

STATE OF CALIFORNIA

Supplement Four



COMMISSION ON
**PERSONAL
PRIVACY**

Securing privacy
through law
and education

DECEMBER, 1982



BURT PINES
CHAIRPERSON

THOMAS F. COLEMAN
EXECUTIVE DIRECTOR



COMMISSION ON PERSONAL PRIVACY



Supplement Four:

This supplemental document contains the Transcript of Public Hearings conducted by the Commission on Personal Privacy.

STATE OF CALIFORNIA

COMMISSION
ON
PERSONAL PRIVACY

DRAFT OF TRANSCRIPT OF PUBLIC HEARINGS
Conducted During November, 1981

Burt Pines
Chairperson

Thomas F. Coleman
Executive Director

CALIFORNIA COMMISSION ON PERSONAL PRIVACY

LOS ANGELES PUBLIC HEARING -- FRIDAY, NOVEMBER 13, 1981

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• CALIFORNIA COMMISSION ON PERSONAL PRIVACY
LOS ANGELES HEARING - November 13, 1981

CHAIRPERSON BURT PINES: This is the time set for our first Hearing in Los Angeles. We're attempting to obtain the input of experts and the public in the field that we're examining for the People of California.

I'd like to just make a few preliminary comments and then outline the procedures we're going to follow today. I think everyone is aware that the society we live in is becoming increasingly complex; it's fast moving, it's the computer age, the age of hi-tech, and as we witness these events going on around us, all of us feel the pressing need for a zone of privacy, an area that we can call our own, that each person knows is there and knows that it is beyond the reach of government or third parties. This is obviously essential for human dignity and work in the kind of age we live in.

The courts for sometime now have recognized the existence of a right of privacy. It's in the California Constitution. The Legislature has made it clear, going further, that certain kinds of conduct -- for example, sexual conduct among consenting adults in the privacy of their own bedroom -- is beyond the scope of the law and essentially no one else's business. But there are many areas that still require examination and the Executive Order from the Governor creating this Commission charged this Commission with examining the area of privacy and reporting back to the Governor and the Legislature what type of privacy concerns exist, what type of recommendations we can provide to address these.

We're going to be dealing with a wide range of privacy issues through the scope and course of this Commission's work. We'll be examining the privacy rights of people in institutions, ranging from patients in nursing homes to inmates in our State institutions. We're going to be examining what's required by government, for example, for State medical services, or other State services, what type of private information. We're going to be examining what is done with medical records or police records. What type of access there is to these. Certainly, the advent of computers and the accessibility of information -- that's an area that requires some attention by the Commission. We may very well focus on the extent and what limits on police surveillance there should be. In the criminal justice area, there is a variety of issues that many experts here who want to testify will present. For example, what rights do victims or witnesses or jurors have to their own privacy. In the case of jurors, how far should the attorneys be able to inquire into their private lives.

In addition to the area of privacy, the Commission is also charged with examining the level of discrimination based on sex and sexual orientation. The people of California, I think it can be fairly stated, do not want to tolerate any kind of discrimination based on sex or sexual orientation. Nevertheless, it does continue to exist in society, and we'll be trying to find out information about where it exists and what the extent of the problem is, at what level enforcement is, whether it is in housing, employment, or elsewhere. Not only are we looking for information regarding employment, but the benefits that come from employers. For example -- the discrepancy that exists now between bereavement leave and medical benefits -- they give them to people who are married, yet, at the same time, they are denied to people who are not married, but are living together. The discrepancy in the Inheritance and Gift Taxes that might exist due to a person's married state. I think this is becoming more and more relevant as the alternate family arrangement increases in this society. The census has indicated a significant change in the amount of people living together in the married state over the last ten years. Thirdly, the area of discrimination warrants our attention and we'll be reporting on that. And that's probably enough said by way of preliminary comments regarding the purpose of this Commission and the underlying Executive Order.

