuality as the focal point of the story, despite Laramie Police Commander O'Dalley's public claim at the time that "robbery was chief motive." (p. 487)

However, it is also crucial to note that that introducing Shepard's sexuality into the crime scene investigation originally began with friends of Shepard contacting media organizations as well as the County Attorney's office (ABC News, 2006). The pair contacted the Associated Press and local gay organizations the same day as visiting Shepard in the hospital. Boulden, a college instructor, claimed that Shepard's death was a result of the Wyoming legislature failing to pass a hate crime act (although Boulden would later say that a police officer labeled the death as a hate crime) (Bindel, 2014). These phone calls are what introduced Shepard's sexuality into the public sphere as an object of scrutiny and deliberation. Through phone calls, Alex Tout and Walt Boulden presented a motive for Shepard's murder for deliberation to achieve a common consensus: Matthew was killed because of his sexual identity and the hate-based motive should bear influence into McKinney and Henderson's trial.

Although the close friends of Shepard were vigilant in their advocacy for establishing Shepard's murder as a hate crime and using the hate crime status to punish McKinney and Henderson to the fullest extent of the law (which would include introducing hate crime legislation to the Wisconsin legislature), the motive of Shepard's death would remain subject to public deliberation for the next twenty years. Henderson and McKinney were convicted of first-degree murder and two consecutive life sentences,

but they were not charged with a hate crime due to the lack of hate crime legislation in Wyoming (Bindel, 2014).

Despite the lack of an official conviction, the reproduction of Shepard's case in the public sphere pointed to a common consensus: McKinney and Henderson committed a hate crime. However, 15 years after Shepard's death, Stephen Jimenez entered the chat with his book *The book of Matt: Hidden truths about the murder of Matthew Shepard*. Jimenez claims that the public consensus labelling Shepard's death as a hate crime is misguided. Instead of a hate crime, Jimenez argues, Shepard's death is a result of a drug deal gone wrong in a community that refuses to acknowledge its methamphetamine crisis. In a 2013 interview, the author explains that while he was compiling research for a screen play, he came across an anonymous letter about McKinney's infamous gay panic defense (a defense" in which an attacker is invoking self-protection from unwanted homosexual advances). Jimenez states that the letter claims that McKinney's "gay-panic" could not have been true because McKinney was a "male hustler" and "that he was familiar with gay guys in gay bars." Additionally, Jimenez claims that the document pointed towards McKinney, "mentioning that he really did like having sex with gay guys, that he wasn't unfamiliar with homosexuality and the guy world" (Nichols, 2013, par. 5-6). Jimenez considered the letter a basis for dispelling the narrative that Shepard's death was borne from homophobia.

Through his research, Jimenez countered the public perception of Shepard. While Shepard was the face of palatable homosexuality (Spieldenner & Glenn, 2014), the author categorized the victim and McKinney as dealers and users of methamphetamine with a

rival business relationship. Additionally, the author claims that Shepard and McKinney “had a sexual relationship.” (Nichols, 2013, par. 8; Jimenez, 2013).

Criticisms of Jimenez’s book include that he is a “revisionist.” The Guardian notes that this particular label is typically geared towards holocaust deniers. Additionally, Jimenez’s book has been regarded as a homophobic retelling of the 1998 events. Jimenez argues that his representation of Shepard as a drug addict, dealer, and prostitute “does not make the perfect poster boy for the gay-rights movement, which is a part of the reason my book has been so trashed” (Bindel, 2014, par. 9). Jimenez, who is also a gay man, states that the murder was brutal. However, “we owe Matthew and other young men like him the truth” in regards to the claims that Shepard had a relationship with his murders centered around drug abuse and distribution (Bindel, 2014, par. 20). *The Book of Matt* drew messages of support alongside its criticisms. Flint Waters, the officer who captured Henderson and discovered the murder weapon and Shepard’s belongings in his truck, commented on the murder after the book’s publication. Waters reintroduced himself into the public deliberation by stating,

I believe to this day that McKinney and Henderson were trying to find Matthew’s house so they could steal his drugs. It was fairly well known in the Laramie community that McKinney wouldn’t be one that was striking out of a sense of homophobia. Some of the officers I worked with had caught him in a sexual act with another man, so it didn’t fit – none of that made any sense. (Bindel, 2014, par. 18)

Other supporters of Jimenez’s book state that the reason *The Book of Matt* has come under is that the account replaces the public perception of an innocent Shepard with the polarizing image of a drug addict. JoAnn Wypijewski, former editor of *The Nation*

and a journalist present in Laramie to cover the aftermath of Shepard's attack, argues, "Jimenez has taken away their angel, and there is the reflexive sense that as a community its suffering was being at last recognized. The people shaping the news require a very simple story – they have to be angels and villains" (Bindel, 2014, par. 29). Others, including Shepard's former-lover, have commented on the need for "truth" found in *The Book of Matt* as well as the condemnation of Shepard's martyrdom status (Bindel, 2014).

To no one's surprise, The Matthew Shepard Foundation responded to *The Book of Matt* in disagreement. The foundation argued that the account was based on "untrustworthy sources, factual errors, rumors, and innuendo. From there, the foundation pointed to the legal case of Shepard, stating that the book's arguments directly conflict with the "actual evidence gathered by law enforcement and presented in a court of law." To further discredit the author and book, the organization stated that they "do not respond to innuendo, rumor, or conspiracy theories." Instead, they continue to focus on their commitment to "honoring Matthew's memory" through their work (Nichols, 2013, par. 11).

The analysis in this section points to an interesting theme in the construction and deconstruction of the Shepard case in public deliberation—the deliberation about Shepard's hate crime status in the media focuses on maintaining a particular image of Shepard. The image of Shepard as an innocent bystander who happened to be at the wrong place at the wrong time and with the wrong people is used to support the hate crime status. In contrast, the image of Shepard as a drug addict whose death is a consequence of his drug dealing is used to negate the hate crime status. Regardless of

their stance of the validity of the term “hate crime,” the public deliberation of the validity of their arguments is still reliant on Shepard as a symbol.

Utilizing Shepard as a symbol provides the public (and counter-publics) distinguishable qualities to discuss during public discourse. By memorializing Shepard as a martyr of a movement, it becomes easier to approach the taboo subject of sexuality. The image of an angelic, young boy to discuss hate crimes to an ignorant audience is an easier starting place than introducing a meth-fueled victim who just so happened to be gay. Alternatively, the image of an addict involved in a local drug-war provides a more feasible gateway to deconstruct a widely-accepted narrative of injustice. As the author, it is not my intention to credit Jimenez’s claims or discredit the hate crime designation of Shepard’s murder. Instead, I advocate that the use of Shepard as both a positive and negative symbol is instrumental in navigating the public discourse of hate crimes. Through the next part of this chapter, I will discuss how protests, vigils, and picketers utilized the symbol of Shepard in public deliberation.

National and Local Protests and Vigils

As news of Shepard’s death being assigned “hate crime status” spread, public demonstrations memorializing Shepard took place across the country. Demonstrations that memorialized Shepard seem to have a consistent feature of an agenda. Through looking at national protests/vigils (New York, Boston, D.C) and local addresses (University of Wyoming vigil), this section of the chapter attempts to distinguish two different agendas within the public deliberation of Shepard’s killing: active calls to action and passive calls to action.

In a 1998 New York rally to mourn Shepard, protestors of the “political funeral” carried a pine coffin and lit memorial candles. Despite the personal connections to a single funeral, the protestors carried signs that read “Stop Hate Crimes, “Homophobia Kills,” and “Where Is Your Rage?” (Cooper, 1998). An organizer of the “political funeral” stated, “As lesbian and gay people, we know that Matthew Shepard is only the tip of the iceberg... We are people who live every day knowing that this could happen to us’ (Cooper, 1998, par. 12). Similarly, a vigil at Harvard University began with organizer, David P. Rudewick, declaring, “Living here in the cradle of liberty, we have a message to send to the nation. Hate crimes of any kind will not be tolerated. We will protect everyone in this state” (Wasserman, 1998, par. 5).

In D.C., President Clinton responded to the news of Shepard’s death, which happened five days after the attack, by calling for congress to pass the Federal Hate Crimes Protection Act (Brooke, 1998). On the steps of the Capitol, Ellen Degeneres pled,

It just hit me why I am so devastated by [Shepard’s death]. It’s because this is what I was trying to stop...I’ve been trying to figure out how to put into words what I want to say. My thoughts are that: this world we live in is filled with hate and darkness. Matthew Shepard was not the first hate crime, it happens every day. There are 2,500 reported this year. Many go unreported because most gays and lesbians are still in the closet for fear of this exact reason (Degeneres, 1998, par. 3-4).

From college campuses, Capitol Hill, and several marches in between, The Washington Post reported that nearly 60 vigils took place the week after Shepard’s death (Krutzsich, 2019).

