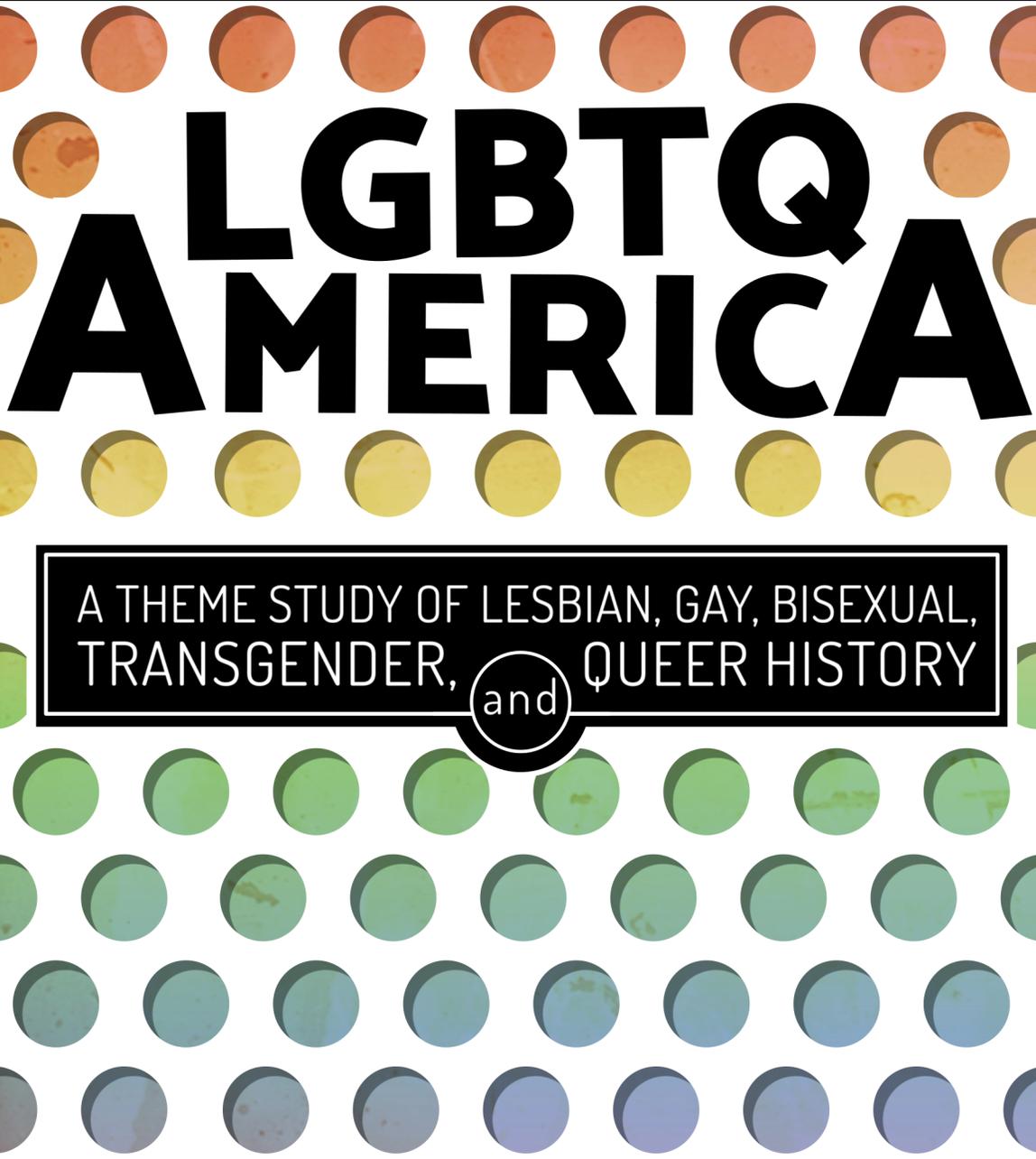


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# LGBTQ AMERICA

A THEME STUDY OF LESBIAN, GAY, BISEXUAL,  
TRANSGENDER, and QUEER HISTORY

Edited by Megan E. Springate



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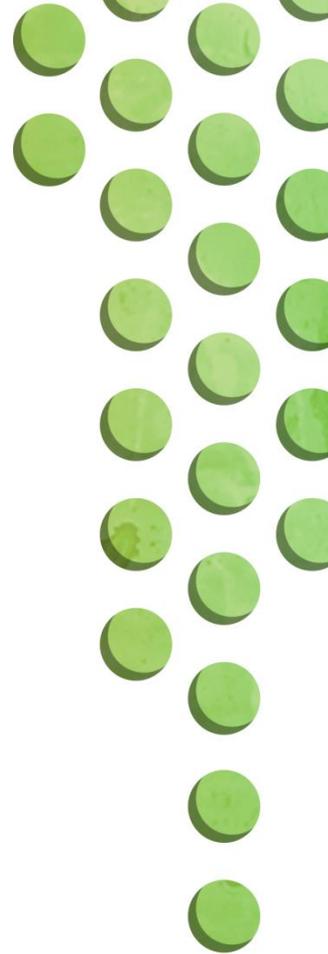
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# THEMES

*The chapters in this section take themes as their starting points. They explore different aspects of LGBTQ history and heritage, tying them to specific places across the country. They include examinations of LGBTQ community, civil rights, the law, health, art and artists, commerce, the military, sports and leisure, and sex, love, and relationships.*

# HISTORICAL LANDMARKS AND LANDSCAPES OF LGBTQ LAW

Marc Stein

The American historical landscape is filled with sites where people who engaged in same-sex sex and transgressed gender binaries struggled to survive and thrive. In these locations, “sinners,” “deviants,” and “perverts” often viewed law as oppressive. Immigrants, poor people, and people of color who violated sex and gender norms had multiple reasons for seeing law as implicated in the construction and reconstruction of social hierarchies. Over time, however, people who identified or were classified as lesbian, gay, bisexual, transgender, or queer (LGBTQ) increasingly came to see law as a potential resource for protecting, defending, and improving their lives. In these contexts, law was a complicated and multifaceted resource, simultaneously freeing, limiting, and producing human sexes, genders, and sexualities. This chapter offers an introduction to historical

landscapes and landmarks of US LGBTQ law, beginning with the European colonization of the Americas and concluding with developments in the 1970s and 1980s.<sup>1</sup>

## Colonial and Early US Laws

When Europeans first invaded the Americas in the fifteenth and sixteenth centuries, they did not generally recognize or respect Native American understandings of sex, gender, sexuality, or law. Unlike Native American societies, the colonies established by Europeans typically criminalized same-sex sex and gender-crossing acts. They did so in the context of broader restrictions on non-marital and non-procreative sex and general bans on deception and disguise. In most cases, Dutch, English, French, and Spanish laws initially applied in their territories overseas, but colonial statutes soon supplemented and superseded European laws. For example, sodomy was made a capital crime by Virginia (1610), Plymouth (1636), and Massachusetts (1641), followed by most of England's other colonies. These laws generally applied to anal intercourse, sometimes punished other forms of non-procreative sex, and tended to be used to police same-sex sex, sexual violence, and sex with minors. Of the early English colonial statutes, New Haven's (1656) was unique in referring to acts committed by women, though women in other colonies were occasionally arrested for having same-sex sex. Prosecutions for same-sex sex were relatively rare, but several people were executed for committing same-sex sexual acts.<sup>2</sup>

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<sup>1</sup> In this chapter I use gender and sexual terms that are generally favored today (including lesbian, gay, bisexual, and transgender) as well as historical terms (such as "deviant" and "pervert") that are generally rejected today. I use analytic terms such as "same-sex sex" and "gender-crossing acts" to address behaviors rather than identities or communities. I use "queer" to reference same-sex and gender-crossing desires, behaviors, and identities. I refer to "LGBTQ acts, identities, and communities" when discussing the larger chronology of US history, though I do not mean to imply that LGBTQ identities existed in North America before the late nineteenth century or are relevant in all of the twentieth or twenty-first century contexts that are discussed.

<sup>2</sup> Other early sodomy and buggery laws were passed by Connecticut (1642), Rhode Island (1647), New York (1665), New Jersey (1668), Pennsylvania (1676), New Hampshire (1679), South Carolina (1712), Delaware (1719), Maryland (1776), and North Carolina (1778). Early prosecutions for same-sex sex have been documented in Virginia (1624), Massachusetts (1629, 1642, and 1712), New Hampshire (1635 and 1663), Plymouth (1637, 1642, and 1649), New Netherland (1646, 1658, and 1660), New

In colonial America the criminalization of sexual transgression intersected with the criminalization of gender transgression. In 1629, for example, Thomas/Thomasine Hall, a resident of Warrossquyoake, Virginia, was accused of inappropriately wearing women's clothing, but one of the things that prompted these accusations was a rumor that Hall was having nonmarital sex with a woman, which was a more serious offense if Hall was a man. After intrusive investigations of Hall's body, Virginia's General Court at Jamestown decided that Hall was a man and woman and required Hall to dress in partially male and partially female clothing, which was a form of public humiliation.<sup>3</sup>

Beginning with a brief experiment in the late seventeenth century, capital punishment for sodomy, buggery, and other "crimes against nature" was replaced by less extreme penalties, including castration, whipping, life imprisonment, and lengthy prison terms. Pennsylvania removed its death penalty for sodomy in 1682, but restored it for "negroes" in 1700 and everyone else in 1718. The Continental Army began court-martialing soldiers for sodomy in 1778. In 1786, Pennsylvania more permanently eliminated its death penalty for sodomy; it was followed by New York and New Jersey in 1796, Rhode Island in 1798, and other states in the early nineteenth century. Maryland in 1793 and Virginia in 1800 eliminated the death penalty for sodomy for free people but not slaves. North and South Carolina did not remove their

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Haven (1646 and 1653), North Carolina (1718), and Georgia (1734). The best documented English colonial case concerns Nicholas Sension of Windsor, Connecticut (1677). See Jonathan Ned Katz, *Gay/Lesbian Almanac* (New York: Harper, 1983), 66-133; William Eskridge, *Gaylaw: Challenging the Apartheid of the Closet* (Cambridge, MA: Harvard University Press, 1999), 17-56, 328-272; William Eskridge, *Dishonorable Passions: Sodomy Laws in America* (New York: Viking, 2008), 16-20, 388-407; Richard Godbeer, *Sexual Revolution in Early America* (Baltimore, MD: Johns Hopkins University Press, 2002), 44-51; and Stephen Robertson, "Shifting the Scene of the Crime: Sodomy and the American History of Sexual Violence," *Journal of the History of Sexuality* 19, no. 2 (2010): 223-242. For New Spain, see Ramón Gutiérrez, *When Jesus Came, the Corn Mothers Went Away: Marriage, Sexuality, and Power in New Mexico, 1500-1846* (Palo Alto, CA: Stanford University Press, 1991); and Tracy Brown, "'Abominable Sin in Colonial New Mexico: Spanish and Pueblo Perceptions of Same-Sex Sexuality,'" in *Long Before Stonewall: Histories of Same-Sex Sexuality in Early America*, ed. Thomas Foster (New York: New York University Press, 2007), 51-77.

<sup>3</sup> Kathleen Brown, "'Changed...into the Fashion of Man': The Politics of Sexual Difference in a Seventeenth-Century Anglo-American Settlement," *Journal of the History of Sexuality* 6 (1995): 171-193. Jamestown was designated a National Historic Site on December 18, 1940, and added to the NRHP on October 15, 1966.

death penalties for buggery until 1868-69. By this time most states criminalized sodomy, buggery, and crimes against nature and punished these offenses with lengthy prison terms. Three Ohio cities—Cincinnati (1819), Dayton (1842), and Columbus (1848)—were among the first to pass laws against indecent behavior. Cincinnati and Dayton, Ohio (1849) and Chicago, Illinois (1851) were among the first to prohibit obscene publications and immoral plays. Early state laws against obscenity, which previously had been a common law offense, were passed by Illinois (1845), California (1858), and Pennsylvania (1860). Laws against buggery, crimes against nature, immorality, indecency, obscenity, and sodomy targeted multiple gender and sexual transgressions, but tended to be used to police same-sex sex, public sex, sex work, sexual violence, and sex with minors.<sup>4</sup>

Before the mid-nineteenth century, state and local governments banned cross-dressing as part of the broader criminalization of deception and disguise. Beginning in the 1840s, however, various cities began to more specifically prohibit men from wearing women's clothing and women from wearing men's clothing. Some of the earliest to do so were Columbus, Ohio (1848), Chicago, Illinois (1851), and Wilmington, Delaware (1856).<sup>5</sup> These laws joined the broad array of prohibitions on non-normative sex, gender, and sexuality that existed in the pre-Civil War era.

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<sup>4</sup> Other laws against indecency were passed by Chicago, IL (1851), Louisville, KY (1853), Cleveland, OH (1854), New Orleans, LA (1856), Springfield, IL (1856), Memphis, TN (1857), Newark, NJ (1858), Toledo, OH (1858), Charleston, SC (1858), Kansas City, MO (1860), Houston, TX (1861), St. Louis, MO (1864), and Wilmington, DE (1865). Laws against obscene publications and/or immoral plays were also passed by New Orleans, LA (1856), New York, NY (1856), Springfield, IL (1856), Memphis, TN (1857), Charleston, SC (1858), Newark, NJ (1858), Toledo, OH (1858), Kansas City, MO (1860), and St. Louis, MO (1864). Before these laws were passed, indecency and obscenity were treated as common law offenses (crimes designated as such by judges rather than legislators). See Katz, *Gay American History*, 38; Katz, *Gay/Lesbian Almanac*, 66-133; and Eskridge, *Gaylaw*, 338-341.

<sup>5</sup> Other early examples were Springfield, IL (1856), Newark, NJ (1858), Charleston, SC (1858), Kansas City, MO (1860), Houston, TX (1861), Toledo, OH (1862), Memphis, TN (1863), San Francisco, CA (1863), and St. Louis, MO (1864). See Eskridge, *Gaylaw*, 338-341; Clare Sears, *Arresting Dress: Cross-Dressing, Law, and Fascination in Nineteenth-Century San Francisco* (Durham, NC: Duke University Press, 2015), 3-6, 23-77; and Susan Stryker, *Transgender History* (Berkeley, CA: Seal, 2008), 32-33.