I'd like at this time to introduce the members of the Commission that are attending this Hearing. There are twenty-five Commissioners and they were all invited to attend. A number of them are attending, in fact, at their own expense, because of the limited budget allowed this Commission. I'll just go quickly around the table here and introduce those Commissioners who are attending this Hearing. Starting on your right, the lower level of the chairs here -- GARY COOPER, a Criminal Justice Researcher from Sacramento; next, GEORGE ESKIN, former Chief of the Criminal Branch of the City Attorney's office, a person that I know well and worked with, who now is an attorney in private practice; below me is BARBARA WAXMAN, a Sex Educator with Planned Parenthood; NORA BALADERIAN is next, a Mental Health Consultant in Los Angeles; TED FERTIG has joined us -- he's from Sacramento, he is an executive for an association there; LESTER PINCU, a Professor of Criminology at California State University, Fresno. Moving back over to my far left -- JERRY BERG, an Attorney from San Francisco; DAVID McWHIRTER, a Psychiatrist from San Diego. Next to me on my right, is TOM COLEMAN, Executive Director of this Commission, who was a prime mover in its creation. Next to Tom is KAY COULSON, Associate Director for Seminars on Sexuality, and STEVE SMITH, now the Assistant to the Assembly Speaker, Willie Brown. I think there will be other Commissioners joining us

as we progress during the day. We're going to be going from now until 8 o'clock. Depending on how many people wish to testify, we'll either take a dinner break as a whole or go in shifts.

Let us just make a few comments about the procedure we're going to follow. A number of people have signed up in advance to testify and we're giving them first preference because of their having done so. We have a list of witnesses already, people that will be joining us. In addition, there is a sign-up list for additional witnesses and we'll try to get to each of you as soon as we can. We're interested in hearing from everyone who is attending this Hearing today. To the extent we're not able to hear as much as you would like to present, we'd like any written comments that you'll provide us with. Everything that is submitted in writing is going to be reviewed and considered and we welcome that as well as your oral presentation. In addition, we'd like some of your help with our committees. This Commission is basically broken down into eight different committees. Much of the work is going to be done at the committee level before it is finally reviewed by the Commission and our eventual report is produced. That is another area in which you could help as well, so I don't want any of you to think that your participation is going to end with just today's Hearing.

I think that is enough for my introductory comments. We'd like people to be as concise as possible in their remarks. Please try to keep your time between five and ten minutes because we may have some questions from Commissioners and we have a lot of people who want to be heard from. As I said, if we can't hear everything you might want to say, we're happy to get your comments in writing as well.

I think we may be hearing from two people initially: William Handel and Bernard Sherwin. I would ask the witnesses to identify the organization they're with if they feel comfortable doing so, as well as their occupation, just for the information of the Commission. Obviously, if you want to keep that private from this Commission, you're certainly welcome to.

. . .

MR. WILLIAM HANDEL: Good morning ladies and gentlemen. I'd like to thank the Commission for inviting my partner, Mr. Sherwin, and myself, here. We represent the Surrogate Parent Foundation, Inc., a private, non-profit, California corporation which is studying the phenomena of surrogate parenting. In addition, my partner and I are individual practitioners in the field of surrogate parenting. Our law firm, as well as medical practitioners and psychologists, actively engage in the field of surrogate parenting. We've been asked to testify in regards to how surrogate parenting relates directly on personal privacy. Let me outline the problem if I may.

Infertility is on the increase to a tremendous extent. 15 to 20% of all couples today in the child bearing age are infertile -- cannot have children. The majority of those infertile couples are infertile because the wife is infertile due to several medical reasons. When the husband is infertile, artificial insemination by donor is the obvious alternative and it is a very simple procedure. When the wife is infertile, the only alternative that exists today seems to be surrogate parenting -- hiring a woman, paying her for her services to carry the child for this couple.

One of the reasons that surrogate parenting is one of the few alternatives left is because there are no adoptable infants left. Because of birth control, because unwed mothers are now keeping their children, and because abortion is now a matter of course, we have a problem of an infertility rate skyrocketing and the adoptable infant pool, as it were, diminishing to almost zero.

