

# LGBT-rights ally Judge Abner Mikva dies at 90

BY MATT SIMONETTE

Abner Mikva, a liberal fixture in Chicago politics who maintained posts in all three branches of government, died July 4. He was 90.

Mikva made a number of contributions in the advancements of LGBT rights, especially in his work as a legislator and in the judiciary, often long before those contributions reflected popular opinion.

"No matter how far we go in life, we owe a



President Obama presenting Abner Mikva with the Presidential Medal in 2014.

profound debt of gratitude to those who gave us those first, firm pushes at the start," wrote President Barack Obama, who counted Mikva among his mentors, in a July 5 statement. "For me, one of those people was Ab Mikva. When I was graduating law school, Ab encouraged me to pursue public service. He saw something in me that I didn't yet see in myself, but I know why he did it—Ab represented the best of public service himself and he believed in empowering the next generation of young people to shape our country. Ab's life was a testament to that truth."

Obama added, "In every position he held, Ab's integrity and wisdom consistently put him on the right side of history, from fighting against prejudice and discrimination and for free speech and civil liberties. He reformed Illinois's criminal code, defended consumers' rights, and although his decision striking down the ban on gay Americans serving in our military was overturned, history proved him right."

That November 1993 decision on gays in the military—written when Mikva was chief judge in the U.S. Court of Appeals for the District of Columbia Circuit—likened the "Don't Ask, Don't Tell" policy to racial segregation.

"A cardinal principle of equal protection law holds that the Government cannot discriminate against a certain class in order to give effect to the prejudice of others," Mikva wrote. "Even if the Government does not itself act out of prejudice, it cannot discriminate in an effort to avoid the effects of others' prejudice. Such discrimination plays directly into the hands of the bigots; it ratifies and encourages their prejudice."

Mikva began his career with a clerkship with Supreme Court Justice Sherman Minton and, in 1956, won a spot in the Illinois House of Representatives. It was there he had a hand in drafting legislation that would eventually result in overhauls of the state's criminal code in 1961. That code eliminated sodomy as a criminal act, making Illinois the first state to enact such a provision.

As reported in the book *Gay Press, Gay Power* by Tracy Baim, *Time* magazine looked at laws across the country in an Aug. 5, 1955, article,

"Sin & Criminality." It was a report on the annual meeting of the American Law Institute, at which the institute voted on a Model Penal Code: "By a heavy majority, the lawyers agreed that adultery should not be a statutory crime. Sodomy proved more controversial. In the end, the model code provided criminal penalties for homosexual behavior 'involving force, adult corruption of minors and public offense.' But a broader provision caused a sharper argument. This clause held that 'a person who engages in

an act of deviate sexual intercourse' commits a crime."

Judge John J. Parker, 69, of the 4th U.S. Circuit Court of Appeals, "opposed the argument that private homosexuality should not be enjoined by the law merely because the law, pragmatically, cannot stop it," *Time* reported.

But Learned Hand, 83, retired chief judge of the 2nd U.S. Circuit Court of Appeals, disagreed. *Time* reported him as saying: "Criminal law which is not enforced practically is much worse than if it was not on the books at all ... I think it [sodomy] is a matter of morals, a matter very largely of taste, and it is not a matter that people should be put in prison about."

The group voted 35-24 to recommend that sodomy and adultery "be removed from the list of crimes against the peace and dignity of the state," *Time* reported.

This likely led to Mikva's pursuit of changing Illinois law to eliminate the sodomy ban, and the timing worked well since Illinois was overhauling its laws.

As reported in Baim's book *Out and Proud* in Chicago, the sodomy law had carried a one- to 10-year prison sentence and rendered the perpetrator "forever ... incapable of holding any office of honor, trust or profit, or voting at any election, or serving as a juror ..."

Mikva won a post to the U.S. Congress in 1968, then was later appointed as a federal judge by President Jimmy Carter. In 1994, he became President Bill Clinton's White House counsel. He resigned due to exhaustion.

