

Many familiar with the historical event, called the Stonewall Riots of 1969, “the emergence of the gay and lesbian movement in the United States.”¹ The night where police officers raided a popular gay bar on Christopher Street in Greenwich Village in NYC and were backlashed with protestors standing up for themselves, was to be known as the start of a movement that will lead to homosexual equality establishing itself today. Openly gay New York State assembly member Daniel O Donnell proclaims “there has never been a better time to be gay in America than now” and “we’ve never been as close to equality as citizens in my lifetime.”² For what is now celebrated as “one of the largest gay pride parades in America”³ the Stonewall Riots has truly marked a victory for the LGBT community. Yet, however impactful this day and its proceeding protests and challenges to the law were to the history and the present progression of LGBT liberation; a closer look into the tribulations experienced by the lesbian gay and transgender community decades before the riots, as well as the endless unjust laws “allow[ing] the government to justify discrimination against lesbians and gay men with dislike or disapproval”⁴ sheds a light to the shadowy timeline that is the LGBT struggle. Even today, with laws such as The Marriage Equality Bill passed; groups and individuals believe the war on LGBT inequality is not over. Kevin Cathart, executive director of Lambda Legal- one of the nations largest and oldest LGBT legal organizations believes “There are so many more challenges ahead.. it would be a mistake for New Yorkers to think that marriage solves everything”⁵ he states that “young people [being] harassed in school, homeless LGBTQ youth rates contin[uing]to be high in New York, housing discrimination [are] still a problem.”⁶

In analyzing the Criminal Laws that fluctuated due to the overpowering amount of cases and events presented “for” and “against” LGBT members, examining the word Crime is of significance. According to the dictionary, crime is defined as “an action or an instance of negligence that is deemed injurious to the public welfare or morals or to the interests of the state and that is legally prohibited.”⁷ Synonyms for the noun include; wrong; misdemeanor, felony; and other definitions include “any offence, serious wrongdoing, or sin” as well as “a foolish, senseless, or shameful act.”⁸ These definitions to the word crime deem important into traveling back in time, before the Stonewall riots, and understanding the multiple events that led to court cases that distinguished gays, lesbians and transgender community members as people that commit “crimes of nature.”⁹

Towards the end of December year 1950 a report entitled “Employment of Other Sex Perverts in Government” was published by Senate¹⁰, stating that homosexuality was a security risk to the nation, and that it was a mental illness. Two years later, on April 1952 The American Psychiatric Association listed homosexuality as a “sociopathic personality disturbance”¹¹ officially publishing these statements in the *Diagnostic and Statistical Manual of Mental Disorders*. Although many professionals in medicine were outraged by the lack of scientific data provided by the publication, in 1953 President Dwight Eisenhower signed Executive Order 10450, which banned homosexuals from working with the federal government.¹² His order qualified homosexuals as security risks and also listed them along with alcoholics and neurotics. It was a long 21 years into the future that the LGBT community had any alleviation from the demonizing title given to them by

society. Whether or not directly linked to the laws against Sodomy, this simplistic definition was a driving force behind the court cases that would arise.

One of the first cases that challenged and appealed a sodomy case was *Enslin vs Walford* in 1963. Sodomy is known as “anal or oral intercourse between human beings” that are not married, and is an “act of which may be punishable as a criminal offense.”¹³ This law technically made the act of male homosexual intercourse illegal by law. In New Yorks case *The People v Onofre* in 1980, Ronald Onofre was charged “with the crime of consensual sodomy”¹⁴ where he was arrested after attempting to avoid prosecution when his angry 17 year old lover sought out the police, vengefully accusing Onofre of coercing him into the homosexual relationship. Ronald Onofre “showed Syracuse District Attorney Richard A. Hennessy, Jr., photographs of himself and his partner engaged in sexual activity”¹⁵ trying to convince the attorney their relationship was consensual. Nevertheless he was charged under New Yorks misdemeanor consensual sodomy statute.¹⁶ Syracuse attorney Bonnie Strunk represented Onofre by challenging New York State Model Penal Code and emphasizing the “violat[i]on of his fundamental right to privacy”¹⁷, he additionally mentioned that since gay marriage was not allowed by law, “married and unmarried individuals is impermissible”¹⁸ under the violation of Sodomy. After a long battle between the court and Onofre, on December 18, 1980 the court appealed his charges and “[held] the consensual sodomy law unconstitutional as violative of due process and equal protection under the federal Constitution.”¹⁹

