

Los Angeles Times

Thursday, July 7, 1983

JUDGEMENT DAY FOR



TOMORROW AT 9 AM . . . A HEARING WILL BE HELD IN SUPERIOR COURT, DEPT. 86 TO DETERMINE IF AN INJUNCTION WILL BE GRANTED MS. GLORIA ALLRED AND HER TWO CLIENTS AGAINST PAPA CHOUX RESTAURANT.

WE REALIZE THE COURT MAY LITERALLY HANG US BY OUR THUMBS, OR MAY EVEN SEND US TO JAIL, BUT OUR POSITION IS CRYSTAL CLEAR. WE WILL NEVER SEAT TWO WOMEN OR TWO MEN IN THOSE SIX BOOTHS. MS. ALLRED SIMPLY HAS GONE TOO FAR IN LEADING HER OWN PARADE.

RESPECTFULLY YOURS

Walter Kulwitzky Seymour Jacoby

Saturday, July 9, 1983

Papa Choux Row Judge to See for Himself

By MYRNA OLIVER,
Times Staff Writer

Los Angeles Superior Court Judge Bruce R. Geernaert decided Friday that he must personally inspect six curtained, intimate booths at the posh downtown Papa Choux restaurant before deciding whether the restaurant can continue to prevent couples of the same sex from dining in them.

"It is a close factual question I don't think anybody could decide without going there," Geernaert said, planning to resume the court hearing Wednesday after a Tuesday night visit to the restaurant.

Deborah Johnson and Zandra Rolon, described by their attorney, Gloria Allred, as "lesbian women with a loving relationship committed to each other," sued the restaurant after they were denied service in one of the booths when they wanted to celebrate Martin Luther King's birthday last Jan. 13.

They claimed that the restaurant violated the Unruh Civil Rights Act by discriminating against them because of sexual preference and sex.

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BOOTHS: Judge to Visit

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Restaurant owner Seymour Jacoby and maitre d' Walter Kulwitzky, who did offer to seat the well-dressed young women at another of the restaurant's 60 booths or tables, countered in a series of newspaper advertisements and arguments of their lawyer, Arnold Barry Gold, that the curtained booths are especially reserved for "a romantic evening" for heterosexual couples.

Geernaert said the ultimate trial will turn on whether the restaurant policy discriminates against sex, which is clearly prohibited by the Unruh Act, or is merely a reasonable regulation of homosexual conduct, which he said is not covered by the act.

"If 'a romantic evening' includes hand-holding and smooching and they are trying to encourage that among heterosexuals and to prevent it among homosexuals," he said, "then it is clearly and simply a regulation of conduct. The question would be whether it is a reasonable regulation."

Injunction Ruling Delayed

Geernaert originally indicated that he would deny the preliminary injunction, believing that the factual issues about whether the policy banned conduct or a certain sex and how the booths were used could only be decided at a full trial.

But when Allred belatedly requested that he examine the booths and actively there, he agreed to visit the restaurant and to delay his injunction ruling until next week. A preliminary injunction would prohibit the restaurant from refusing service to same-sex couples in the curtained booths pending the full trial, perhaps three to five years from now.

The judge left no doubt, however, about rejecting Allred's argument that case law makes the Unruh Act applicable to homosexuals. He indicated that no injunction will be forthcoming unless he finds some discrimination based on sex.

"It is a factual issue here whether or not the sexual preference of the plaintiffs raises inferences about their conduct which can reasonably be controlled by the proprietor of a business establishment," the judge said. "In society today it is fairly well accepted that what occurs in private between two consenting adults is of less concern to society than what occurs in public. Society just does not accept conduct between 'two loving women' as it does conduct between two loving heterosexuals."

Although Allred protested that the young women had not engaged in improper conduct, Geernaert said reasonable regulations to prohibit certain conduct could legally be enforced even if the conduct did not occur.

"If conduct is not involved here," he said, "then clearly this (policy) would be a violation of the Unruh Act merely because they are both females."

Gold said outside court, in answer to reporters' questions, that during the judge's visit, theoretically Allred and the judge could be seated in one of the booths (although they are married to others and have no plans for any romantic evening together) because they would be a heterosexual couple, but that he and the judge could not be seated (although they are married to women and are not homosexuals) because they would be a couple of the same sex.

"There is no sex discrimination," Gold asserted, "because this policy applies equally to two men or two women."