## Post-Civil War Federal, State, and Local Laws



Figure 1: The Nassau-Beekman Building (formerly the Morse Building), office location of the New York Society for the Suppression of Vice, led by Anthony Comstock. Photo by Jim Henderson, 2010.<sup>6</sup>

After the Civil War, federal, state, and local governments responded to the increased presence and visibility of gender and sexual transgression with new laws that criminalized LGBTQ acts, identities, and communities. One of the most powerful was the 1873 Comstock Act, enacted by the US Congress, which prohibited the mailing of obscenity. Over the next century the Comstock Act and the laws it inspired were used to censor LGBTQ speech and expression in publications, plays, photographs, and films (Figure 1). In 1882, 1891, and 1917, Congress passed restrictive immigration statutes

that targeted (among other groups) individuals convicted of crimes of “moral turpitude” and those who were “constitutional psychopathic inferiors.” In 1916, Congress prohibited assault with intent to commit sodomy in the US military; four years later Congress made sodomy itself a crime in the military and broadened its definition to include anal or oral copulation between men or between a man and a woman. In 1921, new army regulations provided for the rejection of recruits based on “sexual

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<sup>6</sup> License: Public Domain. [https://commons.wikimedia.org/wiki/File:Morse\\_Bldg\\_jeh.JPG](https://commons.wikimedia.org/wiki/File:Morse_Bldg_jeh.JPG)

perversion,” “sexual psychopathy,” and bodies that exhibited signs of the “opposite sex.”<sup>7</sup>

State and local governments also passed new laws that targeted LGBTQ acts, identities, and communities. The best estimates are that by the early twentieth century, thousands and perhaps tens of thousands of individuals were arrested each year for violating these laws. The last three states to pass laws against sodomy, buggery, and crimes against nature were Wyoming (1890), Iowa (1892), and Washington (1893). Beginning with Pennsylvania (1879), New York (1886), and Massachusetts (1887), most states updated their sex laws to make it clear that they applied to oral sex and sex between women. These were supplemented by new laws against disorderly conduct, immorality, indecency, lewdness, loitering, solicitation, and vagrancy. These ambiguously-defined statutes, used more frequently than laws against sodomy, buggery, and crimes against nature, provided local authorities with broad discretion to arrest individuals for various reasons. People of color, poor people, immigrants, and people who violated gender norms were distinctly vulnerable. Public indecency statutes, for example, were passed by San Francisco, California (1866), Little Rock, Arkansas (1868), Portland, Oregon (1868), and Indianapolis, Indiana (1869). The earliest states to ban public indecency were Massachusetts (1860), California (1872), Washington (1875), Illinois (1877), and New York (1890). Some of the earliest laws against lewd solicitation were adopted by San Jose (1882) and Los Angeles, California (1883), Columbia, Missouri (1883), and Portland, Oregon (1883).

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<sup>7</sup> Andrea Friedman, “Censorship, Obscenity, and Pornography Law and Policy,” in *Encyclopedia of Lesbian, Gay, Bisexual, and Transgender History in America (ELGBT)*, ed. Marc Stein, 3 vols. (New York: Scribners, 2003), 1: 202-205; Elizabeth Hillman, “Military Law and Policy,” *ELGBT*, 2: 262-65; Eskridge, *Gaylaw*, 13-56; and Margot Canaday, *The Straight State: Sexuality and Citizenship in Twentieth-Century America* (Princeton, NJ: Princeton University Press, 2009), 19-90. The Comstock Act was named for Anthony Comstock, leader of the New York Society for the Suppression of Vice, which had offices in the Nassau-Beekman Building (formerly the Morse Building), 140-142 Nassau Street, New York, NY. On the New York Society, see George Chauncey, *Gay New York: Gender, Urban Culture, and the Making of the Gay Male World, 1890-1940* (New York: Basic, 1994), 138-139, 146-148, 210, 215-216, 230-231, 280. In 1919-20 there was a major investigation of homosexuality at the Newport Naval Training Station and the nearby Army-Navy Young Men’s Christian Association, 50 Washington Square, Newport, Rhode Island; see George Chauncey, “Christian Brotherhood or Sexual Perversion?: Homosexual Identities and the Construction of Sexual Boundaries in the World War I Era,” *Journal of Social History* 19 (1985): 189-212. The Army-Navy Young Men’s Christian Association was listed on the NRHP on December 29, 1988.

Meanwhile more cities passed laws against obscene publications and immoral plays. Some introduced bans on indecent films—among the earliest were San Diego, California (1899), Chicago, Illinois (1907), Detroit, Michigan (1907), Seattle, Washington (1907), and Sioux Falls, South Dakota (1908). Additional cities prohibited cross-dressing. Some states, beginning with California (1909), Iowa (1911), and Oregon (1917), authorized the sterilization of convicted “perverts” and “degenerates.” Building on a 1911 Massachusetts law that permitted indefinite sentencing for “mental defectives,” Michigan (1935), Illinois (1938), California (1939), and Minnesota (1939) authorized indefinite confinement in mental institutions for sex offenders. In 1898, New Jersey provided immunity for the murder of individuals attempting to commit sodomy.<sup>8</sup>

State and local liquor laws also targeted LGBTQ acts, identities, and communities. Before national alcohol prohibition was enacted in 1919, many municipalities required liquor licensees to demonstrate “good character” and not serve “disreputable persons,” both of which were used to discriminate against LGBTQ people. After prohibition was repealed in 1933, states began to regulate the sale of liquor and many, led by New York and New Jersey, required licensees to exhibit “good moral character,” maintain “orderly” premises, and avoid serving “degenerates” and

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<sup>8</sup> Other early examples of states that updated their sodomy, buggery, and related statutes are Ohio (1889), Wyoming (1890), North Dakota (1895), Louisiana (1896), and Wisconsin (1897). Other early examples of cities that passed ordinances against public indecency are Detroit, MI (1870), Lincoln, NE (1870), Salt Lake City, UT (1872), Atlanta, GA (1873), and Grand Rapids, MI (1873). Early post-Civil War laws against cross-dressing were passed by Atlanta, GA (1873), Minneapolis, MN (1877), Oakland, CA (1879), Dallas, TX (1880), and Salt Lake City, UT (1880). Other states that passed sex offender sterilization laws are Washington (1921), Utah (1925), Idaho (1925), North Dakota (1927), Nebraska (1929), and Oklahoma (1935). See Eskridge, *Gaylaw*, 17-56, 338-341, 354-355; Eskridge, *Dishonorable Passions*, 49-59, 388-407; and Robertson, “Shifting the Scene of the Crime.” Some of the more significant local and regional studies of anti-LGBTQ policing in this era focus on Long Beach, CA [Sharon Ullman, “The Twentieth Century Way”: Female Impersonation and Sexual Practice in Turn-of-the-Century America,” *Journal of the History of Sexuality* 5, no. 4 (1995): 573-600]; Los Angeles, CA [Daniel Hurewitz, *Bohemian Los Angeles and the Making of Modern Politics* (Berkeley: University of California Press, 2007)]; New York, NY [Chauncey, *Gay New York*]; San Francisco, CA [Nan Alamilla Boyd, *Wide Open Town: A History of Queer San Francisco to 1965* (Berkeley: University of California Press, 2003) and Sears, *Arresting Dress*]; the Pacific Northwest [Peter Boag, *Same-Sex Affairs: Constructing and Controlling Homosexuality in the Pacific Northwest* (Berkeley: University of California Press, 2003)]; the West [Peter Boag, *Re-Dressing America’s Frontier Past* (Berkeley: University of California Press, 2011) and Nayan Shah, *Stranger Intimacy: Contesting Race, Sexuality, and the Law in the North American West* (Berkeley: University of California Press, 2011)].

“female impersonators.” Over the next several decades, these laws were used to target hundreds of commercial establishments frequented by LGBTQ people.<sup>9</sup>

In the late nineteenth and early twentieth centuries, federal, state, and local officials policed LGBTQ acts, identities, and communities through legal, quasi-legal, and extra-legal means. In many locations, for example, local police and state liquor control officials demanded payoffs from LGBTQ bar owners to avoid raids and closures. Law enforcement officers routinely committed acts of physical and sexual violence against LGBTQ people (and especially people of color, poor people, and people who transgressed gender norms). Many judges, lawyers, bail bondsmen, and police participated in blackmail and extortion schemes that targeted LGBTQ people. Undercover police also entrapped LGBTQ people, persuading them to engage in illegal sexual acts that they might otherwise have not committed.<sup>10</sup>

Resistance to anti-LGBTQ laws took many forms in the pre-World War II era. Millions disobeyed these laws without penalty and many who were arrested or detained denied that they had broken the law. Some began to challenge the criminalization of LGBTQ acts, identities, and communities more directly. In 1866, feminist dress reformer Eliza DeWolf successfully appealed her conviction for violating San Francisco’s law against cross-dressing by arguing that California had not given the city the power to regulate dress. In 1890, after Dick/Mamie Ruble was arrested for violating the same law, Ruble told the judge: “I’m neither a man nor a woman and I’ve got no sex at all.” Ruble was declared insane and committed to the Stockton Asylum. In 1903, Milton Matson unsuccessfully challenged his arrest for cross-dressing in San Francisco by arguing that he was a man; he was sentenced to sixty days in the city’s jail for women. Anarchist Emma Goldman regularly denounced the criminalization of

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<sup>9</sup> Eskridge, *Gaylaw*, 45-49. See also the local studies listed in note 7.

<sup>10</sup> See the local studies listed in note 7.

homosexuality during her national lecture tours in the late nineteenth and early twentieth centuries.<sup>11</sup>

There were other notable challenges in Illinois and New York. In 1924, Henry Gerber established the Society for Human Rights in Chicago to “ameliorate the plight of homosexuals” (Figure 2). In 1925, however, after Gerber and the group’s other leaders were arrested, charged with sex crimes, and threatened with obscenity prosecutions, they abandoned their efforts.<sup>12</sup> In 1927, Mae West denounced the criminalization of homosexuality while unsuccessfully defending productions of her play *Sex* in New York City; her play *Drag* in nearby Bridgeport and Stamford, Connecticut, and Paterson and Bayonne, New Jersey; and Edouard Bournet’s play *The Captive* in New York City. West was sentenced to ten days in prison on obscenity charges.<sup>13</sup> In 1929, American Civil Liberties Union (ACLU) cofounder Morris Ernst successfully defended Pascal Covici and Donald Friede when they were charged with violating New York’s obscenity law for publishing Radclyffe Hall’s novel *The Well of Loneliness*.<sup>14</sup> In 1940, Gloria Bar and Grill, a New York City gay bar, unsuccessfully challenged its license revocation by asserting, “There is no rule or regulation...which provides that a sex variant may not be served.”<sup>15</sup> These and other actions challenged the criminalization of LGBTQ acts, identities, and communities.

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<sup>11</sup> Sears, *Arresting Dress*, 74-75, 142-146. The Stockton State Hospital, at 612 East Magnolia Street, Stockton, CA, closed in 1996 and is now occupied by the Stockton Center at California State University, Stanislaus. San Francisco’s Women’s Jail, also called the Ingleside Jail, was damaged in the 1906 earthquake; the property is now occupied by the City College of San Francisco across from Balboa Park. On Goldman, see Terence Kissack, *Free Comrades: Anarchism and Homosexuality in the United States, 1895-1917* (Oakland, CA: AK, 2008). Goldman lived from 1903 to 1913 in New York City’s East Village.

<sup>12</sup> Marc Stein, *Rethinking the Gay and Lesbian Movement* (New York: Routledge, 2012), 37-40. Gerber’s home in the Lincoln Park neighborhood of Chicago, Illinois was designated an NHL on June 19, 2015.

<sup>13</sup> Chauncey, *Gay New York*, 311-13. *Sex* was performed at Daly’s 63rd Street Theatre (22 West Sixty-third Street, New York City, NY); the building was demolished in 1957.

<sup>14</sup> Leslie Taylor, “‘I Made Up My Mind to Get It’: The American Trial of *The Well of Loneliness*, New York City, 1928-29,” *Journal of the History of Sexuality* 10, no. 2 (2001): 250-286. Covici-Friede was based at 79 West 45th Street, New York City, New York (now demolished).

<sup>15</sup> Chauncey, *Gay New York*, 339. Gloria’s was located near the intersection of Third Avenue and 40th Street, New York City, New York.



Figure 2: The Henry Gerber House, Chicago, Illinois. Photo by Thshriver, 2013.<sup>16</sup>

## Federal, State, and Local Laws in the 1940s, 1950s, and 1960s

LGBTQ acts, identities, and communities were subjected to increased legal repression in the 1940s, 1950s, and 1960s, but there was also increased LGBTQ legal resistance. In 1941, just before the United States entered World War II, the US military adopted new policies that rejected the enlistment of homosexuals. One year later, new rules stipulated that those who “habitually or occasionally” engaged in homosexual acts were unfit for service, as were men with “feminine” characteristics. In 1943-44, some of these policies were relaxed or revised in the context of wartime military needs, but in 1945 US officials reaffirmed the ban on homosexuals in the military and the Veterans Administration announced that individuals discharged because of homosexuality were ineligible

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<sup>16</sup> License: CC BY-SA 3.0. [https://commons.wikimedia.org/wiki/File:Gerber,\\_Henry\\_House\\_2.JPG](https://commons.wikimedia.org/wiki/File:Gerber,_Henry_House_2.JPG)

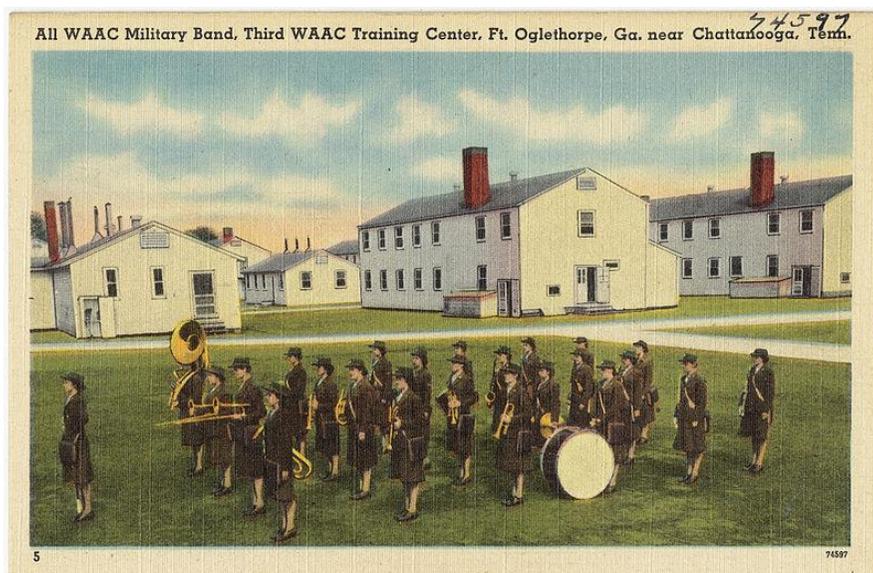


Figure 3: One of the more in-depth investigations of homosexuality during World War II was at the Women's Army Corps Training Center at Fort Oglethorpe, Georgia. Postcard, ca. 1942-1943, from the collections of the Boston Public Library.<sup>17</sup>

for veterans' benefits. The best estimate is that these policies resulted in five thousand recruitment rejections and nine thousand discharges during World War II. In 1950, Congress provided a five-year prison term and dishonorable discharge for service members convicted of sodomy. Ten years later, the US Army formally deemed transsexuals ineligible for enlistment. In the 1940s, 1950s, and 1960s, the US military discharged more than fifty thousand individuals based on allegations of homosexuality (Figure 3).<sup>18</sup>

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[https://commons.wikimedia.org/wiki/File:All\\_WAAC\\_Military\\_Band\\_Third\\_WAAC\\_Training\\_Cente.\\_Ft.\\_Oglethorpe,\\_Ga.,\\_near\\_Chattanooga,\\_Tenn.\\_%286843436993%29.jpg](https://commons.wikimedia.org/wiki/File:All_WAAC_Military_Band_Third_WAAC_Training_Cente._Ft._Oglethorpe,_Ga.,_near_Chattanooga,_Tenn._%286843436993%29.jpg)

<sup>18</sup> Hillman, "Military Law and Policy"; Allan Bérubé, *Coming Out Under Fire: The History of Gay Men and Women in World War Two* (New York: Free Press, 1990); Leisa Meyer, *Creating GI Jane: Sexuality and Power in the Women's Army Corps During World War II* (New York: Columbia University Press, 1996), 148-178; Canaday, *The Straight State*, 137-173; Joanne Meyerowitz, *How Sex Changed: A History of Transsexuality in the United States* (Cambridge, MA: Harvard University Press, 2002), 243; and Eskridge, *Gaylaw*, 381. One of the more in-depth investigations of homosexuality during World War II focused on the Women's Army Corps Training Center at Fort Oglethorpe in Catoosa County, Georgia. The Fort Oglethorpe Historic District was listed on the NRHP on April 20, 1979.