The conflict between the LGBT community, society, government and the court systems proved high during the 1970's *Gaylord v. Tacoma* trial, after a teacher was

dismissed from his position when the Tacoma district discovered that he was gay. In accordance to RCW 28 A.04.132, the court was required to “give the highest consideration to the judgment of the qualified, certified educators regarding conditions necessary to maintain the optimum learning atmosphere.”²⁰ In trial, testimony by administrative staff presented that this “atmosphere” would be disrupted once the parents of students knew the status of the teacher’s homosexuality. Although Gaylord had been working as a teacher for twelve years with excellent evaluations, the court found his orientation to be immoral and therefor would “impair [Gaylord’s] efficiency as a teacher and injure the school”²¹ had he not been fired. This statement conspicuously implicated by the Washington Supreme Court, that gay and lesbian teachers could not be role models because of the immorality of their sexual orientation.²² Discrimination against LGBT teachers continued throughout the country, with cases that seesawed heavily towards the common belief that Gays and Lesbians did not belong teaching others. It was until Harvey Milk became an advocate against Proposition 6, an initiative that would have made it legal for teachers to be fired if it were known they were gay or lesbian,²³ where the attention of the laws against gay teachers began to change.

On the November of 1977, Harvey Milk won a seat in the San Francisco Board of Supervisors. Harvey Milk would “become the first openly gay man elected to any substantial political office in the history of the planet.”²⁴ It took three failures, and multiple death threats for him to finally win his seat.²⁵ Once his seat was secure, he fought heavily to ban discrimination against gays through his time as a political figure. There was many a time where Harvey seemed to foreshadow his own death,

recording a will for his successors and stating famously “If a bullet should ever enter my brain, let the bullet destroy every closet door.”²⁶ This line manifested itself on November 27, 1978, where supervisor Daniel White, “a troubled anti-gay conservative”²⁷ shot Harvey twice, killing him. This murder was a direct hit at the LGBT community all over the United States, however when the murderer was taken to Court for justice, they were left appalled by the decision of the punishment. “Five years with parole”²⁸ was all that was given to Daniel White, whose defense used junk food as a main fuel as to why his depression may have caused him to commit such a heinous crime. Thousands were outraged and soon after more than 5000 protestors ransacked the San Francisco Hall. ²⁹ Harvey’s death became an insight into the isolation and injustice that the LGBT community was still facing, not only through the society that shunned them, but also by the courts that neglected to indict the murderer of an innocent gay man with a fair punishment.

From a far spectrum of the fight against Gay Discrimination, military service and its potent animosity against service of gay men and lesbian women was an issue of high regard. Beginning with President Harry Truman’s Executive Order 9981, a policy that declared, “that there shall be equality without regard to race, color, religion or national origin”³⁰ one can notice the lack of “sexual orientation” in what Truman referred to as worthy of equality. During the preparations for World War II, psychiatric screening was part of an indicator that would define whether an individual’s behavior was homosexually based on medical rationale.³¹ Rejection of homosexual draftees was heavy during the 40’s through the 60’s. As previously stated, a report condemning gays as “sex perverts” accumulated more than 4,380

gay and lesbian discharges in the military. The first Court challenge was brought from Leonard Matlovich, a gay discharged sergeant who openly admitted to being homosexual. The sergeant made his way into the Supreme Court as well as the cover of *Time* magazine. His challenge “marked the first time the young gay movement had ever made the cover of a major magazine.”³² This act strung along several more cases from LGBT members regarding the military to the Law Courts all over the country.

