

# OUT of the PAST

*Gay and Lesbian History*

*from 1869 to the Present*

REVISED AND UPDATED

Neil Miller

For Jane and Rob

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*The New Millennium*

FOR A EUPHORIC MOMENT, it appeared to be the culmination of a 35-year struggle for equality. On November 18, 2003, the Massachusetts Supreme Judicial Court ruled by a 4–3 majority that gay and lesbian couples had the right to civil marriage. “Barring a person from the protections, benefits, and obligations of civil marriage solely because that person would marry a person of the same sex violates the Massachusetts constitution,” wrote Chief Justice Margaret H. Marshall on behalf of the court majority. The Supreme Judicial Court gave the legislature 180 days (until May 17, 2004) to comply. Then, in February the court reaffirmed its decision—only marriage, not a lesser equivalent like civil unions or domestic partnership arrangements—would satisfy its earlier ruling. The decision made Massachusetts the first state in the union to grant gays and lesbians full-fledged marriage rights. In the months that followed, same-sex marriage—or marriage equality, as activists preferred to call it—seemed to be sweeping the country. In San Francisco, starting on Valentine’s Day, 2004, gay and lesbian couples camped out overnight and lined up in the rain in front of City Hall for marriage licenses, with the blessing of the city’s newly elected mayor, political rising star Gavin Newsom. Within five days, San Francisco city officials performed some 2,425 same-sex marriages. Del Martin and Phyllis Lyon, the now-elderly founders of the first lesbian organization, the Daughters of Bilitis, were the first to wed; the marriage of comedian Rosie O’Donnell and her partner of four years, Kelli Carpenter, gained the most notice, however. (In the midst of the euphoria, on March 11, the California Supreme Court ordered a halt to the issuing of licenses so it could rule on the legality of the licenses; by that time, 4,037 marriages had taken place.) A tiny county north of Albuquerque, New Mexico, handed out 26 same-sex marriage licenses, before the state invalidated them. In the college town of New Paltz, New York, Mayor Jason West solemnized 20 same-sex weddings and wound up facing misdemeanor criminal charges. (He was eventually acquitted.)

On March 3, it was Portland Oregon's turn, as officials in Multnomah County, the state's largest and most liberal jurisdiction, issued 2,350 licenses within a two-week period. But by April 20, Circuit Judge Frank L. Bearden ordered the county to stop issuing such licenses, although he did call on the legislature to either approve gay marriage or enact a package of benefits that would be equivalent. Meanwhile, a group of conservative pastors moved to put a referendum question on the state's November ballot restricting marriage in Oregon to a man and a woman; on June 30, they submitted a record 244,587 signatures, twice as many as needed to put the issue before the voters.

The Oregon developments were the signs of a nationwide backlash. In March, amidst passionate debate, the Massachusetts legislature narrowly approve an amendment to the state constitution that would allow civil union status to gay and lesbian couples but deny them the right to marry; the measure couldn't become law, however, until another session of the legislature approved it and until it went before Massachusetts voters on the 2006 ballot. (The legislature overturned this amendment in 2005.) The state's governor, Mitt Romney, began a series of legal maneuvers to block the issuance of licenses on May 17 and, if all else failed, to resurrect an obscure 1913 state law to ban out-of-staters from marrying in Massachusetts if their own states did not accept the legality of same-sex marriages. Meanwhile, Ohio Governor Bob Taft signed a bill banning same-sex marriages in his state.

In March, President George W. Bush announced that he favored amending the U.S. Constitution to define marriage as between a man and a woman. Some Republican strategists sensed a "wedge" issue with which to attack Democrats in the November 2004 presidential election, and Senate Majority Leader Bill Frist (R-Tennessee) announced he would bring the issue to a vote in the U.S. Senate just before the Democratic Convention in Boston in July. (The presumptive Democratic Party nominee Sen. John Kerry opposed gay marriage and supported civil unions but was viewed as vulnerable on the issue, in part because he came from Massachusetts.)

Nonetheless, on May 17, the 50<sup>th</sup> anniversary of the U.S. Supreme Court's *Brown vs. Board of Education* decision that outlawed segregation in the public schools, same-sex marriages began in Massachusetts. Because gay marriage in Massachusetts was state-sanctioned, unlike in San Francisco and Portland in which lo-

cal officials essentially took matters into their own hands, no judge would stop the process. Thousands gathered on the steps of City Hall in Cambridge, Mass., where the first applications for marriage were accepted at 12:01 A.M. The first couple to file paperwork, Marcia Hams, 56, and Susan Shephard, 52, of Cambridge, had been camping out in front in the building since the previous night. A *Boston Globe* article described the scene as "some mix of Mardi Gras, Earth Day, and the happiest group wedding in history." By the end of the first day, more than 1,000 couples arrived at city and town halls throughout the state to apply for licenses, including 99 in Boston, where they were warmly greeted by Mayor Thomas Menino and ate wedding cake. By the end of the first week, over 2,400 same-sex couples had applied for marriage licenses statewide.

The nuptials of two of the couples who were plaintiffs in the legal case that brought about the court decision—Hillary and Julie Goodridge and Robert Compton and David Wilson—became media events. The Style pages of the tabloid *Boston Herald* featured full-color photos of the two couples in their wedding garb, noting Hillary Goodridge's "white Armani blazer with navy accents and a navy scarf, paired with gray silk Armani trousers," and Julie's "more conservative blue/gray silk suit with a Nehru collar." FREE TO MARRY was the banner headline in the *Boston Globe*, and in an editorial entitled "A Wedding Toast," the newspaper called it "a day for Massachusetts citizens to take pride in once again being at the forefront of revolution."

