

# The Case That Changed History

By 1998, multiple efforts to end sodomy laws had hit a wall. As this excerpt from *Flagrant Conduct: The Story of Lawrence v. Texas* by Dale Carpenter, makes clear, attorneys at Lambda Legal saw an unprecedented opportunity in the case. But little was certain, and for a vast community victimized by the laws, a great deal was at stake.

AT THE WALLISVILLE SUBSTATION TWO MILES from John Lawrence's apartment, Lawrence and Tyron Garner were shackled to a bench along with the evening's other alleged criminals. After being processed at the substation, they were taken to the Harris County jail in downtown Houston and given standard orange jail jumpsuits to wear. Lawrence was so bruised and sore from his encounter with the police that he could not carry his mattress.

The next day, September 18, 1998, Lawrence and Garner were taken to an initial arraignment. The hearing officer called Lawrence to the bench and the D.A. announced the charge of "homosexual conduct" against him. The D.A. then read the short affidavit from Deputy Joseph R. Quinn of the Harris County Sheriff's Office stating that officers had observed Lawrence and Garner having anal sex. The hearing officer, Carol Carrier, acting as a judge, asked Lawrence how he would plead. "Not guilty," Lawrence responded. Garner also pleaded not guilty. Carrier scheduled another arraignment in the court of Justice of the Peace Mike Parrot for October 5, just over two weeks away. The men were taken back to their cells to stay until their release date that night, after midnight.

Over the next few days, Lawrence began receiving telephone calls and mail from attorneys

## 14 STATES STILL HAD SODOMY LAWS ON THE BOOKS BEFORE THE LAWRENCE RULING

wanting to represent him. He ignored the calls, knowing that the attorneys had gotten his name and phone number from the public arrest records and were simply looking to collect fees. Having recently been released from the county jail, still tired and bruised, Lawrence remained angry about the

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Paul Smith, who argued *Lawrence* before the Supreme Court, faces the press with then-Lambda Legal Director Ruth Harlow in 2003.

arrest. He was also concerned, as countless gay men facing criminal charges for sexual conduct had been before him, that he might lose his job because of it.

Lane Lewis, a bartender at Pacific Street, a local gay bar, and a longtime activist and organizer, learned about the arrests and called Garner. There was no answer. He next called Lawrence. "I am not a lawyer," Lewis explained in the message. "I am a gay activist and I would like to talk to you." For Lawrence, something about Lewis's message made his call stand out from the others. "I think it was the sincerity in Lane's voice. And he wasn't an attorney. And so I knew he was not out to make a buck," he said.

Lewis offered to get Lawrence an attorney who would represent him free of charge and suggested that his case could lead to a Supreme Court decision that would get rid of sodomy laws across the country. He then called Mitchell Katine, who worked on HIV and AIDS issues in the Houston area, both as a lawyer and as a volunteer visiting the AIDS floors of local hospitals. Katine could hardly believe what Lewis told him about Lawrence and Garner's case. But Katine was still wary of taking it on because he wasn't a criminal-defense lawyer.

As word seeped out, several local gay attorneys urged Katine to drop the case. They argued that it was not the right time to challenge the Texas

sodomy law in court. The state and federal courts, they opined, were still too conservative. And the Supreme Court was far from a sure bet. They worried that the case might end up making more “bad law,” setting new antigay precedents that would reverberate throughout the legal system and be used as a basis for yet more discrimination against gay men and lesbians. That is exactly what had happened just twelve years before in *Bowers v. Hardwick*, when the Supreme Court upheld Georgia’s sodomy law. Undaunted, Katine contacted Suzanne Goldberg, a senior staff attorney for Lambda Legal in New York.

From the beginning, *Lawrence* was about more than constitutional theories and doctrines. It was about lives. Nobody could better understand how important it was to be rid of sodomy laws than a gay person who had lived through the consequences of being criminalized. Lambda Legal combined the rich legal talent and personal commitment Katine thought would be needed.

Suzanne Goldberg started at Lambda Legal in 1991, the year after graduating from Harvard Law School. She had a quick intelligence and an encyclopedic knowledge of the law, not to mention an instinct for tactical advantage. By September 1998, Goldberg had honed her skills on a handful

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of legal challenges to state sodomy laws, including cases in Montana, Tennessee and Arkansas. All these cases, however, had one defect in common: Nobody had actually been arrested for violating the state sodomy law.

Instead, in the cases Lambda Legal pressed, the plaintiffs were arguing that the very existence of sodomy laws inflicted collateral injury on them by making it harder to get jobs, complicated efforts to obtain custody of their children, and marked them as presumptive criminals in the eyes of the state and their fellow citizens. These were certainly real harms, but they were not the kind of direct injuries from the law that courts are generally willing to consider when being asked to hold a law unconstitutional. Someone had to be arrested for actually violating a sodomy law.

By the autumn of 1998, the progress against sodomy laws had almost ground to a halt. The

remaining states were resisting all legislative change to their statutes. Neither their courts nor their legislatures were very responsive to critiques of the laws. Then, Goldberg got the call from Mitchell Katine.

Goldberg walked three doors down to the office of Lambda Legal’s supervising attorney, Ruth Harlow. A graduate of Yale Law, Harlow came to Lambda Legal in 1996 as managing director in charge of supervising the half-dozen or so lawyers in the New York office. Harlow immediately realized the Houston arrests might end up in the Supreme Court, but she was also cautious. Many things could go wrong. They worried that there was still no guarantee that Lawrence and Garner would go through with a protracted legal battle. As Harlow remembered, there was always the possibility that “someone in Texas would come to their senses and drop the case.” The lawyers might make a technical mistake that would ruin their opportunity to make a head-on constitutional challenge.

But for Harlow and for Lambda Legal more generally, the case was going to be about the state’s power to discriminate against gay people by interfering in their private lives. There was never any question Lambda Legal would take the case. This was the spark the gay-rights movement had been awaiting for more than a decade. **L**



Tyron Garner (left) and John Lawrence greet supporters in Houston after the Supreme Court victory in *Lawrence*.



FOR MORE ON THE CASE, visit [www.lambdalegal.org/lawrence-v-texas](http://www.lambdalegal.org/lawrence-v-texas).



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### REMEMBERING JOHN LAWRENCE (1943–2011)

On Sunday, November 20, 2011, John Lawrence—who, along with fellow defendant Tyron Garner, stepped forward to end state sodomy laws in the U.S.—died at the age of 68. Reared in Kountze, Texas, Lawrence had served in the Navy and worked as a medical technologist until his retirement in 2009. Convicted of violating Texas’s “Homosexual Conduct Law” in 1998, Lawrence and Garner (who passed away in 2006) decided to fight back. Lambda Legal was proud to represent them in what became the historic Supreme Court victory in *Lawrence v. Texas*, a case that laid the legal groundwork for so many of the LGBT community’s victories since then. Lawrence “was a quiet, unassuming and heroic man,” said Kevin Cathcart, executive director of Lambda Legal. “We honor him for his courage. He forever changed our march to equality.”