To give you an example, one of the major adoption agencies in the State, one of the private ones, had over 5,000 applications last year from parents. They were able to place 500 children, leaving 4,500 couples without children. The issue that we're here to discuss today is: Do these parents and the surrogate mother have the right to contract, as individuals, for this mother to carry the child for them? That is obviously a personal privacy right. We're dealing with the Supreme Court cases, Roe v. Wade and several others, that deal with a woman's ability to utilize or use her body, outside of prostitution, of course, or outside of areas that are clearly illegal and, at the same time, does the State have a strong interest in protecting the abuse of a woman's body, unless she determines that she wants to do this, and the use of this procedure. Obviously, we're dealing, when it's done correctly, with ethical lawyers, doctors, psychologists, and we're trying to keep this on a level as high as possible. However, it leaves a great deal of room for abuse. You're dealing with very desperate couples. The cost of surrogate parenting is very expensive -- \$15,000 to \$20,000. We know there is a Black Market for babies - \$30,000 are being paid today for white infants. Jewish infants, Oriental infants, are being paid for as much as \$60,000. This is the desperation level -- that we have couples who want children and cannot obtain infants any other way.

So, we have the problem of infertility and we have the problem of the State's interest in regulating this. Now, while the foundation has absolutely no views on surrogate parenting in terms of the legal aspects of it -- it is merely an organization to disseminate information on it. As individuals, as practitioners, Mr. Sherwin and I feel that the State does have a strong interest. We've worked with Professor John Fitzrandolph at Whittier College School of Law and Assemblyman Mike Roos' office in trying to develop new legislation in surrogate parenting. We feel that the State has a very strong interest in maintaining the ethical and moral standards that need to be held when engaging in surrogate parenting.

I want to turn the rest of it over to my partner who will discuss the Constitutional issues and the other legal problems. Until then, does anybody have any questions?

COMM. PINES: Let them hear from both of you first and then ...

MR. HANDEL: Ok, very good. Mr. Sherwin.

MR. BERNARD SHERWIN: Good afternoon - my name is Bernard Sherwin. I'm an Attorney and I'm a Director of Surrogate Parent Foundation, Inc. As my partner mentioned, we do practice surrogate parenting in private practice, and the statements I'm going to make will be statements made on my own behalf. As was stated, the Foundation has no views on any particular subject. Simply, that it is a phenomenon which is new to the public eye and is in need of research and study.

Presently, in the State of California, there are a number of criminal code sections which touch on the area of surrogate parenting. In particular, Penal Code Sections 181, 273, 182, and Civil Code Section 224(p), which relates to advertising for adoption without the requisite license.

These sections basically relate to payment for adoption, custody of the child or advertising for adoption. We feel that the right of privacy touches directly on these Penal Code Sections in that, you know, basically, they were passed at a time when the concept of surrogate parenting was not in anyone's mind. Many of them go back so far that they pre-date artificial insemination. We believe as individual practitioners, that the need on the part of infertile couples to have a family -- obviously, that is of a Constitutional nature, has been recognized. The Penal Code Sections which are in existence right now, as I said, were passed at a time when surrogate parenting was not a big issue, and, as a matter of fact, at a time when the adoptable babies were in great supply. We feel that these Penal Code Sections should be amended such that they will allow for surrogate parenting, for payment for an adoption (what may

be called payment for adoption) under the right circumstances. These are payments made by the natural father in a surrogate situation as opposed to your normal situation of thirty or forty years ago, where it was a payment to an unwed mother. The unwed mother was in a dire emotional, financial, social situation. We feel that surrogate parenting is a viable alternative to childlessness, but we also feel that it is an area that is so new that we believe the State has a strong interest in regulating it to the extent that psychotherapists be involved in it, that informed consent be given, and we feel that attorneys should be involved in it at this state because the legal ramifications of it are so broad that even in the over a year that my partner and I have been involved in the area, we're constantly finding totally new areas. There was a case in New York just recently where Frank Serpico, a former police officer of some note, was found to be not the parent of a child -- I assume for the purposes of child-support, based on the fact that the sexual intercourse which resulted in the child was based on the assumption that the woman was using birth control methods and she was not. We are beginning to deal now in society with technologies that just did not exist at the time when many of us were born. The law in society has not adjusted to it and we feel that study must be made. We feel that, to be done properly, surrogate parenting in particular requires a team of different professional disciplines and we feel ultimately that it is a subject which will require legislation to clear up the problems which exist now.