Soon after, on a Tuesday afternoon in late June, just a month later, a wedding took place that showed just how far gay marriage had come in a short time. That day, Governor Romney was in Washington to testify against what he termed the Massachusetts marriage "experiment" before the U.S. Senate Judiciary Committee, as it considered the constitutional amendment banning gay marriage. But in Boston's 300-year-old King's Chapel, long-term partners Mitchell Adams, the state's former revenue commissioner and Kevin Smith, former chief of staff to Republican Governor William Weld, were married amidst what *Boston Globe* columnist Jeff Jacoby called "a glittering array of VIPs." Among the guests, Jacoby observed, were two former Republican governors of Massachusetts, Boston's mayor and police commissioner, the president of the State Senate, an Episcopal bishop, and "pew after pew of influential

doctors, lawyers, and Indian chiefs." It was a veritable who's who of the state's Republican Party, indicating that the party was already weakening in its opposition to gay marriage after only a month. Jacoby, an opponent of gay marriage, noted:

*Whatever else might be said about same-sex marriage, elites in Massachusetts have clearly accepted it . . . [T]he attendance at a gay wedding of so many movers and shakers from both sides of the aisle is a good indication of which way the cultural winds are blowing. Less and less is it politically risky to openly support same-sex marriage. Increasingly, it is becoming risky not to.*

Jacoby wasn't happy with this development. To him, Governor Romney showed "leadership" because he dared to buck to growing consensus. (Others argued that Romney was playing to a larger audience—the Republican right-wing—and was attempting to further his own national aspirations.) But, in Massachusetts, in a matter of just a month, as Jacoby pointed out, something was clearly changing.

In mid-July, the attempt to enact an amendment to the U.S. Constitution banning gay marriage failed in the U.S. Senate, despite strong support from the Bush administration. The defeat was not unexpected, with barely 48 senators supporting the amendment which needed 60 to come to a vote and 66 votes to pass. The following month, Vice President Dick Cheney expressed pride in his openly lesbian daughter Mary and opposition to the amendment. "Freedom means freedom for everyone" to enter "into any kind of relationship they want to," said the Vice-President, in what many took to be an implicit endorsement of same-sex marriage.

Despite Cheney's position, the Republican Party platform took a stand opposing not just gay marriage, but domestic partnership and civil unions, too. On August 12, the California Supreme Court ruled that San Francisco Mayor Newsom had exceeded his authority by permitting gay marriages in that city, and voided the nearly 4,000 nuptials that had been solemnized in February and March. The ruling was a narrow one that didn't address the constitutionality of the California state law that restricted marriage to a man and a woman: that would be decided later. Still, it was a major defeat, and particularly because the marriages had been declared null and void. (By coincidence, the California court decision came on the

same day that married and previously closeted New Jersey Governor James E. McGreevey shocked the state by announcing that he was a "gay American," had had an extramarital affair with a man, and was resigning as governor; circumstances aside, he was the highest-ranking political figure ever to come out of the closet in the United States.)

However, it was on Election Day 2004 that the air began to go out of the gay marriage balloon. On that day, voters in eleven states—Arkansas, Georgia, Kentucky, Michigan, Mississippi, Montana, North Dakota, Ohio, Oregon, Oklahoma, and Utah—approved constitutional amendments defining marriage as between a man and a woman. The margins were overwhelming; only in "blue" Oregon and Michigan did the amendments receive less than 60 percent of the vote. Missouri and Louisiana had passed similar amendments earlier in the year. Political analysts credited strong support for the Ohio marriage amendment with President Bush's victory in that state, assuring him the election. Although the GOP standard bearers hadn't stressed gay marriage in their campaigns, exit polls showed that 80 percent of Bush and Cheney voters cited "moral values" as the issue that mattered most, second only to terrorism and far ahead of concerns about taxes, health care, education, and the war in Iraq.

A post-election analysis in the *Washington Post* portrayed the same-sex marriage issue as the "rallying cry for many social conservatives" bringing large numbers of evangelical Christians to the polls, most of whom voted for Bush and congressional Republicans. Same-sex marriage was "the hood ornament on the family values wagon that carried the president to a second term," said Tony Perkins, president of the Family Research Council. *New York Times* reporter Adam Nagourney noted that Bush campaign strategist Karl Rove "appeared to stifle a grin" when asked if he owed a debt to San Francisco Mayor Gavin Newsom and to the Massachusetts Supreme Judicial Court.

Suddenly proponents of same-sex marriage found themselves on the defensive, accused of being responsible for the victory of President Bush and the Republicans in Congress. San Francisco Mayor Newsom also faced criticism; the "spectacle weddings" in San Francisco had helped galvanize Bush's conservative supporters in the view of openly gay Rep. Barney Frank (D-Massachusetts). However, Mary Bonauto, the civil rights director of Boston's Gay and

Lesbian Advocates and Defenders (GLAD) and who was the leading legal advocate of same-sex marriage in Massachusetts, argued that Democrats were making a mistake “if they walk[ed] away from the election results deciding that the issue of marriage equality is radioactive.” Noting that 62 percent of voters nationwide told pollsters that they favored some kind of relationship recognition for gay couples—whether it be marriage or civil unions—Bonauto and marriage activist Marty Rouse argued in an op-ed article in the *Boston Globe* that in the states like Massachusetts, Connecticut, and Vermont, where there had been “a conversation” about marriage equality, opinions had become more “nuanced.” The lesson of the election, they insisted, was “more education, not less; more conversation, not less; and a dialogue that stresses the value and importance of equality in this country.” What was notable about Bonauto and Rouse’s article was its extremely temperate tone.

The string of bad news continued when Kansas voters easily approved an anti-gay marriage ballot initiative in April, 2005, and the Oregon Supreme Court invalidated some 3,000 same-sex marriages performed the year before. But Bonauto and Rouse’s argument appeared to be borne out, at least in part, later that month when the Connecticut legislature approved civil unions there. That made Connecticut the second state in the United States—after Vermont—to approve civil unions, which gave gays and lesbians many—but not all—of the same rights as married heterosexual couples. It was also the first state where such rights had been initiated by an elected legislature, not by judicial fiat. The movement for recognition of gay relationships received a new boost. However, the Connecticut legislature added a caveat to the civil union bill—in Connecticut, the bill affirmed, marriage was between a man and a woman. The battle would go on, but politicians were clearly heeding the shifting political winds.