The president of the University of Wyoming, Philip L. Dubois, addressed the university at a candlelight vigil with a different agenda, though. While most of his speech was a heartfelt commemoration of Shepard, Dubois focused heavily on the Laramie community. The speech begins with expressing that though he never met Shepard, he could “be his son” and that the community is “haunted by the thought of a terribly battered young man with his future probably erased” (The University of Wyoming, 1998, par. 4, 5). However, halfway through his address, the university president redirects his mourning away from Matthew and towards the town of Laramie. “It is...sad, however, to see individuals and groups around the country react to this event by stereotyping an entire community if not entire state,” Dubois argued (The University of Wyoming, 1998, par. 7). Similarly, student body president, Jesus Rios suggested that the best way to honor Shepard was to turn feelings of unrest towards forgiveness in order to heal as a community (The University of Wyoming, 1998). In order to heal the “wound in us all,” Rios calls for The University of Wyoming to “be sensitive to the need for a resolution and mindful of the need for progression” (The University of Wyoming, 1998, par. 5, 8).

The national calls to action found in vigils and protests across the county appear to differ with the local calls to action found in Laramie. Scholars have noted that regional newspaper headlines center on healing the physical community where the hate crime took place. However, national newspaper headlines, reporting on the same hate crimes, focus on the specifics on the crime itself. Through the case study of the Shepard murder, it appears the same is true regarding social movements surrounding hate crimes. Laramie locals, Dubois and Rios, challenge their audience to overcome injustice by prevailing as a community. Nationwide protests and vigils utilized Shepard’s memory to provide a face

to a shared experience in the LGBTQ+ community: fear of an attack made because of their sexual and gender identity.

The argument that the media, politicians, and LGBTQ+ coalitions have used Shepard as a symbol for equality is widely agreed upon in the academic community (Ott & Aoiki, 2002; Spieldenner & Glenn, 2014; Thorneycraft & Asquith, 2017). However, in order to deepen our understanding of this phenomenon, I argue that Shepard's memory is invoked as a call to action in two ways through national and local protests and vigils: active change and passive change.

The national vigils (the vigils outside of the Laramie, Wyoming community) had a blatant agenda: to put an end to hate crimes. In order to achieve this particular goal, the protestors achieved this in a variety of ways. Protests in New York demanded anger in the face of injustice. Through carrying a pine coffin on the crowded streets of the city, the protestors call to action was for the public to recognize the death not because they knew Shepard personally, but because the danger of being queer in America is still alive. The New York call to action was to engage in direct dialogue about the rights of LGBTQ+ citizens.

The protest at Harvard University in Boston was clear in the group's advocacy: the community recognizes crimes made on the basis on a person's sexual identity as hate crimes and that they would be condemned. Organizers sought to rally a community behind change and establish a clear precedent to the rest of the nation. The Harvard call to action was to show that because of poor government intervention, communities are responsible for protecting vulnerable populations.

The demonstrations in Washington provided the most tangible avenues for action. President Clinton was quick to revisit his recent proposal of a federal Hate Crime Prevention Act in order to enact institutional change. Ellen Degeneres, on the steps of the capitol, highlighted the concern for accurate reporting and the call for a trusted reporting process for law enforcement officials. While these are three protests/vigils out of 60 that occurred the week after Shepard's death, they point to three active calls for change in the discourse surrounding Shepard's murder. First, heteronormative America should acknowledge the tribulations facing the LGBTQ+ community, especially regarding safety. Second, there is a noticeable lack of government action to prevent the murders of marginalized persons. Therefore, communities should actively denounce hate and protect those who are targeted for hate crimes. Third, there is a lack of accountability for protecting against hate crimes and acknowledging their severity in the U.S. federal code. So, the U.S. legislature is obligated to provide institutional protections for marginalized citizens. The call to action from these national protests provides a discernable route for individuals to take to combat hate crimes in their own communities.

However, the vigils at the University of Wyoming did not ask participants to address the Wyoming State Legislature (who notably has never signed a state wide HCPA into law), encourage them to educate themselves on the number of hate crimes committed against the LGBTQ+ community, or ask them to police their own communities against discrimination. Instead, the speakers addressing the Laramie community advocated for the passive action of forgiveness. The leaders of the vigil advocated that the best way to institute inclusion in their community was to rebrand themselves from a community plagued by hate to a restored community who has learned

from the mistakes of others. In order to achieve this goal, the passive call to action has less discernable steps.

President Dubois's solution called for a renewal of the values of the University of Wyoming, "education, free expression, equality, diversity" (University of Wyoming, 1996, par. 6). Notably, Shepard's vigil happened during the university's homecoming. So, rather than addressing the steps that the audience could take with outside forces, the president focused his call to action to unify the local community. Dubois states,

This weekend has tested our endurance and our sense of community. And we should be proud of how we have responded: Instead of being torn apart by fear, we have been brought together in unity and in purpose. Instead of hiding in our homes, we have taken to the streets to join a parade of celebration for the life of Matthew Shepard. Instead of pointing fingers, we have joined hands. (The University of Wyoming, 1998, par. 8)

While Dubois spends most of his address advocating for a passive approach to instituting change—tasking individuals to remain virtuous to the ideals of the university and rejoining in doing so—the speaker does charge his audience with the responsibility to individually hold each other accountable by adding,

We must continue—as we have in the past—to speak out against hatred, bigotry, and violence. We must continue—as we have in the past—to make sure that the University leads the way in this community and in this state as a place where students can come together to learn and to develop to their full potential without fear of discrimination or prejudice (The University of Wyoming, 1998, par. 9-10).

Similarly, student body president Jesus Rios addresses passive change to the community but focuses on the need for a community of forgiveness in order to move forward. Rios argues, “Be sensitive to the need for a resolution and mindful for the need for progression. Part of the need for progression is being able to forgive” (The University of Wyoming, par. 5-6). Rios echo’s Dubois’s call for reconnecting the community by advocating that anger would only serve to divide them and anger, through McKinney and Henderson, “crumbled the security of this community” (The University of Wyoming, par. 4). Both the student body president and university president’s arguments imply that the best way to memorialize Shepard is to focus in individual virtues to heal the community rather than entering into a nationwide dialogue about the status of hate crime legislation.

Counter-Protests

In the midst of a wave of vigils and protests supporting Shepard, counter protests began to appear as well. Through this section, I will identify the themes prevalent in the counter-public approach to Shepard’s death. The first, and most notable, counter protest organization is Westboro Baptist Church. The church began protesting “homosexual behavior” in 1991 at Gage Park in Topeka, an area known referred to as “the tearoom.” However, many credit Westboro’s picketing of Matthew Shepard’s funeral as the catalyst to church’s infamy (Morton, 2011).

Before Shepard’s death, the church was known for aimlessly picketing Wichita with what might as well be their slogan, “God Hates Fags.” However, as news of Shepard’s murder made headlines across the nation, the church took notice. The church donned signs reading, “Matt in Hell,” “God Hates Fags,” and “AIDS Cures Fags” (healthcare officials discovered Matthew was HIV positive while he was in the hospital)

in a designated “free speech zone” provided by the Casper City Council. The council provided a designated picketing space to keep picketers away from the funeral site. On the day of the service, CNN publicized the protests alongside Shepard’s funeral. Westboro lead chants celebrated “Shepard’s entry into hell” and claimed that he begged for his own death by “trolling for homosexual sex in a bar” (Davis, 2013). The church would later picket the trials of McKinney and Henderson and productions of *The Laramie Project*, a play cataloging the aftermath of Shepard’s murder in Laramie that is widely circulated by The Matthew Shepard Foundation (Abadsidis, 2018; Morton, 2011).

Despite the church’s tenacity to slander Shepard, the LGBTQ+ community, and anyone who supports them, Westboro presents very little advocacy for what goal they are trying to accomplish. The church is explicit in their stance for condemnation of homosexuality (this phrase can be interchanged with bisexuality, pansexuality, transgenderism, etc.), but appears directionless about what call to action they are providing for their audiences. In terms of what action the church expects from their picketing (not only specific to Shepard’s), the church’s leader, Rev. Fred Phelps, states that the bible supports the death penalty for sodomy. He argues, “I’m not urging anybody to kill anybody. However, the former attorney (now disbarred) reaffirmed the church’s belief that “homosexual sodomy should be a crime punishable by death based on his interpretation of the Bible” (Taschler & Fry, 1994, par. 5). Despite Phelps’s staunch belief that homosexuality is punishable by death, he backtracks and loses much of his advocacy when he reflects on passing legislation. The pastor deflects his concerns from homosexuality to law enforcement as he states, "To get that penalty raised — enhanced to

the death penalty — when you can't even get the death penalty in Kansas for murdering police officers, is too remote to talk about" (Taschler & Fry, 1994, par. 8).

The church's infamously polemic approach to Shepard's death contrasts the approach of the protests supporting the LGBTQ+ community and vigils for public mourning not only in content, but in its approach to an agenda. Earlier in this chapter, I discussed the two approaches present in the public deliberation of Shepard's death: the active and passive approaches utilized by supportive national and local movements. In the case of the antagonistic public deliberation of Shepard's death, there is no clear call to change. Instead, Westboro paints Shepard as a catalyst of the demoralization of America.

Similar to how media sources, movements, and legislators used Shepard's memory as a symbol for the need for inclusion, Westboro uses the same memory (as well as other LGBTQ+ figureheads) as symbol for deterioration of the country's sense of morality. In reflection upon Shepard's death, the church has been quoted in saying that 9/11 served as a consequence of the nation's "lax approach" to homosexuality. The church described *The Laramie Project* as "a tacky piece of sick fag melodrama with zero social value or literary merit. Its sole, shabby purpose is to recruit kids to sin, shame, disease, misery, death and Hell. All associated with it are lost" (Stavitiski, 2003, par. 14).

