

My Harvard Law School

*William B. Rubenstein**

If you don't know the stories, then how can you cherish your own life, hold it precious? Never forget, all this has been taken away from us before. Never forget that it could be taken away again. We can only protect and enjoy it if we tell its stories, tell them on our own terms.

—Neil Bartlett¹

I. DAYS OF 1983

I graduated from Harvard Law School on Thursday, June 5, 1986. It rained. Twenty-five days later, the Supreme Court held, in *Bowers v. Hardwick*,² that the claimed link between family, marriage, and procreation on the one hand, and homosexuality on the other, was “at best facetious.”³ Two Harvard professors, Laurence Tribe and Kathleen Sullivan—who that semester had taught me a course entitled *Groups and the Equal Protection Clause*—presented Michael Hardwick’s case to the High Court. The moment of my departure from Harvard coincided with a memorable moment in the gay rights movement, a moment produced in part by Harvard professors. Harvard and homosexuality were, for me, inextricably intertwined. And this had always been the case.

Harvard started for me at Yale, winter 1981, as I weighed my options: spend another three years in New Haven attending Yale Law School or move to Boston to attend Harvard. I called each school to inquire whether I could defer enrollment. Harvard put me on hold, and then a secretary told me I could defer for only one year and promptly hung up on me. At Yale, I was immediately transferred to an associate dean. Within minutes, he was knocking on my door with a bottle of wine in hand, and he then spent the afternoon explaining how much Yale wanted me, why I should go there, and how I could defer for as long as I wanted. And therein lay the problem:

* Professor of Law, UCLA School of Law. This Essay is adapted from the keynote speech I delivered on September 20, 2003, at the occasion of the The First Reunion Celebrating the 25th Anniversary of the Founding of the Committee on Gay and Lesbian Legal Issues (COGLLI) at Harvard Law School. I am grateful for comments I received on earlier drafts from Steven Bromer, Rob Dobson, Jody Freeman, Jerry Frug, Janet Halley, Brad Sears, Seana Shiffrin, and Kenji Yoshino, for the suggestions of Gregory Grube, and especially for the reactions of my classmate George Fisher, who was there.

¹ NEIL BARTLETT, WHO WAS THAT MAN? A PRESENT FOR MR. OSCAR WILDE 206 (1988).

² 478 U.S. 186 (1986).

³ *Id.* at 194.

New Haven was a small town. For a young person struggling to come out, it was perilous. I feared that the tenderest tiptoe out of the closet would, within moments, produce a law school dean at my door. I chose Harvard so I could come out, or, more precisely, I chose Harvard because it was in Boston, a large anonymous city that enabled me to come out at my own pace. I looked forward to the education, but Harvard promised something Yale could not: not just law, but *sex* and reason, *flesh* and the word, *beauty* and truth.

About the time that the Yale Dean was traipsing across New Haven to meet me, a new virus was on a collision course with my desires. The Centers for Disease Control (CDC) had just published its first studies showing a link between “some aspect of homosexual lifestyle . . . and pneumocystis pneumonia,”⁴ and reporting that twenty-six gay men in New York and California had been diagnosed with Kaposi’s Sarcoma, all strikingly young and healthy, each dead within two years.⁵ By the time I took my seat in Arthur Miller’s Civil Procedure class my first day of law school, about 2000 AIDS cases had been reported to the CDC, so exclusively among gay men that the disease was referred to as Gay-Related Immune Deficiency (GRID). While scientists suspected a virus caused GRID, none had been identified and no test existed to determine one’s vulnerability. Human Immunodeficiency Virus (HIV) was not identified until my 2L year, and a test was not widely available until my 3L year. During my law school years, young sexually active gay men were at risk of dying quick and horrible deaths from a new disease that bore our name, yet we had no way of knowing whether we, our sexual partners, and our friends were infected, whether we would die. I came to Harvard to acquire knowledge, but the one fact I wanted to know more than any other neither Harvard nor any other institution could provide.

There were other gaps in Harvard’s provision of an education. One of my earliest law school memories is of an evening during my first semester spent exercising my newly acquired legal research skills in an attempt to uncover cases about gay people. I had been taught, in those proto-computerized days, that traditional research tools would lead me to the cases I wanted to find and I had been given, by my instructor, a checklist of such helpful resources. But as I worked my way down the checklist, I could find no mention of homosexuality, much less of lesbians and gay men. Up and down the cavernous corridors and through the labyrinth of stacks I went—no casebooks, no hornbooks, no treatises, no black letter guides, no practice pointers. As each possibility was exhausted, I increasingly felt trapped in an Orwellian nightmare. In the vast majestic expanses of Harvard Law School’s library—where no subject was too obscure for its own shelf—the absence of legal materials about my life was deafening.

⁴ Centers for Disease Control and Prevention, *Pneumocystis Pneumonia—Los Angeles*, MORBIDITY & MORTALITY WKLY. REP., June 5, 1981, at 250–52.

⁵ Centers for Disease Control and Prevention, *Kaposi’s Sarcoma and Pneumocystis Pneumonia Among Homosexual Men—New York City and California*, MORBIDITY & MORTALITY WKLY. REP., July 3, 1981, at 305–08.

In the succeeding semesters, I pieced together a self-education, relying primarily on the few law review articles then published on the subject; on a dog-eared and defaced first edition of the ACLU's handbook, *The Rights of Gay People*;⁶ and on the early years of Arthur Leonard's *Lesbian/Gay Law Notes*. There were rare classroom moments—the inclusion of gay families in Martha Minow's family law course, the coverage of homosexuals in Kathleen Sullivan's advanced constitutional law course, an undergraduate literature seminar on post-modernism, including post-modern sexualities, which I audited with my contracts professor, Jerry Frug. But for these moments, I would have been a complete gay-law autodidact.