IF GAYS IN THE MILITARY had been the major gay issue in the United States during the early 1990s—largely thanks to Bill Clinton—it was now the issue of same-sex marriage that had become the leading edge of the gay and lesbian movement. Previously dismissed by almost everyone as an “impossible dream,” rejected by lesbian feminists as mimicking patriarchal values and by other lesbians and gay men who preferred to steer clear of what increasingly appeared to be a troubled institution, marriage had suddenly

become the key issue of gay equality—the test of whether the growing tolerance of the 1980s and 90s could lead to the true acceptance of gays and lesbians into the mainstream of American life.

There were a number of reasons for the rise of this issue. The generation that came of age in the tumultuous years of the 1960s—and which still dominated the gay movement—had grown older and found itself with changing needs. Lives were more settled; many had children. As early as the mid-to-late 80s, AIDS had undercut the sexual liberation ethos that had sustained many gay men; at the same time, among lesbians the separatist ideology had lost most of its power and, with women feeling they had more personal and economic choices, the much-vaunted “lesbian baby boom” had emerged. Of the 594,000 “cohabiting same-sex couples” who identified as such on the 2000 U.S. census, 34 percent of lesbians and 22 percent of gay male couples had children at home. A *Boston Globe* survey of 752 same-sex couples who had applied for marriage licenses on the first day of legal gay marriage in Massachusetts found an even larger number—30 percent—with children living at home with them. The gay and lesbian community was beginning to look more and more like the rest of society. In an editorial, the *Globe* noted, “These families resonate to the same demands and desires as any: shutting teenagers to the mall, staying up late with a science project, feeling rooted enough in a community to plant a perennial garden.”

For the “impossible dream,” it had been a long—yet, at the same time, miraculously short—journey. The first time same-sex marriage gained visibility as an issue was at the April 1993 March on Washington, following Clinton’s inauguration. On the day before the march, the Rev. Troy Perry, founder of the Metropolitan Community Church, married 2,000 gay and lesbian couples in a ceremony on the steps of the Internal Revenue Service building. Although the event was overshadowed by the march itself—whose main emphasis was on the issue of gays in the military—for those who participated it was a transforming occasion.

<sup>1</sup>Remember going down the escalator to catch the Metro to the IRS,” recalled Aleta Fenceroy of Omaha, who married her partner Jean Mayberry at that ceremony, “and the whole subway tunnel burst out with people singing ‘Going to the Chapel.’ It was one of those moments that still gives me goose bumps when I think of it.” A month later, same-sex marriage became a public issue for the

first time. The setting was one not usually associated with gay activism—Honolulu. In a case brought by local attorney **Dan Foley**, the ACLU's former Hawaii legal director, aided by **Evan Wolfson**, a lawyer with Lambda Legal in New York City, the state's Supreme Court ruled that the denial of marriage licenses to three same-sex couples represented discrimination on the basis of sex. The state of Hawaii, ruled the court, would have to demonstrate a "compelling" reason in order to continue the exclusion of same-sex couples from civil marriage.

It was a stunning decision that raised the hopes of gay activists everywhere, but it was immediately undercut by the state legislature which moved to define marriage as solely between a man and a woman. The court failed to act further, and the legislature placed a constitutional amendment on the November 1998 ballot that would give it the exclusive power to define marriage. Sixty-nine percent of Hawaii's voters ratified the legislature's decision at the polls.

Meanwhile, in response to the Hawaii court decision, in 1996, Alaska's legislature enacted a law banning gay marriage in the state. Two years later, in April 1998, Alaska Superior Court Judge **Peter Michaliski** ruled that unless the state could find a compelling reason, there was no basis for this prohibition. In an attempt to overrule the judge, the two Houses of the legislature quickly approved a constitutional amendment restricting marriage to a man and a woman. That fall, on the same day as Hawaii's referendum, Alaskan voters voted by better than two to one in favor of the amendment and against same-sex marriage.

In both Hawaii and Alaska, financial assistance from the Church of the Latter-Day Saints in Salt Lake City—fiercely opposed to same-sex marriage—was crucial to the passage of the anti-gay amendments. In Hawaii, the Mormon church donated over \$600,000 to the anti-gay marriage campaign, while in Alaska it gave \$500,000 to the amendment proponents. Six years later, in Massachusetts, it would be the Roman Catholic Church that led opposition to same-sex marriage, underscoring the religious character of much of the opposition, even though it was the civil status of marriage that was at issue.

Despite these defeats, the very fact that courts in Hawaii and Alaska ruled as they had gave heart to proponents of gay marriage. The issue was moving slowly to the gay mainstream. "Once the Hawaii court ruled, we were in a different world," gay marriage

proponent **Wolfson** would recall. "There was this sense of possibility, this sense of hope, this sense of empowerment."

But the opposition had been mobilizing. With the legalization of gay marriage in Hawaii a real possibility in the wake of the state court decision, politicians in Washington were determined to make sure it didn't spread to the mainland. In July 1996, with the presidential election looming in the fall, the U.S. House of Representatives passed the Defense of Marriage Act (DOMA), by a vote of 342 to 67. The bill denied any federal recognition of gay marriages, and, while not barring gay marriage in specific jurisdictions, it stated that states would not be able to recognize such marriages performed in another state. It was arguably a violation of the "full faith and credit" provisions of the Constitution, but that didn't stop DOMA's momentum. The Senate followed suit, by an 85-14 vote, on September 10, and President Bill Clinton signed the bill into law. Within four years, 38 states would have their own versions of DOMA on the books—33 through legislative action and 5 others (Hawaii, Alaska, Nebraska, Nevada, and California) by popular referendums.

