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Stonewall at 50: A Salute to a Pioneering Family Lawyer

One of those lawyers, Rosalie Davies, died a decade ago. Born in 1939 in London, England, Davies was one of the earliest activists in Pennsylvania to protect the rights of gay and lesbian litigants in Family Court.

By **Mark A. Momjian** | July 03, 2019



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The Philadelphia Pride Parade this year was the largest ever, with tens of thousands of marchers and supporters commemorating the 50th anniversary of the Stonewall riots. In 1972, Philadelphia was one of the first cities in the country with a parade celebrating the gay community. This year's parade on June 9, started in the heart of the city's Gayborhood at 13th and Locust streets, and it featured a float called "Pioneers on the Road to Stonewall." Many politicians, including Gov. Tom Wolf, Attorney General Josh Shapiro and city Mayor Jim Kenney, honored the trailblazing activists of the LGBTQ community, calling for an end to discrimination based on sexual orientation and gender identity.

Many civil rights lawyers who dedicated their professional careers to ending LGBTQ intolerance did not live to see this year's historic parade in Philadelphia. One of those lawyers, Rosalie Davies, died a decade ago. Born in 1939 in London, England, Davies was one of the earliest activists in Pennsylvania to protect the rights of gay and lesbian litigants in Family Court.

A mother of two children, Davies and her husband moved to King of Prussia in the late 1960s. After they separated, she came out as a lesbian. Initially, the couple shared custody of their children, but after Davies' ex-husband remarried, he fought for sole custody and was permitted to relocate to Canada. Back then (in the early 1970s), almost every gay and lesbian litigant in Family Court hid their sexual orientation. But Davies didn't. Her open status resulted in her losing custody of her children, ages 10 and 13 at the time. See Marc Stein, "City of Sisterly and Brotherly Loves: Lesbian and Gay Philadelphia, 1945-1972" (Philadelphia: Temple University Press, 2004), 37, 302-03, 344.

Davies was shocked over how little custody time she got—one in-person visit a month, one telephone call a week, and two weeks of supervised visitation at her parents' home in Canada. That's because Davies and her estranged spouse were told by their respective lawyers that the judge had already decided the case after meeting with counsel in chambers (<http://outhistory.org/exhibits/show/philadelphia-lgbt-interviews/interviews/davies>). She told reporters afterwards that her child-custody case felt "like an ancient witchcraft trial.

(<http://outhistory.org/exhibits/show/philadelphia-lgbt-interviews/interviews/davies>)"

But after a year of living in Canada, Davies' children sought their father's permission to return to Philadelphia, and he agreed. A college graduate of the University of Pennsylvania, where she majored in English and philosophy, Davies would eventually graduate from Temple Law School in 1979. She chose domestic relations as a practice field because of what she endured as a litigant in Family Court.

Once she became a member of the bar, Davies dedicated herself to representing lesbian litigants who faced discrimination in child-custody litigation. She founded C.A.L.M. (Custody Action for Lesbian Mothers), an organization that counselled

women on what to do when their sexual orientation was put on trial. Davies represented scores of these women pro bono. As a lawyer practicing on the cutting-edge, she easily related to lesbian mothers who feared losing custody of their children.

Davies represented one of them in a notorious case out of Northampton County. In *Constant A. v. Paul, C.A.*, 496 A. 2d 1 (Pa. Super. 1985), a lesbian mother's application to expand her limited custody rights was flatly rejected. The mother lived in Boston with her same-sex partner, and she retained Davies so that her teenage children could visit her in New England, to walk the Freedom Trail and to swim at Cape Cod. Despite being a respected member of her community, with an excellent employment record at a local hospital, the mother lost her case, as the trial court concluded that her sexual orientation reflected a "moral deficiency."

The Pennsylvania Superior Court affirmed, and in a now-infamous footnote, stated: "Simply put, if the traditional family relationship (lifestyle) was banned, human society would disappear in little more than one generation, whereas if the homosexual lifestyle were banned, there would be no perceivable harm to society." *Constant A.* created a rebuttable presumption against the gay or lesbian parent, placing the burden on them to demonstrate that their sexual orientation would not cause their children to suffer detriment or harm, meaning that they would have to prove a negative.

The now-retired Judge Phylliss W. Beck (the first woman to serve on the Pennsylvania Superior Court) wrote a compelling dissent in *Constant A.*, but it took the Superior Court a quarter-century to overrule the majority decision, as it did in *M.A.T. v. G.S.T.*, 989 A.2d 11 (Pa. Super. 2009). Davies did not live long enough to learn of the *M.A.T.* holding that gay and lesbian parents bear no special evidentiary burdens in child-custody cases. *M.A.T.* was argued before the Pennsylvania Superior Court about two months after Davies died in 2009.

As a young lawyer in private practice in the mid-1980s, I had the honor of meeting Davies at various programs sponsored by the Pennsylvania Bar Institute. She talked candidly about the challenges of her family law practice between 1979 and 1988.

Davies took cases that many family lawyers avoided back then. They were among the most difficult of representations, as many judges (in Pennsylvania and elsewhere) assumed gay and lesbian parents were per se unfit.

A lawyer in the pantheon of LGBTQ rights, Davies made a lasting mark on Pennsylvania family law. This year's Philly Pride Parade was a tribute to her and the many LGBTQ activists who have, in the 50 years since Stonewall, fought to achieve equality before the law, and against all forms of discrimination based on whom a person loves and one's outward expression of identity.

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