Although Westboro Baptist is loud in their disdain for the LGBTQ+ community, they provide no real call to change or corrective action. Instead, the church's approach accomplishes a goal to maintain the nation's remaining anti-LGBTQ+ sentiment. The church's polemic approach is enticing for reporters in that it makes good news—the picketers have extremist opinions that draw a large crowd of counter-pickers. With the wide circulation of the church's beliefs, their contribution to public deliberation is that

they have become the spokespeople for anti-LGBTQ+ sentiment. In turn, the public that quietly shares the same sentiment can remain validated in their beliefs while not having to officially enter the discussion.

Conclusion

Through a textual analysis, I agree with a long line of scholars who argue that Shepard's memory has been used symbolically to discuss hate crimes and LGBTQ+ rights in the United States. However, my analysis above contributes to this line of literature by assessing that he was not used out of opportunity, but out of necessity to navigate public discourse. This argument leads to three conclusions: First, discourse surrounding the legitimacy of the hate crime designation is highly contingent on a legitimate image of Shepard. Second, the image of Shepard as a national symbol and a local symbol advocate for two different kinds of advocacy. Third, an attack on the symbol of Shepard is used as an attack on queer identities.

First, discourse surrounding the legitimacy of the hate crime designation is highly contingent on a legitimate image of Shepard. Boulden and Shepard's labelling of the event as a hate crime to media outlets can be seen as an attempt to shine truth on the crime in the name of citizen-journalism. With very little official word over an official, public statement of a hate crime status, the media's reproduction of the murder as a hate crime is extremely fragile without a strong, national symbol to back up the story. So, the receptiveness to the melodrama of the case (Ott & Aoiki, 2002) and the respective call to justice was contingent on a socially acceptable image. The disruption of this image, found in *The Book of Matthew*, is a disruption to the original narrative. Since the image, or symbol, of Shepard is used to navigate public discourse about hate crimes and

LGBTQ+ inclusion, it is construed to be an attack of an entire movement within public deliberation.

Second, the image of Shepard as a national symbol and a local symbol advocate for two different kinds of advocacy. As I argued earlier in the chapter, both national and local demonstrations called for a call to action. For national movements, the action was active, demanding for specific steps challenging the status quo to take place in order to regain justice. For local movements, the action was passive; by individually remaining virtuous, communities can best memorialize Shepard by healing. In addition to the different strategies that national and local movements use, it is important to note that both sets of movements invoke the name of Shepard in their agendas. The national movements memorialize Shepard by assigning his face to a long line of victims of hate crimes. In using his memory to represent a collective past, it seems appropriate that their calls to action are passive; the only way to get justice for a targeted community is to get justice for Shepard.

Local movements memorialize Shepard both as a symbol for the LGBTQ+ community and their own local community. Ott and Aoiki (2002) point out that the national media vilified not only McKinney and Henderson, but the entire state of Wyoming for lacking state hate crime protections. In order to rectify this attack on their community, local movements invoked Shepard's image as a symbol for homecoming and healing. Through the passive call to action of remaining a virtuous citizen, local movements called for collective grieving as well as a collective attempt to move on from the tragedy. Instead of entering the national dialogue of demanding justice, the University of Wyoming rooted their image of Matthew as another member of their community. By

tying his image close to the community, Laramie used Shepard's memory as a symbol for protecting their reputation as a small, loving town.

Finally, just as the symbol of Matthew Shepard was used to promote unity and healing, his image was also used to divide. The third conclusion from this chapter is that an attack on the symbol of Shepard is used as an attack on queer identities. While the picketers from Westboro Baptist church lack a specific agenda (other than yelling at whoever will listen), their picketing and protesting of Shepard's funerals, the murder trial, and productions of *The Laramie Project* show an explicit hatred for the LGBTQ+ community. Like the rest of the nation, it is clear that Westboro became familiar with the widely accepted narrative of Shepard's death and his status as a symbol for the LGBTQ+ community. The church did not provide any clear call to action: no call for revisiting the trial, no challenge to the hate crime status, and no protest to Henderson and McKinney's conviction. Instead, they invoked the symbol of Shepard to attack all queer identities. When protestors chant about Matthew being greeted in the gates of hell, they are speaking of Shepard exclusively. By recognizing the widespread support and media coverage of Shepard, their attacks are on the collective queer identity instead of a single victim. By establishing how Shepard's memory was symbolically used in public deliberation, it is clear that he was used to positively motivate and antagonistically divide simultaneously. Through the next chapter, I will examine one of the active calls to action: invoking a federal hate crime protection act through the rhetoric of Bill Clinton and Al Gore compared to the discourse provided by The Matthew Shepard Foundation.

CHAPTER III - RHETORICAL DIMENSIONS OF LEGISLATORS AND INTEREST GROUPS

As the last chapter focused on how Shepard was used as a symbol to navigate public deliberation, this chapter focuses on the attempts made to institutional change following his death. Spieldenner and Glenn (2014) note that “hate crime legislation is a social pact between larger mainstream society and the marginal group, and can therefore signify some form of institutional acceptance” (p. 124). In order to gain insight into how to navigate the dialogue of institutional acceptance, this purpose of this chapter is two answer

RQ2: How is the discourse of Shepard’s memory and hate crime legislation deliberated by interest groups and legislators in the public sphere?

The Matthew Shepard Foundation

The first set of texts I will analyze for this project will come from the Matthew Shepard Foundation (MSF). The foundation, founded by Shepard’s parents, is a private organization that provides resources for the public on hate crime reporting and statistics and community outreach. For the purposes of this project, I will be looking at the MSF website and its available materials. The foundation’s website provides the most up to date references on reporting as well as the foundation’s most recent initiatives with the public (including but not limited to productions of *The Laramie Project*, speeches and appearances from the Shepard’s and other board members, and recent programming).

While there is plenty of critical, potential research to be done on the community outreach and public performances sponsored by the Matthew Shepard Foundation, I will be focusing on the materials available through the “Hate Crime Work” section of the

website for the following reasons. First, the resources listed under Hate Crime Work provide an institutionalized approach for preventing, reporting, and convicting hate crimes. The foundation provides many guides for communities to approach the topics of inclusion and hate crime prevention. However, this section focuses on policy and, most importantly, the impact the organization has on the public deliberation of hate crimes through its work with the Department of Justice, Federal Bureau of Investigation, and law enforcement officials.

Before I can continue providing context for the analysis, it is imperative that I provide context as the author of the study to justify 1) the focus on Shepard as a touchstone hate crime case and 2) my reliance on the Matthew Shepard Foundation for a source of artifacts. As a queer scholar, I feel a special obligation to feature, discuss, and problematize the case of Matthew Shepard (rather than, for example, examining the case of James Byrd Jr. through my position as a white scholar). So, being aware of the conjecture of my identity with research interests, I argue that the MSF is of particular value as a critical artifact in that it explicitly uses Shepard's memory and focuses primary on crimes based off of a person's gender or sexual orientation. For a future study in which I can account for different positionalities, I would account for other NGO's whose primary lens for advocacy is not primarily focused on the LGBTQ+ community. Until then, my responsibility and interest to focus on the safety of the LGBTQ+ community leads me to focus on The Matthew Shepard Foundation for now.

Although one of the goals of the organization is to address hate crimes at an institutional level, it appears that their role in public deliberation is homed in the reconstructing the memory of a single voice: Shepard. By using the MSF as a text, I will

apply Habermas's (1989) contention that this private organization perpetuates technical, specialized discourse that allows the state to avoid specific legislation protecting the LGBTQ community. Additionally, Goodnight's (1982) contention that arguments arising from the private and technical sphere substitute "actual deliberation" within the public sphere (Goodnight, 1999, p. 253).

By analyzing the role of the Matthew Shepard Foundation, I will analyze how a private entity that is responsible for accounting for hate crime statistics, representing the special interests of private individuals, as well as providing digestible information of hate crimes to the public domain serves as a substitution for a public demand of resources (including legislation) from the state. Habermas contends that the role of the public sphere has evolved to where individuals must rely on organizations for political agency or be considered the elite few who hold power above the law (Habermas, 1989, p. 176).

Upon accessing the materials for Hate Crime Work through the MSF website, readers are automatically introduced to a definition of a hate crime. The site reads,

A hate crime (sometimes termed a "bias crime") is defined by law as an act where the offender targets his or her victim specifically due to one or more personal characteristics such as race, ethnicity, religion, national origin, disability, sexual orientation, gender, gender identity or gender expression (The Matthew Shepard Foundation, pp. 1).

It is understandable why an organization that focuses on hate crimes would begin by establishing what a hate crime *is*. While the term is heavily circulated, many victims of the crime do not believe that their cases qualify for an investigation (Schwencke, 2017). Or, adversely, legislators confuse "hate crime" with "hate speech," and any subsequent

deliberation is rooted in a deep misunderstanding of the matter at hand (most specifically, senators referring to hate crimes” as “thought crimes”) (Newsroom, 2009). However, the group transitions from a general, publicly accepted definition of a hate crime to referencing the story of the Shepard tragedy. Of course, the Matthew Shepard Foundation was founded in his namesake. However, by segueing from a general definition of a hate crime to resurrecting Shepard’s memory in the context of modern day hate-crime reporting, the organization swiftly implies that hate crimes penetrate public and private spheres, and they are prepared to provide audiences with the tools to navigate the crimes in both contexts.