Although the issue frightened many Democrats, afraid the Republicans would use it against them (the late liberal Minnesota Senator and "conscience of the Senate" **Paul Wellstone** supported DOMA), at least one prominent political figure, Senator **John Kerry** (D-Massachusetts), was passionate in his opposition. In a column he wrote for *the Advocate* just a week before the Senate passed DOMA, Kerry called the legislation "as unconstitutional and unnecessary as it is mean-spirited and malicious." He went on:

*What is this debate really about? It seems no coincidence that every election year a few politicians gang together for some legislative gay bashing. This behavior panders to the basest instincts of the human condition—scapegoating and ostracizing. We are a better nation than that. Echoing the ignorance and bigotry that peppered the discussion of interracial marriage a generation ago, the proponents of DOMA call for a caste system for marriage... As **Martin Luther King Jr.** explained 30 years ago, "Races do not fall in love and get married. Individuals fall in love and get married." This is the essence of the American pursuit of happiness and the core of the struggle for equality.*

But if by signing DOMA, Bill Clinton engaged in his own version of “gay bashing,” it was a lapse that most gay and lesbian voters were willing to forgive. In the 1996 presidential election, which took place shortly after he signed DOMA into law, Voter News Service exit polls showed that Clinton won 66 percent of the gay vote to 23 percent for Republican candidate **Bob Dole** and 7 percent for **Ross Perot**. (In the 2004 election, Kerry would win 77 percent of the gay vote to Bush’s 23 percent, according to a *New York Times* exit poll.)

Despite DOMA and the anti-gay marriage backlash, throughout this period, gay family issues were increasingly coming to the fore. Vermont’s decision in 1994 to approve medical and dental benefits for same-sex partners of state workers led the way. A variety of companies, notably in the health-care and high-tech industries, began to include same-sex partners in their benefits packages. Courts in Vermont and Massachusetts legalized second-parent and step-parent adoption by a same-sex partner. (A 1977 law banning adoption by gay people was still in force in Florida, however, a legacy of Anita Bryant’s “Save the Children” crusade; it later became a “cause célèbre” for Rosie O’Donnell.)

In April 1997, inspired by the Hawaii example, three Vermont same-sex couples went to their local justices of the peace and applied for marriage licenses. They were refused. With the help of their attorneys, **Beth Robinson** and **Susan Murray** of Middlebury and **Mary Bonauto** of Lesbian Advocates and Defenders (GLAD) in Boston, they sued, and the case wound up in Vermont Supreme Court. On the Monday before Christmas 1999, after 18 months of deliberation, the Supreme Court justices ruled unanimously that the State of Vermont was obliged to extend to same-sex couples “the common benefits and protections that flow from marriage under Vermont law.”

The decision put the legislature on the spot. Most Vermont lawmakers were reluctant to authorize full-fledged marriage equality, and the court did not insist upon it. So a compromise emerged: civil unions that would grant Vermonters many of the benefits and responsibilities of marriage without the polarizing “M-word.” It was an innovative idea in the United States, similar to the Scandinavian model (see sidebar). “The phrase ‘civil union’ didn’t exist before this,” said State Representative **Bill Lippert**. “We made it up.” Even the compromise faced opposition: some in the gay com-

munity wanted marriage or nothing; meanwhile, Burlington Roman Catholic Bishop **Kenneth Angell** and family values groups nationwide mobilized against it. A state known for its quirky social liberalism and small-town civility was badly split. In fact, some of the opposition was so vociferous and so venomous that it worked against the anti-civil union forces themselves. **Randall Terry**, an anti-abortion crusader from Binghamton, New York, who would later emerge as the spokesperson for **Terri Schiavo**’s parents in the “right to die” case, played a major role in polarizing the issue. The openly gay Lippert says that Terry would follow him around the State House, whispering, “Judgment Day is Coming, Representative Lippert, Judgment Day is coming.” Such tactics antagonized undecided legislators. In the end, the House and Senate gave final approval to civil unions in April 2000, and Governor **Howard Dean** signed the bill into law on April 26.

It was a national first—as close to equality as any state had reached—but the polarization intensified as a movement called “Take Back Vermont” led a campaign in the fall elections to defeat legislators who had supported civil unions. Five Republican supporters of civil unions lost their seats in primaries, and anti-civil union Republicans took control of the House of Representatives for the first time in 14 years. Governor Dean won re-election but the race was the most difficult of his career.

Still, the law stood. And then, almost miraculously, all the bile and venom of the previous year seemed to fade away. Civil unions became part of the Vermont landscape, like cows and maple syrup. “Four years later, we wonder what all the fuss was about,” wrote by-then-ex-governor **Howard Dean** in an op-ed piece in the *Boston Globe*, just after gay marriages went into effect in Massachusetts. He went on:

*Civil unions were never an issue in Vermont in the 2002 election and will not be this fall [2004]. The intensity of anger and hate has disappeared, replaced by an understanding that equal rights for groups previously denied them has no negative effect on those of us who have always enjoyed those rights.*

Dean added, “Is there a lesson here for Massachusetts? Perhaps. The Commonwealth will not collapse today, and the prognosis, based on Vermont’s experience, is good.”

ONCE THE U.S. MILITARY'S "Don't Ask, Don't Tell," policy had been put into effect during the tumultuous first year of the Clinton administration, the subject of gays in the military had faded from the headlines. But it was soon evident that the policy didn't protect gay GIs as it was intended. Gay and lesbian personnel continued to be discharged from the military in large numbers, doubling from 617 in 1994 to 1,212 in 2000 and a high of 1,273 in 2001. An increasing number of them were women, who comprised 30 percent of all discharges in 2001 and 33 percent in 2003. (Only 14 percent or so of the military at that time was made up of women.)