The informal education I got outside of Harvard's classrooms far outstripped the formal education I received in them. Some of it took place at COGLLI meetings, especially because the class one year ahead of mine included a group of remarkable activists—Ben Schatz, Chai Feldblum, Paul DiDonato, Michael Isbell, Luis Lavin—all of whom have remained so for decades. Some of my informal education took place in a basement room called the *Harvard Women's Law Journal*, better known at the time as the *Harvard Women's and Gay Men's Law Journal*. I devoured past issues packed full of feminism, including lesbian feminism. I stumbled upon a set of binders constituting a reader for a course that Catharine MacKinnon had taught at Stanford Law School called *Sexuality and Legality*. The reader had whole sections on homosexuality, even on transsexuality. I sat in the shabby office on a sunken couch drinking coffee and reading through the books from cover to cover, awed by what was there but not here. Our 3L year, my friend Ruth Borenstein crowned me with the title of Managing Editor. When I went on the teaching market some years later, my résumé was turned into a computer form which spat back out an abbreviation announcing that I had been the “Man Editor” of the *Women's Law Journal*. I wanted only to object that I was the “Gay Man Editor,” clinging closely to what was then my newfound identity.

My informal education occasionally even took place in the classroom. Once, I looked across hundreds of students packed into Austin Hall and saw one, head down, sound asleep. I tapped my friend Luis Lavin and said, “Look at that guy sleeping over there,” to which he responded without missing a beat, “Oh, that's Ric. She clearly stayed out too late last night and now she's smudging her makeup.” It may not have been the first time someone made a campy comment during Abe Chayes's international law class, but it felt that way to me, history in the making. My then-campy friend is now a judge; our sleeping friend Ric Chanon, our sleeping beauty, died of AIDS within five years, February 1990, barely thirty. One year during law school, Ben Schatz had a party to watch the Academy Awards and as his guests arrived, Ben crowned each with a tiara. I like to think of

⁶ E. CARRINGTON BOGGAN ET AL., *THE RIGHTS OF GAY PEOPLE: THE BASIC ACLU GUIDE TO A GAY PERSON'S RIGHTS* (1975).

Ric in his tiara, crowned not temporarily, queen for a day, as Ben had intended, but crowned with those jewels eternally, as each of us deserves to be. What had he done, after all, but *go down into the salt tide of wanting as much as he wanted?*⁷

No one should have to die for wanting too much.

No one should have to die for wanting.

No one should have to die.

No one.

My learning took place beyond the walls of Harvard as well: in the coffeehouses of Harvard Square; in tiny South End apartments; in openly gay Vin McCarthy's 1985 Congressional campaign; at pride parades and demonstrations, one my 2L year protesting Governor Dukakis's removal of two children from their gay foster parents; and in Provincetown, on the edge of the continent, where, in 1984, the summer after my 1L year, riding my bike one June afternoon, I stopped to talk to a beautiful blond man sitting in front of Body Body on Commercial Street, thinking he could be the love-of-my-life, and because I was too forward, he said, "I like to be wined and dined first," and now, twenty years and twenty twists later, the two of us live together on the other edge of the continent, in a house on a hill, with a dog, in a relationship blessed by the State of California.

But I get ahead of myself. Most of my learning at Harvard took place, of course, in bars around the city. One, on Cambridge Street, where *upstairs in a nearly empty room over a crowded bar, a beautiful black drag queen—perched on the edge of the piano, under a blue spot, her legs crossed in front of her so that the straps of her sparkling ankle shoes glimmered—sang only to us.*⁸ One, The 1270, where we crowded out on the rooftop on hot summer nights, backlit by the glow of the lights from Fenway Park, and where one night, March 17, 1984, I met the first love-of-my-life, an artist who could talk about Gary Hart's presidential campaign. I called him several times even though he never called me back once. *I might call him again to apologize for my naive persistence, my lack of etiquette, my ignorance of the austere code of tricks. I didn't know how to make love like that. I thought of course we'd go on learning the fit of chest to chest, curve to curve.*⁹ Another night, leaving The 1270, I stopped to talk to a man sitting at the bar by the door because he smiled at me, and he really did become the first love-of-my-life, a blond who played the cello like an angel, Haydn concertos wafting through cold Cambridge apartments while I read the law. And finally one bar called Buddies, smack in

⁷ MARK DOTY, *Tiara*, in TURTLE, SWAN & BETHLEHEM IN BROAD DAYLIGHT: TWO VOLUMES OF POETRY BY MARK DOTY 96 (2001) [hereinafter TURTLE, SWAN].

⁸ MARK DOTY, *Chanteuse*, in MY ALEXANDRIA: POEMS BY MARK DOTY 24, 26 (1993) [hereinafter MY ALEXANDRIA].

⁹ MARK DOTY, *Days of 1981*, in MY ALEXANDRIA, *supra* note 8, at 10.

the middle of the Back Bay. They made you stand in line along Boylston Street to get into Buddies, a line so publicly visible that on bustling Saturday nights it tested my determination to come out. But as the years progressed, I stood proud, eventually marching up to that line in the firm center of my authority, *head up like a missionary moving certainly into the country of his hopes*,¹⁰ which is all that Buddies represented to me. *Could you even name it, that longing?*¹¹ One 1L Saturday night, gliding across the dance floor to a song called, “It’s Raining Men,” I bumped into someone from my class, one of the men it was raining, and, as the DJ segued and the first notes of Sylvester feeling “Mighty Real” sounded forth, we greeted one another as if we were passing in the bowels of Langdell Hall, though to a different soundtrack, and I did, at that moment, feel mighty real. My 3L year, Buddies burned down, if you can call a fire in a basement bar “burning down,” and some years later a queen wrote an article in the local gay paper saying that if you were gay in Boston in 1985, you’ll always remember where you were at the moment you heard that Buddies burned, like our parents used to tell us about Kennedy’s assassination. I confess I know precisely where I was when the news reached me: dancing with my friend Paul Butler to Prince’s “Let’s Go Crazy” (*Electric word, life*) at the Haymarket Bar in the Combat Zone; when we heard the news, Paul and I jumped in a car and *sped uptown through the dawn-empty city*¹² to bear witness; to what, God only knows—to the end of an era?