In the early years of the Cold War, the federal government introduced new anti-LGBTQ laws. In 1947, President Harry Truman established a loyalty security program for federal civil servants; among those targeted for exclusion and termination were homosexuals. In 1951, Federal Bureau of Investigation Director J. Edgar Hoover initiated a project that targeted “sex deviates.” In 1953, President Dwight Eisenhower issued an executive order that explicitly named “sexual perversion” as grounds for exclusion and dismissal from federal government jobs. More than five thousand federal government workers lost their jobs because of these policies in the 1940s, 1950s, and 1960s. The Immigration and Nationality Act of 1952 provided for the exclusion and deportation of noncitizens who were “afflicted with psychopathic personality” or had committed “crimes of moral turpitude,” both of which were interpreted to apply to LGBTQ people. In 1965, Congress more explicitly barred the admission of “sexual deviates.”<sup>19</sup>

State and local governments also introduced new anti-LGBTQ laws. In 1948, Congress criminalized sodomy in the District of Columbia; five years later Congress banned indecent sexual proposals (in private or public) in the district. In the late 1940s and early 1950s, California increased its maximum penalties for sodomy, oral copulation, lewd vagrancy, and loitering around a public toilet. By 1961, twenty-one states had revised their laws against lewdness and indecency to cover private as well as public acts. Meanwhile, new laws were passed against lewd solicitation in Houston, Texas (1942), Sioux City, Iowa (1943), Norfolk, Virginia (1944), Orlando, Florida (1952), Miami, Florida (1955), and New Orleans, Louisiana (1956). New laws against cross-dressing were adopted by Detroit, Michigan (1944), Indianapolis, Indiana (1951), Miami, Florida (1952 and 1965), Denver, Colorado (1954), and San Diego, California (1966). By 1961, twenty-nine states and the District of Columbia had

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<sup>19</sup> Ruthann Robson, “Employment Law and Policy,” in *ELGBT*, 1: 346-349; Eskridge, *Dishonorable Passions*, 100-102; Canaday, *The Straight State*, 214-254; David Johnson, *The Lavender Scare* (Chicago: University of Chicago Press, 2004); Stein, *Rethinking*, 49, 65; Douglas M. Charles, *The FBI's Obscene File: J. Edgar Hoover and the Bureau's Crusade against Smut* (Lawrence: University Press of Kansas, 2012); and Douglas M. Charles, *Hoover's War on Gays: Exposing the FBI's 'Sex Deviates' Program* (Lawrence: University Press of Kansas, 2015).

passed sexual psychopath laws that provided for indefinite detention. In 1941, California authorized the castration of convicted sex perverts and in 1947 the state began requiring convicted sex offenders to register with local police after their release from prison. Other states that adopted sex offender registration laws were Arizona (1951), Nevada (1961), Ohio (1963), and Alabama (1967). The passage of these laws was accompanied by more aggressive legal, quasi-legal, and extra-legal policing, which disproportionately affected LGBTQ communities and especially immigrants, people of color, and poor people within these communities. The best estimate is that more than 300,000 individuals were arrested in the 1940s, 1950s, or 1960s for violating the country's anti-LGBTQ laws. Countless others suffered because the legal system did not recognize their relationships, their families, and their parental rights.<sup>20</sup>

Other new state and local laws affected employment rights and rights of assembly. In 1951-52, for example, California supplemented its ban on immoral conduct for teachers with a law requiring school districts to be notified when teachers were arrested for sex crimes. New laws also authorized the state board of education to decertify teachers convicted of sex crimes and prohibited school districts from employing convicted sex offenders. In 1958, Florida's Legislative Investigation Committee began a

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<sup>20</sup> Eskridge, *Dishonorable Passions*, 73-108, 388-407; Eskridge, *Gaylaw*, 62, 338-341; Robertson, "Shifting the Scene"; Daniel Winunwe Rivers, *Radical Relations: Lesbian Mothers, Gay Fathers, and Their Children in the United States since World War II* (Chapel Hill: University of North Carolina Press, 2013), 11-52. The 300,000 figure is a rough and conservative estimate based primarily on Eskridge's analysis of individuals arrested for consensual and adult same-sex sexual crimes (*Dishonorable Passions*, 98). There was a notable police crackdown on same-sex sex in Boise, Idaho in 1955-1956; see John Gerassi, *The Boys of Boise: Furor, Vice, and Folly in an American City*, with a new foreword by Peter Boag (1966; Seattle: University of Washington Press, 2001). The scandal began with allegations that focused on a Boise YMCA located at Eleventh and Idaho Streets. Some of the more significant local and regional studies of anti-LGBTQ policing in this era focus on Buffalo, NY [Elizabeth Lapovsky Kennedy and Madeline D. Davis, *Boots of Leather, Slippers of Gold: The History of a Lesbian Community* (New York: Routledge, 1993)]; Cherry Grove, NY [Esther Newton, *Cherry Grove, Fire Island: Sixty Years in America's First Gay and Lesbian Town* (Boston: Beacon, 1993)]; Los Angeles, CA [Lillian Faderman and Stuart Timmons, *Gay L.A.: A History of Sexual Outlaws, Power Politics, and Lipstick Lesbians* (Berkeley: University of California Press, 2006)]; Mississippi [John Howard, *Men Like That: A Southern Queer History* (Chicago: University of Chicago Press, 1999)]; Philadelphia, PA [Marc Stein, *City of Sisterly and Brotherly Loves: Lesbian and Gay Philadelphia* (Chicago: University of Chicago Press, 2000)]; Provincetown, MA [Karen Krauhlik, *Provincetown: From Pilgrim Landing to Gay Resort* (New York: New York University Press, 2005)]; San Francisco, CA [Boyd, *Wide Open Town*; Christopher Agee, *The Streets of San Francisco: Policing and the Creation of a Cosmopolitan Liberal Politics, 1950-1972* (Chicago: University of Chicago Press, 2014)]; and Washington, DC [Genny Beemyn, *A Queer Capital: A History of Gay Life in Washington, D.C.* (New York: Routledge, 2015)].

six-year campaign of repression against teachers and students at primary, secondary, and postsecondary schools. In 1959, Florida authorized the revocation of teaching certificates based on moral misconduct. California and Florida were among many states that authorized the denial and revocation of licenses for doctors, lawyers, and other professionals based on immoral conduct. As for rights of assembly, in 1954 Miami, Florida, made it illegal to sell alcohol to, employ, or allow the gathering of two or more homosexuals in licensed bars. In 1955, California authorized liquor license revocations for bars that served “perverts.” In 1961, Illinois passed a new law that increased the ability of Chicago’s mayor to close LGBTQ bars. In many cities, including New York, Philadelphia, and San Francisco, the owners of LGBTQ bars and other commercial establishments were distinctly vulnerable to raids and closures if they did not make payoffs to local police, politicians, and other officials. The best estimate is that tens of thousands of individuals lost their jobs and hundreds of businesses were harassed, raided, and closed by the police because of anti-LGBTQ laws in the 1940s, 1950s, and 1960s.<sup>21</sup>

Notwithstanding these developments, there were signs of increased support for sex and gender law reform in these decades. These efforts were championed by the LGBTQ movement, which consisted of groups such as the Mattachine Society, ONE, the Daughters of Bilitis, the Janus Society, the Erickson Educational Foundation, and the Society for Individual Rights.<sup>22</sup> LGBTQ activists supported reform with educational, lobbying, and litigation campaigns, but also engaged in direct action. They challenged police practices, for example, with protests at Cooper’s Donuts

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<sup>21</sup> Eskridge, *Dishonorable Passions*, 103-107, 389, 391; Karen Graves, *And They Were Wonderful Teachers: Florida’s Purge of Gay and Lesbian Teachers* (Urbana: University of Illinois Press, 2009); and Timothy Stewart-Winter, *Queer Clout: Chicago and the Rise of Gay Politics* (Philadelphia: University of Pennsylvania Press, 2016). See also the local studies listed in note 17.

<sup>22</sup> Stein, *Rethinking*, 41-78. Mattachine was initially based at Harry Hay’s residences in the Silver Lake and Hollywood Hills neighborhoods of Los Angeles, California. ONE was based at 232 South Hill Street, Los Angeles, California (now demolished). The Daughters of Bilitis was based for many years at 693 Mission Street, San Francisco, California. Janus was based for many years at the Middle City Building, 34 South Seventeenth Street, Philadelphia, Pennsylvania. The Erickson Educational Foundation was based for many years at Reed Erickson’s home near the Hundred Oaks area of Baton Rouge, Louisiana. The Society for Individual Rights was based for many years at 83 Sixth Street, San Francisco, California.

in Los Angeles in 1959, California Hall in San Francisco in 1964, Compton's Cafeteria in San Francisco in 1966, the Black Cat in Los Angeles in 1967, and the Patch in Los Angeles in 1968. They demonstrated against military policies at the Whitehall Street Induction Center in New York City in 1964 and at locations in Los Angeles, New York City, Philadelphia, San Francisco, and Washington, DC, on Armed Forces Day in 1966. In 1965, they staged a sit-in at Dewey's Restaurant in Philadelphia and organized demonstrations at the White House, Civil Service Commission, State Department, and Pentagon in Washington, DC; Independence Hall in Philadelphia, and the United Nations Building in New York City. The protest at Independence Hall, held on the Fourth of July Independence Day holiday, became the "Annual Reminder" when it was repeated in 1966, 1967, 1968, and 1969.<sup>23</sup>

Influenced by these and other developments, in 1955 the American Law Institute (ALI) called for the decriminalization of private sex acts by consenting adults. The ACLU, which had long defended individuals accused of gender and sexual crimes, adopted policy statements on the rights of homosexuals in 1957 and 1967. In the 1960s, the Playboy Foundation began to support homosexual law reform. Two early LGBTQ

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<sup>23</sup> Stein, *Rethinking*, 63-78. Cooper's Donuts was positioned between two gay bars, the Waldorf and Harold's, which were located at 527 and 555 South Main Street, Los Angeles, California (both now demolished); see Faderman and Timmons, *Gay L.A.*, 1-2. California Hall was located at 625 Polk Street, San Francisco, California; see Boyd, *Wide Open Town*, 233-235. Compton's Cafeteria was located at 101 Taylor Street, San Francisco, California, a contributing building to the Uptown Tenderloin Historic District, listed on the NRHP on February 5, 2009; see Stryker, *Transgender History*, 63-75. The Black Cat was located at 3909 W Sunset Boulevard, Los Angeles, California; see Faderman and Timmons, *Gay L.A.*, 154-157. The Patch was located in the Wilmington neighborhood of Los Angeles, California; see Faderman and Timmons, *Gay L.A.*, 157-158. The Whitehall Street Induction Center was located at 39 Whitehall Street, New York City, New York; see Martin Duberman, *Stonewall* (New York: Dutton, 1993), 80-82. Dewey's was located at 219 S Seventeenth Street, Philadelphia, Pennsylvania; see Stein, *City of Sisterly and Brotherly Loves*, 245-246. Independence Hall is located at 520 Chestnut Street, Philadelphia, Pennsylvania; it is part of Independence National Historical Park, created June 28, 1948, and designated an NHL District on October 15, 1966; see Stein, *City of Sisterly and Brotherly Loves*, 231-232, 248-249, 253-254, 273-274, 291-295, 292, 299, 317. The White House is located at 1600 Pennsylvania Avenue, Washington, DC; it was designated an NHL on December 19, 1960. The US Civil Service Commission was based in Washington, DC. The State Department is located in the Harry S. Truman Building at 2201 C Street NW, Washington, DC. The Pentagon is located on Jefferson Davis Highway in Arlington, VA; it was listed on the NRHP on July 27, 1989 and designated an NHL on October 5, 1992. The United Nations Building is located at 405 East 42nd Street, New York City, New York.

legal advocacy groups were the Homosexual Law Reform Society (HLRS), founded in Philadelphia in 1966, and the National Legal Defense Fund (NLDF), founded in San Francisco in 1967.<sup>24</sup>

Some liberal reforms were achieved through legislative and executive action. In 1950, California created a misdemeanor option for oral copulation. New York in 1950, Minnesota in 1967, and Utah in 1969 reduced consensual sodomy to a misdemeanor. In 1969, when Kansas decriminalized heterosexual deviate sexual intercourse, it reduced its homosexual counterpart to a misdemeanor. More significantly, in 1961 Illinois became the first state to decriminalize sodomy; Connecticut was second in 1969. In 1961, California replaced its vagrancy law, which had often been used against LGBTQ people, with a law against disorderly conduct. In 1967, New York repealed its prohibition on the depiction of “sex degeneracy or sex perversion” in plays. In the 1960s, Illinois, Arizona, and Louisiana were among the first states to permit changes of sex on birth certificates and drivers’ licenses; by 1965 eleven states permitted changes of sex on birth certificates. At the federal level, in 1966 the US Civil Service Commission announced in a letter to Mattachine activists that individuals who engaged in homosexual conduct were not automatically barred from all federal government jobs; only those who publicly revealed their homosexuality and those whose homosexual conduct became publicly known were excluded.<sup>25</sup>

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<sup>24</sup> On the American Law Institute (ALI), see John D’Emilio, *Sexual Politics, Sexual Communities* (Chicago: University of Chicago Press, 1983), 112, 144; Eskridge, *Dishonorable Passions*, 121-124; Marie-Amelie George, “The Harmless Psychopath: Legal Debates Promoting the Decriminalization of Sodomy in the United States,” *Journal of the History of Sexuality* 24, no. 2 (2015): 225-261. On the ACLU, Playboy, HLRS, and NLDF, see Marc Stein, *Sexual Injustice: Supreme Court Decisions from Griswold to Roe* (Chapel Hill: University of North Carolina Press), 139-170, 246-248. The ALI was located at and continues to have offices at 4025 Chestnut Street, Philadelphia, Pennsylvania. The ACLU was based at the Presbyterian Building, 156 Fifth Avenue, New York City, New York. The Playboy Foundation was based in the Palmolive Building at 919 N Michigan Avenue, Chicago, Illinois, listed on the NRHP on August 21, 2003. HLRS was based at the Middle City Building, 34 South Seventeenth Street, Philadelphia, Pennsylvania. The National Legal Defense Fund was based at Glide Memorial Church at 330 Ellis Street, San Francisco, California, a contributing building to the Uptown Tenderloin Historic District, listed on the NRHP on February 5, 2009.