COMM. PINES: Thank you. It would be very helpful if you could actually provide us with your written recommendations.

MR. SHERWIN: Yes, we do have proposed legislation which came out of a seminar at Whittier Law School which we would be happy to provide to the Commission, as well as a copy of surrogate parent legislation which is presently in the Michigan Legislature.

COMM. PINES: Let me ask if any of the Commissioners have any questions ...

COMM. ESKIN: Mr. Handel or Mr. Sherwin -- I have not read the article that appeared in the Los Angeles Times within the last few days and so, due to my naivete or lack of understanding the basic process -- does surrogate parenting involve sexual intercourse between the father and the surrogate mother until the surrogate mother conceives?

MR. HANDEL: No. Fortunately, in our case, it involves artificial insemination. It is always done by a licensed physician and the husband or the inseminating father donates the sperm to the physician, who then artificially inseminates the surrogate mother.

COMM. ESKIN: I see. So in other words, you would not be involved with any construction of Penal Code Section 647(b).

MR. HANDEL: No, there is absolutely no intercourse at all. We're just simply talking about custody, baby-selling, black market baby statutes, and paying for adoptions.

COMM. ESKIN: So, the same process of insemination would occur as occurs when the husband is infertile?

MR. HANDEL: It is exactly the same thing as artificial insemination by donor except that the wife is infertile and we produce a child with the surrogate mother producing the child.

COMM. PINES: Thank you. Ms. Baladerian . . .

COMM. BALADERIAN: Yes. I don't know that much about it either and what I would like to know is how much decision-making in terms of the pregnancy itself is on the part of the surrogate mother or on the part of the natural parents in view of prenatal care, nutrition, a decision for amniocentesis and that were negative or indicative of a disease that would be inherited. In case there would be anything like that, would the decision to abort be that of the surrogate mother or of the natural parents?

MR. SHERWIN: Originally when we began preparing contracts, we had the decision-making, the decision-making power was in the hands of the inseminating physician. We have since decided that, for various reasons, including our belief they would be totally unenforceable in view of court opinions, the decision, there are recommendations in the contract, but the decision is to be made by the surrogate mother with the advice of her obstetrician and the inseminating physician. As to the prenatal care, the prenatal care is prescribed by a physician, any legitimate obstetrician, and the choice of the obstetrician is that of the surrogate.

COMM. PINES: Thank you. Mr. McWhirter . . .

COMM. McWHIRTER: I have a couple of questions. I've realized that surrogate mothering (or this process) has been going on for a few years now. I'm wondering if there is somewhere where any research whatsoever has been done in this area. Are we doing any kind of follow-up on your children at this time? Are we looking at what are the consequences to the surrogate mother? Because that kind of data would help us in our evaluations.

MR. HANDEL: That is the specific reason we formed the Surrogate Parent Foundation. All the psychologists that are involved, all the practitioners that are involved, make available to the Foundation their interpretations of what is happening. We've only had two children born of surrogate parents in our practice. We have several more that are pregnant. The psychologist and the physicians with waivers written by all parties is supplying the Foundation with the raw data base. As of right now, it is so new that all we have is, let's say, three or four months of therapy that the surrogates have gone through, how they're feeling, and as far as the children and how surrogate mothering is affecting society, that is something that is years in the future before we determine exactly what is happening, but one of the main reasons the Foundation was formed, for exactly that reason. It has to be studied as a phenomenon. On the other hand, we as practitioners cannot wait, because the couples ...we cannot tell the couples you have to wait five or ten years before you have children. For the first ten years we're all going to remain childless, so we're dealing with the couples who want this as soon as possible. They've been going through infertility work and trying to adopt for five, sometimes ten years. They were anxious to have children.