Harvard ended for me at Yale. In the spring of our 3L year, my friends and I traveled down to New Haven for America’s first AIDS law conference. Afterwards, we danced in New Haven’s one gay bar and I bumped right into an associate dean of the law school. We hugged, I laughed, I was, officially, out.

The lesson: I didn’t just come out at Harvard, I learned how to be gay at Harvard. The historian David Halperin has written: “Just because you happen to be a gay [person] doesn’t mean that you don’t have to learn how to become one.”¹³ I learned to be gay at Harvard because I didn’t, or couldn’t, learn how to be gay growing up in Pittsburgh, Pennsylvania, in the 1960s. That sentence implies something specific to that time or place, but I mean to be universal: most everyone who will someday recognize, acknowledge, and perhaps respond to homosexual desire will have been raised by non-gay parents, in a non-gay family, among non-gay people. We live our youths in alien, and often quite threatening, territory,¹⁴ isolated outcasts dreaming

¹⁰ MARK DOTY, *Turtle, Swan*, in *TURTLE, SWAN*, *supra* note 7, at 15, 16.

¹¹ MARK DOTY, *Manhattan: Luminism*, in *SOURCE* 16, 19 (2001).

¹² Audre Lorde, *Tar Beach*, in *HOME GIRLS: A BLACK FEMINIST ANTHOLOGY* 145 (Barbara Smith ed., 1983).

¹³ David M. Halperin, Course Syllabus, *How To Be Gay: Male Homosexuality and Initiation*, English 317.002, Univ. of Mich. (Fall 2003) (on file with author).

¹⁴ As Eve Sedgwick explains:

of escape to San Francisco, or to the nearest big city. But ours is a uniquely tragic diaspora: even as one generation makes it home, the next is invariably born dispersed, doomed to repeat the hejira, the pattern of solitary self-discovery and frenzied flight so unremitting as to be worthy of Sisyphus. Our young people will, therefore, again and again and again, wash up orphans on Harvard's shores, in search not only of love, but of self-worth, guidance, and acceptance, of, in short, a home.

In this sense, it might be most accurate to say of my student experience at Harvard that, as Neil Bartlett has written, "I didn't so much 'come out' as 'go in'"¹⁵—go in, in this case, to a rich, wonderful, and quite vibrant community. It is paradoxical that at the moment we finally work up the courage to declare our own individuality, we simultaneously, and hesitantly, associate ourselves with an existing group of peoples, institutions, and histories. We do so hesitantly because there's risk involved: communities can be stifling, demand conformity, just like our families.

And hence the terms of life: this conflict; this constant indecipherable act, balancing the hunger for connection with the yearning for selfhood; this endless battle between alienation and acquiescence, loneliness and conventionality; this high-wire trick, seeking *perfect stasis poised over the realms of desire*:¹⁶ *coming out* ("If I am not for myself, who will be for me?") versus *going in* ("If I am only for myself, what am I?"). As I came out of Harvard, I went in to the life.

II. DAYS OF 1993

After graduating, I started doing legal work on AIDS issues because my friends were dying and I assumed I would too. While clerking for a federal judge in Washington, I volunteered to be a "buddy" for people with AIDS. I was so clumsy at the buddy training that one of the trainers said, "Forget it, Mary, she'll be dead by the time you change that pillowcase," and I was assigned to work on wills with the organization's one lawyer. During the day, he and a group of volunteers interviewed men, scores of them, about their dying wishes. After work, I would pick up the files, return

[T]he number of persons or institutions by whom the existence of gay people is treated as a precious desideratum, a needed condition of life, is small. The presiding asymmetry of value assignment between hetero and homo goes unchallenged everywhere: advice on how to help your kids turn out gay, not to mention your students, your parishioners, your therapy clients, or your military subordinates, is less ubiquitous than you might think. On the other hand, the scope of institutions whose programmatic undertaking is to prevent the development of gay people is unimaginably large.

EVE KOSOFSKY SEDGWICK, *How To Bring Your Kids Up Gay: The War on Effeminate Boys*, in *TENDENCIES* 154, 161 (1993).

¹⁵ BARTLETT, *supra* note 1, at 223.

¹⁶ DOTY, *Tiara*, in *TURTLE, SWAN, supra* note 7, at 96, 97.

to my apartment, and type these desires into a computerized form, dropping the completed wills into a mail slot on my way to work the following morning. I never met these men, scores of them, but I knew their most intimate longings. They left small bank accounts to their mothers, art work done by ex-lovers to new boyfriends (“Michael’s oil painting of Fifi to Robert”), collections of Billie Holiday records to their church. They made specific bequests of toasters and Tallulah Bankhead portraits and jewelry boxes full of jade bracelets. And then they died, scores of them. I would watch for their names to appear in the obituaries of the local gay paper—one by one, or some weeks in batches—hear their names read aloud at memorial services, see their names on patches of the gigantic quilt laid out on the Mall. *So many names, there is barely room on the walls of the heart.*¹⁷ The philosopher Avishai Margalit tells the story of an army colonel who is scorned because he forgets the name of a man in his command killed by friendly fire; the story compels Margalit to investigate whether there is a moral obligation to remember the names of the dead, an ethics of memory.¹⁸ I knew nothing *but* these men’s names, had no faces to match to their requests, and now I don’t remember a single name. Only that there were scores of them, that they were unbelievably young and beautiful, and that this was in Washington, D.C., in 1987.