<sup>25</sup> Eskridge, *Dishonorable Passions*, 124-127, 144, 161-165, 388-407; Stryker, *Transgender History*, 121; Eskridge, *Gaylaw*, 126-127; Johnson, *The Lavender Scare*, 202-207; and Meyerowitz, *How Sex Changed*, 243.

Reformers and activists also pursued law reform through court-based litigation. In 1952, when Dale Jennings, a founder of the Mattachine Society, was arrested and charged with lewd behavior in Los Angeles, he acknowledged his homosexuality but denied that he had propositioned an undercover police officer. After the jury deadlocked, Mattachine celebrated its first legal victory.<sup>27</sup> There were also victories in police entrapment cases in Washington, DC, in 1952, 1956, and 1960; warrantless bathroom surveillance cases in California in 1962; a

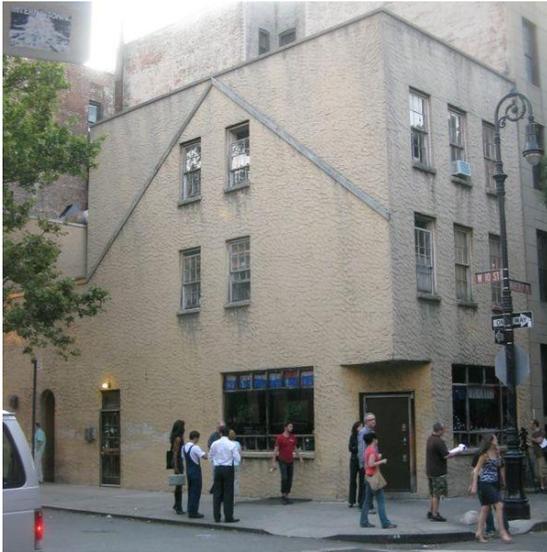


Figure 4: Julius', New York City. Photo by Americasroof, 2008.<sup>26</sup>

transsexual name change case in New York City in 1968; and a teacher decertification case in California in 1969.<sup>28</sup> The Supreme Court declined to consider appeals of convictions for sodomy in Mansfield, Ohio in 1964 and 1966, lewd solicitation in New York City in 1966, and lewd conduct in Los Angeles in 1968, but homophile lobbying and negative publicity about these cases helped

<sup>26</sup> License: CC BY-SA 3.0. <https://commons.wikimedia.org/wiki/File:Julius-bar.jpg>

<sup>27</sup> D'Emilio, *Sexual Politics*, 70-71. Mattachine's early meetings took place at Harry Hay's homes in the Silver Lake and Hollywood Hills neighborhoods of Los Angeles, CA.

<sup>28</sup> Stein, *Rethinking*, 48, 54, 75, 104; Johnson, *The Lavender Scare*, 174-178; and Meyerowitz, *How Sex Changed*, 208-209, 241-247. The DC cases were Kelly v. United States (1952), Guarro v. United States (1956), and Rittenour v. District of Columbia (1960). The California cases were Bielicki v. Superior Court of Los Angeles County (1962), Byars v. Superior Court of Los Angeles County (1962), Britt v. Superior Court of Santa Clara County (1962), and Morrison v. State Board of Education (1969). The New York case was *In Re Anonymous* (1968). Kelly was arrested in Franklin Park (now Franklin Square), Washington, DC. Guarro was arrested at Cinema Follies, formerly located at 37 L Street SE, Washington, DC.

convince New York City's police commissioner to curtail entrapment practices.<sup>29</sup>

Reformers and activists also challenged police practices that targeted sites associated with LGBTQ cultures. In 1959, Mel Heifetz unsuccessfully pursued a federal civil rights complaint after police raided his Philadelphia coffeehouse.<sup>30</sup> In 1968, the Supreme Court refused to consider Richard Inman's challenge to Miami's ordinance against serving or employing homosexuals in bars.<sup>31</sup> In California, however, the Black Cat in San Francisco (1951) and Mary's First and Last Chance Bar in Oakland (1959) won state supreme court rulings that rejected liquor license revocations for bars that served homosexuals who were not engaging in immoral or indecent acts.<sup>32</sup> In 1966, Mattachine activists staged a successful "sip-in" at Julius, a New York City gay bar (Figure 4). They announced they were homosexuals, were denied service on that basis, and then filed suit, winning a 1967 state court ruling that constrained the ability of the State Liquor Authority to revoke the licenses of gay bars unless there was evidence of indecent behavior.<sup>33</sup> Also in 1967, HLRS supported litigation that yielded a New Jersey Supreme Court ruling upholding the rights of "well-behaved" homosexuals to assemble in bars.<sup>34</sup>

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<sup>29</sup> The Mansfield cases were *Poor v. Mayer* (1964) and *Chamberlain v. Ohio* (1966). The New York case was *Robillard v. New York* (1966). The Los Angeles case was *Talley v. California* (1968). The Florida case was *Franklin v. State* (1971). In the Los Angeles case, Charles Talley and Benny Baker were arrested for kissing on New Year's Eve at the Black Cat Tavern, 3909 West Sunset Boulevard, Los Angeles, California. See Joyce Murdoch and Deb Price, *Courting Justice: Gay Men and Lesbians v. the Supreme Court* (New York: Basic, 2001), 135-147.

<sup>30</sup> *Haifetz v. Rizzo* (1959); Stein, *City of Sisterly and Brotherly Loves*, 155-176. Heifetz's coffeehouse, the Humoresque, was located at 2036 Sansom Street, Philadelphia, Pennsylvania. Note that the alternative spellings are intentional.

<sup>31</sup> *Inman v. City of Miami* (1968).

<sup>32</sup> *Stoumen v. Reilly* (1951); *Vallerga v. Department of Alcoholic Beverage Control* (1959); Boyd, *Wide Open Town*, 121-123; 206-207. The Black Cat was located at 710 Montgomery Street, San Francisco, California. The building is a contributing element to the Jackson Square Historic District, listed on the NRHP November 18, 1971. Mary's First and Last Chance was located at 2278 Telegraph Avenue, Oakland, California.

<sup>33</sup> *Duberman, Stonewall*, 114-117. Julius is located within the Greenwich Village Historic District (listed on the NRHP on June 19, 1979) at 159 West Tenth Street, New York City, New York. Not currently individually listed on the NRHP, the New York State Historic Preservation Office has determined Julius eligible.

<sup>34</sup> *One Eleven Wines & Liquors v. Division of Alcoholic Beverage Control* (1967); Stein, *Sexual Injustice*, 150-151; and Bryant Simon, "New York Avenue: The Life and Death of Gay Spaces in Atlantic City, New Jersey, 1920-90," *Journal of Urban History* 28, no. 3 (2002): 300-327. The New Jersey case

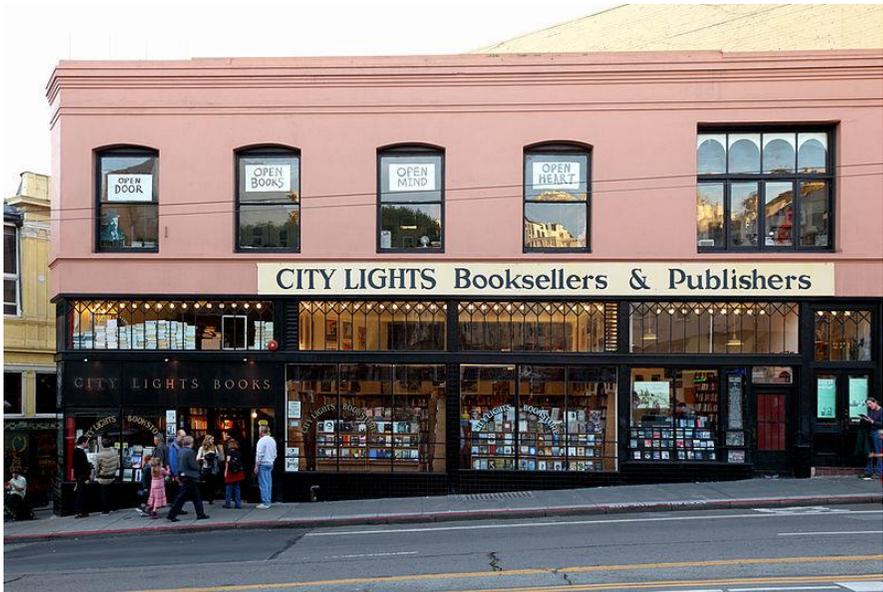


Figure 5: City Lights Bookstore, San Francisco. Photo by Caroline Culler.<sup>35</sup>

Reformers and activists also had some success in challenging anti-LGBTQ censorship. In 1955, Bob Mizer, the Los Angeles-based founder of the Athletic Model Guild and publisher of *Physique Pictorial* magazine, successfully appealed his conviction for selling indecent literature.<sup>36</sup> Two years later, Lawrence Ferlinghetti, the owner of City Lights Bookstore in San Francisco, was found not guilty of obscenity for selling Allen Ginsberg's homoerotic *Howl and Other Poems* (Figure 5).<sup>37</sup> In 1962, Dorian Book Service in San Francisco successfully challenged restrictions on the importation of homoerotic books by US Customs.<sup>38</sup> Five years later, Directory Services in Minneapolis, a gay-oriented mail-order business, was

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addressed Val's, which was located on New York Avenue in Atlantic City, New Jersey; Murphy's Tavern, which was located at 135 Mulberry Street in Newark, New Jersey (now demolished); and One Eleven Wines and Liquors, location unknown.

<sup>35</sup> License: CC BY-SA 3.0. [https://commons.wikimedia.org/wiki/File:City\\_Lights\\_Bookstore.jpg](https://commons.wikimedia.org/wiki/File:City_Lights_Bookstore.jpg)

<sup>36</sup> Whitney Strub, *Perversion for Profit: The Politics of Pornography and the Rise of the New Right* (New York: Columbia University Press, 2011), 35-36. Bob Mizer operated his office and studio out of his home in Brooklyn, New York.

<sup>37</sup> D'Emilio, *Sexual Politics*, 177-182. City Lights Bookstore is located at 261 Columbus Avenue, San Francisco, California.

<sup>38</sup> Stein, *Rethinking*, 75. Dorian Book Service was based out of the Williams Building, 693 Mission Street, San Francisco, California.

acquitted on charges of mailing indecent literature.<sup>39</sup> Two particularly significant victories occurred when the Supreme Court overturned the US Postal Service's censorship of *ONE* magazine in 1958 and invalidated the Postal Service's censorship of physique magazines in 1962.<sup>40</sup> In this period federal, state, and local authorities continued to use obscenity laws to censor LGBTQ speech and expression and in so doing they effectively destroyed Guild Press in Washington, DC, and the Janus Society, HLRS, and Trojan Book Service in Philadelphia.<sup>41</sup> Nevertheless there were also notable successes in challenges to anti-LGBTQ censorship.

Activists and reformers also had a mixed record of success when using litigation to invalidate or circumvent other federal laws and policies. Military service members were rarely successful when they challenged anti-LGBTQ policies. In 1960, however, Fannie Mae Clackum and Grace Garner, who had been involuntarily discharged from the US Air Force, won a US Court of Claims decision that awarded them back pay. While the court did not challenge the military's anti-homosexual policies, it ruled that the women should have been given the court martial they requested.<sup>42</sup>

Noncitizens generally failed in their challenges to anti-LGBTQ immigration laws, which tended to be enforced when the Immigration and Naturalization Service learned that a legal or nonlegal resident had been charged with or convicted of a sex crime. Sara Quiroz, a Mexican woman living in El Paso, Texas, was deported for "looking like a lesbian" in 1961. Clive Boutilier, a Canadian man living in New York, was ordered deported after he revealed an earlier sodomy arrest on his application for US

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<sup>39</sup> David Johnson, "Physique Pioneers: The Politics of 1960s Gay Consumer Culture," *Journal of Social History* 43, no. 4 (2010): 867-892.

<sup>40</sup> *ONE v. Olesen* (1958); *Manual Enterprises v. Day* (1962); Murdoch and Price, *Courting Justice*, 27-50, 65-83. *ONE's* offices were located at 232 South Hill Street, Los Angeles, California (now demolished). The offices of Manual Enterprises and Guild Press were located at 807-813 Eighth Street SE, Washington, DC.

<sup>41</sup> Murdoch and Price, *Courting Justice*, 82; Stein, *City of Sisterly and Brotherly Loves*, 299-302; Stein, *Rethinking*, 78.

<sup>42</sup> Hillman, "Military Law and Policy," 264; Canaday, *The Straight State*, 198-200; and Eskridge, *Gaylaw*, 91. Clackum and Garner served at Barksdale Air Force Base, located just southeast of Bossier, Louisiana.

citizenship; he lost his Supreme Court appeal in 1967. However, George Fleuti, a Swiss national who lived in Ojai, California, won his 1963 Supreme Court appeal on a legal technicality, even though he had been arrested and convicted multiple times for homosexual offenses.<sup>44</sup> As for federal employment discrimination, future homophile movement leader Frank Kameny, who had been fired by the Army Map Service in 1957, lost his final round of appeals in 1961 (Figure 6). In 1965, however, the DC Circuit Court ruled in an appeal by Bruce Scott that the Civil Service Commission could not fire an employee based solely on vague allegations about homosexual conduct. In 1969 the same court ruled in an appeal by

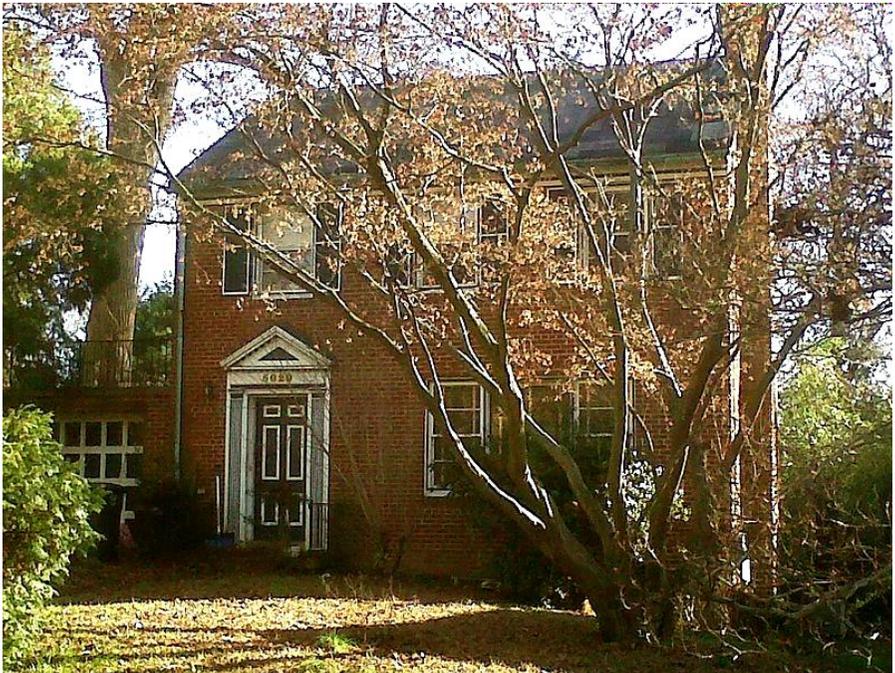


Figure 6: The Dr. Franklin E. Kameny House, Washington, DC. Photo by Farragutful, 2011.<sup>43</sup>

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<sup>43</sup> License: CC BY-SA 3.0.