Judge to visit restaurant in lesbian discrimination case

By JEFF SNYDER

Daily News Staff Writer

Judge Bruce R. Geernaert will visit Papa Choux Restaurant next week, but the jurist said Friday he has no intention of eating at the fashionable establishment specializing in romantic dining.

Instead, the Los Angeles Superior Court judge will be examining the restaurant's six special booths, each of which are secluded behind sheer drapery and equipped with call buttons to ensure uninterrupted dining.

Geernaert Friday made the unusual decision to visit the 1925 W. Olympic Blvd. restaurant during a hearing prompted by two lesbians who claim they were denied access to the booths.

Deborah L. Johnson and Zandra Z. Rolon filed a lawsuit against Papa Choux, seeking damages stemming from a Jan. 13, 1983, incident in which they contend the restaurant owner violated the Unruh Civil Rights Act.

The judge first denied the request to issue a preliminary in-

junction against the restaurant, saying the Unruh Act prohibits discrimination on the basis of sex but does not cover the issue of sexual preference.

He retracted his ruling later in the hearing, however, and decided to visit Papa Choux at 7 p.m. on July 12 before making his ruling. The judge scheduled a July 13 hearing on the matter.

Rolon and Johnson, who were described by their attorney, Gloria R. Allred as "two lesbian women with a committed and loving relationship," went to Papa Choux to celebrate Martin Luther King's birthday.

After they were seated in one of the special booths, Johnson and Rolon said they were ordered to leave the table by the maitre d'hotel, who said the owner follows a 12-year-old policy to allow only heterosexual couples in that portion of the restaurant.

Both women said they were in the booth only for a few minutes and did not engage in any physical contact, including hugging or kissing.

"We were rudely treated to say the least," Johnson said. "It

caused attention to us sitting there."

"We just couldn't believe we were not allowed to sit there because we were women," Rolon added.

Arnold B. Gold, attorney for Papa Choux, said the policy does not discriminate against anyone, because the regulation prohibits homosexual men and women from using the booths but allows them to sit anywhere else in the restaurant.

Gold said Papa Choux owner Seymour Jacoby opened the restaurant "with a concept and vision to create and maintain a special atmosphere of fantasy and romance."

"The fantasy is that that only heterosexual couples can have romantic relationships," Allred said in response to Gold.

In discussing the case Geernaert indicated society is less concerned about relationships between adults than about "what occurs in public."

"The courts really can't get too far out ahead of what society accepts as acceptable conduct," Geernaert said.

LOS ANGELES HERALD

EXAMINER

Saturday
July 9, 1983

Los Angeles Times
Wednesday, July 13, 1983

Judge to visit controversial restaurant

A Los Angeles Superior Court judge yesterday agreed to make a personal visit to one of the city's best-known restaurants before ruling in the case of two self-proclaimed lesbian lovers who failed to get service in the restaurant's semi-private curtained booths.

Judge Bruce R. Geernaert, initially unwilling to issue a preliminary injunction requiring Papa Choux on Olympic Boulevard to make six comparatively private booths available to couples of the same sex, postponed his ultimate decision on the matter pending a personal visit to the premises.

He instructed feminist attorney Gloria Allred, representing Zandra Rolon and Deborah Johnson, and attorney Arnold Barry Gold, speaking for the restaurant, to visit the restaurant with him at 7 p.m. Tuesday. Hearings on the matter will resume Wednesday.

Judge's Night Out at a Posh Restaurant All Part of Job

By MYRNA OLIVER, Times Staff Writer

Los Angeles Superior Court Judge Bruce R. Geernaert visited the posh downtown Papa Choux restaurant Tuesday night to see for himself what six curtained booths designed for "a romantic evening" really looked like.

He plans to hear further arguments today on whether the restaurant can legally exclude couples of the same sex from the booths without running afoul of the state's Unruh Civil Rights Act.

Flanked by attorney Arnold Barry Gold, defending the restaurant, and feminist attorney Gloria Allred, who represents the lesbian couple that is suing the establishment, Geernaert told the news media after a brief tour that it would be inappropriate for him to comment on his observations until he rules on the case.

What he saw was a strolling violinist and a guitarist serenading—and harried waiters attempting to mollify—five startled couples suddenly confronted by the entourage of judge, lawyers, clients and reporters invading their "romantic evening." Geernaert asked photographers to wait outside, saying that their lights would "interfere with the inspection."

He laughed suddenly when he recognized the sixth couple, a

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POSH: Judge's Restaurant Visit All Part of Job

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wire service reporter and a court clerk, seated in the booth from which acknowledged lesbians Deborah Johnson and Zandra Rolon had been ousted.