After many years of military right initiatives, President Bill Clinton finally asked the Secretary of Defense to prepare a policy that’ll end discrimination against sexual orientation in the military.³³ Members of the Congress reacted with opposition to this plea, and after heated debate a compromise was reached that was then labeled the “Don’t Ask, Don’t Tell” policy.³⁴ Although this policy allowed LGBT members of the military to keep their orientation to themselves ultimately gays still weren’t allowed to “engage in sexual conduct with a member of the same sex.”³⁵ Working quite in contrary to the goal of ending discrimination towards gay and lesbian military personnel, it is noted, “discharges actually increased under the policy, and harassment of gay and lesbian personnel appear[ed] to have intensified.”³⁶ Only after the murder of Pfc. Barry Winchell, killed by a member of his unit with a baseball bat while he lay sleeping, a crime sparked by disagreement against his sexual orientation- did President Clinton label the policy a failure. ³⁷

In similar terms, it seems that President Clinton stood in defense with the homosexual community with his attempt at barring discrimination against gay men and lesbians in the military.³⁸ However in 1996, he infuriated gay supporters by

signing the defense of Marriage Act, a federal law that defines marriage exclusively between a male and a female. This act also removed benefits that were given to married couples because the federal government did not see same-sex marriage as a legal matter. Most prominently known is the Supreme Court case *Windsor v U.S.*, the case of a couple who lived together in New York for 44 years and married in Canada were struck with \$363,000 in federal estate taxes after Windsor's spouse died. The case fought that "had the couple been considered by federal government to be married, Windsor would not have incurred those taxes."³⁹

Debates tugging at separate sides of the table argue viciously from their own point of views. The popular view in America being that "upholding traditional marriage is not discrimination."⁴⁰ The proportion of people that believe that same-sex marriage should not be a legal right, find same sex couples are a threat. Timothy J Daily, a senior fellow for the Conservative Christian Organization believes that discrimination "occurs when someone is unjust denied some benefit or opportunity" however he thinks that in order to be discriminated "such persons deserve to be treated equally."⁴¹ Interestingly, he argues that natural rights cannot be appealed as a form of defense from gay activist. According to Daily, "Nature and reason tell us that a Negro is a human being, and is not treated like a horse or an ox or a dog"⁴² without mentioning that "negroes" were indeed treated even worse than a horse, or an ox or a dog, for centuries under the chains of slavery. The paradoxical belief that marriage is somehow inhuman and unnatural shows up in the Minnesota Supreme Court case *Baker v. Nelson*, when "it rejected the argument that denying a same-sex couple the right to marry was the equivalent of racial discrimination"⁴³. The comparable

mentality between the Court systems, religious extremist, and religious members presumably show that many of the laws that impact the gay and lesbian communities think very much alike; through static, ancient religion based opinions.

A common thread becomes apparent through such various amounts of cases, events and issues that arise against the lesbian and gay community, and simply stated, it is hate. In most, or perhaps all of the cases mentioned, a boiling disagreement with the “lifestyle” of gays and lesbians is held unarguably in the spotlight. Although many of these cases do not show any form of physical harm to LGBT members, in some way they do impact (negatively) the lives of those who want to live their life attracted to the same sex. Passing the riots of Stonewall, cases that include violence or rather known as “hate crime” begin to be statistically published after the Hate Crimes Statistics Act of 1990, is put into effect.⁴⁴

Before the Hate Crimes Statistics Act “no federal statute specifically addressed anti-gay violence.”⁴⁵ Therefore there was no way to tell how many members of the LGBT community were being attacked physically. Aside from the disregard of the federal justice system keeping tabs before this act, “federal laws [did not] protect the rights of gay men and lesbians from discrimination in employment, housing, or services.”⁴⁶ Protection seemed to be nonexistent for the gay and lesbian community from both the court system and the justice system, unless those who were discriminated on fought for their cases to be heard. In some ways, the acts being perpetuated against gays right before (and long before) the Stonewall Rebellion can be considered a form of police brutality. Relatively speaking gay men,

lesbians and transgendered people are “less likely to report abuse than other groups because of their fear of police brutality or public exposure.”⁴⁷

Actually, a report released in 1984 “documented the extent of violence directed to lgbt people in the United States” conducting a survey of 2,000 gay men and lesbians that indicated that almost all respondents had experienced “some form of verbal, physical, or property related abuse.”⁴⁸ According to some sources as many as 90% of antigay crime goes unreported.⁴⁹ This number is devastatingly disappointing and impactful to those who are part of the homosexual community.