COMM. McWHIRTER: Is surrogate mothering being done for gay male couples?

MR. HANDEL: Right now, no. In California, we, as practitioners, have decided as a matter of practicality not to engage in surrogate parenting for any single people at all, but that's only because we're trying to pass legislation and ...

COMM. McWHIRTER: I'm not talking about singles. I'm talking about . . .

MR. HANDEL: I'm talking about singles... Well, I don't believe that gays can be legally married, if I'm not mistaken. So we are talking about unmarried single people of any persuasion, even cohabiting couples that are not gay, we will not do a surrogate parenting for a child, but that is only our individual practice. The Foundation makes no value judgment, nor do we. It will happen.

MR. SHERWIN: If I might comment on that question. The Michigan legislation which is currently pending, a copy of which I'll supply to the Commission, does provide for surrogate parenting by single persons...

COMM. McWHIRTER: By single persons or for single persons?

MR. SHERWIN: For single persons. The marital status of the surrogate is not particularly an issue in any of the minds of the practitioners throughout the country. We, as individual practitioners, have decided that for the present time we are limiting this to married couples strictly for the purposes of palatability to the widest population in the state, but we have no particular feeling as to whether it should be restricted in its ultimate form down the road.

COMM. PINES: May I just take care of a couple of housekeeping items. Two additional Commissioners have been able to join us. To my left is WALLACE ALBERTSON, President of the Los Angeles Community College Board and STANLEY FLEISHMAN, a very distinguished attorney in town, who has joined us also. One other item. We do have an interpreter here for people who are either deaf or not able to hear well. I'll ask her now to see if there is anyone in the audience who requires that type of interpretation. (HE CHECKS) She'll remain here in case any deaf individuals do arrive. I'll remind all the Commissioners that we have a lot of people waiting to be heard from. Try to keep your questions short for these witnesses.

COMM. PINCU: I was wondering whether you get into the situation where not only is the mother infertile, but perhaps the father is infertile and dealing with anonymous donors also.

MR. HANDEL: We believe that is probably as close to the felony baby-buying as you can possibly get without actually going out and purchasing a child. When a couple is infertile, as of right now, the way we perceive the laws, until they're amended, we are definitely saying no, that is a new issue.

COMM. WAXMAN: If the child's only disability is from general causes, and the parents reject that child, what is the implication for the child?

MR. SHERWIN: Well, the safeguards at this point are basically those provided by State law. Our contract provides that as soon after the birth of a child as is medically practical, HLA tests are performed, and once the paternity of the child is established, the father has the responsibilities that any father has.

MR. HANDEL: The contract thoroughly states that the adopting parents definitely take the child, be there an anomaly or not. That has never been tested in the court and we think that the court would not fail to enforce that provision.

COMM. ALBERTSON: As you know, we are interested in a family and family relationships, not only traditional, but non-traditional, in their experience. Do you have a working definition for "family"?

MR. HANDEL: No. As a matter of fact, what we are probably doing is re-defining the mother-child relationship and this is the area that is most - I would say "mind-boggling" -- to us both, in the Foundation as practitioners. I think what we're saying is that the traditional concepts of mother-and-child, that is, a natural mother birthing a child, and therefore she is the mother, is no longer valid with the new scientific methods that are available to us. We're only ten years away (maybe five or ten), from practical invitrial inseminations, when we're able to take the egg of an infertile mother, the sperm of her fertile husband, implant it into another woman's uterus, because the real mother cannot carry the child. Genetically, biologically, every chromosome, every gene is that of the first couple, the mother and the father, yet a third woman is birthing the child. You tell me who the mother is in that case! We're in the middle of redefining that entire relationship, and it is something that must be studied. This is why we're here today.

COMM. PINES: You might consider while working with the Committee on Family Relationships that have been established within this Commission . . .