[https://commons.wikimedia.org/wiki/File:Dr.\\_Franklin\\_E.\\_Kameny\\_House,\\_DC.jpg](https://commons.wikimedia.org/wiki/File:Dr._Franklin_E._Kameny_House,_DC.jpg)

<sup>44</sup> Murdoch, *Courting Justice*, 87-134; Stein, *Sexual Injustice*, 57-93; Canaday, *The Straight State*, 214-254; and Eithne Luibhéid, *Entry Denied: Controlling Sexuality at the Border* (Minneapolis: University of Minnesota Press, 2002), 77-101. Boutilier lived in Brooklyn, New York. Fleuti worked at the Ojai Valley Inn and Country Club, located at 905 Country Club Road, Ojai, California.

Clifford Norton that homosexual conduct alone was not sufficient reason to fire a federal government employee.<sup>45</sup> With this victory, which was announced just a few days after the 1969 Stonewall riots in New York City, LGBTQ reformers won one of their most important courtroom victories.

## Federal, State, and Local Laws in the 1970s and 1980s

A massive upsurge in LGBTQ activism after the Stonewall riots contributed to more substantial legal reforms in the 1970s and 1980s. The riots, which began when patrons of the Stonewall Inn resisted arrest and fought back during a police raid, were influenced by the radicalization of LGBTQ activism in the second half of the 1960s and by several years of African American urban rebellions. In the aftermath of the riots, LGBTQ activists joined other disenfranchised communities to challenge police repression and fight for law reform.<sup>46</sup>

Much of this was driven by grassroots local organizing. In the early 1970s, for example, New York City activists formed the Gay Liberation Front, Gay Activists Alliance, Queens Liberation Front, Radicalesbians, Street Transvestite Action Revolutionaries, and Third World Gay Revolution. Similar groups formed in other US cities and many organized political demonstrations and lobbying campaigns to promote legal and police reform. Some of the most significant national organizations were the National Gay Task Force (founded in New York City in 1973, renamed the National Gay and Lesbian Task Force in 1985 and the National LGBTQ Task Force in 2014), Gay Rights National Lobby (founded in Washington,

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<sup>45</sup> Stein, *Rethinking*, 72-74; Johnson, *The Lavender Scare*, 179-192, 202-208; and Murdoch and Price, *Courting Justice*, 51-64. Kameny's home in Washington, DC, was listed on the NRHP on November 2, 2011. Scott was denied employment based on a 1947 arrest in Lafayette Park (now Lafayette Square), DC. Norton lost his job with the National Aeronautics and Space Administration because of a 1963 sexual encounter in Lafayette Park (now Lafayette Square), DC. The Lafayette Square Historic District was listed on the NRHP and designated an NHL on August 29, 1970.

<sup>46</sup> Duberman, *Stonewall*; David Carter, *Stonewall: The Riots That Sparked the Gay Revolution* (New York: St. Martin's, 2004); Stein, *Rethinking*, 79-142. The Stonewall Inn is located at 53 Christopher Street, New York City, New York. Stonewall was added to the NRHP on June 28, 1999; designated an NHL on February 16, 2000; and declared a National Monument (an NPS unit) on June 24, 2016.

DC in 1976), National Coalition of Black Gays (founded in Baltimore and Washington, DC, in 1978 and renamed the National Coalition of Black Gays and Lesbians in 1984), and Human Rights Campaign Fund (founded in Washington, DC in 1980). While these groups pursued law reform as part of larger agendas, others focused primarily on legal matters. The ACLU, based in New York, established the Sexual Privacy Project in 1973 and the National Lesbian and Gay Rights Project in 1986. Other major groups included Lambda Legal Defense and Education Fund (founded in New York City in 1972-73), Gay Rights Advocates (founded in San Francisco in 1977, later renamed National Gay Rights Advocates), Lesbian Rights Project (founded in San Francisco in 1977 and renamed National Center for Lesbian Rights in 1989), and Gay and Lesbian Advocates and Defenders (founded in Boston in 1978). Two early legal advocacy groups that focused on LGBTQ parenting were the Lesbian Mothers National Defense Fund (based in Seattle) and Custody Action for Lesbian Mothers (based in Philadelphia).<sup>47</sup>

At the local and state levels, LGBTQ law reformers achieved many significant goals in the 1970s and 1980s. Twenty states joined Illinois and Connecticut in repealing their sodomy laws in the 1970s. Wisconsin joined them in 1983 and courts in New York and Pennsylvania invalidated their sodomy laws in 1980.<sup>48</sup> Litigation succeeded in limiting police surveillance

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<sup>47</sup> See Stein, *Rethinking*, 81-142, 151. The National LGBTQ Task Force is located at 1325 Massachusetts Avenue NW, Washington, DC. The Gay Rights National Lobby was based in Washington, DC. The National Coalition of Black Gays was based in Baltimore, Maryland and Washington, DC. The Human Rights Campaign is based at 1640 Rhode Island Avenue NW, Washington, DC. The ACLU was based at 156 Fifth Avenue, New York City, New York. The Lambda Legal Defense and Education Fund was based at the Daily News Building, 220 East Forty-Second Street, New York City, New York (listed on the NRHP on November 14, 1982, and designated an NHL on July 29, 1989). Gay Rights Advocates was based in San Francisco, California. The National Center for Lesbian Rights is based at the Flood Building, 870 Market Street, San Francisco, California. Gay and Lesbian Advocates and Defenders is based at 30 Winters Street, Boston, Massachusetts. The Lesbian Mothers National Defense Fund was based at a private residence in Seattle, Washington. Custody Action for Lesbian Mothers (CALM) was based at 1425 Walnut Street, Philadelphia, Pennsylvania.

<sup>48</sup> Sodomy laws were repealed by Colorado (1971), Oregon (1971), Delaware (1972), Hawaii (1972), Ohio (1972), North Dakota (1973), California (1975), New Hampshire (1975), Maine (1975), New Mexico (1975), Washington (1975), Indiana (1976), Iowa (1976), South Dakota (1976), West Virginia (1976), Nebraska (1977), Vermont (1977), Wyoming (1977), Alaska (1978), and New Jersey (1978). Idaho decriminalized sodomy in 1971 and recriminalized it in 1972. Arkansas decriminalized sodomy in 1975, but recriminalized same-sex sodomy in 1977. Washington, DC, tried to decriminalize sodomy in 1981, but the US House of Representatives vetoed the change. The New York case was *People v.*

of public bathrooms in California (1973) and invalidating bans on crimes against nature in Florida (1971), loitering to solicit deviate sexual intercourse in Colorado (1974), lewd and indecent acts in Washington, DC (1974), lewd vagrancy in California (1979), and lewd solicitation in Pennsylvania (1980) and New York (1983).<sup>49</sup> Activists also used litigation to overturn a Miami, Florida, law against serving or employing homosexuals in bars (1972); more generally there was a major decline in police harassment of LGBTQ bars in this period.<sup>50</sup> Several of the earliest parental custody cases won by openly gay, lesbian, and bisexual parents took place in the early 1970s in California, Michigan, North Carolina, Oregon, and Washington.<sup>51</sup> There were also successful court-based challenges to cross-dressing laws in Chicago, Illinois; Cincinnati, Toledo, and Columbus, Ohio; Denver, Colorado; Detroit, Michigan; Fort Worth and Houston, Texas; Miami, Florida; New York City, New York; and St. Louis, Missouri.<sup>52</sup> By 1990, twenty states and the District of Columbia permitted legal changes of sex on birth certificates and drivers' licenses.<sup>53</sup>

Meanwhile, more than eighty cities and ten states revised their civil rights laws or used executive orders to prohibit specific types of sexual orientation discrimination. Among the first cities to ban public employment discrimination based on sexual orientation were Ann Arbor and East Lansing, Michigan in 1972. Among the larger cities that followed were New York and San Francisco, in 1972; Washington, DC, and Seattle, Washington, in 1973; Minneapolis, Minnesota, in 1975; Los Angeles, California, in 1977; Detroit, Michigan, in 1979; and Philadelphia, Pennsylvania, in 1980. In 1978, California voters defeated the Briggs

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Onofre (1980). The Pennsylvania case was *Commonwealth v. Bonadio* (1980). See Eskridge, *Dishonorable Passions*, 177-228, 388-407; and Ellen Ann Andersen, *Out of the Closets and into the Courts* (Ann Arbor: University of Michigan Press, 2006), 58-142.

<sup>49</sup> Stein, *Rethinking*, 102-103, 127, 164; Eskridge, *Gaylaw*, 104-111. The California surveillance case was *People v. Trigg* (1973). The Florida case was *Franklin v. State* (1971). The Colorado case was *People v. Gibson* (1974). The DC case was *District of Columbia v. Walters* (1974). The California lewd vagrancy case was *Pryor v. Municipal Court* (1979). The Pennsylvania case was *Commonwealth v. Waters* (1980). The New York case was *Uplinger v. State* (1983).

<sup>50</sup> Stein, *Rethinking*, 87, 102, 129.

<sup>51</sup> Stein, *Rethinking*, 106, 130-131; and Rivers, *Radical Relations*, 53-79.

<sup>52</sup> Stein, *Rethinking*, 87, 103, 127; and Eskridge, *Gaylaw*, 111.

<sup>53</sup> Stryker, *Transgender History*, 121.

Initiative, which would have disqualified for public school employment anyone who advocated, encouraged, or promoted homosexuality, inside or outside the classroom. Conservative campaigns to repeal antidiscrimination laws failed in Seattle, Washington (1978); Austin, Texas (1982); Davis, California (1986); and St. Paul, Minnesota (1988). In 1975, Pennsylvania became the first state to prohibit sexual orientation discrimination in state employment; it was followed by California (1979), Wisconsin (1982), New York (1983), Ohio (1983), and five other states in the 1980s. Many of these laws also barred sexual orientation discrimination in housing and public accommodations and some city laws, including those passed by Minneapolis, Minnesota (1975); Champaign (1977) and Urbana, Illinois (1979); Los Angeles, California (1979); Harrisburg, Pennsylvania (1983); and Seattle, Washington (1986), covered gender identity and expression. Twelve states and several cities passed hate crimes laws that addressed crimes motivated by anti-homosexual prejudice. In 1984 and 1985, Berkeley and West Hollywood, California, approved limited domestic partner benefits for city employees; similar policies were adopted by Los Angeles, Minneapolis, New York, San Francisco, Seattle, and other municipalities. The passage of antidiscrimination, hate crime, and domestic partner benefits laws signaled more powerfully than had been the case before that law could be a tool of LGBTQ empowerment.<sup>54</sup>

There were also significant legal reforms at the federal level. In 1979, Surgeon General Julius Richmond announced that the US Public Health Service no longer viewed homosexuality as a mental illness and therefore would not provide the medical certificates required to exclude or deport noncitizens based on homosexuality. One year later, the Immigration and Naturalization Service adopted a new policy under which noncitizens

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<sup>54</sup> The other states that passed antidiscrimination laws were Rhode Island (1985), Washington (1985), Minnesota (1986), Oregon (1987), and Massachusetts (1989). See Eskridge, *Gaylaw*, 130-131, 356-61; Stein, *Rethinking*, 104, 128-129, 139, 170-171; Andersen, *Out of the Closets*, 143-174; Kevin Mumford, "The Trouble with Gay Rights: Race and the Politics of Sexual Orientation in Philadelphia, 1969-1982," *Journal of American History* 98, no. 1 (2011): 49-72; and Transgender Law and Policy Institute, <http://www.transgenderlaw.org/ndlaws>. For examples of successful employment discrimination litigation in California, Delaware, Florida, Kentucky, New York, Texas, and Wisconsin, see Stein, *Rethinking*, 129, 168.

would not be questioned about their homosexuality but would be subject to exclusion or deportation if they unambiguously acknowledged their homosexuality. This policy remained in force until 1990, when Congress repealed the ban on immigrants with “psychopathic personalities” and “sexual deviations.”<sup>55</sup> In 1980, the Federal Bureau of Prisons agreed to stop restricting prisoner access to gay and lesbian publications.<sup>56</sup> The federal government also adopted new civil service rules and regulations. In 1973, the Civil Service Commission announced that federal agencies could not find individuals unsuitable for employment based solely on homosexuality; only those whose homosexuality affected their job performance could be excluded or terminated. Two years later the commission dropped “immoral conduct” as a basis for disqualification. In 1978, Congress prohibited civil service discrimination based on conduct that did not adversely affect job performance.<sup>57</sup>

Another significant achievement in the 1970s and 1980s was the election of openly-LGBTQ candidates as local, state, and national lawmakers. In earlier periods of US history there had been many elected and appointed officials who were rumored to be LGBTQ; these included US presidents, cabinet and sub-cabinet officials, presidential advisors, Supreme Court justices, senators and representatives, state governors, and city mayors. Early unsuccessful efforts by openly-LGBTQ candidates to win election to public office included José Sarria’s bid for the San Francisco Board of Supervisors in 1961, Frank Kameny’s campaign for the US House in 1971, and Alan Rockway’s campaign for Florida’s Dade County Board of Commissioners in 1971. In 1973, Nancy Wechsler and Jerry DeGriek came out while serving on the Ann Arbor City Council in Michigan. In 1974, Kathy Kozachenko was elected to Ann Arbor City Council as an openly-lesbian candidate. Elaine Noble, publicly identified as a lesbian, won a seat in the Massachusetts House of Representatives in

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<sup>55</sup> Stein, *Rethinking*, 132-133, 172-173; Stein, *Sexual Injustice*, 285; Canaday, *The Straight State*, 249-254; and Eskridge, *Gaylaw*, 132-134.

<sup>56</sup> Stein, *Rethinking*, 128.

<sup>57</sup> Eskridge, *Gaylaw*, 126-128; Johnson, *The Lavender Scare*, 202-211; Stein, *Rethinking*, 105, 131; and Murdoch and Price, *Courting Justice*, 189-193.