In order to equip their audiences to navigate and participate in hate crime and HCPA discourse, the MSF provides a base understanding of what a hate crime is before integrating their audience to more technical terms associated with hate crime prevention. While the website provides links for more detailed studies, documents, and legislation, the primary text for the site reads in a way that builds-up a lay person’s understanding of the subject matter. For example, the site provides a definition of a hate crime. Then, moves to give a brief history of the Shepard case and organization’s founding in order to contextualize what a hate crime prevention act is in order to introduce the Shepard-Byrd Hate Crime Preventions Act of 2009 (The Matthew Shepard Foundation, 2019). Although the Matthew Shepard Foundation is a private organization, it provides private citizens the specialized vocabulary and context in order to engage in discourse about hate crimes.

The site progresses to problematize the current state of reporting, citing that there are gaps in reporting due to the optional participation in reporting hate crimes as well as

the minimum required reporting being one month or one quarter to be included in the annual Uniform Crime Report (Mathew Shepard Foundation, 2019). For good measure, the foundation also provides a page with a quick list titled “5 Things You Can Do To Improve Hate Crime Reporting” urging private citizens to become involved in the discourse surrounding hate crime reporting. With a digestible vocabulary and easily interpreted info-graphics, the Matthew Shepard Foundation provides a pragmatic approach for private citizens to become aware of hate crimes, become advocates for inclusion, and to deliberate amongst other private citizens about the nuances of hate crimes and reporting.

Although the foundation is rooted in Shepard’s memory, the material that the website provides in terms of Hate Crimes Work only mentions his name and resurrects his memory in order to contextualize the current research being done to ensure enforcement of HCPA’s. In terms of hate crimes work, the largest appeal to pathos the foundation makes lies in the numbers that they report. By reproducing Shepard’s story and linking in his memory, the foundation is able to highlight the subjectivity of privateness. However, their presentation of reliable, digestible data allows for a public understanding of the importance of HCPA’s.

Hate Crime Prevention Act Rhetoric

The second set of texts serve to juxtapose the mission of the MSF with texts showcasing the deliberative rhetoric from politicians such as former presidents/nominees Al Gore and Bill Clinton. Gore, Clinton, and Obama were the three nominees to campaign for hate crime awareness and federal protections since Shepard’s death in 1998. Since Chapter 4 focuses on the Shepard-Byrd Act of 2009 that President Obama signed as

an executive order, a more detailed analysis on his position will be featured then. For this chapter, though, I will focus on statements made by Gore and Clinton to illuminate common themes in hate crime discourse that were presented to the public.

At a 2000 Democratic National Committee meeting, Gore proposed federal hate crime policy by bringing Byrd and Shepard to the center of the discussion by stating, “...when Matthew Shepard is crucified on a split rail fence by bigots, how can any political leader in either party say that there is no difference between hate crimes and other crimes...We need to come together as a people” (Burns, 2008, par. 2). Rather than discuss the rates at which hate crimes occur, institutions to protect marginalized persons, or specific legislations, Gore focuses on themes such as “humanization” and “stigmatization” without any plan to present the public in how to achieve those goals (Burns, 2008, par. 2). Gore maintains this this vernacular through presidential debates against George W. Bush, who also uses loaded language (Saunders, 2012). By avoiding the technical jargon associated in developing legislation, the discourse Gore presents to the public is one full of emotion but lacking in direction. While Gore promotes unity, he withholds a dialogue of agenda from public discourse.

Clinton, however, provided a slightly more nuanced approach to hate crimes prevention acts. Although Clinton’s proposed initiative did not make it past House and Senate Committees, the former-President advocated to include crimes based off of a person’s gender, sexual orientation, or disability as well as mandatory reporting of hate crimes from colleges and universities (CNN, 1999). Additionally, Clinton’s policy involved implementing diversity programming in K-12 public schools (Clinton White House Archives, 1999). Despite the more nuanced approach to addressing hate crimes in

America, Clinton, too, relies on emotionally-laden vocabulary to relay urgency to his audiences. During a 1999 Roosevelt Room ceremony, the former-President likened hate crimes to the “religious and ethnic persecution” happening in Kosovo (CNN, 1999, par. 7). Further, Clinton pled,

We should remember that each of us almost wakes up every day with the scales of light and darkness in our own hearts, and we've got to keep them in proper balance. And we have to be in the United States absolutely resolute about this. That's why I think this hate crimes issue is so important. (CNN, 1999, para. 9)

In the public ceremony, Clinton (like Gore) urges that hate crimes are a moral issue that private citizens should delve deep in their hearts to resolve. Here, it is important to note that as the author, it is not my intention to state that hate crimes are not emotionally rooted or involved in morality. Rather, in order to truly advocate for awareness and change—the position of both Gore and Clinton—the first step to solve the harms of hate crimes is understanding. The promotion of unity only triumphs half the battle of inclusion and safety if the nuances of the policies are inaccessible for private citizens to understand.

Conclusion

This study into how discourse surrounding Matthew Shepard and the Shepard-Byrd Hate Crimes Prevention Act of 2009 is important because this project assesses the best ways issues that are constructed as “private concerns” (i.e., sexual orientation and gender identity) can be best maintained through public deliberation. While previous research has provided clear arguments for how Shepard’s narrative is used in media framing of hate crimes (Ott & Aoiki, 2002), how Shepard’s memory is marked in the

LGBTQ+ community (Dunn, 2010), and why Shepard's body was deemed most permissible as a text (Thorney & Asquith, 2017), this research is significant in that it focuses on the deliberative rhetoric of the legislation that previous scholarship has called for through their own analyses. Considering the above, my comparative analysis of The Matthew Shepard Foundation with the deliberative rhetoric of Gore and Clinton leads to the discussion of two important themes: the importance of accessibility to technical language and how accessibility to information regarding hate crimes affects marginalized, specifically queer, communities.

First, the comparison of the Matthew Shepard Foundation to the language of Gore and Clinton shows a need for accessibility to technical language when it comes to public discourse. Gore and Clinton relied on a pathos-laden approach in relaying information to their audiences. Clinton, in his Roosevelt Room Ceremony, cites the greatest threat to the American people is the fear of the "other" (CNN, 1999). However, Gore and Clinton do little to put the fear of the "other" to rest; rather, the emotionally laden language with little allusion to the nuances of their proposed policy only feeds the public's imagination of the "other" with fear, distrust, and uncertainty of what a productive relationship with marginalized communities should look like. Thus, advocacy is perceived as unobtainable. Additionally, for Gore, Shepard's memory is used as a cultural reference to illustrate a barbaric past in need of rectification. While Shepard's tragedy was a heinous, senseless, and prejudiced act of violence that should not be belittled, Gore's lack of nuanced policy only presents Shepard as a martyr for the LGBTQ+ community, not a turning point for change. Without a turning point, the public has no reference for an alternate reality where queer lives are accounted for.

Although Clinton did attempt to roll out a federal HCPA, most of the nuance was reserved for the state consumption instead of the public's. Emotional language and foreign parallels leave audiences unsure of the intricacies of hate crimes and paint them as dichotomy: hate crimes either exist or they do not. In contrast, the Matthew Shepard Foundation serves as a reference material for private citizens to join the discourse surrounding hate crime legislation *before* providing proposed policy adjustments. This approach honors Shepard's and thousands of other victim's memories as well as provides assurance for the queer community by proposing a pragmatic approach for institutionalized change. The foundation identifies short comings in the current system in order to better it rather than construct a fear of it. By doing so, the MSF optimistically fulfills Habermas' (1989) claim that private citizens must rely on organizations (or an elite status) in order for the state to account for their interests. In the case of The Matthew Shepard Foundation, the organization does not only account for individual interests, but invites private citizens to join discourse of hate crimes and HCPA's with information rather than emotion.

Second, I argue that the accessibility of technical language involved with hate crimes and HCPA's affects the queer community's memory of hate crimes. Dunn (2014) argues the LGBTQ+ vernacular memory is unique in that it consists of "an array of public interests" that "[conveys] what social reality feels like rather than what it should look like" (Dunn, 2010, p. 614). Through the Matthew Shepard Foundation's approach to provide a basis for technical language and accessibility to reporting and the flaws in such, the queer community can root their experience in something more reliable than fearful, emotionally taxing approach that politicians use to convey urgency to the general public.

By having access to digestible, easy to understand information, the queer community can join conversations that are happening about them rather than becoming subject to faulty policies made without them in the metaphorical room. Just as this chapter revisited the rhetoric of pending legislation and institutional changes, the next chapter aims to examine the discourse surrounding a “successful” HCPA.