MR. HANDEL: The Foundation would be more than happy to be involved on any level possible. We're a new Foundation, as you are a new Commission, and these are areas, the ramifications of which are so fundamental and so mind-boggling that it is something that has to be studied.

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S. THOMAS TODD: Mr. Chairperson and members of the Commission -- I'm an Attorney in private practice here in Los Angeles. The purpose of my testimony today is to bring this Commission's attention a very pervasive form of discrimination affecting personal and sexual privacy in our State. That's discrimination by employers against gay, lesbian and unmarried heterosexual employees in the provision of employment benefits. If I may, I will draw my remarks upon my personal experience as a means of discussing this problem with you.

I was an Attorney for the City of Los Angeles for over 5-1/2 years, during the Pines administration. For the last two of those years, I had a lover who was considerably younger than I was and in school, so we were totally dependent upon my income alone to get by. Finances were sometimes a problem. One day, I got to thinking about the financial disaster which could befall us if my lover were ever seriously injured or became seriously ill because he had no health insurance and we couldn't afford to get individual health insurance for him.

It occurred to me that if my lover were entitled to coverage under my group health insurance plan which was provided by the City as an employment benefit, my worries would be over. So, I got on the telephone and I called the Employee Benefits Division of the City's Personnel Department, gave them my name, identified myself as a gay City Employee, and said I wanted my lover to be covered by my health insurance. The reaction was somewhat interesting. "Oh God, it's finally happened. I knew I'd be getting a call like this sooner or later!"

Now my call happened to be by a gay employee to a municipal employer concerning the subject of health insurance. It could just as easily have been by an unmarried heterosexual employee to a government employer at the State or Federal level, or a private employer, and could have just as easily have involved a significant employment benefit other than health insurance, such as Family Sick Leave, Bereavement Leave, and Retirement Benefits. Let me give you a few more examples before I recount my adventures with the City and tender some recommendations to this Commission.

First, in the area of Family Sick Leave -- this of course is that sick leave that practically all government employers and many private employers provide to an employee who must miss work because of the illness or injury of someone in the employee's "family." Suppose the issue in the context in which I am speaking ... Suppose that an employee's homosexual or unmarried heterosexual lover breaks his or her leg at home and needs assistance to get to the hospital and to get settled back at home the first day of recuperation. In most instances, the employee cannot take advantage of Family Sick Leave to cover his or her absence from work.

Another category - Bereavement Leave. Again, something most government employers and many private employers provide. In our context, suppose an employee's homosexual or unmarried heterosexual lover dies. The employee cannot use Bereavement Leave to cover his or her absence from work while arranging for and attending the funeral.

The third major category, actually the fourth, counting Health Insurance, is Retirement Benefits. Many pension plans in both the public and private sector, require the employee to make contributions as well as the employer. If the employee dies before retiring, of course, the employee's contributions will be returned to any person that the employee designates. But most pension plans also provide Death Benefits from the employer's contributions, payable to the surviving spouses or minor children. Here, we are talking thousands of dollars. In our context, suppose an employee dies. His or her homosexual or unmarried heterosexual lover of many years is not entitled to receive these Death Benefits.

OK. Now I'd like to return to the theme of Health Insurance and get back to my phone call to the City's Employee Benefits Division.

The result of that initial call was not too favorable. I was told it would be illegal for the City to provide health insurance to anyone other than a legally married spouse or dependent children. I asked what made it illegal. I was told that Insurance Code Section 10270.5 limits group insurance plans for employees to "employees, with their dependents or spouses." I then asked who would enforce this statute if the City of Los Angeles were to decide to treat unmarried significant others as spouses, and I was told it would probably be the State Insurance Commissioner.

So I then called the State Department of Insurance and talked to the Chief of the Policy Approval Bureau, the person whose responsibility it is to the State of California to approve all group insurance plans. He told me that the Department of Insurance would not prevent the City from providing health insurance to lovers of heterosexual or homosexual employees. In fact, he specifically said that he would be the person required to approve such a policy, and he would approve it ... in spite of the language of that Insurance Code Section, I might add. He informed me that the Insurance Commissioner had promulgated regulations dealing with discrimination on account of sex and/or marital status in insurance.