Just a scratch on the surface, the following are examples of hate crimes, and physical brutality that gay men, lesbians and transgendered individuals and groups have undergone. The murder of a gay man in 1954 in the state of Miami, where instead of advocating justice for gays, or at least respecting the death of an innocent man, a local newspaper “demand[ed] that homosexuals be punished for tempting ‘normals’ to commit such deeds.”⁵⁰ The frightening murder of cross dresser Brandon Teena in 1993 echoes today through the critically acclaimed film *Boys Don't Cry*. The infamous murder of Matthew Shepard in 1998, that sparked mass media attention after a young gay man was beaten, tied to a split rail fence in freezing temperatures and left to die in Laramie, Wyoming. During trial, Shepard’s killers plead they were suffering from “gay panic” and were charged with a life sentence, “rather than exposing [them] to the death penalty”⁵¹.

It is evident through these examples that anti-gay hate crimes have been going on long before the Hate Crimes Statistics Act. In reaction to the violence targeting gay men and lesbians as well as transsexuals, “many organizations have

formed antiviolence task forces.”⁵² Since protection from the government or police was minimal, these forces aimed at creating safe spaces for members of the LGBT community. Some task forces have even had to “monitor courtrooms to make certain that individuals charged with hate crimes are persecuted fully.”⁵³

The *Hate Crime Statistics Act* is of crucial importance because it follows antigay hate crimes into present day society. In 2001, out of the 9,730 hate crimes reported by F.B.I, about 14% were based on sexual orientation. That’s a soaring 1,362 members of the LGBT community attacked physically because of their orientation. In 2009, the *Hate Crimes Prevention Act* was passed and soon gave authority to F.B.I to investigate violent hate crimes “committed because of the actual perceived religion, national origin, gender, and sexual orientation.”⁵⁴

While legislations are being passed and the LGBT community has seen progression in the written laws protecting homosexuals, recent studies show that hate crimes may actually be rising. So exactly how impactful have these legislations been to the protection of LGBT members? An analysis of New York City’s hate crime shows that in the year of 2013 police have recorded antigay hate crimes doubling from 14 to 29, in the span of one month.⁵⁵ From the 1,443 antigay hate crimes recorded in 1996, a slight rise in 2011 shows 1,553 anti hate crimes.⁵⁶ A number of reasons can be concocted from this selected data. The two main reasons may be that more gays and lesbians are perhaps reporting hate crimes as opposed to the 90% that did not report hate crimes in the 1990s, while also the progression of federal protection for the LGBT rising has caused religious groups and individuals who oppose homosexuals to react more violently. Either way, neither of the acts

constituted by the law has shown any significant progress in protecting the LGBT community.

A question that homosexuals may be asking themselves when they are either attacked or have not been protected properly may be: “where does one turn to when there seems to be no protection?” Some individuals such as Christine Quinn, a New Yorker “respond[ing] to a disturbing spate of alleged anti-gay attacks in [her] area” offers free self defense classes to the city’s LGBT community.⁵⁷ Quinn says “It isn’t safe to be gay everywhere in New York City”⁵⁸ perhaps referring to New York as the “free” and “diverse” city it is. According to the New York Police Department, 24 bias’s related attacks have been recorded in 2013, doubling from its previous year.⁵⁹ In regards to Quinn and many others who are putting it upon themselves to protect their LGBT community members, the presence of the police department seem rather dim.