CHAPTER IV – CERTAINTY AND LEGISLATION

In this chapter, I will analyze a section of discursive history of the Matthew Shepard-James Byrd Jr. Hate Crime Prevention Act of 2009. First, I will consider the deliberative rhetoric of former-President Barack Obama upon the passage of the act in order to examine the symbolism associated with the federal HCPA. From there, I examine the criticisms from LGBTQ+ advocacy groups and community policing coalitions to uncover the discourse of uncertainty perpetuated by the act. By examining the consequences of uncertainty in the discursive history of the Shepard-Byrd Act, I aim to answer:

RQ3: How does public deliberation of the Shepard-Byrd Hate Crimes Prevention Act of 2009 affect the public perception of certainty regarding hate crime discourse??

Symbolic Legislation

On October 28, 2008, then-President Barack Obama signed the Matthew Shepard and James Byrd Jr. Act into law. The act, passed by congress earlier that month, served as a provision to the National Defense Authorization Act. (Zeleny, 2009). Most notably, the law updated the 1969 hate crime law to prosecute crimes based off of a victim's gender identity, gender (actual or perceived), sexual orientation, and disability. Additional provisions would include eliminating the stipulation that the crime must impugn on an individual engaging in a federally protected activity, providing federal authorities agency to assume hate crime investigations that local authorities do not investigate, funding for state and local agencies to investigate and prosecute hate crimes, and mandated FBI reporting for hate crimes based on gender and gender identity (Zeleny, 2009).

Alongside the repeal of the Defense of Marriage Act, enacting a federal hate crime statute to include gender, gender identity, and sexual orientation was perhaps one of Obama's greatest promises to the LGBTQ+ community. As President-elect, Obama's commitment to expanding hate crimes statutes was listed as one of his top civil-rights priorities, second to fighting employment discrimination (Change.Gov, 2009). As a candidate, Obama urged his audiences to reflect on the long history of the struggle for LGBTQ+ rights in America. And, in that reflection, to turn towards the future of queer advocacy. Obama urged,

While we have come a long way since the Stonewall riots in 1969, we still have a lot of work to do. Too often, the issue of LGBT rights is exploited by those seeking to divide us. But at its core, this issue is about who we are as Americans. It's about whether this nation is going to live up to its founding promise of equality by treating all its citizens with dignity and respect. (The Office of the President-elect, 2009, pp. 10)

The "work to do" that Obama mentions is referring to the struggle that congress faced in updating a 40-year-old federal hate crimes statute to include one of America's most vulnerable populations—the LGBTQ+ community. Upon signing the bill into law, Obama emphasized the symbolic nature of hate-crimes by explaining, "...we must stand against crimes that are meant not only to break bones, but to break spirits -- not only to inflict harm, but to instill fear" (Office of Press Secretary, 2009, par. 9). As Spielfelder and Glenn (2014) argue, "hate crime legislation is a social pact between larger mainstream society and the marginal group, and can therefore signify some form of institutional acceptance" (p. 124). Obama directly speaks to this institutional acceptance

by emphasizing, “the rights afforded every citizen under our Constitution mean nothing if we do not protect those rights -- both from unjust laws and violent acts” (Office of the Press Secretary, 2009, par. 9).

A Decade of Uncertainty and Reporting

Ten years after Obama signed the bill into law, organizers and advocates representing the LGBTQ+ community have spoken out against the act. While many supported the intention of the act, many argued that it raises concern. The New York City Anti-Violence Project, an organization that originally supported the Shepard-Byrd Act, also recognize the symbolic value of hate crime statutes by stating, “There has been a real transformation about how we think about ending violence and what justice looks like.” However, the group’s organizing director qualifies the statement by adding, “We wanted the system to fix things through punishment. We now believe punishment doesn’t end violence—it perpetuates it” (Crary, 2018, par. 13). The law and policy director for Lambda Legal shares a similar sentiment; Jenny Pizer argues that while the laws help the LGBTQ+ community positively negotiate stigma and marginalization, that the HCPAs themselves “only do so much” (Crary, 2018, par. 15).

Judy Shepard, mother of Matthew Shepard and co-founder of the Matthew Shepard Foundation argues that the initial presentation of the law was hopeful, but it needs to be updated. She specifically raises concerns of “requiring law enforcement agencies to report hate crimes to federal authorities” as well as “training for officers handling the cases.” Shepard explains, “We (Matthew Shepard Foundation) are seeking to create environments where victims of hate violence do not fear re-victimization by the police” (Crary, 2018, par. 8-9).

Nine years after the passage of the Shepard-Byrd HCPA, the Department of Justice released a press statement reporting that, nearly a decade later, officers were still being trained on how to report hate crimes. The press release reads that in October of 2018 “for the first time, law enforcement will be able to access critical and innovative education and training resources on hate crimes investigation and prevention” after help from a 10 million dollar technical assistance program (Department of Justice, 2018, par. 1). Ronald L. Davis, director of Community Oriented Policing Services and Patrice O’Neill, executive director of Not In Our Town (a community-based movement and media organization to address prejudice) also recognize the symbolic status of hate crimes by stating,

What makes these crimes so pernicious is that their impact spreads far beyond the direct victims and their families. Because hate crimes threaten everybody who worships, looks, speaks, or shares the same beliefs as the victims. And if the bias against these groups is not condemned by law enforcement, distrust and resentment thrive in the victims’ communities, undermining efforts to maintain peace and security (Davis & O’Neill, 2016, par. 10)

However, Davis and O’Neill juxtapose the apparent need for HCPAs with the clear reality that officers are underreporting. The researchers (2016) provide an in-depth analysis of why officers do not report hate crimes (i.e., disregarding motive, the age of offenders, ignorance of cultural cues). Yet, what is most notable about their report is that it is not only targeted towards police officers; it is targeted towards victims and witnesses who choose not to report based off of uncertainty of law enforcement. The authors cite a 2007-2011 study that shows that twenty-four percent of hate crime victims did not report

the crime “because they didn’t think the police could or would help” (Sandholtz, Langton, & Planty, 2013; Davis & O’Neill, 2016, par. 17).

At the time of the article’s publication, the most recent hate crime statistics from the FBI showed that “87 percent of law enforcement agencies in the United States Reported no hate crimes in 2013” (Davis & O’Neill, 2016, par. 5; Federal Bureau of Investigation, 2016). The researchers situate their study to address reporting with victims, law enforcement, and the potential coalition for community advocacy between the two groups. This, the Department of Justice’s need to continue hate crime reporting training, and the suspicion of once-advocates of the federal HCPA points to uncertainty created from the Shepard-Byrd Act of 2009.

Analyzing Social Knowledge of Hate Crimes and Uncertainty

It is important to note that by the phrase “uncertainty,” I am referencing Goodnight’s (1999) assertion that argumentative endeavors involve the “creative resolution and resolute creation of uncertainty” (p. 252). Goodnight argues that “deliberative rhetoric is used to create social knowledge of an event, uncover, assess, and resolve shared social problems” (Goodnight, 1999, p. 251). Obama’s approach to the federal HCPA lends itself to Goodnight’s definition of deliberative rhetoric. Obama points to the long history of injustice against the LGBTQ+ community. While Obama honors Shepard’s memory in the legislation’s name (alongside James Byrd Jr.’s), he situates Shepard’s death within a long history of violence and call for national action. Obama states,

This is the culmination of a struggle that has lasted more than a decade. Time and again, we faced opposition. Time and again, the measure was defeated or delayed. Time

and again we've been reminded of the difficulty of building a nation in which we're all free to live and love as we see fit. But the cause endured and the struggle continued, waged by the family of Matthew Shepard, by the family of James Byrd, by folks who held vigils and led marches, by those who rallied and organized and refused to give up, by the late Senator Ted Kennedy who fought so hard for this legislation... and all who toiled for years to reach this day. (Office of the Press Secretary, 2009, par. 7)

By referencing the long history of injustice against marginalized demographics and the long fight to rectify prejudice, Obama intertwines the creation of social knowledge within the deliberative rhetoric used to enact the legislation. Obama's mention of the 1969 Stonewall Riots at the beginning of his address situates the discourse in a long history of deliberation and movements. However, in the creation of social knowledge, Obama still utilizes the image of Shepard, particularly his body, as a symbol in his deliberation as he states,

It's hard for any of us to imagine the mind-set of someone who would kidnap a young man and beat him to within an inch of his life, tie him to a fence, and leave him for dead... But we sense where such cruelty begins: the moment we fail to see in another our common humanity -- the very moment when we fail to recognize in a person the same fears and hopes, the same passions and imperfections, the same dreams that we all share. (par. 12-13)

Like other organizations discussed earlier in this project, Obama initially focuses not on Shepard before he was a victim, but on the image of his body after he was attacked. As Ott & Aoiki (2002) explain, Shepard's body was often assigned to the center of the story when circulated by the media. Without stating Shepard's name, Obama is

able to invoke his memory as a symbol to navigate deliberative discourse. Similar to how the media's portrayal of hate crimes influences how the public understands loss (Husselbee & Elliot, 2002), the portrayal of Shepard's narrative is instrumental to how the public understands the necessity of hate crime prevention acts.