"Not only was [Mikva] involved in the judicial and political careers of many, including President Obama, but he created the Mikva Challenge, which will continue to inspire, empower, and encourage young people for years to come," said Mayor Rahm Emanuel in a statement. "The first political campaign I ever worked on was Abner's Congressional campaign in Illinois' 10th District, and I later had the privilege of working with him in the White House during the Clinton administration.

"Abner was not only a great Chicagoan, but a great American. The thoughts and prayers of Amy and I are with Zoe and the entire Mikva family."

## Relationships & the Law Today

BY MATTHEW J. RUZA



### Transgender Phobia Continues: "Bathroom Bill" Making It Through Illinois Legislature

Being a teenager is hard enough, so one can only imagine the difficulty in being a transgender teenager. Transgender teens face a host of issues as they struggle for support and acceptance at home, at school and in society. Unfortunately, Illinois lawmakers are not making the transgender teen's life any easier.

restrooms that correspond with their sex, but not their gender, places them at a greater risk for harassment and being singled out from their peers. Fortunately, federal government officials have directly spoken to these state lawmakers and to the transgender community as a whole—and they certainly are not mincing their words.

"One can only hope that the Obama administration's guidance and organizations like Lambda Legal, the ACLU and the Illinois Safe Schools Alliance can help further a culture of understanding in Illinois schools and combat the fear that bills like HB 4474 foster. After all, being a transgender teenager is hard enough without having to worry about what restroom you will be allowed to use while at school, a place where all students—transgender or otherwise—should feel safe and accepted"

For instance, on May 4, Vanita Gupta, principal deputy assistant for the U.S. Department of Justice, sent a letter to North Carolina Gov. Pat McCrory informing him that the bathroom bill he signed into law is a violation of Title IX of the Education Amendments of 1972 and Title VII of the Civil Rights Act of 1964, both of which prohibit discrimination on the

A new proposal in Illinois to amend the state School Code could force transgender students to use restrooms and locker rooms that correspond with their birth-assigned sex, rather than their gender. The bill (HB 4474), filed in January by Rep. Thomas Morrison (R-Palatine), would force school boards to "designate each pupil restroom, changing room, or overnight facility accessible by multiple pupils simultaneously, whether located in a public school building or located in a facility utilized by the school for a school-sponsored activity, for the exclusive use of pupils of only one sex." The bill, which has more than two dozen co-sponsors, requires schools to provide "reasonable accommodations" for students using single-occupancy restrooms/locker rooms, but the students first need the written request of a parent or guardian for such an accommodation to be made.

Currently, under federal laws, students can use the bathroom of the gender they identify with. However, state lawmakers appear to be following the anti-transgender path that North Carolina began paving. Multiple states, including Kentucky, Missouri and South Carolina, to name a few, have similar "bathroom bills" pending. And while many of these bills seem to die in committee, it is not exactly reassuring to know that states like South Dakota had bills that made it all the way to the governor before being vetoed. As it stands, HB 4474 sits in the hands of the Illinois House Human Services Committee.

Forcing transgender teenagers to use

basis of sex. Gupta reiterated that this should be extended to gender identity.

Attorney General Loretta Lynch echoed Gupta's sentiments in May: "Today, the Department of Justice and the entire Obama administration wants you to know that we see you; we stand with you; and we will do everything we can to protect you going forward. Please know that history is on your side."

Despite the support from federal leaders, HB 4474 remains hanging in the balance for Illinois transgender teens. The Illinois Human Rights Act prohibits discrimination based on sexual orientation or gender identity in housing, employment and public accommodations, which includes schools and other educational facilities. Further, the Chicago Human Rights Ordinance prohibits the denial of equal treatment to any individual based on sex, gender identity and sexual orientation in places of public accommodations. Yet, that may not be enough to combat HB 4474 through the Illinois legislature.

One can only hope that the Obama administration's guidance and organizations like Lambda Legal, the ACLU and the Illinois Safe Schools Alliance can help further a culture of understanding in Illinois schools and combat the fear that bills like HB 4474 foster. After all, being a transgender teenager is hard enough without having to worry about what restroom you will be allowed to use while at school, a place where all students—transgender or otherwise—should feel safe and accepted.

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