

In memory of David Morris (1933 -2008)

A strongly worded Appellate Division footnote in a recent case made me recall how New Jersey judges viewed our community very differently in earlier decisions. Section member Jeanne LoCicero posted on our listserve the Appellate Division case, State of New Jersey v. J.C. decided by Judges Fuentes and Simonelli. Jeanne called our attention to the following footnote in the opinion:

We must emphasize that the initial allegations of sexual misconduct against thirteen-year-old Jf.C. were unsubstantiated. Despite this, DYS's complaint seeking custody of the children contained the following statement. "[Jf.C.] seemed to not know the seriousness of the allegations. [Jf.C.] presented as having homosexual tendencies such as his conversational style, flipping of the wrist, and hands on his hips." We find this stereotypic description of alleged homosexual behavior offensive. Equally disturbing is the insinuation that homosexuality bears a possible link to pedophilia. Discredited homophobic stereotypes have no place in a pleading filed by the Attorney General and are antithetical to an attorney's ethical responsibilities. See RPC 8.4(g).

The judges' chastisement of the Attorney General made me remember David Morris who recently died. David played an important role in changing judicial perception of the New Jersey LGBT community. He was a pioneer as one of the first openly gay attorneys in the state. He continued to serve as a leader in our community for decades until his death.

Over 40 years ago, David worked on the New Jersey Supreme case, One Eleven Wines v. Division of Alcoholic Beverage Control, 50 N.J. 329 (1967) which won our community's first significant court victory.

Since the end of Prohibition, the Division of Alcoholic Beverage Control (ABC) had regularly suspended the licenses of bars frequented by homosexuals. According to ABC regulations, allowing such persons in a bar was "offensive to common decency and public morals."

Before the New Jersey Supreme Court ruled in the One Eleven case, there were two earlier reported Appellate Division cases on the same issue.

In 1957, three respected Appellate Division judges, Judges Clapp, Jayne and

Hughes, heard Paddock Bar, Inc. v. ABC, 46 N.J. Super. 405 (1957). On Cookman Avenue in Asbury Park, the Paddock Bar billed itself “The Gayest Spot in Town.”

ABC charged the Paddock Bar with misconduct because it permitted “persons who conspicuously displayed by speech, tone of voice, bodily movements, gestures, and other mannerisms the common characteristics of homosexuals” to congregate at the premises.

The Court affirmed the suspension. Although it recognized that there was no evidence produced that the patrons were in fact homosexuals, the judges held “it certainly proved that they had the conspicuous guise, demeanor, carriage, and appearance of such personalities. It is often in the plumage that we identify the bird.”

Four years later, in 1961, three different, but equally esteemed jurists, Judges Conford, Freund and Kilkenny , decided the second Appellate Division case, Murphy’s Tavern, Inc. v. Davis, 70 N.J. Super. 87 (1961). Murphy’s Tavern was located on Mulberry Street in Newark.

Writing for the Court, Judge Freund reviewed at length the evidence presented by ABC. ABC alleged that the bar was patronized by “males impersonating females who appeared to be homosexuals” and males who engaged in “foul, filthy and obscene conduct” including “overtures for and arrangements with other male persons ... for acts of perverted sexual relations.”

Judge Freund wrote that “the testimony ... undeniably demonstrates that an inordinate number of the patrons habitually congregating at the tavern displayed the dress, mannerisms, speech and gestures commonly associated with homosexuals.

He then stated that “It should not be thought that the court is callous to the problem of the homosexual, medically or socially.” However, the court found that the primary purpose of the ABC regulation is “maintenance of accepted standards of public decency and morality, and when these standards are, as here, impinged upon, proper sanctions are not only justified but are demanded.”

Six years later and two years before Stonewall, the New Jersey Supreme Court heard the One Eleven appeal. David Morris worked with Theodore Meth who represented One Eleven .

It was courageous for David to become involved as a volunteer lawyer on that case. He had just been hired by Continental Can Company where he was the first black attorney. Not out at work and being a volunteer attorney on this “gay

rights” case could have jeopardized his career, But David knew that the issues at stake were too important not to act.

The One Eleven case concerns Manny’s Den, then on Albany Street in New Brunswick and still operating today in Franklin Township, Somerset County. Again, ABC found that the Den had violated ABC regulations because it allowed homosexuals to congregate on the premises.

On appeal, ABC contended that the suspension was justified because ‘the presence of apparent homosexuals in so-called ‘gay’ bars may serve to harm the occasional non-homosexual patrons who happen to stray there.’ ABC also argued that their patronage “may lead to violence against them by non-homosexuals.”

Justice Jacobs, writing for a unanimous court, found that ABC had exceeded its authority in suspending the license. “Though in our culture homosexuals are indeed unfortunates, their status does not make them criminals or outlaws. So long as their public behavior violates no legal proscriptions, they have the undoubted right to congregate in public.”

The One Eleven decision reflects the beginning of a societal change in attitudes. Looking back at it through the lens of 40 years, the language used by all three courts is shocking. The footnote cited above demonstrates the sea change in how the judiciary views our community and is working to dispel stereotypes.

David was proud of his work on the One Eleven case. And he would be thrilled to see how differently we are now treated by New Jersey appellate judges today.