The following year I went to New York to work on AIDS issues. My Harvard classmates made this possible: recent graduates donated one percent of their income to fund the Harvard Fellowship in Public Interest Law. I secured one of the coveted fellowships, joined the national staff of the ACLU and helped launch an AIDS Project. All of my clients died. The years blur. I can see myself meeting my very first client, Michael Callen, on a street corner during the 1987 March on Washington so he can sign an affidavit in a lawsuit we’ve filed challenging the composition of Ronald Reagan’s AIDS Commission and I can see myself leaving Michael’s memorial service, some years later and in a different city, but I don’t know if it’s two years later or ten or if it’s the twentieth or thirtieth memorial service I’ve attended for a man not yet forty. I see myself bailing an ACT-UP protester out of jail in lower Manhattan so he can get home to take his drugs, but I can’t now remember if it was the Wall Street Demo or the St. Patrick’s Cathedral Demo or the City Hall Demo. I only remember that the police took his belt—standard operating procedure even for the thirty-minute incarceration of a political demonstrator—and he emerged from the holding pen so emaciated from AIDS or from the drugs supposedly saving his life or from both that he had to hold his pants up with one hand, impossibly bony fingers furiously clutching a huge ball of black denim. Yet out he marched, a shocking apparition, dead man walking, right through the middle of the stunned precinct’s now-hushed cacophony, head up, like Mandela

¹⁷ Billy Collins, *The Names*, N.Y. TIMES, Sept. 6, 2002, at A23.

¹⁸ AVISHAI MARGALIT, THE ETHICS OF MEMORY 18–20 (2002).

emerging from Robben Island. His dignity was unimaginable, a mixture of pride, bravado, protest, performance, and sheer terror. He *was* the era. He went home, took his drugs, and then, like all the others, a few months later, he died. I remember traveling to JFK in the middle of the night to help a client convince customs officials to release a shipment of experimental drugs, but I can't remember if the drug was AL-721 arriving from Israel or HPA-23 from Paris or Ribavirin from Mexico or dextran sulfate from Japan. I only remember that this particular drug had to be spread and eaten, like cheese on a cracker, and my client convinced a gay priest in New Jersey to purloin a stockpile of communion wafers for the cause. But even with this unique delivery device, perched atop the body of Christ, the drug didn't work, and all of my clients died. I remember that John Wallace, the most gorgeous man in my college class, tried everything, but I can no longer remember everything he tried—just the experimental penicillin shots, mega-doses so painful he couldn't sit for days but which turned out to be useless; the cleansing macro-macrobiotic diet that made his skin turn grey but which turned out to be useless; the bitter melons everybody fought so hard to secure but which turned out to be useless—and then one afternoon Lem called me at work and said come quick, no not after work, now, and I ran down 44th Street, clutching a yellow legal pad, what I could offer the dying. Our senior year at Yale we had been in an American Studies reading group together and I sat across the seminar table mesmerized by his beauty while everyone chattered on about the social significance of Barbie dolls and Graceland and *My Mother the Car*, and now, not even a decade later, I was kneeling by his bedside scribbling his dying wishes. And then Lem died too.

This report sounds too bleak. Has memory darkened it? Or is it just too shameful to remember that I also had fun, pursued a career, fell in love in the midst of a plague? Tell the story: Friday afternoons, summer, as if the top end of Manhattan lifted up and spilled the whole teeming mess of a city into Penn Station, each group of commuters to be sorted by their destination, gay men filtering into the Long Island trains, mixing with businessmen returning to suburbia. But then at Sayville we debark, dash for the mad taxi rides to the landing, queue up with weekend bags, and then board the ferry to Fire Island, a boatload of just us, finally alone on a quiet sound, floating toward our paradise, relaxing into the freedom that is segregation. Once, a radio blared Gloria Gaynor, *I Will Survive*, and (because it hit too close to home?) someone let loose in a loud, slow, deep bass, *Sw-ing low, sw-eet char-i-ot*, and soon the whole boat load of doomed men, ferrying into the soft Long Island sunset, were joined in song, camping their way across the Acheron to Hades. Looking back, survivor's guilt, I'm reminded of Allen Ginsberg's question to Walt Whitman: "[W]hat America

did you have when . . . you got out on a smoking bank and stood watching the boat disappear on the black waters of Lethe?"¹⁹

But I'm supposed to be reporting the good times here. There were legal victories: we won jury verdicts on behalf of men denied health care during their dying days, helped survivors resist eviction when their lovers died, forced Medicare to reimburse for experimental treatments, resisted draconian public health measures. There was art everywhere: after an ACT-UP meeting, over dinner at Veselka, someone would throw out the seeds of an idea for a protest poster and a few days later the whole city would be plastered with the final product, seething anger and dazzling sheen. There was sex: a lot of it foreplay and theater, the pent-up erotic energy of ACT-UP meetings themselves, a lot of it extraordinarily safe sex, the taste of latex lingering for days. And always of course the bars: mine, in those days, one called simply, The Bar, as if the times had fully sapped the imagination needed for naming, at Second and Fourth, where, on an otherwise unremarkable Thursday night in 1989, I met a dancer coming from work on the AIDS hotline and we argued about the city's AIDS policies, then left and spent the next ten years of our lives together.

There was a life-affirming intensity to it all, fighting a plague, at least at first, until the numbness set in. Then it became rote, attendance at protests dwindled, spontaneous art collectives gave way to formal institutions with black-tie benefits at the Waldorf Astoria, and then even the memorial services felt repetitive, difficult to remember whether it was Bill's or Tom's that was held at the Ethical Culture Society, which had the Flirtations and which had Bach, whose father it was that wailed unspeakably at the back of the synagogue. I don't think I dwell on the bleak because it was all bleak. I think I dwell on the bleak because *I can hardly remember how it felt now, that relentless hopelessness*.²⁰

How is it possible that one of these years I started teaching a course on sexual orientation law at Harvard Law School? I don't know the emotional answer to that question; I remember only facts: students at the school agitated for it—for two things really, a course on gay law and an openly gay teacher²¹—and some of my former professors thought that I could offer both. Among the things I carried when I returned to Harvard in January 1991 were some of the things I missed as a student a decade earlier: a course on gay law and the burdens of identity politics.