1974. In the same year Minnesota State Senator Allan Spear came out as gay. In 1977, Harvey Milk was elected as an openly gay candidate to the San Francisco Board of Supervisors. After Milk was murdered in 1978, Harry Britt, who was openly gay, was appointed to replace him and Britt won election to the board in 1979. In Wisconsin, Jim Yeadon was elected to the Madison Common Council in 1978. Gerald Ulrich was elected the mayor of Bunceton, Missouri, in 1980 and continued to serve as the city's mayor until 2006. US Representative Gerry Studds of Massachusetts came out as gay in 1983, as did US Representative Barney Frank of Massachusetts in 1987.<sup>58</sup>

Notwithstanding these achievements, there were also setbacks and limitations during the 1970s and 1980s. Christian Right and New Right activists campaigned against LGBTQ law reform and much of the US public blamed gay men for the AIDS epidemic. Most of the legal reforms discussed above only applied in particular cities or states. In most jurisdictions and most aspects of private and public life, discrimination based on sexual orientation was legal; in even more it was legal to discriminate based on gender identity or expression. Most states did not permit changes of legal sex on birth certificates and drivers' licenses. Conservatives defeated proposals for new civil rights laws in many cities and states and campaigned successfully for the repeal of antidiscrimination laws in Boulder, Colorado (1974); Dade County, Florida

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<sup>58</sup> See David Rayside, "Electoral Politics," in *ELGBT*, 1: 336-339; and Stein, *Rethinking*, 73, 107, 133, 174, 198-199. Ann Arbor City Hall is located at 301 E Huron Street, Ann Arbor, Michigan. The Massachusetts State House is located at 24 Beacon Street, Boston, Massachusetts; it was listed on the NRHP on October 15, 1966 and designated an NHL on December 19, 1960. The Minnesota State Capitol is located at 75 Martin Luther King Junior Boulevard, St. Paul, Minnesota; it was listed on the NRHP on February 23, 1972. Milk lived and worked at 573-575 Castro Street, San Francisco, California. San Francisco City Hall was and is located at 1 Dr. Carlton B. Goodlett Place; it is a contributing element to the San Francisco Civic Center Historic District (listed on the NRHP on October 10, 1978, and designated an NHL District on February 27, 1987). The Madison Common Council meets at the Madison Municipal Building, 210 Martin Luther King Jr. Boulevard, Madison, Wisconsin. City Hall in Bunceton, Missouri, is located at 103 E Main Street. Studds is recognized as a leader in the creation of the Boston Harbor Islands National Recreation Area, established in 1996. The Congressman Barney Frank Archives Collection is housed at the Claire T. Carney Library Archives and Special Collections at the University of Massachusetts, Dartmouth, located at 285 Old Westport Road, North Dartmouth, Massachusetts. Two Supreme Court justices who were rumored to be gay were Frank Murphy, who served in the 1940s, and Abe Fortas, who served in the 1960s. On Murphy, see Craig Loftin, "Frank Murphy," in *ELGBT*, 2: 280-281; Murdoch and Price, *Courting Justice*, 18-21. On Fortas, see Stein, *Sexual Injustice*, 11-12.

(1977); Eugene, Oregon (1978); St. Paul, Minnesota (1978); Wichita, Kansas (1978); and other cities.<sup>59</sup> In 1978, Oklahoma passed a law that permitted local school districts to fire teachers who publicly advocated, encouraged, or promoted homosexuality (this was overturned by the US Supreme Court in 1985). Litigation challenging anti-LGBTQ employment discrimination failed in Arizona, California, Louisiana, Maryland, Massachusetts, Minnesota, New Jersey, Ohio, Oregon, Texas, Washington, and Wisconsin.<sup>60</sup>

Meanwhile, the pace of sodomy law reform slowed in the 1980s and by the end of the decade sodomy thus remained a crime in half of the states, various US territories, the US military, and US prisons. Some states, including Montana and Texas in 1973, Kentucky in 1974, Arkansas, Missouri, and Nevada in 1977, and Tennessee in 1989, joined Kansas in creating new distinctions between same-sex sodomy, which was criminalized, and cross-sex sodomy, which was not. In 1975, Virginia increased its penalty for sodomy from three to five years in prison. In 1974, Cincinnati passed a new law against cross-dressing. Most states that repealed their sodomy laws in the 1960s, 1970s, and 1980s passed new laws against loitering to solicit sodomy. Police in some locations, including Denver, Colorado, used these and other laws to increase their arrests of LGBTQ people after sodomy law repeal. People of color, sex workers, and others who pursued sex in public places were distinctly vulnerable to discriminatory policing. LGBTQ bars and bathhouses continued to be harassed by the police.<sup>61</sup> In thirteen sodomy and sodomy-related convictions that were appealed to the US Supreme Court from

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<sup>59</sup> Stein, *Rethinking*, 138-142, 170; Eskridge, *Gaylaw*, 356-361; and Andersen, *Out of the Closets*, 143-174. Antidiscrimination laws were also repealed in Santa Clara County and San Jose, California (1980); Duluth, Minnesota (1984); Houston, Texas (1985); Irvine, California (1989); Athens, Georgia (1989); and Tacoma, Washington (1989).

<sup>60</sup> Stein, *Rethinking*, 104, 129-130, 139, 168; Stein, *Sexual Injustice*, 92, 283; Eskridge, *Dishonorable Passions*, 225-228; Murdoch and Price, *Courting Justice*, 176-180, 196-198, 237-60; and Meyerowitz, *How Sex Changed*, 241-253.

<sup>61</sup> Pennsylvania distinguished between same-sex and cross-sex sodomy from 1972 to 1980. See Stein, *Rethinking*, 126-128; and Eskridge, *Gaylaw*, 106-110; *Dishonorable Passions*, 178-180, 198-200, 388-407.

1972 to 1986, the justices refused to consider or rejected challenges to the constitutionality of the statutes.<sup>62</sup>

There were other legal setbacks and limitations at the state and local levels. In 1970 and 1971, same-sex couples in Minneapolis, Minnesota, and Seattle, Washington, attempted to obtain marriage licenses; when they were rebuffed by local officials, they unsuccessfully appealed to the courts. The Supreme Court rejected the Minneapolis appeal in 1972 and declined to review a challenge to a deportation order that was based on a Boulder, Colorado, same-sex marriage in 1982.<sup>63</sup> Partly in response to these cases, in 1973 Maryland became the first of many states to pass a law defining marriage as the union of a man and a woman.<sup>64</sup> The absence of legal protections for same-sex partners became painfully evident in 1984 when a Minnesota judge selected Sharon Kowalski's father, rather than her partner Karen Thompson, to serve as her guardian after a disabling 1983 car accident. Kowalski's father subsequently blocked Thompson's access to her partner. After years of litigation, including a failed 1986 appeal to the Supreme Court, Thompson won visiting rights in 1989 and guardianship rights in 1992.<sup>65</sup> As for parenting, while it became possible for openly LGBTQ parents to win custody cases in the 1970s and 1980s, judges continued to discriminate against them on grounds unrelated to the welfare of the children. Even when judges granted rights to LGBTQ parents, they often imposed conditions that required the

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<sup>62</sup> Stein, *Rethinking*, 127-128, 164; Stein, *Sexual Injustice*, 92, 283-292; and Murdoch and Price, *Courting Justice*, 158-161, 173-176, 180-187, 205-208, 225-231, 271-354. The cases were *Buchanan v. Texas* (1972), *Crawford v. Missouri* (1972), *Connor v. Arkansas* (1973), *Canfield v. Oklahoma* (1973), *Wainwright v. Stone* (1973), *Doe v. Commonwealth* (1976), *Enslin v. North Carolina* (1976), *New York v. Onofre* and *New York v. Peoples* (1981), *New York v. Uplinger* (1984), *Bowers v. Hardwick* (1986), *Baker v. Wade* (1986), and *Texas v. Hill* (1986).

<sup>63</sup> Stein, *Rethinking*, 87, 105, 130, 168-169, 171; Murdoch and Price, *Courting Justice*, 163-173, 220-225. The Minneapolis case was *Baker v. Nelson* (1972); the Boulder case was *Adams v. Howerton* (1982). There were attempts by same-sex couples to marry legally in Los Angeles, CA; Louisville, KY; Milwaukee, WI; New York, NY; Phoenix, AZ; and other locations.

<sup>64</sup> Other states that defined marriage as the union of a man and woman in the 1970s and 1980s were Texas (1973), Colorado (1973), Louisiana (1975), Montana (1975), Oklahoma (1975), Nevada (1975), North Dakota (1975), Virginia (1975), Illinois (1977), Minnesota (1977), Utah (1977), Florida (1977), California (1977), Wyoming (1977), Arizona (1980), Kansas (1980), and Indiana (1986). See Peggy Pascoe, "Sex, Gender, and Same-Sex Marriage," in *Is Academic Feminism Dead?*, ed. Social Justice Group (New York: New York University Press, 2000), 86-129.

<sup>65</sup> Stein, *Rethinking*, 169; Murdoch and Price, *Courting Justice*, 260-270.

parents to distance themselves from their partners, friends, and communities.<sup>66</sup> In 1977 Florida became the first state to ban adoptions by gays and lesbians. In 1985, Massachusetts took the lead in all but banning gays and lesbians from serving as foster parents. In 1987, New Hampshire prohibited gays and lesbians from adopting or fostering children.<sup>67</sup>

Federal law reform was also limited. Beginning in 1974 the US Congress considered but rejected proposals to pass a federal law against sexual orientation discrimination. After the Civil Service Commission barred sexual orientation discrimination in general, it permitted exceptions for the Central Intelligence Agency, Department of Defense, Federal Bureau of Investigation, National Security Agency, and jobs requiring security clearance. When the Federal Bureau of Prisons agreed to stop censoring gay and lesbian publications in 1980, it made an exception for sexually explicit materials; when the Supreme Court ruled in 1989 that federal prison officials could not deny inmates access to sexually explicit materials, it made an exception for homoerotic materials. In 1982, the Department of Defense issued new regulations that reaffirmed the ban on LGBTQ people in the military and abandoned the more flexible rules that had emerged as a result of several court rulings in the 1970s. In 1986 the Centers for Disease Control (CDC) announced that it would not fund “offensive” AIDS education materials. One year later, Congress prohibited the use of federal funds for AIDS education materials that promoted homosexuality. In 1989, Congress banned National Endowment for the Arts funding for homoerotic projects. While Congress repealed the ban on gay and lesbian immigration in 1990, it permitted the CDC to exclude immigrants and visitors based on HIV/AIDS.<sup>68</sup>

The most significant legal setback for LGBTQ law reform occurred in 1986, when the US Supreme Court upheld Georgia’s sodomy law in

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<sup>66</sup> Stein, *Rethinking*, 106, 130-131; Rivers, *Radical Relations*, 53-138.

<sup>67</sup> Stein, *Rethinking*, 139, 170.

<sup>68</sup> Stein, *Rethinking*, 105, 128, 131-133, 165-167, 171-173; Stein, *Sexual Injustice*, 92, 283-286, 292, 294; Eskridge, *Gaylaw*, 125-129, 132-134; and Murdoch and Price, *Courting Justice*, 150-158, 189-193, 208-225, 231-236, 380-398.

Bowers v. Hardwick and did so with language that ridiculed and renounced the notion that same-sex love, intimacy, and sex were protected by the US Constitution. By the end of the 1980s, LGBTQ law reformers had achieved some of their goals, but gender and sexual discrimination continued to be entrenched in the US legal system and the future prospects of LGBTQ law reform remained highly uncertain.<sup>69</sup>

## Crime and Punishment

As the previous discussion has indicated, LGBTQ acts, identities, and communities have been linked with crime in multiple ways. Until recently, the US legal system defined LGBTQ acts, identities, and communities as criminal. In addition, popular beliefs long regarded LGBTQ people as predisposed to engage in other types of criminal activity, including murder and rape. In some cases, these beliefs have contributed to social panics in which LGBTQ people and cultures have been blamed for crime and violence they did not commit. At the same time, social attitudes about sex, gender, and sexuality have rendered LGBTQ people distinctly vulnerable to criminal offenses, including arson, assault, and homicide, and the criminal justice system has often failed to respond fairly and fully to anti-LGBTQ crimes. In many times and places, this has been especially true for immigrants, people of color, poor people, transgender people, and women.

Violence against those who transgress gender and sexual norms has been ubiquitous in US history and it has often been difficult for its victims to secure justice. In 1866, for example, an African American woman named Frances Thompson testified before a US congressional committee at the Gayoso House Hotel in Memphis, Tennessee, that she had been raped by four white men during a recent race riot. Ten years later, after Thompson was arrested and convicted for cross-dressing as a woman (a charge based on the authorities' classification of her as a man), her earlier

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<sup>69</sup> Bowers was later overturned by *Lawrence v. Texas* (2003), which in turn provided the foundation for the Supreme Court's favorable decisions on same-sex marriage in *United States v. Windsor* (2013) and *Obergefell v. Hodges* (2015). On Bowers, see Stein, *Rethinking*, 164; Stein, *Sexual Injustice*, 286-289; and Murdoch and Price, *Courting Justice*, 271-354.

testimony was discredited and her prior claims were denounced. In 1869-70, two female rivals for the affection of Annie Hindle, a professional male impersonator who had performed at Broome's Variety Theater in Memphis, attacked each other with knives at the Overton Hotel. Memphis was also the site of Alice Mitchell's 1892 murder of her lover Freda Ward. After Mitchell was judged insane, she was committed to the Western State Mental Hospital in Bolivar, Tennessee.<sup>70</sup> Other well-documented LGBTQ and anti-LGBTQ crimes in this period include the 1876 murder of Jeanne Bonnet in San Miguel, California; the late nineteenth-century rape and murder of Native American Amatkwisai Masahai at Fort Mohave, Arizona; and the 1924 kidnap and murder of Robert Franks by Nathan Leopold and Richard Loeb in Chicago, Illinois. In general, lesbian "butches," gay "fairies," and other gender "inverts" were distinctly vulnerable to violence, as were individuals who made unwanted sexual advances or advances that were simultaneously wanted and unwanted.<sup>71</sup>

In the next several decades, public discourse continued to associate LGBTQ people and others who engaged in LGBTQ acts with crime and violence. For example, LGBTQ people (and people perceived to be LGBTQ)

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<sup>70</sup> On Thompson, see Hannah Rosen, "'Not That Sort of Women': Race, Gender, and Sexual Violence during the Memphis Riot of 1866," in *Sex, Love, Race: Crossing Boundaries in North American History*, ed. Martha Hodes (New York: New York University Press, 1999), 267-292. The Gayoso House Hotel was located at 130 South Front Street, Memphis, Tennessee. It burned down in 1899. The site is now occupied by the Gayoso House Apartments. On Hindle, see Lisa Duggan, *Sapphic Slashers: Sex, Violence, and American Modernity* (Durham, NC: Duke University Press, 2000), 142-148. Broome's Variety Theater was located at 37 Jefferson Street, Memphis, Tennessee. The Overton Hotel was located at 255 N Main Street, Memphis, Tennessee. The site is now occupied by the Memphis Cook Convention Center. On Ward and Mitchell, see Duggan, *Sapphic Slashers*. Mitchell lived at 215 Union Street (now demolished) and was tried at the Shelby County Criminal Court (201 Poplar Avenue, Memphis, Tennessee). The Western State Mental Hospital at 11100 Old Highway 64, Bolivar, Tennessee is currently operating as the Western Mental Health Institute. Duggan discusses similar narratives of late nineteenth and early twentieth century "sapphic slashers" in Pocomoke City, MD (128-135); Los Angeles, CA (136-139); Mobile, AL (139-140); Indianapolis, IN (166-167); Chicago, IL (174-175); and Philadelphia, PA (175).