Still, there were some cracks in the façade. In January 1998, a U.S. District Court judge prevented the navy from discharging Senior Chief Petty Officer Timothy R. McVeigh (no relation to the Oklahoma City bomber). The 36-year-old McVeigh, who had been in the navy for 17 years, was the highest ranking enlisted person on the nuclear-powered submarine, the USS Chicago. McVeigh had sent an American Online e-mail to the wife of a fellow crewman, discussing a Christmas toy drive for the crew's children. The e-mail's return address was the AOL screen name, "boysrch" (as in boy search). The woman then looked up boysrch's profile on AOL and noticed that among his hobbies was "collecting pictures of other young studs." She passed the information on to the navy, and a navy investigator called AOL, who confirmed that "boysrch" was indeed Timothy McVeigh. The navy then moved to discharge him, accusing McVeigh of sodomy and homosexual conduct, based solely on the AOL profile.

McVeigh challenged the navy in court, and in January 28, U.S. District Court Justice Stanley Sorkin ruled in his favor, accusing the navy of having "impermissibly embarked on a 'search and outing' mission" in clear violation of "Don't Ask, Don't Tell." But by then, McVeigh's military career had been thoroughly undermined. He agreed to leave the navy, with the benefits he would have accrued had he served 20 years instead of 17. Through it all, McVeigh never revealed his sexual orientation.

Another high-profile stumble for "Don't Ask Don't Tell" involved the case of U.S. Army Reserve First Lieutenant Steve May, a member of the Arizona state legislature. May, 29, a Republican and self-styled "recovering Mormon," was first elected to the House of Representatives in 1998, representing a conservative

Phoenix district. He revealed that he was gay during House debate on whether to ban all domestic partnership ordinances enacted in the state. May's role in opposing and defeating the bill was front-page news in Arizona newspapers. At the time he came out to the legislature, May was in the inactive reserve and therefore not subject to the rules of the "Don't Ask, Don't Tell" policy. But, in April 1999, three weeks after his 'coming out' speech, his unit was activated in preparation for the Kosovo campaign. (Although a Phoenix alternative newspaper dubbed him the "gay right wing warrior," he never went overseas in what turned out to be almost entirely an air war.) May was now under the purview of "Don't ask, Don't Tell," and the military wasted no time in investigating him on the basis of those legislative comments.

Unimpressed by May's argument that his statement in the Arizona legislature represented "protected speech," an army panel voted to remove him from the Reserves for violating the "Don't Ask, Don't Tell" policy. May appealed and, in the waning hours of the Clinton administration, a deal was struck: the army would drop the case, and May would leave the Reserves only after he finished his term of service four months later.

May remained in the Arizona legislature, serving as chairman of the powerful House Ways and Means committee. He also sponsored a bill to repeal the state sodomy statutes, which was passed and signed by Governor Jane Hull in 2001. He narrowly lost his seat, however, in a 2002 redistricting battle and returned to managing his family's herbal tea business.

Despite the relative success of these challenges, the atmosphere in the U.S. military remained difficult—if not poisonous—for many gay and lesbian servicemembers. That was underscored by the brutal murder of Pfc. Barry Winchell on July 5, 1999, at Fort Campbell, an army base in Kentucky. Winchell, 21, was beaten to death with a baseball bat by two fellow soldiers as he slept in the 101<sup>st</sup> Airborne infantry barracks. Winchell was a regular at a bar called the Connection, where he was dating a transgendered nightclub performer named Calpernia Addams. The army was initially reluctant to label the killing as a "hate crime," but increasingly it became clear that that was the case. The Servicemembers Legal Defense Group (SLDN), an organization which fights for the rights of gays in the military, castigated Fort Campbell's commanding officer at the time, Major General Robert Clark, accusing him of



creating an environment where anti-gay harassment (and, in Winchell's case, murder) went unchecked.

In the end, Winchell's killer, Private **Calvin Glover**, was sentenced to life imprisonment (with possibility of parole) for the murder, and Specialist **Justin Fisher**, who supposedly goaded Glover to commit the crime, was sentenced to 12 and a half years in prison. A legal suit brought by Winchell's family against the army was eventually thrown out. The story of Winchell and Adams was made into a TV movie called "Soldier's Girl," written by openly gay screenwriter **Ron Nyswaner**, who had previously penned the screenplay for the Oscar-winning film *Philadelphia*.

In the year following the Winchell murder, some 1,212 gay servicemen and women were discharged, the highest number since "Don't Ask, Don't Tell" had been implemented in 1993. At least 161 of these discharges came at Fort Campbell itself. Instead of putting the brakes on the situation, Winchell's killing seemed to have only intensified it.

Despite the increasingly nasty atmosphere in the military, there was some hope that the incoming Bush administration would at least interpret the policy more fairly when it came to power in 2001. During the campaign, candidate George W. Bush had proclaimed, "I'm a Don't Ask, Don't Tell man," opening up some distance between him and those in the Republican Party who wanted to return to the more restrictive pre-Clinton days. In addition, his vice-president, Dick Cheney, had once dismissed the ban as "a bit of an old chestnut."

Things remained much the same, with discharges in 2001 climbing to another all-time "Don't Ask, Don't Tell" high of 1,273. For many, the utter absurdity of the policy was further highlighted in 2003 by the discharge of 37 gay linguists, many of whom spoke Arabic, Farsi, and Korean, from the Defense Language Institute. All were discharged because of their sexual orientation, despite the shortage of trained linguists desperately needed for the campaign against international terrorism.

But war is the great leveler, and, with the invasion of Afghanistan and the war in Iraq, the thinly stretched U.S. military desperately needed manpower. In the wake of the Afghan campaign, discharges of gay GIs fell by 30 percent. And when the Iraq war began, the numbers decreased by 40 percent from pre-Afghanist numbers. In 2004, at the height of the Iraqi insurgency, the number

of service members discharged for being gay dropped to half of what it was in 2001. Just as in World War II, the Korea War, and the Vietnam War—all periods when the military discharges of gay military personnel declined—suddenly the presence of gay and lesbian GIs wasn't so divisive or "threatening to unit cohesion."