I organized the course materials around what were then two concepts in tension with one another—the dignity of gay lives and the reality of gay law. Some schools had offered courses on sexuality, but I feared that these marginalized gay people. They would start with *Griswold*, proceed through

¹⁹ ALLEN GINSBERG, *Supermarket in California*, in *HOWL AND OTHER POEMS* 23, 24 (1956).

²⁰ MARK DOTY, *Lost in the Stars*, in *SOURCE*, *supra* note 11, at 10, 13.

²¹ For an account, see Peter M. Cicchino, *An Activist at Harvard Law School*, 50 *AM. U. L. REV.* 551, 554–55 (2001).

Loving, *Eisenstadt*, *Roe v. Wade* and its progeny, and then culminate, at the end of the semester, time permitting, with a quick run through *Hardwick*. I aimed to reverse this trajectory, to bring gay people front and center, but to do so in a way that displayed our differences, the multiple allegiances and experiences that constitute, loosely speaking, our community. Buoyed by Minnie Bruce Pratt's simple reminder—*This is my life you are talking about*²²—I arranged the course along the paths of lives: coming out, going in, working, coupling, parenting. Into the materials, I channeled the mellifluous voices of real queers—black, white, brown, girls, men, women, boys, city, rural, prudish, promiscuous, rich, poor, disabled, convicts, outlaws, Republicans, Boy Scouts, bull dykes—their poems, their stories, their memoirs, their interviews, their scholarship, their letters, their e-mails, their obituaries. I shared Helen Vendler's sense, expressed of Frank O'Hara's poetry, that “An aesthetic that permits the coexistence of moody loves, hardons, mice, and candy bars has a good chance of being a new source of truth.”²³ This humane design was frustrated, however, by the fact that all gay law revolved around the degrading prattle of the *Hardwick* opinions. It was impossible to study equal protection, marriage, gays in the military, child custody, or even free speech without considering *Hardwick*'s impact. The case had to be taught first, or nothing that followed would be fully comprehensible. So the course started with indignity not justice, conviction not desire.

My students volunteered to help turn the materials into a casebook. I approached the publishers, but none was interested since so few courses were taught on the subject. Professors who approached their schools to teach the course found that few were interested since no casebook existed. I wanted, in the parlance of the day, to break the cycle. A nonprofit press published the materials as *Lesbians, Gay Men, and The Law*. The first run sold out. I returned to the casebook publishers with the sales figures. West then published the second edition—*Cases and Materials on Sexual Orientation and the Law*. It looked just like the common law tomes we carried through law school, but between its canonical brown covers resided uncommon material. About the same time, Foundation Press published a sexuality casebook edited by William Eskridge and Nan Hunter,²⁴ and within the decade both Professors Eskridge and Hunter, among others, would teach courses on law and sexuality at Harvard. Amidst so much loss, flowers bloomed.

When Bill Clinton was elected President in November 1992, 1970s-style jubilation gingerly resurfaced at a gay advocacy group's election party

²² MINNIE BRUCE PRATT, *My Life You Are Talking About*, in CRIME AGAINST NATURE 67 (1990).

²³ Helen Vendler, *Frank O'Hara: The Virtue of the Alterable*, in PART OF NATURE, PART OF US: MODERN AMERICAN POETS 179, 181 (1980).

²⁴ SEXUALITY, GENDER, AND THE LAW (William N. Eskridge, Jr. & Nan D. Hunter eds., 1997).

in a dance club on the far West Side. Even Colorado's enactment of an anti-gay ballot initiative couldn't fully quell the evening's enthusiasm. Within a few days, the nation commenced a year-long obsession with gays in the military, propelling to the front pages stories of proud soldiers fighting for their country, an image of lesbians, but particularly of gay men, markedly different from that of the 1980s. Within a few years, the FDA approved the use of several protease inhibitors and the Supreme Court declared Colorado's ballot initiative a violation of the equal protection clause.²⁵ The deaths slowed, at least in this country, and the victories mounted. Another era closed.

This one was marked by loss, to be sure, but as much by renewal. My Harvard Law students, separated from me by only a half decade, were nonetheless a younger generation, not busy losing their friends. They included a new group of remarkable activists who published articles on queer law,²⁶ fought to transform the curriculum and faculty, protested Colin Powell's presence at their graduation, and started new institutions to change the world.²⁷ What they accomplished at Harvard mirrored the rise of a new generation of activists, a queer nation. Gay rights had been on hold for the better part of the decade—having suffered the one-two punch of AIDS and *Hardwick*—but it was now re-invigorated, with new faces, new emphases, even a new name. *Yeah, QUEER can be a rough word but it is also a sly and ironic weapon we can steal from the homophobe's hands and use against him.*²⁸

The lesson: a community that does not reproduce itself biologically will not be decimated by a communal plague. Straight people were busily breeding young gay people, young queers, while we died or tended to the dying, and now they were ready to lead. The poet Mark Doty bears witness to an *individual* regaining his life following the loss of his lover, but the words resonate for the *community*:

²⁵ *Romer v. Evans*, 517 U.S. 620 (1996).

²⁶ See, e.g., Michelle Benecke & Kirstin Dodge, *Military Women in Nontraditional Fields: Casualties of the Armed Forces' War on Homosexuals*, 13 HARV. WOMEN'S L. J. 215 (1990); KEITH BOYKIN, *ONE MORE RIVER TO CROSS: BLACK AND GAY IN AMERICA* (1996); KEITH BOYKIN, *RESPECTING THE SOUL: DAILY REFLECTIONS FOR BLACK LESBIANS AND GAYS* (1998); Jeffrey S. Byrne, *Affirmative Action for Lesbians and Gay Men: A Proposal for True Equality of Opportunity and Workforce Diversity*, 11 YALE L. & POL'Y REV. 47 (1993); Peter Cicchino, Bruce Deming & Katherine Nicholson, *Sex, Lies, and Civil Rights: A Critical History of the Massachusetts Gay Civil Rights Bill*, 26 HARV. C.R.-C.L. L. REV. 549 (1991); James D. Esseks, *Redefining the Family*, 25 HARV. C.R.-C.L. L. REV. 183 (1990); Brad Sears, *Winning Arguments, Losing Themselves: (Dys)Functional Approach in Thomas S. v. Robin Y.*, 29 HARV. C.R.-C.L. L. REV. 559 (1994).