In stark contrast, the second half of this statement calls for healing within the national community in approaching prejudice. By invoking "common humanity," Obama shows the alternative reality of how Shepard's story could have ended—or, better yet, continued if his identity was protected by the federal government. Ott and Aoiki argue that through "fostering symbolic resolution through narrative closure, the news media's coverage of the story re-imposed order and eliminated the self-reflective space that might serve as the basis for social and political change" (Ott & Aioki, 2002, p. 250). However, through his deliberative rhetoric, Obama provides an opportunity to reflect on the history before the act and the future of progress after it has been signed into federal law. Further, he tasks hate crime prevention as a shared social problem facing Americans instead of a siloed experience that only affects the queer community. In turn, this provides a space for further "creative resolution and resolute creation of uncertainty" (Goodnight, 1999, p. 252). Both advocates for LGBTQ+ protections as well as law enforcement representatives partake in the assessment of this social knowledge.

The Department of Justice as well as Davis and O'Neill imply the clear need for assessing uncertainty about the parameters of hate crime legislation with law enforcement. While have provided public documentation of efforts to alleviate uncertainty, both organizations have communicated to their audiences that the "resolution" of the Shepard-Byrd HCPA is still malleable and subject to the receptiveness

to officers ability in correctly reporting hate crimes as well as victim's trust in their willingness to come forward. Both statements are used to represent the concerns of law enforcement regarding enforcing hate crime protection acts. However, as I will discuss in the next section, the uncertainty associated with deliberative rhetoric proves to be at odds with symbolic legislation.

Conclusion

By examining a brief discursive history of the Shepard-Byrd Act of 2009, it is evident that the federal HCPA served as a “social pact between larger mainstream society and the marginal group, and can therefore signify some form of institutional acceptance” (Spieldenner & Glenn, 2014, p. 124). The social knowledge that Obama created through his deliberative rhetoric of the act is one of a deep history of discrimination and public advocacy. Despite its symbolism of the United States' supposed condemnation of hate crimes, the statements made by representatives of private organizations engage in a discourse of uncertainty. Goodnight (1999) points out that arguments that arise from the personal and technical spheres have begun to substitute actual deliberation. For the case of the deliberative rhetoric and public deliberation of the Shepard-Byrd Act of 2009, the discourse points to affirm Goodnight's point. Private organizations recognize the symbolic power of a federal hate crime statute, but task themselves in holding the state accountable for promises made in the implementation of legislation.

As mentioned in the previous chapter, The Matthew Shepard Foundation works with the Federal Bureau of investigation in providing resources for accurate reporting in order to track statistics as well as ensure the rightful prosecution of a hate crime. The Matthew Shepard Foundation, alongside the other LGBTQ+ interest groups and

community policing coalitions have reaffirmed Obama's conviction in the need for legislation to not only convict hate crimes but symbolize a commitment to rectifying injustice as well. However, in critiquing its effectiveness, organizations run the risk of critiquing the symbolism it provides as well.

It appears that the tool to navigate the evolving public discourse surrounding hate crime legislation is the critique of enforcement of the act. Here, it is important that I make a small disclaimer as the author of this critique: The argument that the only way to better hate crime legislation is to critique the enforcement of the policy does not imply that I am aiming to discredit the use of federal or local HCPA's. Instead, as an author who agrees that hate crime legislation is essential to addressing injustice, I urge that critiques of enforcement as well as other concerns are imperative in the public deliberation of social change. In short, I argue that critiquing the lack of state-level HCPA's, miseducation of the public as to what constitutes as a hate crime, and the negligence of enforcement of the act are key to providing a comprehensive approach to reform. Any critique of the listed shortcomings is not an attack on any symbolic institutional inclusion. Instead, it is an attempt to honor the memory of Shepard, the LGBTQ+ community, and the need to condemn injustice through the discourse of uncertainty in order to illuminate an avenue of sustainable change.

Through using a critique of enforcement, organizations are able to provide a distinguishable source of shortcoming followed by a comprehensive approach to reform. The Department of Justice's press release announcing the continued use of training initiative on the 10 years after passing the Shepard-Byrd Act is an easier way to soothe discontent than demanding that all states, including Wyoming, provide a state hate crime

prevention act. The Federal Bureau of Investigation's partnership with the Matthew Shepard Foundation and the Human Rights Campaign to provide the public with promises in changes to reporting is a more pragmatic approach to assessing systematic hate in America than drawing attention to the correlation of the spike in hate crimes after Trump winning the 2016 election (BBC, 2016). And, ensuring the public that a large financial investment has been made to make sure that police officers can do the job that they should already know how to do, accurately report crimes according to U.S., is a more palatable approach than revealing that the American government does not provide accessible information to its citizens on their rights and protections.

In navigating uncertainty throughout the discursive history of the Shepard-Byrd Hate Crime Prevention Act, citing enforcement as the source for the legislation's ineffectiveness has become a tool to vaguely recognize other deep-seeded shortcomings of the American Justice System. An attack on the legislation itself would be an attack on the symbolism attached to the act. In the same regard, the lack of legislation at the state level and an absence of a comprehensive federal statute can also be considered a charge against justice as well as the communities it intends to protect. In the next and final chapter of the project, I will revisit the arguments made in chapters 2, 3, and 4 and situate the study in the line of scholarship addressing social movements, deliberative rhetoric, and hate crime legislation before discussing theoretical takeaways.

CHAPTER V – CONCLUSION

I position this research in the rich history of scholars before me who have analyzed Shepard and hate-crimes against the LGBTQ+ community. By engaging with literature that focuses on the media framing of Matthew Shepard, I engage the public perception of the victim associated with the figurehead case of hate-crime legislation. Further, I argue that the constellation of rhetorical theory, New Social Movement theory, and public sphere literature enables an articulation of the lasting impact of an act of hatred within both the private and public sphere in hopes to provide future protections.

Additionally, I point to Morris's (2006) argument that scholars—particularly queer scholars—should have a vested obligation to rhetorically analyzing queer history and the respective consequences of being forced into a heteronormative, historical paradigm. Morris notes, “recent focus on archives of trauma and lust portend a vigorous pursuit and sophisticated analysis of diverse traces of the multiple complex representations of GLBTQ history” (p. 149). Although Morris is pointing to “queering the rhetorical archive,” I believe that his assertion lucidly points to the most practical contribution of the project so far—that analyzing the past arguments used to systematically divert the needs of institutionalized protections of the queer community will only aid in our understanding, and action regarding, future discourse. Fo

Through this final chapter, I will provide a summary of the findings of previous chapters and further situate the work in existing literature with my analyses, provide some practical recommendations for approaching hate crime legislation, and discuss future research opportunities.

Locating Shepard in Public Deliberation Findings

In the second chapter of this project, I aimed to join the previous discussions of how Shepard was viewed as a revolutionary symbol as well as asserting the ways in which he was used to carry a national dialogue—both supportively and antagonistically. By examining the construction of Shepard’s narrative and the events leading to “naming a hate crime,” an analysis of how Shepard was used deliberatively by Stephen Jimenez, and the advocacies of national and local movements, Chapter 2 aimed to answer:

RQ1: How was Shepard used discursively in the public sphere in the public sphere?

Naming the Event

This section of Chapter 2 discussed the events that lead to Shepard’s case gaining the public consensus of hate crime status. Divided into two sets of text, the first data set recalled the discursive history of naming Shepard’s death as a hate crime. After Shepard’s attack, friends of the victim reached out to media organizations and public officials, introducing Shepard’s sexuality into the public sphere (ABC News, 2006). Despite the lack of an official conviction, the reproduction of Shepard’s case in the public sphere pointed to a common consensus: McKinney and Henderson committed a hate crime. However, 15 years after Shepard’s death, Stephen Jimenez entered the conversation, challenging the public consensus labeling Shepard’s death as a hate crime. The analysis of the second set of texts, the discourse aiming to discredit Shepard’s murder as a hate crime, focuses on the discourse surrounding Jimenez’s book. By introducing Shepard as a drug addict and distributor, reimagining the town of Laramie as a community plagued with meth addiction, and questioning the sexuality of Shepard’s aggressors, the discursive function of the book was to invert the original symbol of

Shepard as a martyr for LGBTQ+ rights to a troubled drug addict who's death was caused by a drug deal gone wrong.

The findings of this section point to the reliance of Shepard as a symbol in order to approach hate crime discourse. By memorializing Shepard as a martyr of a movement, it becomes easier to approach the taboo subject of sexuality. The image of an angelic, young boy to discuss hate crimes to an ignorant audience is an easier starting place than introducing a meth-fueled victim who just so happened to be gay. Alternatively, the image of an addict involved in a local drug-war provides a more feasible gateway to deconstruct a widely accepted narrative of injustice. As the author, it is not my intention to credit Jimenez's claims or discredit the hate crime designation of Shepard's murder. As Spieldenner and Glenn (2014) argue, in scripting hate crime narratives, "the body both *is* and carries the text" (p. 126). Just as Spieldenner and Glenn argue that the moralization of bodies contributes to society's understanding of hate crimes, I argue that the deconstruction of them is used to work counter-productively.

National and Local Protests and Vigils

In this section of the chapter, I provide a comparative analysis of national and local movements with their respective demands to institute change in the wake of Shepard's death. Findings from this section point to the types of demands these movements make. Through this section, I argue that national movements call for active change while local movements call for passive change. National movements invoked Shepard's memory as a call to explicitly challenge institutional discrimination of the LGBTQ+ community by demanding for legislative, societal, and enforcement reform. Local movements centered in Laramie focused on the healing of their community and

remaining virtuous to the values they cherish (namely forgiveness and homecoming) in order to overcome injustice. National movements remember Shepard as a gay man, a member of the queer community, murdered based off his sexual identity. Local movements remember Shepard as a student and citizen of their town. The different memories of Shepard are used to advocate for different types of change.

