

MEMORIAL ESSAYS

TOM STODDARD: CIVIL LIBERTARIAN

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The Greeks had a saying, "The good die young." Rarely has this been as true as with Tom Stoddard, who in the short years given to him made an indelible mark as a hero in the struggle for the rights of lesbians and gay men. He did it all—courtroom advocate, legislative counsel for the New York Civil Liberties Union, head of Lambda Legal Defense Fund, and a colleague who taught (at New York University) one of the first courses given in any American law school centering on legal issues surrounding homosexuality.

Tom will be remembered for many things, but mainly for his success, as the *New York Times* recognized when he died, in "bring[ing] issues affecting gay men and lesbians into the mainstream of legal and political debate."¹ The former head of the ACLU's gay rights and HIV project, Bill Rubenstein, put it this way in 1995: "Tom legitimized gay rights work for the legal community in New York."

Tom had a special talent for expressing ideas clearly and pithily, in the simplest and best possible terms. Phil Gutis, a senior ACLU press officer and former *New York Times* reporter, says that "Tom became 'Mr. Gay.' Every time there was a story about gay rights in *The Times*, Tom was quoted."²

But news bites are empty without substance, and Tom's impact and celebrity were ultimately traceable to his mastery of complex and often novel issues. While he took strong positions, he was flexible enough to acknowledge at times that a problem could not be solved easily or that a definitive conclusion required more information. In other words, Tom was an excellent lawyer, not merely a push-button advocate.

I go back a long way with Tom, to his second year in law school, when I recall him as an eager and articulate student in my Legal Process course. I recently checked his law school transcript, and I was

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¹ Editorial, Mr. Stoddard's Gift, *N.Y. Times*, Feb. 19, 1997, at A20.

² Robert Murphy, Fear of Disclosure, *POZ*, Oct.-Nov. 1995, at 36, 38.

disappointed to learn that he took the course pass-fail, a mistake on his part since he surely would have received an A.

I remember well our next encounter, in early 1976, when Tom applied for a fellowship in the law school's Arthur Garfield Hays Civil Liberties Program, my institutional home since early 1961. By submitting as a writing sample a memorandum he had prepared for Lambda on challenging military discharges on the basis of homosexuality,³ he signalled that he himself might be gay, a fact confirmed during his interview. Today this is commonplace, but I think Tom was our first openly gay applicant.

Another notable aspect of Tom's Hays application was a conversation I had with one of his references, Thomas Costner, then-editor-in-chief of the publishing company Clark Boardman, Ltd., where Tom had worked the previous summer. By 1976 I had become accustomed to effusive praise from references, but Costner was so laudatory about Tom's work, so vivid about its content and quality, and so dismissive of the idea that Tom might have a weakness, that I began to think that Tom was not merely a likely candidate for a fellowship, but someone who might be exceptional in any company.⁴

Of course we awarded Tom a fellowship; his writing, references, and impressive interview made him, for me, an easy case. And when he undertook his duties the following fall, Sylvia Law⁵ and I were not disappointed.

On rereading Tom's civil liberties memoranda written while he was a Hays Fellow twenty years ago, I am again struck by his intelligence, thoroughness, and common sense. He worked on many issues, but most of his time was spent for the New York Civil Liberties Union (NYCLU) on two First Amendment problems and on possible judicial and legislative challenges to the death penalty. That year Tom had his

³ Tom returned to this issue in 1993 by becoming the director of the Campaign for Military Service, the national coalition of organizations that valiantly sought, unsuccessfully, to end the government's policy that excludes lesbians and gay men from the military.

⁴ Something else lay beneath the surface of Costner's unqualified recommendations. This was a time when openly gay applicants for anything were rare and disfavored. It seems to me now that Costner, himself a successful gay man, was, consciously or unconsciously, reflecting eons of discrimination when he so strongly pressed Tom's qualifications for a position that Costner felt he clearly merited but nevertheless might not obtain.

⁵ Sylvia Law, now the law school's Elizabeth K. Dollard Professor of Law, Medicine, and Psychiatry, was a Hays Fellow in 1967-68, joined the faculty in 1973, and became associate director of the Program in September 1976, just as Tom assumed his fellowship. Since 1977, Professor Law and I have served as co-directors of the Program. When Tom died, we wrote a remembrance for the NYU Law School *Commentator*, from which parts of this Essay derive. See Norman Dorsen & Sylvia A. Law, A Man of Geniality and Wit, NYU Law School *Commentator*, Feb. 26, 1997, at 1.

first taste of lobbying for civil liberties in the New York State Assembly.

Many years later, Tom suffered a great disappointment when the board of directors of NYCLU chose someone else to be its executive director. Tom had wanted to show that a gay man could direct a general civil liberties organization and not be pigeonholed as a lawyer solely for homosexual rights, as was too common at the time. I comforted Tom with the usual words, including the possibility that the loss might be a blessing in the long run. Happily, this turned out to be true because Tom remained available when the call came to become executive director of Lambda, the post from which he provided unmatched leadership to the gay rights movement and reached national prominence.

Despite Tom's necessary concentration on the cause of lesbians and gay men while at Lambda, he had thoroughly assimilated the ethos of the Hays Program and the Civil Liberties Union. He was committed to the rights of women and racial minorities and to the protection for all people of the constitutional rights of speech, due process, travel, and privacy. He was a consummate civil libertarian.

He also was a many-sided one. He knew that the courts alone could not satisfy all the varied demands of individual liberty. Thus, he directed his passion for justice in American society along many paths—nurturing social movements, seeking legislative reform, and writing.⁶ He also knew that our hopes rest with the next generation, and he brought enormous energy to teaching and mentoring at the Law School. Even when his health forced him to make hard choices, he continued his classroom work.

A few months before Tom's death, in a keynote address at a symposium that marked the 10th anniversary of *Bowers v. Hardwick*,⁷ Representative Barney Frank, a friend of Tom's, said:

I think the news is essentially good, we're making great progress. I think we will make more. . . . [T]hose of us who've been around since Stonewall, and I think those who will come to be activists for the next fifteen or twenty years, are going to have the satisfaction

⁶ Among Tom's major works were Thomas B. Stoddard, *Lesbian and Gay Rights Litigation Before a Hostile Federal Judiciary: Extracting Benefit From Peril*, 27 *Harv. C.R.-C.L. L. Rev.* 555 (1992); Thomas B. Stoddard & Walter Rieman, *AIDS and the Rights of the Individual: Toward a More Sophisticated Understanding of Discrimination*, 68 *Milbank Q.* 143 (Supp. 1990); Nan D. Hunter, Sherryl E. Michaelson, & Thomas B. Stoddard, *The Rights of Lesbians and Gay Men: The Basic ACLU Guide to a Gay Person's Rights* (3d ed. 1992).

⁷ 478 U.S. 186 (1986).

later on in life of looking back as having been those who helped defeat one of the great social prejudices of our time.⁸

If Barney Frank is correct, none will have made a larger and more lasting contribution to the cause than Tom Stoddard. He was the best.⁹

⁸ Barney Frank, *Bowers + Ten: Litigation, Legislation, and Community Activism*, 32 *Harv. C.R.-C.L. L. Rev.* 265, 273-74 (1997).

⁹ In recognition of Tom's contributions, a Tom Stoddard Fellowship has been established in the Hays Program, the only one dedicated to a former Hays Fellow.