Meanwhile in Britain, which had lifted its ban on the gays in the military in 2000, the Royal Navy asked a leading gay rights organization for assistance in developing ways to recruit and retain gay and lesbian sailors.

THE DANGERS THAT GAY PEOPLE STILL FACED were underscored by one of the most widely reported events of the 1990s—the brutal murder of 21-year-old University of Wyoming student **Matthew Shepard** in Laramie, Wyoming, in early October 1998. A mountain biker found the unconscious Shepard tied to a fence outside of the college town on an early fall evening. He had been there for 16 hours, beaten repeatedly with a .357 Magnum revolver; a sheriff's deputy would later say that the only spots on his face not covered with blood were those where his tears had washed away the blood. Shepard, who never regained consciousness, died five days later in a Fort Collins, Colorado, hospital. Two young Laramie men who worked as roofers, **Aaron McKinney** and **Russell Henderson**, were arrested for the crime an hour after Shepard was discovered.

Shepard had left a Laramie bar the night before with McKinney and Henderson. Almost immediately, the torture/murder was widely characterized as an anti-gay hate crime, although robbery may have been as great a motive as anti-gay prejudice. Laramie, previously just an obscure but beautiful college town, grappled with its own feelings of guilt. The day after the dying Shepard was found, marchers carrying signs like "No Hate Crimes in Wyoming" joined the University of Wyoming's Homecoming parade behind floats and marching bands; a moment of silence in Shepard's memory took place before the Homecoming game; and two vigils and a memorial service were held in the town.

The national media, which had often ignored cases of anti-gay violence in the past, became fascinated with the story and gave it wide coverage. The image of the barely breathing 5'2", 110 pound college student tied to a fence was compared to the Crucifixion. (A song about Shepard entitled "Jesus on the Wire" was recorded by

the folk group Peter, Paul, and Mary, with the lyrics "They took him down / Off the fence / Cold as ice / Almost dead / They said that he / That he slept with guys / They said that he / deserved to die.") *Time* magazine called his murder "a lynching." In attempting to explain the media's "intense, obsessive interest" in Shepard, University of Wyoming professor Beth Loffreda noted in her book *Losing Matt Shepard* that "Matt appeared boyish, pensive, sweet, charmingly vulnerable in oversized wool sweaters—a boy who still wore braces when he died, a boy who looked innocent of sex, a boy who died because he was gay but whose unthreatening image allowed his sexuality to remain an abstraction for many."

Whatever the reasons, Shepard became a saint and martyr for millions and a potent symbol for the passage of hate-crimes legislation—the legal effort to require stricter penalties for crimes motivated by racial, ethnic, or antigay prejudice. (Shepard's death came a few months after the murder by dragging of a black man, James Byrd, Jr. in a small Texas town, which also spurred national awareness of hate crimes.) Two days after Shepard's death, the Human Rights Campaign held a candlelight vigil on the steps of the U.S. Capitol, attended by 5,000 people and featuring Sen. Edward Kennedy (D-MA)—sponsor of federal hate crimes legislation—and lesbian TV personality Ellen DeGeneres. Celebrities rallied to the cause: singer Barbra Streisand telephoned the county sheriff's office in Laramie to demand quick action on the case; Madonna called an assistant to the University of Wyoming president to register her outrage.

Meanwhile in Laramie itself, local businesses were so alarmed at their placid town's sudden image as the epicenter of anti-gay violence that they felt necessary to deplore the murder on their outdoor advertising signs. The Comfort Inn assured patrons, HATE AND VIOLENCE ARE NOT OUR WAY OF LIFE, while an Arby's sign read, HATE AND VIOLENCE ARE NOT WYOMING VALUES 5 REGULARS \$5.95.

Later, the murder of Shepard became the subject of a TV documentary as well as a highly praised theatrical piece, MOISES KAUFMAN's *The Laramie Project*, based on extensive interviews with townspeople by New York actors who then played the townspeople as characters on stage.

Thirteen months after Matthew Shepard's death, his killers were both sentenced to two consecutive life sentences in prison, with

McKinney avoiding the death penalty largely due to the intervention of Shepard's parents. At the sentencing, Dennis Shepard, Matthew's father, was unsparing, however, addressing McKinney directly:

*I would like nothing better than to see you die, Mr. McKinney. However, this is the time to begin the healing process. To show mercy to someone who refused to show any mercy. To use this as the first step in my own closure about losing Matt . . . Mr. McKinney, I'm going to grant you life, as hard as that is for me to do, because of Matthew. Every time you celebrate Christmas, a birthday, or the Fourth of July, remember that Matt isn't. Every time that you wake up in that prison cell, remember that you had the opportunity and the ability to stop your actions that night. Every time that you see your cellmate, remember that you had a choice, and now you are living that choice . . . Mr. McKinney, I give you life in the memory of one who no longer lives. May you have a long life, and may you thank Matthew every day for it.*

The widespread sympathy engendered by the murder of Shepard had ramifications long after the trial. This was particularly true in the area of hate-crimes legislation, an issue championed by Dennis and Judy Shepard. In 1999, the Wyoming House of Representatives came the closest in its history to passing such a bill, defeating it by a tie 30–30 vote, viewed by some as a major achievement in a state adverse to passing regulatory laws of any kind. (In May 2000, the city of Laramie did pass a bias-crimes ordinance—the only one in Wyoming—requiring law enforcement officials to keep statistics on hate crimes and to train police officers on the subject.) By 2004, 29 states had hate crimes laws that included sexual orientation among the protected categories, while 17 states had hate crimes laws that excluded sexual orientation. Only four states, including Wyoming, had no hate crimes legislation at all.

Despite the efforts of the Shepards—and the support of President Bill Clinton and Vice President Al Gore—efforts to expand the national Hate Crimes law to include crimes targeted against gays and lesbians failed in the U.S. Congress during the Clinton and Bush administrations. According to a 2002 report by the FBI, 16.7 percent of all hate crimes that year were based on the victim's sexual orientation, the highest percentage in 12 years.