Counter-Protests

Westboro Baptist Church, the primary picketers and counter-protesters in the Shepard case-study, also used Shepard as a symbol. However, they also inverted the symbol of Shepard as a martyr for LGBTQ+ rights into the deterioration of American morality. While members of Westboro Baptist did not use their protests to advocate for institutional change, they maintain the nation's remaining anti-LGBTQ+ sentiment. The church's polemic approach is enticing for reporters in that it makes good news—the picketers have extremist opinions that draw a large crowd of counter-pickers. With the wide circulation of the church's beliefs, their contribution to public deliberation is that they have become the spokespeople for anti-LGBTQ+ sentiment. In turn, the public that quietly shares the same sentiment can remain validated in their beliefs while not having to officially enter the discussion. Like those who support the LGBTQ+ community and media organizations, counter-protestors recognized Shepard as a symbol for the queer community.

Chapter Conclusions

Through this chapter, I discuss three contentions of the use of Shepard as a symbol in the discourse complicating the public's consensus of hate crimes. First, discourse surrounding the legitimacy of the hate crime designation is highly contingent

on a legitimate image of Shepard. The struggle over legitimacy is present in the naming of the event as a hate crime and the subsequent deconstruction of the event present in Jimenez's account and the surrounding discourse. Second, the image of Shepard as a national symbol and a local symbol advocate for two different kinds of advocacy: active change and passive change. While national movements remember Shepard as a martyr of the LGBTQ+ movement, local movements remember him as a neighbor in Laramie. The active change requires audiences to consider Shepard as an activist while the passive change requires audiences to remember Shepard as a regular college student, who so happens to be gay. Third, the symbol of Shepard was used to promote unity and healing as well as division. National communities used the symbol of Shepard as a martyr to gather for collaborative interests for the LGBTQ+ community. Local communities used the symbol of Shepard as a community member to promote peace and healing within their town. Alternatively, Westboro Baptist used an attack on symbol of Shepard as an attack on collective queer identities.

Rhetorical Dimensions of Deliberative Rhetoric and Private Organizations Findings

In chapter 3, I examine the roles of private organizations (The Matthew Shepard Foundation) alongside that of legislators in the discourse of hate crime protection acts. For this project chapter, I focused on how public deliberation from elected officials has been supplemented through the use of extra-political, private organizations such as the Matthew Shepard Foundation. Through a comparative analysis of the technical rhetoric of the Matthew Shepard Foundation and the deliberative, presidential rhetoric of Bill Clinton and Al Gore hate crime campaign platforms, chapter three aimed to answer:

RQ2: How is the discourse of Shepard's memory and hate crime legislation deliberated by interest groups and legislators in the public sphere?

The Matthew Shepard Foundation

For this section of chapter 3, I focused on the materials available through the Hate Crime Work portion of the organization. By using the MSF as a text, I apply Habermas's (1989) contention that this private organization perpetuates technical, specialized discourse that allows the state to avoid specific legislation protecting the LGBTQ community. Additionally, Goodnight's (1982) contention that arguments arising from the private and technical sphere substitute "actual deliberation" within the public sphere (Goodnight, 1999, p. 253). By analyzing the role of the Matthew Shepard Foundation, I analyze how a private entity that is responsible for accounting for hate crime statistics, representing the special interests of private individuals, as well as providing digestible information of hate crimes to the public domain serves as a substitution for a public demand of resources (including legislation) from the state.

The Matthew Shepard Foundation provides a basis for the public to understand hate crimes intertwined with resurrecting Shepard's memory to do so. The organization swiftly implies that hate crimes penetrate public and private spheres and prepare audiences—who they assume are potential victims—tools to navigate both approaches to the argument. Further, the Matthew Shepard Foundation presents information in a manner than is easily interpreted by a lay audience. While it starts off simple with the key terms to understanding what a hate crime is, it gradually inundates its audience of private citizens with the specialized vocabulary and context in order to engage in discourse about hate crimes. Although the foundation is rooted in Shepard's memory, the material that the

website provides in terms of Hate Crimes Work only mentions his name and resurrects his memory in order to contextualize the current research being done to ensure enforcement of HCPA's. By reproducing Shepard's story and linking in his memory, the foundation is able to highlight the subjectivity of privateness. However, their presentation of reliable, digestible data allows for a public understanding of the importance of HCPA's.

For this section of chapter 3, I juxtapose the texts of the Matthew Shepard Foundation with texts showcasing the deliberative rhetoric from presidential candidates Al Gore and Bill Clinton. Unlike the Matthew Shepard Foundation, the statements that were available for public consumption from the candidates were primarily an appeal to pathos rather than a nuanced policy position. Gore's statements promote unity, but he withholds a dialogue of agenda from public discourse. While Clinton's public addresses on hate crime prevention acts were more nuanced, they were still centered around an assumed public consensus of morality. The rhetoric of both Gore and Clinton was clearly intended to unite, but the nuances of policy remained inaccessible for private citizens to understand.

Chapter Conclusions

The findings from chapter 3 point to how "private concerns" (i.e., sexual orientation and gender identity) can be best maintained through public deliberation. First, the comparison of the Matthew Shepard Foundation to the language of Gore and Clinton shows a need for accessibility to technical language when it comes to public discourse. While Clinton cites the greatest fear of the American people is the fear of the "Other" (CNN, 1999), the emotionally laden language of Gore and Clinton in discussing their

advocacy of HCPA's does little to put this fear to rest, rendering their advocacy unobtainable. Alternatively, the Matthew Shepard Foundation serves as a reference material for private citizens to join the discourse surrounding hate crime legislation *before* providing proposed policy adjustments. By doing so, the MSF optimistically fulfills Habermas' (1989) claim that private citizens must rely on organizations (or an elite status) in order for the state to account for their interests

Second, the accessibility of technical language involved with hate crimes and HCPA's affects the queer community's memory of hate crimes. Dunn (2014) argues the LGBTQ+ vernacular memory is unique in that it consists of "an array of public interests" that "[conveys] what social reality feels like rather than what it should look like" (Dunn, 2010, p. 614). Through the Matthew Shepard Foundation's approach to provide a basis for technical language and accessibility to reporting and the flaws in such, the queer community can root their experience in something more reliable than fearful, emotionally taxing approach that politicians use to convey urgency to the general public. By having access to digestible, easy to understand information, the queer community can join conversations that are happening about them rather than becoming subject to faulty policies made without them in the metaphorical room.

Certainty and Legislation Findings

In Chapter 4, I analyzed the discursive history of the Matthew Shepard-James Byrd Jr. Hate Crime Prevention Act of 2009. Through this chapter, I examined two sets of texts. First, I considered the deliberative rhetoric of Barack Obama upon the passage of the act in order to examine the symbolism associated with a federal HCPA. Then, I juxtaposed the symbolic nature of hate crime legislation with the criticisms from

LGBTQ+ advocacy groups and community policing coalitions to uncover the discourse of uncertainty perpetuated by the act. In doing so, I reference Goodnight's (1999) argument that argumentative endeavors involve the "creative resolution and resolute creation of uncertainty" (p. 252). Further, I reference Goodnight's explanation of deliberative rhetoric to examine the role of creating social knowledge has on the discursive history of the Shepard-Byrd Act of 2009. Through the comparative analysis of the two sets of texts, I aimed to answer:

RQ3: How does public deliberation of the Shepard-Byrd Hate Crimes Prevention Act of 2009 affect the public perception of certainty regarding hate crime discourse?

Symbolic Legislation

Through this section of chapter 4, I present the deliberative rhetoric of President Obama in advocating for a federal hate crime statute before discussing the legislation's symbolic representation. Obama urged his audiences to reflect on the long history of the struggle for LGBTQ+ rights in America. And, in that reflection, to turn towards the future of queer advocacy. Obama recognizes the symbolic nature of the legislation as he states, "...at its core, this issue is about who we are as Americans. It's about whether this nation is going to live up to its founding promise of equality by treating all its citizens with dignity and respect (The Office of the President-elect, 2009, pp. 10). As Spieldenner and Glenn (2014) argue, "hate crime legislation is a social pact between larger mainstream society and the marginal group, and can therefore signify some form of institutional acceptance" (p. 124).

A Decade of Uncertainty and Reporting

Through this section of the chapter 4, I examine the criticisms of the Shepard-Byrd Hate Crime Prevention Act of 2009 from once advocates of the act and then the criticisms of representatives of law enforcement to address uncertainty in the deliberation of the HCPA. Both sets of texts point to uncertainty of the effectiveness of the act due to the poor reporting standards and questionable authority of enforcement. Further, the Department of Justice's need to continue hate crime reporting training, and the suspicion of once-advocates of the federal HCPA points to uncertainty created from the Shepard-Byrd Act of 2009.