"We'd better go," joked the judge. "Who knows what might happen."

Geernaert lifted one of the curtains, which can be drawn to offer the dining couple semi-privacy. Gold pointed out that the curtain was "sheer" and that heavier velvet draperies could not be closed. Allred said the judge should observe that the booths were "reasonably secluded."

The judge will be asked to enjoin the policy the restaurant adopted when it opened 12 years ago to reserve the six booths solely for heterosexual couples seeking "a romantic evening." Same-sex couples, whether homosexual or not, are welcomed at the restaurant's 60 other tables and booths that have no

curtains.

Allred claims that denying her clients use of a secluded booth is discriminatory against their sex and their sexual preference. She said Tuesday night that she will ask the judge to declare the policy a violation of a city ordinance banning discrimination by any business establishment on the basis of "sexual orientation," as well as a violation of the Unruh Act.

Gold claims that the policy is non-discriminatory because it excludes male couples as well as female couples. He argues that the policy is legal because it is a "reasonable regulation" of public (homosexual) behavior that is unacceptable to society.

Geernaert said he needed to inspect the booths before deciding whether the policy is sex discrimination or a regulation of conduct. A preliminary injunction would remain in effect until the case goes to full trial in four or five years.

Daily News

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Wednesday, July 13, 1983



Daily News photo by Scott Garrity

Attorneys Gloria Allred and Arnold B. Gold, foreground, discuss lawsuit against Papa

Choux restaurant brought by Deborah L. Johnson, left, and Zandra Z. Rolon.

Judge inspects restaurant sued by lesbians barred from booths

By HECTOR GONZALEZ

Daily News Staff Writer

A Los Angeles Superior Court judge, trailed by camera teams and reporters, visited a restaurant Tuesday night to inspect six secluded dining booths that are at the center of a lawsuit filed by two lesbians.

As he promised at a hearing last week, Judge Bruce R. Geernaert made a first-hand inspection of the sheer-curtained booths at the Papa Choux restaurant, 1925 W. Olympic Blvd. The judge will subsequently decide whether the restaurant must drop its policy forbidding couples of the same sex in the booths.

The restaurant's policy came into question in June, when Deborah L. Johnson and Zandra Z. Rolon filed the lawsuit. In it,

they charged the owner, Seymour Jacoby, violated the Unruh Civil Rights Act by refusing them a special booth during a Jan. 13 visit to the restaurant.

Friday, Geernaert put off a decision on an injunction hearing until he could examine how much privacy couples have in the booths. He spent several minutes in the large area that encompasses the booths, but made no comment to reporters after the inspection.

However, Arnold B. Gold, Jacoby's attorney, and Gloria Allred, representing the women, talked with reporters for several minutes outside the restaurant.

"We don't care what consenting adults do within the privacy of their own bedrooms, but we maintain we have a right to reasonable regulation within the

restaurant," said Gold.

Allred compared the restaurant's policy to "blacks being asked to sit in the back of the bus."

"We believe the restaurant has carried on an old-world tradition of romance, and it's time for them to wake up and realize this is a new world where two men or two women can also have a caring, romantic relationship," she said.

Allred said she filed court papers Tuesday citing Los Angeles Municipal Code Section 49.70, which prohibits discrimination on the basis of sexual orientation.

"This is not a question of romance, it's a question of illegal business practices," she said.

Gold denied the policy is discriminatory.

LOS ANGELES HERALD

EXAMINER

Thursday
July 14, 1983

Judge rules Papa Choux knows best in sex bias suit

By Camille Hamilton
Herald staff writer

Saying that romantic homosexual conduct in public is "unacceptable to social mores," a Los Angeles Superior Court judge yesterday refused to order the Papa Choux restaurant to serve couples of the same sex in the establishment's private, curtained booths.

The booths are designed to create "a romantic and intimate atmosphere," and are limited by restaurant policy to couples of opposite sex.

"It appears to me that social mores deem romantic conduct in public, between heterosexuals, as pleasing and acceptable, but do not hold that view of the same conduct between homosexuals," said Judge Bruce R. Geernaert in denying the request for a preliminary injunction. "Such conduct appears to me to be unacceptable to social mores at this time."

Although many may accept "what people do in private, from the information I have received, I believe the majority simply do not accept (homosexual) conduct in public," Geernaert said.

The injunction would have required the restaurant, located on

"It appears to me that social mores deem romantic conduct in public, between heterosexuals, as pleasing and acceptable, but do not hold that view of the same conduct between homosexuals."