²⁷ Peter Cicchino '92, founded the Gay and Lesbian Youth Project, at the Legal Action Center for the Homeless, in New York. Michelle Benecke '92, co-founded the Servicemembers Legal Defense Network, in Washington, D.C. Jennifer Gordon '92, founded the Workplace Project, in Hempstead, Long Island. Keith Boykin '92, co-founded the National Black Justice Coalition. Brad Sears '95, founded the HIV Legal Check Up Project, in Los Angeles.

²⁸ ANONYMOUS QUEERS, *QUEERS READ THIS* 9 (1990).

there is
something stubborn in us
—does it matter how small it is?—
that does not diminish.
What is it? An ear, a wave?

Not our histories or who we love
or certainly our faces, which dissolve
even as we're living. Not a bud
or a cinder, not a seed
or a spark: something else:
obdurate, specific, insoluble.
Something in us does not erode.²⁹

III. DAYS OF 2003

Perhaps something in me did not erode, but much was abraded by the constant struggle, the deaths, the public interest salary, the travel, the deaths, Manhattan's so-called "one-bedroom apartments," its noise and grime, its subway life. The deaths. At thirty-four, I did what aging homosexuals do: I moved to San Francisco. My dancer, now a doctor, secured a residency there, and I took the favored escape route of burned-out lawyers: a visiting teaching position, mine happily at Stanford. Driving across America, we read all six volumes of *Tales of the City* out loud, ending, as we crossed the Bay Bridge into the fold of the glinting green hills, with the series' first line, a new beginning: "*Mary Ann Singleton was twenty-five years old when she saw San Francisco for the first time.*"³⁰ We were no longer twenty-five, but we were home.

San Francisco was an odd choice of refuge from the AIDS crisis, but the combination of leaving New York for California and practice for teaching proved a potent tonic. We lived in a two-bedroom apartment that really was, with spectacular views of the Bay, at least until the fog rolled in at dusk, enveloping us in our own private storm; then hours later, out it would roll again, the glassy lights of the fishing boats sparkling across the evening air, this daily repetition of disclosure and concealment mirroring the lives lived by that Bay. *I loved that city, the two of us traversing that light.*³¹ If my office at Stanford had a telephone, I don't remember it ever ringing, the silence not now one of death but of the scholarly life. Although I had taught gay and AIDS law courses for seven years at Harvard and Yale, I had never wanted to go into teaching full-time because I thought I would

²⁹ DOTY, *Manhattan: Luminism*, in SOURCE, *supra* note 11, at 16, 21–22.

³⁰ ARMISTAUD MAUPIN, *TALES OF THE CITY* 1 (1978).

³¹ DOTY, *Chanteuse*, in MY ALEXANDRIA, *supra* note 8, at 25.

have to teach civil procedure to first-year students, and I thought I'd sooner shoot myself. Stanford made me teach civil procedure to first-year students—and I loved it. Perhaps this merely proved how burned out I had been. But it was emotionally and intellectually liberating to think about something other than gay rights and AIDS, something other than my life, all day. Neither Pennoyer nor Neff was my client and neither died on my watch. I had an opinion about the outcome of their matter, but whether anyone agreed with it was of no consequence for my life. The students were laid-back, the faculty remarkably kind, the campus referred to not inaccurately as a “farm,” and everywhere you turned everyone was, suddenly, rich beyond comprehension. I felt what all San Franciscans, if not all law professors, ultimately do: that I had gotten off the world.

Tell the story, *the one you've been saving, memory's glimmering spotlight and sequin*.³² one June evening, 1997, we walked over the foggy hills to the Castro Theater to see *Lilies*, the featured selection of that year's film festival. The hall was packed, every seat, every inch of aisle to the back of the balcony, occupied by queers, the piano player tapping out tunes, the queens singing, and then the lights dimmed, the film rolled: an astonishing story of regret and desire told with astounding beauty—our lives, made pretty. Afterwards, there was an eerie stunned silence as the filmmaker was brought on stage and then everyone stood and started clapping, cheering really, slowly at first, but for some unknowable reason we couldn't stop, wouldn't stop, didn't want to stop, would not, even for a moment, be still, the contained exaltation cascading ceaselessly upon itself. It might have gone on forever, might still be unfolding somewhere, but in the midst of these waves of praise crashing against the stage of the darkened theater, someone threw open a balcony door and the fog had lifted and there they were, revealed: the magical hills, the sheen that was not artifice, the flawless setting we had made our own doomed Atlantis, glimmering under a halo of the day's last light. Our awe for the glistening beauty of our city melted right into our applause for the radiant illusion of our lives and in that instance, *I think we were perfected . . . and maybe from that moment on it didn't matter so much exactly what would become of us*.³³

Nor what had befallen us.

Reality, in the form of a job search, ultimately landed me in a permanent teaching position at UCLA, with a portfolio of procedural courses and articles. Surreality, in the form of a fateful phone call, brought me back to gay law: a UCLA alum, Charles Williams, his partner having found my biography on the Internet, telephoned one day to discuss the possibility of a gift to the university to create a program in this field. A few meetings and a few months later, the Charles R. Williams Project on Sexual Orientation Law and Public Policy was hatched.

³² *Id.* at 26.

³³ *Id.* at 28.