Analyzing Social Knowledge of Hate Crimes and Uncertainty

In this section of the chapter, I apply Goodnight's (1999) assertion that argumentative endeavors involve the "creative resolution and resolute creation of uncertainty" (p. 252). Additionally, I focus on the "social knowledge of events" created by deliberative rhetoric (Goodnight, 1999, p. 251). Obama invokes this social knowledge as he recalls the history of the struggle for LGBTQ+ rights alongside the name of the symbol largely associated with hate crimes against the queer community—Matthew Shepard. Obama intertwines the creation of social knowledge within the deliberative rhetoric used to enact the legislation. In contrast, The Department of Justice as well as Davis and O'Neill imply the clear need for assessing uncertainty about the parameters of hate crime legislation with law enforcement. While they have provided public documentation of efforts to alleviate uncertainty, both organizations have communicated to their audiences that the "resolution" of the Shepard-Byrd HCPA is still malleable and subject to the receptiveness to officers' ability in correctly reporting hate crimes as well as

victim's trust in their willingness to come forward. Both statements are used to represent the concerns of law enforcement regarding enforcing hate crime protection acts.

Chapter Conclusions

The analysis of chapter 4 points to the consequences of when uncertainty associated with deliberative rhetoric proves to be at odds with symbolic legislation. Despite its symbolism of the United States' supposed condemnation of hate crimes, the statements made by representatives of private organizations engage in a discourse of uncertainty. Goodnight (1999) points out that arguments that arise from the personal and technical spheres have begun to substitute actual deliberation. For the case of the deliberative rhetoric and public deliberation of the Shepard-Byrd Act of 2009, the discourse points to affirm Goodnight's point. Private organizations recognize the symbolic power of a federal hate crime statute, but task themselves in holding the state accountable for promises made in the implementation of legislation

Further, given the fact that hate crime legislation is a symbolic pact between marginalized communities and larger population (Spieldenner & Glenn, 2014), the discursive history of the federal HCPA points to the fact that it is difficult to critique. It appears that the tool to navigate the evolving public discourse surrounding hate crime legislation is the critique of enforcement of the act.

Final Discussion

The three content chapters (chapter 2, 3, and 4) represent the three arenas present in the public discourse relevant to hate crime legislation: the public, private organization, and politicians. Through these three arenas, there appears to be three important themes embedded in the public discourse of hate crime legislations—particularly for the

LGBTQ+ community: the role of Shepard's memory, the role of private organizations, and the role of the legislation itself.

The Role of Shepard's Memory

I argue that Shepard's memory was invoked in all three arenas: the public, private organizations, and politicians. Shepard is widely regarded as a symbol for LGBTQ+ rights. Thorneycraft and Asquith (2017) posit that Shepard is easy to use as a symbol in that Shepard was "'straight-acting' or *normal*" which "[makes] public consumption and compassion permissible" (Thorneycraft & Asquith, 2017, p. 486). This "permissibility" of Shepard as a symbol points to two points. First, a generic version of Shepard allows for malleability of him as a symbol. Second, if the "permissibility" is violated, so is his symbolism in public discourse.

First, the permissible, generic image of Shepard allows for malleability of him as a symbol. As discussed in chapter 2, both national and local movements used Shepard as a symbol in order to initiate their respective agendas. National movements were able to capitalize on his sexuality in order to call for institutional—or active—change. Arguably, the national movements focus on his sexuality more than Shepard as a victim; in turn, the national movements liken him to member of their movement instead of a victim of a hate crime. As Zaekske (2002) notes, participants of a movement "inseminate" themselves into the public sphere. So, by remembering Shepard for his permissible homosexuality, national movements invoked his memory as a member of their cause with no consent. Thus, Shepard's memory becomes an active participant in a movement. In contrast, Shepard's permissiveness as a gay figurehead also allows for local movements to move away from his sexuality and focus on him as a community member who was inherently

valued because he lived in Laramie, not because he was gay. I argue that through abandoning the nuances of Shepard's sexuality in the narrative, local movements were able to displace Shepard in the widely heteronormative community of Laramie. In doing so, local communities were able to focus on healing themselves through Shepard's memory instead of demanding institutional change that would carry them outside of their city limits.

Second, if the "permissibility" of Shepard as a text is violated, so is his symbolism in public discourse. Munro's (2014) claims on Shepard's constructed identity shed light onto why Westboro Baptists protests against Shepard became protests against a collective queer identity. I argue that his "nonthreatening face" with no clear voice allowed for the public to assign the voice of an entire community—no matter how polarizing—to a symbol of innocence. While Shepard is easily malleable to navigate the constructs of public discourse, his steadfast, socially permissible symbolism of innocence casts critiques against the symbol as polemic. This explains how Jimenez's *Book of Matt* was met with much contempt; the deconstruction of the widely accepted narrative of Shepard would mean the disintegration of a national symbol of protecting the LGBTQ+ community.

The phenomenon of Shepard's perpetual constructed identity could also point to why politicians use Shepard's memory in navigating public discourse of hate crime legislation. Of course, the narrative of Shepard's murder was melodramatic (Ott & Aoiki, 2002) and widely recognized by the public. However, I recommend that the permissiveness of Shepard as a symbol for the LGBTQ+ community intertwined with deliberative rhetoric automatically gains favor with audiences. Further, Dunn notes that

Shepard was able to penetrate the sphere of the LGBTQ+ community as well as the public sphere (Dunn, 2010, p. 615). The murder of Shepard served as a reminder of the harsh reality that members of the LGBTQ sphere faced regarding their safety as well as signifying to the public sphere of the actions that needed to happen next: hate crime legislation (Dunn, 2010). By tracing the discursive history of hate crime legislation and taking note of how Shepard was represented within those discussions, I believe that Shepard's permissiveness as a symbol made it easier to navigate that signification.

The Role of Private Organizations

Through Chapters 4 and 5, I reference the use of private organizations in the discursive history of hate crime legislation within the United States. Habermas (1989) states that private citizens must rely on organizations to advocate for their interests. In light of the specialized, technical language (Habermas, 1989) that these groups perpetuate, I argue that in analyzing the public deliberation of hate crime legislation, private citizens do not only rely on these organizations for advocacy; they rely on organizations to provide information in how to join public discourse. While these groups may perpetuate a specialized, technical language, I argue that the Matthew Shepard Foundation educates in a way to equip private citizens with the vocabulary needed to hold their governments accountable.

Similarly, Goodnight contends that arguments arising from the private and technical sphere substitute "actual deliberation" within the public sphere (Goodnight, 1999, p. 253). While I recognize that Goodnight states that the different spheres should be likened to the different approaches to an argument, I argue that public negotiation of the uncertainty of hate crime reporting and enforcement are not intended to replace

deliberation within the public sphere. Again, the use of private organizations alongside the federal government to support HCPA's speaks more to attempts to hold politicians responsible for the discourse they perpetuate.

The Role of Legislation

As I have maintained throughout the project, my study concurs with the argument Spieldenner and Glenn make about the role of hate crime legislation. The researchers (2014) argue, "hate crime legislation is a social pact between larger mainstream society and the marginal group, and can therefore signify some form of institutional acceptance" (Spieldenner & Glenn, 2014, p. 124). However, just like an attack on Shepard is an attack on the LGBTQ+ community, I contend that an attack on a federal HCPA is construed as an attack on the inclusion it represents in public deliberation.

Further, the researchers cite the American Civil Liberties Union (ACLU) in their analysis that "without federal provisions, criminal prosecution is left up to local and state jurisdictions. In some crimes, the local police may not investigate certain crimes due to their own biases or beliefs about certain groups" (Spieldenner & Glenn, 2014, p. 124). With the reliance of marginalized groups on this legislation for their livelihoods, Husselbee and Elliot argue that the media portrayal of hate crimes plays a key role in how the public understands loss (Husselbee & Elliot, 2002). Through this chapter, I argue that if the communicative action of how the media portrayal of hate crimes affects public understanding, then the portrayal of the effectiveness or ineffectiveness of hate crime legislation must affect how the public understands the government's position on inclusion of vulnerable communities. By addressing the uncertainty that the deliberative rhetoric of

hate crime legislation can perpetuate, I argue that the symbolism associated with HCPA's is reflected in their success.

Limitations and Future Research

Limitations to this project are mainly centered on the time restraints imposed on myself as the researcher. The condensed timeline for the project directly affected the number of artifacts presented in the study and, in turn, affected the scope of the conclusions. Further, I argue that my identity as a white, cisgender, queer woman has inherently limited my scope of interest and credibility in critiquing institutional barriers of inclusion available in the United States, including the critique of the public deliberation of hate crime legislation.

Future research paths associated with this study include comparing Mathew Shepard and James Byrd Jr. as symbols used to navigate public discourse of hate crime legislation. I also believe that the conclusions drawn from this study could be applied to investigating symbolism of victims in the Black Lives Matter movement, particularly the public discourse surrounding George Floyd. Additionally, while I focused on the Matthew Shepard Foundation due to the direct relationship with Shepard's memory and the FBI's hate crime reporting, I believe that it would be interesting to examine the deliberative rhetoric of other organizations such as the Human Rights Campaign, Southern Poverty Law, and the ACLU, in how they 1) reimagine hate crime statutes in America and 2) communicate to the public. Finally, I believe that a future version of this project or separate study should include the discourse of uncertainty perpetuated by organizations and individuals who seek to repeal federal and state hate crime protection acts.

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