Judge Bruce R. Geernaert

Olympic Boulevard near Alvarado Street, to serve same-sex couples in the booths, pending the outcome of a discrimination suit filed last month by two women who were asked by Papa Choux owner Seymour Jacoby and maitre d' Walter Kulwitzky to leave a table in one of

Papa Choux/A-7, Col. 2

Papa Choux

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the private booths.

Deborah Johnson and Zandra Rolon, both 27, alleged that the restaurant had discriminated against them on the basis of sex and sexual orientation.

The women, who were described by their attorney Gloria Allred as "lesbian women with a loving relationship committed to each other," had gone to Papa Choux on Jan. 13 to celebrate Martin Luther King Jr.'s birthday.

Geernaert also said the existence of the restaurant's policy for 12 years without a complaint and the availability of "comparable" seating to the women were factors in his refusal to grant the injunction. He indicated that the ultimate issue to be decided at trial is whether the policy discriminates by sex, which would be a clear violation of the Unruh Civil Rights Act, or merely reasonably regulates the public conduct of homosexuals, which he said Friday was permitted under the act.

But a preliminary injunction cannot be granted, he said, where the right that the women claim was violated is "uncertain."

"There is no question as to whether this (policy) is a discrimination on the basis of sex — it is," Geernaert said. "The question is whether it is a reasonable regulation of conduct. This is a very close case... and a preliminary injunction should not be granted where the right involved is so uncertain."

Allred came to court with documents to file an appeal already prepared and said she would file immediately.

"This is a question of status, not conduct. Social mores have nothing to do with whether or not a person is entitled to protection under the laws. Social mores do not make the law, the Legislature does, and homosexuals are entitled to protection enjoyed by any other citizen under those laws."

Rolon, who was present at the hearing, denied engaging in any improper conduct. "The issue of homosexuality was never raised (during the incident at the restaurant). We are professional women. We are not going to put our jobs or our dignity on the line doing anything offensive."

The hearing was originally continued from Friday, when Geernaert decided to visit Papa Choux and personally inspect the curtained booths before ruling on the injunction.

Women Will Appeal

Restaurant Wins Row Over Curtained Booths

By MYRNA OLIVER, *Times Staff Writer*

Papa Choux restaurant in downtown Los Angeles can continue excluding couples of the same sex from its six curtained booths designed for "a romantic evening," Los Angeles Superior Court Judge Bruce R. Geernaert decided Wednesday.

Waving a previously prepared document and a check for the filing fee, feminist attorney Gloria Allred said she will appeal the ruling immediately on behalf of acknowledged lesbians Deborah Johnson and Zandra Rolon, who were denied dinner in the booths last Jan. 13.

"Unfortunately, if the law allows this type of discrimination," a disappointed Rolon said, "it only opens doors to other discrimination. Today it is two women who can't sit together. Tomorrow a heavy-set person could be prohibited from sitting with a thin one."

Restaurant owner Seymour Jacoby, who has staunchly maintained that he has a right to encourage romance between heterosexuals but prevent it between homosexuals in his place of business, said: "I am very happy. It is a vindication of Papa Choux's policy."

Geernaert denied the women's request for a preliminary injunction after visiting the restaurant Tuesday night to inspect the curtained booths. The suit can still go to full trial, and Geernaert said that would be the proper time for resolution of what he termed a "very, very close case."

He said that judges normally

cannot grant preliminary injunctions when close questions of law and fact exist and when the rights claimed by plaintiffs are uncertain. The law remains "unsettled" concerning homosexuals' rights, he said, and a trial judge or jury must have detailed evidence to decide such questions as whether California's Unruh Civil Rights Act allows restaurant patrons to choose their own table and whether 12 uncurtained booths and 48 tables, where same-sex couples can be seated, offer dining accommodations comparable to the six curtained booths.

The judge said that the restaurant's policy had clearly excluded the women because of their sex, which normally is a violation of the Unruh Act except when the policy involves reasonable regulation of conduct. Although a trial judge might decide differently when presented with additional evidence, Geernaert said, at this point he had to judge the policy as a reasonable regulation of public homosexual behavior unacceptable to society.

Geernaert made short shrift of Allred's reliance on a related Los Angeles city ordinance banning discrimination by business establishments because of "sexual orientation." Indicating that he considers it unconstitutionally vague and preempted by the state Unruh Act, the judge said that strict interpretation of the ordinance would "allow any avowed male homosexual into a women's restroom."