<sup>71</sup> On Bonnet, see Sears, *Arresting Dress*, 64, 74, 142-144. Bonnet was murdered at the San Miguel Saloon in San Miguel, CA (the saloon no longer exists). On Masahai, see Robin Jarvis Brownlie, "Amatkwisai Masahai," in *ELGBT*, 2: 232-233. On Leopold and Loeb, see Saralyn Chestnut, "Violence," in *ELGBT*, 3: 226-230. They murdered Robert Franks in a car in Chicago and dumped his body near Wolf Lake in Hammond, Indiana. They were tried in Chicago's Courthouse Place (also known as the Cook County Criminal Court Building, listed on the NRHP on November 13, 1984) and imprisoned in Joliet Prison, which was originally known as the Illinois State Penitentiary and later as the Joliet Correctional Center; it closed in 2002 and is now open as a museum at 1127-1299 Collins Street, Joliet, Illinois. They were later incarcerated at Stateville Penitentiary (now Stateville Correctional Center) in Crest Hill, Illinois, where Loeb was murdered in 1936.

were disproportionately classified as sexual psychopaths, disproportionately blamed for serial murders, and disproportionately attacked as pedophiles.<sup>72</sup> Mainstream newspapers in Philadelphia, for example, linked homosexuality with violence in their coverage of at least thirteen local murders that took place from 1949 to 1969.<sup>73</sup> In Jackson, Mississippi, two Air Force cadets on trial for killing John Murrett in 1955 claimed they attacked him after he made sexual advances in the bed they shared.<sup>74</sup> Three years later, Airman John Mahon, charged in the murder of Jack Dobbins in Charleston, South Carolina, defended himself by claiming that Dobbins, whom he had met in a gay bar, had made sexual advances.<sup>75</sup> In 1968, Mexican American film star Ramon Novarro was murdered by two male hustlers whom he had invited to his Los Angeles home. One year later, Howard Efland was beaten and kicked to death by Los Angeles police officers during an antigay raid on the Dover Hotel.<sup>76</sup>

While public discourse commonly associated LGBTQ individuals and acts with crime and violence, it also frequently erased the LGBTQ identities and histories of crime victims. Perhaps the best example of this

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<sup>72</sup> Estelle Freedman, “‘Uncontrolled Desires’: The Response to the Sexual Psychopath, 1920-1960,” in *Passion and Power: Sexuality in History*, eds. Kathy Peiss and Christina Simmons (Philadelphia: Temple University Press, 1989), 199-225.

<sup>73</sup> Stein, *City of Sisterly and Brotherly Loves*, 118-120, 218, 268-269. Ellis Simons (1949) was killed at the home of his murderer in Overbrook, Philadelphia; Robert Prado (1950) in his apartment in Center City, Philadelphia; John Simpson (1950) in the Woodlyn Hotel at 430 South Fortieth Street, Philadelphia (now demolished); Richard Rosen (1950) in the Congress Hotel at 1334 Walnut Street, Philadelphia; Edgar Clymer (1953) in his apartment in Northern Liberties-Fishtown, Philadelphia; Elmer Schroeder (1953) in his apartment at the Garden Court Apartments (now Garden Court Plaza) at Forty-seventh and Pine Streets in Philadelphia; John Dopirak (1954) at the home of his killer at Hazel and Keystone Avenues in Upper Darby, PA (Dopirak lived at the Seamen’s Church Institute, 211 Walnut Street, Philadelphia, now demolished); Charles Ferro (1958) in an apartment in Center City, Philadelphia; John Green (1967) at Ye Olde Tobacconist on Pier 37 at Poplar Street, Philadelphia; William Thompson (1967) in his apartment in Lower Merion, Pennsylvania; George Casey (1968) in his apartment at Broad and Stiles Streets in Philadelphia; and Joseph Costello (1969) at the Family Theater, 1311 Market Street, Philadelphia, Pennsylvania (demolished in the 1990s).

<sup>74</sup> Howard, *Men Like That*, 129-142. Murrett was murdered at the Hotel Heidelberg, which was demolished in 1977.

<sup>75</sup> Paul Bowers, “A Map of Charleston’s Gay History,” *Charleston City Paper*, July 30, 2014, <http://www.charlestoncitypaper.com/charleston/a-map-of-charlestons-gay-history/Content?oid=4964566>. Dobbins met Mahon at a local gay club—the 49 Club at 368 King Street and was killed in his home near Waterfront Park in Charleston, South Carolina.

<sup>76</sup> On Novarro and Efland, see Faderman and Timmons, *Gay L.A.*, 161. Novarro was killed in his home in the Studio City neighborhood of Los Angeles, California. The Dover Hotel was located at 555 South Main Street, Los Angeles, California (now demolished).



Figure 7: San Francisco City Hall, California. Photo by King of Hearts, 2013.<sup>77</sup>

is Kitty Genovese, who was stabbed to death outside of her home in Queens, New York, in 1964. Genovese's death received extensive media attention because of widely-reported claims that more than thirty of her neighbors witnessed the attack and did nothing in response. For decades, however, the mainstream media ignored the fact that Genovese was a lesbian and was murdered outside the home she shared with her partner.<sup>78</sup>

Criminal violence against LGBTQ people continued in the 1970s, 1980s, and 1990s. Although it is difficult to select a small set of examples to represent the large number of hate crimes, one of the best known criminal attacks on LGBTQ people was the 1978 murder of San Francisco Supervisor Harvey Milk (along with Mayor George Moscone) by ex-Supervisor Dan White at San Francisco City Hall (Figure 7). Charlie Howard

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<sup>77</sup> License: CC BY-SA 3.0.

[https://commons.wikimedia.org/wiki/File:San\\_Francisco\\_City\\_Hall\\_September\\_2013\\_panorama\\_3.jpg](https://commons.wikimedia.org/wiki/File:San_Francisco_City_Hall_September_2013_panorama_3.jpg)

<sup>78</sup> On Genovese, see Marcia Gallo, *"No One Helped": Kitty Genovese, New York City, and the Myth of Urban Apathy* (Ithaca, NY: Cornell University Press, 2015). Genovese lived in an apartment at 82-70 Austin Street in the Kew Gardens neighborhood of New York City; the building's first floor is now occupied by Austin's Ale House.

died in 1984 after he was thrown over the State Street Bridge into the Kenduskeag Stream in Bangor, Maine. Rebecca Wright was killed and her partner Claudia Brenner was shot while they were camping in the Michaux State Forest in Pennsylvania in 1988. In 1993, Brandon Teena was raped and killed by two men in Humboldt, Nebraska, after they decided that he was a cross-dressing woman; his story was the basis of the 1999 Academy Award-winning film *Boys Don't Cry*. Matthew Shepard was tortured, tied to a fence, and left to die near Laramie, Wyoming, in 1998. After his death inspired a wave of art and activism that targeted anti-LGBTQ violence, the US Congress passed and President Barack Obama signed the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act in 2009.<sup>79</sup>

Individuals have not been the only targets of anti-LGBTQ crime and violence; sites that are associated with LGBTQ communities and cultures have also been attacked. For example, after the LGBTQ movement gained greater visibility in the 1970s, arsonists responded by setting fires at various LGBTQ sites.<sup>80</sup> Although not all of these were necessarily the result of arson, fires destroyed bars in Philadelphia, Pennsylvania (1972); San Francisco, California (1973); Springfield, Massachusetts (1973); Phoenix, Arizona (1974); Boston, Massachusetts (1975); Las Vegas, Nevada (1978); and St. Louis, Missouri (1979).<sup>81</sup> There were destructive fires at LGBTQ community centers and organizational offices in Phoenix, Arizona (1970); Buffalo, New York (1973); New York City, New York (1974);

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<sup>79</sup> Chestnut, "Violence"; and Karen Foss, "Harvey Milk," in *ELGBT*, 2: 265-266. For San Francisco City Hall, see note 52. Wright and Brenner were attacked in Cove Shelter outside Duncannon, Pennsylvania, during a hiking trip on the Appalachian Trail. Teena was killed at the home where he was living on Route 105 in Humboldt, Nebraska; he is buried as Teena Brandon in Lincoln Memorial Park Cemetery (6800 South Fourteenth Street, Lincoln, Nebraska). Matthew Shepard was left to die near the intersection of Pilot Peak and Snowy View Roads, Laramie, Wyoming.

<sup>80</sup> Stein, *Rethinking*, 114; Mark Thompson, ed., *Long Road to Freedom: The Advocate History of the Gay and Lesbian Movement* (New York: St. Martin's, 1994).

<sup>81</sup> The examples include the Mystique in Philadelphia, Pennsylvania; Toad Hall at 482 Castro Street and the Exit in San Francisco, California; the Arch Café in Springfield, Massachusetts; the Hiding Place in Phoenix, Arizona; Twelve Carver and Herbie's Ramrod Room at 12 Carver Street in Boston, Massachusetts; Le Café at 4817 Paradise Road, Las Vegas, Nevada; and More or Les at 4135 S Grand Avenue in St. Louis, Missouri.

Seattle, Washington (1976); and Boston, Massachusetts (1982).<sup>82</sup> There was also a series of fires that damaged or destroyed Metropolitan Community Churches (MCCs) in San Francisco, California (1972 and 1973); Los Angeles, California (1973); and Nashville, Tennessee (1973).<sup>83</sup> One of the most devastating fires occurred in 1973, when more than thirty people died as a result of a firebomb that destroyed the UpStairs Lounge in New Orleans, Louisiana. Two other destructive fires occurred in 1977, when nine people died at the Everard Baths, a gay bathhouse in New York City, and nine died at the Cinema Follies, a gay porn theater in Washington, DC.<sup>84</sup>

Beginning in the 1950s, LGBTQ activists responded to crime and violence in multiple ways: they publicized crimes and violence against LGBTQ people; supported LGBTQ survivors and victims; criticized the police and criminal justice system; and challenged popular prejudices and stereotypes about LGBTQ crime and violence. While some joined “law and order” campaigns that targeted poor people and people of color, others formed coalitions with other marginalized communities that were negatively affected by crime and violence. Many LGBTQ groups addressed these issues, but two early ones that focused on crime and violence were Citizens Alert and Vanguard, both founded in San Francisco in 1965. In the 1970s, the Lavender Panthers, the Richard Heakin Memorial Butterfly Brigade, and Lesbians Against Police Violence were active in San Francisco, while the Society to Make America Safe for Homosexuals (SMASH) was established in New York City. The strategies used by these and other antiviolence groups varied greatly, ranging from vigilante activism, street patrols, and self-defense workshops to hotlines, litigation,

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<sup>82</sup> The examples include ONE's gay clubhouse in Phoenix, Arizona; the Gay Services Center in Buffalo, New York; the Gay Activists Alliance's headquarters (the Firehouse) at 99 Wooster Street, New York City (located within the SoHo-Cast Iron Historic District, listed on the NRHP and designated an NHL District on June 29, 1978); Seattle's Gay Community Center at 1726 Sixteenth Avenue East, Seattle, Washington; and *Gay Community News* at 22 Bromfield Street, Boston, Massachusetts.

<sup>83</sup> The MCC in San Francisco was located at 1074 Guerrero Street. The MCC in Los Angeles was located at 2201 South Union Avenue.

<sup>84</sup> Dudley Clendinen and Adam Nagourney, *Out for Good: The Struggle to Build a Gay Rights Movement in America* (New York: Simon and Schuster, 1999), 174-187. The UpStairs Lounge was located at 141 Chartres Street, New Orleans, Louisiana. Everard Baths was located at 28 West Twenty-Eighth Street, New York City. Cinema Follies was located at 37 L Street SE, Washington, DC.

and lobbying, but they shared a strong sense that the criminal justice system did not respond fully and fairly to the problems of anti-LGBTQ crime and violence.<sup>85</sup>

## Prisons and Jails

Throughout US history many people have been incarcerated in prisons, jails, and other institutions because of their real or perceived participation in LGBTQ acts, their real or perceived LGBTQ identities, or their real or perceived involvement in LGBTQ communities. At the same time, many LGBTQ people have been imprisoned for other reasons; many have participated in LGBTQ acts, identities, and communities while incarcerated; and many have experienced abuse, discrimination, and violence in the



Figure 8: Charles Street Jail, Boston, Massachusetts. Photo by Daderot, 2009.<sup>86</sup>

criminal justice system.<sup>87</sup>

Prison officials, prison reformers, prison doctors, and prisoners themselves have long expressed concern about same-sex sexual acts and gender-crossing behaviors in

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<sup>85</sup> Christina Hanhardt, *Safe Space: Gay Neighborhood History and the Politics of Violence* (Durham, NC: Duke University Press, 2013). Citizens Alert and Vanguard were based at Glide Memorial Church, 322-330 Ellis Street, San Francisco, California (a contributing building to the Uptown Tenderloin Historic District, listed on the NRHP on February 5, 2009). The Richard Heakin Memorial Butterfly Brigade was based at 330 Grove Street, San Francisco, California (now demolished).

<sup>86</sup> License: Public Domain. [https://commons.wikimedia.org/wiki/File:CategoryCharles\\_Street\\_Jail\\_-\\_IMG\\_3873.jpg](https://commons.wikimedia.org/wiki/File:CategoryCharles_Street_Jail_-_IMG_3873.jpg)

<sup>87</sup> Elise Chenier, "Prisons, Jails, and Reformatory: Men's," in *ELGBT*, 2: 423-426; and L. Mara Dodge, "Prisons, Jails, and Reformatory: Women's," in *ELGBT*, 2: 426-429.

penal institutions. In the 1820s, for example, Reverend Louis Dwight, who founded the Boston Prison Discipline Society and influenced the design of the Charles Street Jail, denounced the “sin of Sodom” in US prisons and jails (Figure 8). In an 1883 medical journal article on a “case of sexual perversion,” Dr. P. M. Wise of the Willard Asylum for the Chronic Insane in New York State reported on inmate Lucy Ann Lobdell, who was also known as Rev. Joseph Lobdell (Figure 9). Anarchist Alexander Berkman’s 1912 prison memoir sensitively discussed the intimate friendships, erotic relationships, and sexual coercion that he witnessed and experienced in Pennsylvania’s Western Penitentiary in the late nineteenth century. In 1913, psychologist Margaret Otis exposed and critiqued interracial sexual “perversion” and racialized female masculinity at the New Jersey State Reformatory for Women. One year later, an investigation at the New York



Figure 9: Willard Asylum for the Chronic Insane, Seneca County, New York. Photo by Jerrye and Roy Klotz, MD, 2008.<sup>88</sup>

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<sup>88</sup> License: CC BY-SA 4.0.

[https://commons.wikimedia.org/wiki/File:WILLARD\\_ASYLUM\\_FOR\\_THE\\_CHRONIC\\_INSANE,\\_SENECA\\_COUNTY.jpg](https://commons.wikimedia.org/wiki/File:WILLARD_ASYLUM_FOR_THE_CHRONIC_INSANE,_SENECA_COUNTY.jpg)

State Reformatory for Women in Bedford, New York, discovered and criticized similar dynamics.<sup>89</sup>

Prison officials responded to same-sex sex and gender-crossing behaviors in diverse and complex ways. Some responded compassionately and sympathetically. Some did not concern themselves with what came to be termed “situational homosexuality.” Some had consensual or nonconsensual sex with prisoners. Some used the promise of sex and the threat of sexual violence to promote order and discipline. And some adopted other repressive strategies, including punishment for sex and gender offenses, withholding of privileges, segregation of inmates, solitary confinement, and medical “treatment” (including castration and electroshock “therapy”). In turns, prisoners used sex and gender in diverse and complex ways, with some deploying sex and gender as forms of self-expression, some developing intimate and loving relationships, some using sex and gender for material gain and physical protection, and some using sex and gender as tools of exploitation and oppression.

