



How two unlikely allies scored win for same-sex unions

By: Alan Wallace
July 5, 2014

Along the path to same-sex marriage's legalization in 19 states today was a California case decided by the U.S. Supreme Court in 2013. In “Redeeming the Dream: The Case for Marriage Equality” (Viking), the high-profile lawyers who won that case retell the legal drama behind it.

Having argued opposite sides of the high-court case that settled the 2000 presidential election's contested Florida recount — David Boies for Democrat candidate Vice President Al Gore, Theodore Olson for GOP candidate George W. Bush — they seemed unlikely allies on same-sex marriage. But their professionally adversarial Bush v. Gore roles brought them together personally. Subsequent events — including the 9/11 death of Olson's wife aboard the hijacked airliner flown into the Pentagon — reinforced that bond.

They had deep political differences but shared high regard for the law and had similar backgrounds as Illinois natives whose families moved, when they were young, to California. Their case concerned Proposition 8, in which Californians voted to amend that state's constitution to ban same-sex marriage, essentially overruling the California Supreme Court.

Both saw same-sex marriage as a civil right. By teaming up, Boies told The Wall Street Journal, he and Olson “wanted ... to send a message that this was not a Republican issue, it was not a Democratic issue ... it was a constitutional issue.”

The justices did strike down Proposition 8 — but on narrow, technical “standing” grounds. Ironically, another Supreme Court decision issued the same day, which struck down the federal Defense of Marriage Act, has played a much bigger role in same-sex marriage's advance since then.

Still, Boies and Olson working together helped draw attention to the issue as a civil rights matter. And by conveying their account of their case and detailing their rationale for same-sex marriage, their book is a valuable addition to public discourse as Americans grapple with the issue's ramifications.

FROM THE TRENCHES

“Poilu: The World War I Notebooks of Corporal Louis Barthas, Barrelmaker, 1914-1918” by Louis Barthas, translated by Edward M. Strauss (Yale University Press) — Among World War I books being published in this centennial year of that conflict's start, none likely can connect readers more directly or vividly to the experience of those who fought it. First published in France in 1978, now available in English for the first time and taking as its title a French word for “hairy one” that was slang for a shaggy, unkempt trench soldier, this book presents a first-person account recorded initially in journals and letters by a common soldier, conscripted at World War I's outset, as he fought in battles including Verdun and the Somme. It describes filth, disease, death, horror, exhaustion, officers' cruelty, awful food, occasional displays of camaraderie between French troops and German enemies and more, capturing what the author and millions of other combatants went through.

OSTRACIZING ISRAEL

“Making David into Goliath: How the World Turned Against Israel” by Joshua Muravchik (Encounter Books, available Tuesday) — A Johns Hopkins University School of Advanced International Studies fellow traces how Israel, far more strongly supported in America and Europe than were the Arabs and Palestinians at the time of 1967's Six-Day War, has since become a pariah state in the eyes of so many outside the United States. He attributes that change in part to Israel's battlefield successes countering its early image of vulnerability, but mainly to international leftists, focusing more on race than on class, creating what the publisher calls “a lexicon of rationales for taking sides against Israel.” Helping provide such rationales, he says, are craven world leaders, an “adversary culture” of revisionist historians and some media outlets within Israel, academics such as Edward Said, and Arab, Muslim and “non-aligned” organizations that have made the United Nations a hostile setting for the Jewish state.

PLAINTIFF'S PERSPECTIVE

“Outsider Inside the Supreme Court: A Decisive First Amendment Battle” by Shaun McCutcheon (Amazon Digital Services) — The Cato Institute calls this book, available only in electronic format for Kindle devices, “a rare first-person layman's account of high-stakes litigation.” Its author, an Alabama electrical engineer and business owner active in Republican politics, was the plaintiff in a landmark U.S. Supreme Court case decided in early April. The justices' ruling in *McCutcheon v. FEC* struck down aggregate political-contribution limits as violations of the First Amendment's free-speech guarantee. The book covers his motivations for challenging those limits and the process involved in the case making its way to the nation's highest court and being heard there. Bradley Smith, a Capital University Law School professor and former Federal Election Commission chairman, contributes an introduction that provides relevant legal background and political and historical context and discusses the ramifications of the McCutcheon ruling for all Americans.