Being treated equally as a gay, lesbian or transgendered person is still an issue that has not been resolved. Police gendering, discrimination and brutality today are still vast reasons why many LGBT individuals do not contact or depend on the protection of either the police department or the criminal justice systems. For instance, Jason Lyndon, a reverend, witnessed a discriminating profile of a transgendered woman he accompanied to court. When her name was called, she was placed in cuffs and was sent to the holding area. The court officer then proceeded to ask her if she was a man or woman, she responded that she was a woman. The officer then grabbed her genitals and said “women don’t have dicks.”⁶⁰ Another story includes a young transgender woman being profiled simply because

she was carrying condoms with her. One night, after an officer approached the young woman and asked for ID, the officer repeatedly called her a man and a faggot. Soon after the officer checked her purse without consent and arrested her for carrying condoms, allegedly accusing her of prostitution. A black transgender tells her story while spending time in a federal prison, she says “I was put in blatantly dangerous housing situations where officials knew I would be taken advantage of.”⁶¹ While another transgendered female detained in juvenile hall underwent a treatment plan that aimed to “help with gender confusion and appropriate gender identity”⁶² this youth was “prohibited from growing her hair out or having any feminine accessories.”⁶³ Whether the NYS courts of law have passed legislation in order to protect individuals like this, circumstances where discrimination is apparent continues to plague the justice and equality of many individuals.

It is clear throughout the United States legislative timeline and court cases that cases from all over the nation have indelibly affected New York’s Court systems in addressing human rights for the LGBT community. For example, the Dignity Act which took effect on July 1st 2012, “[intends] to give students in public schools an educational environment free from discrimination and harassment”⁶⁴ and works to protect against harassment based on race color, sexual orientation and more. Equal Right organizations in New York are presently fighting to pass the GENDA (Gender Expression Non-Discrimination Agenda) bill in order to “protect all New Yorkers, including transgender New Yorkers” by “expand[ing] and outlaw[ing] the states hate crimes law to explicitly include crimes against transgender people.”⁶⁵ The passing of SONDA also marked how New York State legislature has been addressing these

rights. In 2003 the Sexual Orientation Non Discrimination Act “prohibit[ed] discrimination on the basis of actual or perceived sexual orientation in employment, housing, public accommodations, education, credit, and the exercise of civil rights.”⁶⁶ Lastly (but not least) the recent Marriage Equality Act declared, “Marriage is a fundamental human right. Same-sex couples should have the same access as others to protections, responsibilities, rights, obligations, and benefits of civil marriage.”⁶⁷

Ultimately, the progression and state of mind towards equal rights for LGBT communities in both New York State and the United States has evolved drastically from the opposition it received long ago. The reason of back tracking, and rewinding further then the acclaimed Stonewall Riots of 1969 was to dignify that events similar to that faithful night has been taking place much longer then the fight between the police raid and gay/lesbian bar attendees. The evolution and progression has gotten to where it is today because of the unrelenting force of LGBT members from all sides of the field. New York courts and legislature have addressed many of these fundamental rights to gays, lesbians and transgender for the solid fact that once upon a time none of these rights existed, and all the rights given today were exploited by society, police, religious groups, the criminal systems and the law systems alike. A war began far before the Stonewall Rebellion, it began when the simple fact that a person who felt an undeniable attraction to a person of the same sex was proclaimed as a criminal against nature and law alike. It continued when this idea guillotined the rights that so many ‘normal’ people were able to have, but gays, lesbians and transgender groups weren’t. This war was fought from the inside of the courts, to the blood shed of hundreds of innocent men and woman killed;

beaten, raped and hurt because their sexual preferences were not customary to society. Through the many victories that New York State Courts have come to realize in this battle, there is still discrimination happening through these streets, and it is up to the LGBT community, supporters as well as the United States Law system to continue their advancement in addressing and impacting the security and equality of homosexuals.

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²⁶ i.d

²⁷ i.d

²⁸ i.d

²⁹ i.d

³⁰ Gays and Lesbian Green Book

³¹ I.d

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⁵⁷ Christine Quinn PRINT

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⁶⁶ <http://www.ag.ny.gov/civil-rights/sonda-brochure>

⁶⁷ <http://www.governor.ny.gov/sites/governor.ny.gov/files/archive/assets/marriageequalitybill.pdf>