In the 1930s, public interest in prison sex and gender grew with the publication of Joseph Fishman’s *Sex in Prison: Revealing Sex Conditions in American Prisons*, Louis Berg’s *Revelations of a Prison Doctor*, and Samuel Kahn’s *Mentality and Homosexuality*. These books and a public scandal in 1934 brought distinct attention to “sex perversion” in the male and female penitentiaries on Welfare Island in New York City. More attention followed in the 1940s with the release of Donald Clemmer’s

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<sup>89</sup> Jennifer Terry, *An American Obsession: Science, Medicine, and Homosexuality in Modern Society* (Chicago: University of Chicago Press, 1999), 80-119; Regina Kunzel, *Criminal Intimacy: Prison and the Uneven History of Modern American Sexuality* (Chicago: University of Chicago Press, 2008), 27-57. On Lobdell, see Bambi Lobdell, “A Strange Sort of Being”: *The Transgender Life of Lucy Ann/Joseph Israel Lobdell, 1829-1912* (Jefferson, NC: McFarland, 2011). On Berkman, see Kissack, *Free Comrades*, 101-125. The Charles Street Jail (also known as the Suffolk County Jail) was located at 215 Charles Street, Boston, Massachusetts. The building is now the Liberty Hotel; it was listed on the NRHP on April 23, 1980. The Ovid Asylum for the Chronic Insane was located at 7116 County Road 132 in Willard, New York; it was listed on the NRHP on June 7, 1975. Western Penitentiary now operates as the State Correctional Institution – Pittsburgh and is located at 3001 Beaver Avenue, Pittsburgh, Pennsylvania. The New Jersey State Reformatory for Women (also known as the Clinton Correctional Facility for Women and Clinton Farms) now operates as the Edna Mahan Correctional Facility for Women and is located at 30 Route 513, Clinton, New Jersey. The New York State Reformatory for Women (also known as the Westfield State Farm) now operates as the Bedford Hills Correctional Facility for Women and is located at 247 Harris Road, Bedford Hills, New York.



book *The Prison Community*, which was based on research at Southern Illinois Penitentiary, and in the 1950s with the publication of Gresham Sykes's book *The Society of Captives: A Study of a Maximum Security Prison*, which was based on research at the New Jersey State Prison. Meanwhile, influential prison reformer Miriam Van Waters, whose longtime partner was Geraldine Thompson, served as the superintendent of the Massachusetts Reformatory for Women from 1932 to 1957.<sup>90</sup>

In the 1960s and 1970s, new studies brought unprecedented attention to prison sex and gender in women's prisons. These included David Ward and Gene Kassebaum's *Women's Prison: Sex and Social Structure*, which examined California's Frontera; Rose Giallombardo's *Society of Women: A Study of a Women's Prison*, which explored the Federal Reformatory for Women in Alderson, West Virginia; Sara Harris's *Hellhole: The Shocking Story of the Inmates and Life in the New York City House of Detention for Women*, which discussed the New York Women's House of Detention; and Esther Heffernan's *Making It in Prison: The Square, The Cool and The Life*, which addressed the District of Columbia's Women's Reformatory.<sup>91</sup>

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<sup>90</sup> Kunzel, *Criminal Intimacy*, 57-109; Chauncey, *Gay New York*, 91-95, 123-125. On Van Waters, see Estelle Freedman, "Miriam Van Waters," in *ELGBT*, 3 :224-225; Estelle Freedman, *Maternal Justice: Miriam Van Waters and the Female Reform Tradition* (Chicago: University of Chicago Press, 1996). Welfare Island was renamed Roosevelt Island and includes several prison-related buildings listed on the NRHP, including the Blackwell Island Lighthouse (also known as the Welfare Island Lighthouse and the Roosevelt Island Lighthouse, listed March 16, 1972) and the Octagon at 888 Main Street, Roosevelt Island, Manhattan, New York (listed March 16, 1972). The Southern Illinois Penitentiary now operates as the Menard Correctional Center and is located at 711 East Kaskaskia Street in Menard, Illinois. The New Jersey State Prison (formerly the Trenton State Prison) is located at 300 Second Cass Street in Trenton, New Jersey. The Massachusetts Reformatory for Women (previously the Framingham State Prison) now operates as the Massachusetts Correctional Institution - Framingham and is located at 99 Loring Drive, Framingham, Massachusetts.

<sup>91</sup> Kunzel, *Criminal Intimacy*, 111-148. Frontera (previously the California Institution for Women at Corona) now operates as the California Institution for Women and is located at 16756 Chino Corona Road in Corona, California. The Federal Reformatory for Women (now Federal Prison Camp, Alderson), the first federal penitentiary for women, is located on Route 3, South of Greenbrier River, in Alderson, West Virginia; see Historic American Buildings Survey WV-113. The Women's House of Detention, located at 10 Greenwich Avenue, New York City, was demolished in 1973-1974; the site is now the Jefferson Market Garden; see the nearby Third Judicial District Courthouse, formerly the Jefferson Market Courthouse and now the Jefferson Market Branch of the New York Public Library, which was added to the NRHP on November 9, 1972, and declared an NHL on December 22, 1977. The District of Columbia's Women's Reformatory was part of the Lorton Reformatory (formerly known as the Occoquan Workhouse) in Laurel Hill, Virginia. Closed in 2001, it is part of the DC Workhouse and

The US military has a long history of incarcerating service members who violate rules against LGBTQ acts, identities, and communities and there is a long history of LGBTQ acts, identities, and communities among those who have been incarcerated by the military. Beginning in the 1920s, many soldiers and sailors who were convicted on sodomy charges were confined in the US Disciplinary Barracks in Fort Leavenworth, Kansas, and the Portsmouth Naval Prison on Seavey Island in Kittery, Maine.<sup>92</sup> In the 1930s, several members of the armed forces who had served in Hawaii or Panama were imprisoned on Alcatraz Island after they were convicted on sodomy charges.<sup>93</sup> During World War II, when the US military incarcerated thousands of Japanese Americans, future gay liberationist Kiyoshi Kuromiya was born at the Heart Mountain Relocation Center in Wyoming and Jiro Onuma, a “dandy gay bachelor,” was interned at the Central Utah Relocation Center (Topaz) in Utah. Kuromiya and Onuma remind us that the US military has incarcerated LGBTQ people for reasons that extend beyond gender and sexuality.<sup>94</sup>

A new era in public discussions about prison sex and gender began in 1968 when a young man told a local judge that he had been sexually assaulted in a Philadelphia sheriff’s van. After the judge ordered an

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Reformatory Historic District, listed on the NRHP on February 16, 2006. The Workhouse Arts Center is located at 9601 Ox Road, Lorton, Virginia.

<sup>92</sup> Bérubé, *Coming Out Under Fire*, 128-137. The US Disciplinary Barracks (formerly the United States Military Prison) is located at 1301 N Warehouse Road, Fort Leavenworth, Kansas. While some of its buildings were torn down in 2004, ten of the original structures still stand. The Portsmouth Naval Prison, commonly referred to as “Alcatraz of the East,” is located on Seavey Island in Kittery, Maine, and was in use until 1974.

<sup>93</sup> On Alcatraz, see “Alcatraz Prisoners,” *The LGBT Institute* (blog), August 8, 2009, <http://thesheldoninstitute.blogspot.com/2009/08/alcatraz-prisoners.html>. In the 1940s and 1950s, Robert Stroud, “the Birdman of Alcatraz,” was imprisoned there; Stroud discussed prison homosexuality in his autobiography *Looking Outward*. The Alcatraz Federal Penitentiary is now a public museum operated by the NPS Golden Gate National Recreation Area (established October 27, 1972). Alcatraz was listed on the NRHP on June 23, 1976, and designated an NHL District on January 17, 1986.

<sup>94</sup> On Kuromiya, see Marc Stein interview with Kiyoshi Kuromiya, Jun. 17, 1997, “Philadelphia LGBT History Project,” *Outhistory*, <http://outhistory.org/exhibits/show/philadelphia-lgbt-interviews/interviews/kiyoshi-kuromiya>. The Heart Mountain Relocation Center (also known as the Heart Mountain War Relocation Center), at 1539 Road 19, Powell, Wyoming, was listed on the NRHP on December 19, 1985, and designated an NHL on September 20, 2006. On Onuma, see Tina Takemoto, “Looking for Jiro Onuma: A Queer Meditation on the Incarceration of Japanese Americans during World War II,” *GLQ* 20, no. 3 (2014): 241-275. The Central Utah Relocation Center (also known as the Topaz War Relocation Center), located at 10000 West 4500 North, Delta, Utah was listed on the NRHP on January 2, 1974, and designated an NHL on March 29, 2007.

investigation, Philadelphia Assistant District Attorney Alan Davis produced one of the country's first in-depth studies of prison sexual violence. Influenced by Davis's report, in 1971 the Pennsylvania Prison Society, supported by the National Institute of Law Enforcement and Criminal Justice, sponsored a national conference on prison homosexuality in Philadelphia. One year later, Peter Buffum of the Pennsylvania Prison Society published *Homosexuality in Prisons*.<sup>95</sup>

In the late 1960s and 1970s, while reformers focused more attention on prison sex and gender, LGBTQ inmates and their allies organized multiple protests against prison conditions, challenged the treatment of those who were incarcerated, and advocated on behalf of LGBTQ prisoners. In 1967, the ten-person editorial board of *Eastern Echo*, a periodical produced by prisoners at Eastern State Penitentiary in Philadelphia, resigned when their institution's superintendent censored an issue that addressed homosexuality in prison. LGBTQ activists demonstrated at the Women's House of Detention in New York in 1970, the Manhattan House of Detention in New York in 1971, the Charles Street Jail in Boston and the Sybil Brand Institute in Los Angeles in 1972, and the Cook County Jail in Chicago in 1973. Gay and bisexual activist Stephen Donaldson helped draw attention to prison sexual violence by speaking about the rapes he experienced in a Washington, DC, jail after his 1971 arrest at an antiwar demonstration; he later became a leader of Stop Prison Rape, an organization founded by Russell Dan Smith in 1980. In 1972, Join Hands, a San Francisco collective, began doing advocacy work on behalf of LGBTQ prisoners and the MCC began ministering to LGBTQ and other prisoners in California. Also in 1972 the *Advocate* published an article that denounced the medical "treatment" of LGBTQ prisoners at California's Atascadero State Hospital. Condemning the use of lobotomies, electroshock therapy, and castration, the article referred to Atascadero as "Dachau for Queers." In 1974-75, lesbian feminists rallied

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<sup>95</sup> Stein, *City of Sisterly and Brotherly Loves*, 268; and Kunzel, *Criminal Intimacy*, 149-156. One of the main sites of Davis's research was the Philadelphia Detention Center, 8201 State Road, Philadelphia, Pennsylvania. The Pennsylvania Prison Society (founded in 1787 as the Philadelphia Society for Alleviating the Miseries of Public Prisons) was and is located at 245 North Broad Street, Philadelphia.

around the case of Joan Little, an African American inmate in Beaufort County, North Carolina, who was acquitted on murder charges after she killed a white male guard who had committed multiple sexual assaults. In 1975 *Gay Community News*, published by the Bromfield Street Educational Foundation in Boston, founded the Prisoner Project (Figure 10). Led by Mike Riegle until he died in 1992, the project facilitated penpal relationships, circulated reading materials, provided other forms of assistance, and educated nonprisoners about prison issues. Another early and influential advocacy group was Men Against Sexism, which was founded in 1977 by gay and allied prisoners at the Washington State Penitentiary in Walla Walla. These and other groups established an important foundation for more recent manifestations of LGBTQ prison activism, which

continues to address sex and intimacy, gender and sexual segregation, physical and sexual violence, political and sexual censorship, medical care and legal assistance, reproductive and sexual health, and transgender rights and freedoms.<sup>97</sup>



Figure 10: Former location of the Bromfield Street Educational Foundation, 20-30 Bromfield Street, Boston, Massachusetts. Photo by M2545, 2012.<sup>96</sup>

<sup>96</sup> License: CC0 1.0, Public Domain.

[https://commons.wikimedia.org/wiki/File:2012\\_BromfieldSt\\_Boston\\_Massachusetts\\_4761.jpg](https://commons.wikimedia.org/wiki/File:2012_BromfieldSt_Boston_Massachusetts_4761.jpg)

<sup>97</sup> Kunzel, *Criminal Intimacy*, 191-224. On *Eastern Echo*, see Stein, *City of Sisterly and Brotherly Loves*, 284. On Atascadero, see Eskridge, *Dishonorable Passions*, 96. Eastern State Penitentiary is located at 2027 Fairmount Avenue, Philadelphia, Pennsylvania; it was listed on the NRHP on October 15, 1966, and designated an NHL on June 23, 1965. It closed in 1971 and is now operated as a museum. For the Women's House of Detention, see note 81. The Manhattan House of Detention for Men (one of a collection of New York City jails referred to as The Tombs), built in 1941, was located at 125 White

## Conclusion

After the Stonewall riots of 1969, LGBTQ activists adopted the countercultural expression “we are everywhere” to convey their sense of expansive and expanding LGBTQ geographies. This chapter has attempted to convey a similarly expansive and expanding sense of LGBTQ landmarks and landscapes of US law. Because of the powerful influences of law on the history of gender and sexuality in the United States and the powerful influences of gender and sexuality on the history of US law, these landmarks and landscapes are potentially everywhere. In that context, the chapter necessarily has been selective in focusing on particular historical moments and sites. Some are distinctly important, but others are better understood as representing and symbolizing countless other moments and sites where US law has interacted with LGBTQ acts, identities, and communities. Recognizing and respecting these landmarks and landscapes can play a positive role in promoting diversity and democracy in the United States.

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Street, New York City; it now operates as part of the Manhattan Detention Complex. For the Charles Street Jail, see note 79. The Sybil Brand Institute, built in 1963, was located at 4500 City Terrace Drive, Los Angeles, California; it closed in 1997 but the building still exists. The Cook County Jail is located at 2700 South California Avenue, Chicago, Illinois. There is an LGBTQ lounge named in honor of Donaldson, who founded Columbia University’s Student Homophile League in 1967, in Furnald Hall at Columbia University, New York City. The Atascadero State Hospital, which opened in 1954, is located at 10333 El Camino Real, Atascadero, California. The Beaufort County Detention Center is located at 210 North Market Street, Washington, North Carolina. The GCN Prisoner Project was based from 1975 to 1982 at 22 Bromfield Street, Boston, Massachusetts. The Washington State Penitentiary is located at 1313 North Thirteenth Avenue, Walla Walla, Washington.