AS THE MATTHEW SHEPARD MURDER SHOWED, gay, lesbian, bisexual and transgendered (GLBT) youth were among the most vulnerable part of the gay population. Surveys showed that the age of young people coming out was getting lower—down from the early-to mid-20s on average in the 1970s to 16 for males and 17 for females according to a study cited by *New York Times* columnist Frank Rich—indicative that gay youth were feeling more comfortable overall. However, the situation in middle and high schools continued to be extremely problematic. According to the 2003 “National School Climate Survey,” issued by the Gay, Lesbian and Straight Education Network (GLSEN), more than 84 percent of GLBT students reported being verbally harassed, while 40 percent—50 percent in the case of transgendered students—had been physically harassed. Ninety percent said they heard anti-gay comments in schools. And 85 percent of those students reported only occasional or non-existent faculty or staff intervention when such remarks were made. Many American public schools featured an atmosphere where coming out was fraught with peril, both psychological and physical.

Furthermore, legal protections for gay students were limited. Only eight states—California, Connecticut, New Jersey, Minnesota, Massachusetts, Vermont, Washington and Wisconsin—had enacted laws protecting gay students from discrimination, while just three—California, Minnesota, and New Jersey—included transgendered students as a protected class. That was an improvement, however, over 1994 when Massachusetts became the first state to pass such legislation. Nine states had anti-bullying laws but GLSEN found them generally to be “vague” and “ineffective.” All in all, when GLSEN issued its “report card” of the states in 2004 regarding laws affecting the environment of gay students, only Minnesota and New Jersey received As. Forty-two states rated Fs. At the same time, seven states—Alabama, Arizona, Mississippi, Oklahoma, South Carolina, Texas and Utah—actually had laws against the positive portrayal of homosexuality in the public schools.

Still, the national movement to establish gay/straight alliances in public high schools was gathering steam. By 2004, estimates were that 2,100 schools around the country had formed gay/straight alliances. Efforts to establish such groups gained a national profile in Salt Lake City in 1996, when the local school board attempted to block the formation of a gay/straight alliance at the city’s East High, going as far as banning all non-curricular clubs from meet-

ing. (Under the federal government’s Equal Access Act, schools that receive federal funds and which allow non-curricular student groups to meet on school property cannot discriminate against any groups, based on their viewpoints.) Students at the East High, led by Kelli Peterson, took the school board to court and, after two court decisions backing the students, the school board agreed in 2000 to rescind its policy. By 2004, every public high school in Salt Lake City had a gay/straight alliance.

Similar battles were fought in other cities and states with varying results. At Boyd County High School in Ashland, in rural eastern Kentucky, the school board went the Salt Lake City route, banning all clubs in order to stop the establishment of a gay/straight alliance. Eventually, the school board capitulated. However, in 2004, in Lubbock, Texas, a federal judge ruled that Lubbock High School could ban a gay/straight alliance.

For inner-city gay youth—particularly black and Latino teenagers—the situation was even more disturbing. National studies estimated that as many as half of all homeless youth in the United States were lesbian or gay, in many cases kicked out of their homes once parents discovered their sexual orientation. On the eve of the New York’s Gay Pride Day 2004, Carl Siciliano, who ran the city’s largest shelter for gay young adults, told the *New York Times* that thousands of young gay people were homeless in New York City. Siciliano’s shelter only had beds for 12 gay youth at a time, with a waiting list that he said often grew beyond 100. “He seethes with indignation when talking about the teenagers who are forced onto the streets, where they quickly become acquainted with drugs, hustling, violence, and the virus that causes AIDS,” wrote *Times* reporter Andrew Jacobs. “For many, he says, suicide becomes the only way out.”

And Siciliano noted that the number of homeless gay teens was rising, in part due to TV shows like “Will & Grace,” which encouraged young people to come out to their parents at a young age, at which point they sometimes found themselves out on the street. “I think it’s shameful that these kids are out there alone and in danger, in a city where gay men have so much money,” Siciliano told the *Times*.

TEN YEARS AFTER THE “GAY MOMENT” of the first days of the Clinton administration, it was the summer of 2003 and a new gay movement, both cultural and political, was afoot. Millions of Americans

were tuning into "Queer Eye for the Straight Guy" on cable TV. Ellen DeGeneres, who had come out six years before amidst controversy, had reinvented herself as America's favorite daytime TV talk show host. MTV was planning to start up an all-gay cable network. At Broadway's Tony Awards, *Take Me Out*, a play about a gay baseball player, won the prize for best drama, and *Hairspray*, with its camp sensibility won for best musical. Its songwriting team, Mark Shaiman and Scott Wittman kissed on the Tony stage—and in front of millions of Americans watching on TV. *New York Times* columnist Frank Rich quipped that CBS had staged the first live gay network reality show in prime time—"They called it 'The Tony Awards.'"

But the political and religious worlds still had to a long way to go to catch up with the cultural change, and they soon began to make the initial first steps.

On June 27, in a landmark decision, the U.S. Supreme Court, reversed its 1986 *Bowers v. Hardwick* ruling, declaring unconstitutional a Texas law that criminalized gay sexual relations in private. The 6-3 vote in the case, *Lawrence v. Texas*, protected gay sexual conduct in the broadest terms possible, overturning not just the Texas sodomy law but the laws of the 13 remaining states where gay sex remained illegal. Writing for the court's majority, Justice Anthony Kennedy stated that gays and lesbians are "entitled to respect for their private lives. The state cannot demean their existence or control their destiny by making sexual conduct a crime." He added, "[T]imes can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress. As the Constitution endures, persons in every generation can invoke its principles in their own search for greater freedom." It was probably the most important legal decision affecting gay rights ever in the United States, and as the *New York Times* legal correspondent Linda Greenhouse noted, "A conservative Supreme Court has now identified the gay civil rights cause as a basic civil rights issue."