In my new guise, I was hired on May 19, 2003 by the Harvard Law School as a visiting professor to teach a January 2004 course on sexual orientation law. Thirty-five days later, the Supreme Court overruled *Hardwick*, writing that the case was “not correct when it was decided.”³⁴ Striking down the remaining sodomy laws, the Court wrote that gay people “are entitled to respect for their private lives,” that the government “cannot demean their existence or control their destiny,” that “adults may choose to enter upon this relationship . . . and still retain their dignity as free persons.”³⁵ Within six months, the Massachusetts Supreme Judicial Court held that laws restricting marriage to opposite-sex couples violated the state’s constitution³⁶ and eventually ordered the state to permit same-sex couples to marry.³⁷

The course I had been hired to teach was, suddenly, gone. *Hardwick* was no longer the hub of gay law, around which all else revolved, marriage no longer some futuristic fantasy. Though the future was now, I never anticipated that when *Hardwick* would be overruled, and marriage gained, the world would look like it does: conservative Republicans controlling the White House and Congress; seven of nine Supreme Court justices appointed by Republicans; and Republican appointees constituting a majority even of the state supreme court that brought us marriage. *Lawrence* and *Goodridge* reflect a seismic shift in the legal situation of gay people, but they are embedded in a social fabric far more conservative, in other ways, than that of my 1960s and 1970s upbringing. Although these decisions have been goals of the gay rights movement for decades, it hardly feels the time has come to declare victory and go home.

Hence, it was with mixed feelings that I reorganized my *Hardwick*-centric course away from its gay focus. Labeling the new product *Law & Sexuality*, I took up newer identities (bisexuality, trans, genderfuck), as well as the gauntlet thrown down by Justice Scalia, dissenting in *Lawrence* (polygamy, S&M, the sexuality of minors).³⁸ De-centering the experiences of gay people violated my initial organizing instincts and resonated with my deafening 1L hunt through Langdell Library in search of signs of my own existence. I had vowed then to voice our lives here and found myself wary of ushering this Babel offstage so quickly. Hadn’t we learned that *Silence = Death*? Remembered, even at a score’s remove, this insistent command retains its power.

And yet Harvard Law School itself has not retained many of its alienating features of old. My own classmate Elena Kagan is now Dean; another classmate, Carol Steiker, who had written her journal Note arguing for

³⁴ *Lawrence v. Texas*, 123 S. Ct. 2472, 2484 (2003).

³⁵ *Id.*

³⁶ *Goodridge v. Dep’t Pub. Health*, 798 N.E.2d 941 (Mass. 2003).

³⁷ *In Re Opinions of the Justices to the Senate*, 802 N.E.2d 565 (Mass. 2004).

³⁸ *Lawrence*, 123 S. Ct. at 2490 (Scalia, J., dissenting).

heightened scrutiny of classifications based on sexual orientation,³⁹ now a professor; and one of my own students from a 1995 Yale course on Queer Theory, Ryan Goodman, now a member of the Harvard faculty. Fifty-four Harvard Law professors signed an *amicus* brief challenging the Solomon Amendment, Congress's insistence that the military be permitted to recruit at the law school, recruit, that is, in direct violation of the law school's, the university's, the city's, and the state's anti-discrimination policies. No longer do gay law books represent the occasional oasis in the Saharan library. Most importantly, Harvard's faculty now includes the country's single most interesting and provocative queer law scholar, Janet Halley, hired away from Stanford.

Professor Halley identifies herself as a member of the LGBT community in the law professors' directory—the first full member of the Harvard faculty to do so.⁴⁰ Professor Halley's work, however, challenges the identity-based nature of social movements, investigating whether identity is not, ultimately, as imprisoning as it is liberating. In a unique demonstration that the personal is political, Professor Halley refers to herself as a "gay man."⁴¹ When I was in law school, several faculty members were presumed gay, but these men came from an earlier, closeted, generation. It was all rumor, innuendo, coded references: they were theatrical teachers, embodying all the sheen and artifice that *was* the Harvard Law School, they had young male protégés whose careers they helped promote, and when they died, memorials in the *Law Review* attested to their love of good food and fine wine. What would it mean to write their names here, now? Judy Grahn reminisces about a 1950s lesbian bar, the Rendezvous, where the patrons, using false names, built community from the darkness on the edge of town. One night, the police raided, attacking not the bodies of the patrons, but something deeper: "They shined a flashlight into our eyes and commanded us to stand up or else be arrested. Then they demanded that we say our real names, first and last, several times, as loud as we could. Sweat poured down my ribs as I obeyed. After they left, my friend and I sat with our heads lowered, too ashamed of our weakness to look around or even to look each other in the face."⁴² This was my professors' generation; I had no expectation they would name themselves, find it impossible, even now, to name them. Twenty years later, the law school finally has a faculty member willing to identify publicly as a gay man—and he's a woman. The Harvard Law School faculty seems to have come out of the closet with

³⁹ Note, *The Constitutional Status of Sexual Orientation: Homosexuality as a Suspect Classification*, 98 HARV. L. REV. 1285 (1985).

⁴⁰ ASSOCIATION OF AMERICAN LAW SCHOOLS, THE AALS DIRECTORY OF LAW TEACHERS 2003–2004, at 1431–33 (Gay, Lesbian, and Bisexual Community Law Teachers). A handful of Harvard's clinical professors list themselves here as well.

⁴¹ Janet Halley, *Take A Break From Feminism*, in GENDER AND HUMAN RIGHTS 57, 67 (Karen Knop ed., 2004).

⁴² JUDY GRAHN, *An Underground Bar*, in ANOTHER MOTHER TONGUE 32 (1984).

such propulsion that it jetted from the Rendezvous right past identity, a Sputnik shooting effortlessly out of the 1950s to the new millennium, with not a single professor on the ever-changing eighty-person faculty ever simply *being gay*.