The ruling resulted in celebrations in gay communities across the country. No longer would opponents of gay rights be able to argue in custody, adoption, marriage, and workplace discrimination cases that gay and lesbian behavior was criminal. "I feel like I have been walking six inches off the ground," said Kate Kendall, executive director of the National Center for Lesbian Rights in San Fran-

cisco. "The arsenal used against us, with sodomy laws being the foremost weapon, has been neutralized."

The court's decision sparked a fierce dissent from Justice Antonin Scalia, arguably the court's most conservative member. In Scalia's view, not only had the Court "taken sides in the culture war" and "largely signed on to the so-called homosexual agenda," it had made approval of same-sex marriage the logical next step. In his last observation, he was prescient.

A month and a half later, on August 6, a near-earthquake occurred in the world of religion. The Episcopal Church, the U.S. branch of the international Anglican Communion, elevated the Rev. Gene Robinson of New Hampshire to be its first openly gay bishop—and the first openly gay bishop in the history of the Christian church. The 56-year-old Robinson tried to play down the significance of the vote—approved by 62 of 107 diocesan bishops—as "a tiny sign" of broader acceptance of gays and lesbians in the church and American culture. "I think we're seeing the moving into a mature adulthood" regarding the treatment of gays and lesbians, he said.

Still, the decision threatened to split the church's 2.3 million members in the United States and 77 million around the world, with many traditionalists threatening to leave the church altogether. It was particularly denounced by Anglican prelates in Africa. "The Devil has clearly entered our church," said Archbishop Benjamin Nzimbi of Kenya. And a spokesman for the 8 million Anglicans of Uganda—the second largest Anglican grouping in Africa—said they would refuse to recognize Robinson as bishop and would break all ties with the diocese of New Hampshire.

But this opposition failed to derail Robinson's path to bishop. On November 3, his consecration took place in an elaborate ceremony in a hockey arena at the University of New Hampshire in Durham. Present were Robinson's partner of 15 years, his former wife, his daughters, parents, and sister. As *Boston Globe* religion writer Michael Paulson noted, "The Whittemore Center, where the New Hampshire Wildcats play hockey and basketball, was converted into a makeshift cathedral, with an altar in the center of the floor, incense wafting through the bleachers, and a celebrant in a white cassock holding aloft a kite in the shape of a white dove, symbolizing the Holy Spirit." Forty-four Episcopal bishops laid their hands on the head of a kneeling Robinson, "making him a

part of the unbroken line of bishops that the church traces back to Jesus' apostles," Paulson wrote.

(The following year, in October 2004, in London, a commission of the Anglican Communion would criticize the Episcopal Church USA for ordaining an openly gay bishop and blessing same-sex unions, calling for a moratorium on both practices until a new consensus emerged within the worldwide church.)

There were other significant events that summer and fall, as well. The Canadian provinces of Ontario and British Columbia both approved same-sex marriage (see sidebar), and Canada's governing Liberal Party announced its determination to make gay marriage the law of the land. On September 21, California Governor Gray Davis signed domestic partner legislation that, following in the footsteps of Vermont's civil union law, granted same-sex couples in California many of the same rights as married couples. The law was slated to take effect on January 1, 2005, long after Davis had been recalled from office. Unlike in Vermont, same-sex couples wouldn't be able to file joint state income taxes. However, California was probably the most influential state in the union in terms of changing laws; what began there, usually happened elsewhere eventually.

Finally, on November 18 came the capstone to all the events of the previous few months—the Massachusetts Supreme Judicial Court's decision to give same-sex couples the right to marry. The likelihood was that it would be a long time before gay marriage would take place in other states or at the federal level. There would be a ferocious backlash—and questions as to whether the Massachusetts decision itself would eventually be overturned by the voters. The 2004 election results, along with the passage of anti-gay amendments in so many states, would show how long and difficult the road would be.

The euphoria of those heady days following the Massachusetts court decision would be short-lived. But the impossible dream had become reality at least in one state: it was clearly *the* most important development in the integration of gays and lesbians into American society thus far. As Andrew Sullivan wrote in a column in the *New York Times* on the day that gay marriage became legal in Massachusetts several months later (it was also the 50<sup>th</sup> anniversary of the U.S. Supreme Court decision outlawing segregation in the public schools):

*Today is not the day "gay marriage" arrives in America. Today is the first time that civil marriage has stopped excluding homosexual members of our own families. These are not "gay marriages." They are marriages.*

*What these couples are affirming is not something new; it is as old as humanity itself. What has ended—in one state, at least—is separatism. We have taken a step towards making homosexuality a non-issue; toward making gay citizens merely and supremely citizens . . . It is integration made real, a love finally come home: after centuries of pain and stigma, the "happiest day of our lives."*

## September 11, 2001

The horrific attacks of September 11, 2001, had their gay victims and heroes. On that day, Al Qaeda terrorists hijacked four U.S. civilian passenger aircraft, flying two of them into the World Trade Center in New York City and one into the Pentagon. Another, United Airlines Flight 93, apparently targeting the Capitol or the White House, crashed in a field in Shanksville, Pennsylvania, after a group of passengers rushed the cockpit in an attempt to overpower the hijackers.

One of the heroes of Flight 93 was Mark Bingham (1970–2001), a gay man who was on his way to San Francisco from Newark on Flight 93 when the airplane was commandeered by terrorists near Cleveland. The personable and gregarious Bingham, 31, owned his own San-Francisco–based public relations firm, the Bingham Group, which had thrived representing Silicon Valley companies during Northern California's dot.com boom of the late 90s. Bingham had also been a former collegiate national championship-winning rugby player at the University of California at Berkeley. He had been accepted as a permanent member of the Northern California Rugby Football Union in the summer of 2001, a major coup for a mostly gay team. At 6'4", 220 pounds, Bingham was bearish, aggressive, often headstrong, and considered himself "a man of action," according to Jon Barrett, author of *Hero of Flight 93*.