Harvard's romance with post-identity scholarship and politics places it at one cutting edge of intellectual inquiry. In 1995, two former students edited a path-breaking collection of essays, *After Identity*,⁴³ which includes several pieces by Harvard faculty. Today's students continue to challenge what they perceive to be the limits of identity. Theirs is a multi-faceted critique ranging from a theoretical insistence that categories are traps to an empirical claim that the gay community is too conservative, racist, sexist, or assimilationist. At times, Harvard students and faculty impressively marry their dazzling intellectual curiosity with real-world political commitment: some of the same students who made anti-identity statements in my 2004 course asked if class could end early so that they could attend a same-sex marriage rally. Professor Halley similarly contributes post-modern readings not of obscure texts but of, for example, "Don't Ask, Don't Tell."⁴⁴

Despite these rich examples,⁴⁵ generally speaking Harvard is neither a leader in the field of queer studies nor as queer friendly an environment as many other schools. Universities nationwide maintain LGBT studies programs, ranging from the purely informational, to undergraduate minor or major programs, to graduate degree programs.⁴⁶ Harvard has no such program. UCLA's Williams Project, now funded by a \$7.5 million pledge from Mr. Williams, and directed by Brad Sears '95, focuses on producing empirically based scholarship, a Brookings Institute approach to the field.⁴⁷

⁴³ AFTER IDENTITY: A READER IN LAW AND CULTURE (Dan Danielson & Karen Engle eds., 1995).

⁴⁴ See JANET E. HALLEY, DON'T: A READER'S GUIDE TO THE MILITARY'S ANTI-GAY POLICY (1999).

⁴⁵ See also Lindsay Harrison, Note, *The Problem with Posner as Art Critic: Linnemair v. Board of Trustees of Purdue University Fort Wayne*, 37 HARV. C.R.-C.L. L. REV. 185 (2002); Douglas NeJaime, Note, *Marriage, Cruising, and Life in Between: Clarifying Organizational Positionalities in Pursuit of Polyvocal Gaybased Advocacy*, 38 HARV. C.R.-C.L. L. REV. 511 (2003); Rachel L. Toker, Note, *Multiple Masculinities: A New Vision for Same-Sex Harassment Law*, 34 HARV. C.R.-C.L. L. REV. 577 (1999).

⁴⁶ For a listing, see <http://www.people.ku.edu/~jyounger/lgbtqprogs.html> (last visited Apr. 24, 2004). Many were launched by alumni donations. Larry Kramer and his brother donated \$1 million to Yale, establishing an Initiative for Lesbian and Gay Studies. See <http://www.yale.edu/lesbiangay/homepage.html> (last visited Apr. 24, 2004). Alums have similarly given Berkeley \$1 million and Dartmouth \$250,000 for such work. See <http://www.dartmouth.edu/~news/releases/2000/oct00/klorese.html>; see also Nathan B. Anderson, *Dartmouth Accepts GLBT Donation*, THE DARTMOUTH, Feb. 22, 2000, available at 2000 WL 12901884.

⁴⁷ The Project hosts public fora and working groups, including an annual update on sexual orientation law; maintains a library, reading room, and collection of materials for use by scholars and students; funds law students to intern with organizations working on gay issues; has a two-year post-J.D. fellowship to prepare young scholars for jobs in legal academia; hosts visiting scholars from around the world; and publishes an annual "prize" journal, reprinting the best sexuality scholarship published in American law journals. See <http://www.law.ucla.edu/williamsproj/home.html> (last visited Apr. 24, 2004).

Harvard has no such program. Two Penn alums donated \$2 million to establish a physical space, an LGBT community center at that school.⁴⁸ Harvard has no such space. Two University of Chicago Law School alums donated money to start a “Stonewall Scholarship,” providing grants to law students who are “likely to use [their] legal education toward the advancement of gay and lesbian rights.”⁴⁹ Harvard has no such scholarships.

The lesson: Harvard, though perhaps not the alienating space of our youth, is also not the leader Harvard should be.

IV. DAYS OF 2013

And so my message, to collect the lessons: our children, figuratively speaking, come to Harvard seeking a home; they bring with them a wondrous spirit that renews the life of the community regularly; but what they “go into” here at Harvard is not what it is at other institutions around the country. Whose law school is it? Why not ours?

Imagine the possibilities: student scholarships; fellowships for graduates to work on queer issues or to assist them in becoming legal scholars; funds to expand Harvard’s collection of gay materials; funds to support scholars to come to Harvard to teach and write; research and travel money to facilitate the efforts of Professor Halley and other Harvard faculty working on these issues; an endowed speaker series providing a forum for the exchange of ideas among scholars, lawyers, judges, and law students; a chair. Such programs would both make Harvard a more welcoming place and help Harvard contribute more to intellectual discourse on gay issues. Harvard should aspire to lead, and we alums should aspire to make sure that happens. After all: *Aren’t we enlarged by the scale of what we’re able to desire? Still time. Still time to change.*⁵⁰

V. CONCLUSION

These, then, are my stories, my flakes of memory: my frenzied searches through the stacks, my caffeine-infused feminist journal, my classroom camp, my tiara, my moon-lit evenings at The 1270, my loves-of-my life, my closeted teachers who caught us in the glory of their artifice, my ACT-UP protests, my sunset ferry rides, my beautiful lost generation, my Atlantis, my iridescent students, my torch, my community—my cold, my splendid Harvard Law School.

⁴⁸ See <http://www.vpul.upenn.edu/lgbtc/carriagehouse> (last visited Apr. 24, 2004).

⁴⁹ See Stonewall Scholarship, <http://www.law.uchicago.edu/financial/stonewall.html> (last visited Apr. 24, 2004).

⁵⁰ MARK DOTY, *Messiah (Christmas Portions)*, in SWEET MACHINE: POEMS 29, 30 (1998). The structure of the following paragraph is adapted from Mark Doty’s *Chanteuse*, *supra* note 8, at 27.