I looked that particular regulation up and it is Title 10 of the Administration Code, Section 2560.3, and it provided that no entity engaged in the business of insurance in this State shall refuse to issue any contract of insurance because of the marital status or sexual orientation of the prospective insured. However, marital status may be considered for the purpose of determining eligibility for family coverage. The word "may" in an Administrative Code provision is the key, so it

was up to the City of Los Angeles and its health insurance providers as far as the State Insurance Commissioner was concerned, to determine whether or not the kind of coverage I was seeking for my lover could be provided.

So, I went back to my contact in the City's Employee Benefits Division and by this time, he and I were becoming quite friendly. He said this is all well-and-good, but now, what if the providers, the insurance companies, refuse to provide this kind of coverage? About this time, for other reasons, I became very involved in labor negotiations between the City's Attorneys and the City Government, and in fact, I ended up as the President of the Association of Deputy City Attorneys. In preparing for that year's negotiations, I decided to make my effort to broaden the concept of "spouse", if you will, as part of the negotiation process with the City. We drafted a proposal which I would be pleased to share with the Commission and its staff. Essentially, it provided that health and dental insurance be made available to an employee's "spouse or a person with whom the employee cohabits in a stable relationship." A number of criteria was set forth by which the employer or the insurance company could determine if a "stable relationship" existed in that particular case.

I took my completed proposal, put it in the contracts that we were proposing with the City for that year for its attorneys, and then I called my contact in the City Employee Benefits Division and he agreed to submit this particular proposal to the City's six different health insurance providers for their comments. He received prompt replies from all six. I want to read you a few very short excerpts from their letters, because they really are quite interesting!

One company said: "We will agree to an expanded definition of 'spouse' in accordance with your letter. It is important that the City impose as clear a criteria as possible for determining a stable relationship for persons cohabiting. This would preclude legal problems in claims administration."

Another company said: "We have no problems with the proposed revisions for definition of 'spouse' providing it is the City that determines whether a stable relationship exists."

The third company said: "Our review suggests that a problem could develop wherein this definition would apply to persons of the same sex. I anticipate a major problem knowing the attitude maintained by many professionals, i.e., doctors, etc. However, you may rest assured that in the event the City does accept this proposed definition, we will exert every effort to make sure the definition is fairly applied."

The fourth company: "We can accommodate a redefinition of "spouse" provided that such definition is interpreted to limit one spouse or one cohabiter to an employee."

The fifth company: "We understand that the suggested language is a reflection of

changing lifestyles in our society. We wish to be as progressive as possible, but we find serious problems with the suggested language because of ambiguity. Also to require justifying information can be considered by some as an invasion of privacy. We strongly prefer that the existing definition not be changed, but if a change is required, the new definition must consist of concrete universally understood terms."

And the sixth company, the largest of them: "We are unwilling to add a category of eligible dependence which would cause administrative difficulties, though I am ready to meet with you at any time to discuss this further."

Actually, the response was a lot better than I had anticipated. The problem does not really seem to lie with the insurance companies. Apparently, it lies with the employers. That was my suspicion at that point, and that was definitely confirmed by subsequent events.

I submitted our proposed contract with the language extending the definition of "spouse" for Health Insurance, for Family Sick Leave, and for Bereavement Leave, to the City Council. It met unexpectedly strong opposition by members of the City Council who are normally sympathetic to human rights issues, and even with the strong backing of the City Attorney, Mr. Pines, the Council would not agree to that provision. I am informed that the proposal will be resubmitted this year.

OK. Where does that leave us. First, I urge this Commission to recommend to the Legislature that Insurance Code Section 10270.5 be amended so it cannot possibly be construed as prohibiting an employer from providing health insurance benefits to the family partners of gay, lesbian, or unmarried heterosexual employees. Second, I urge this Commission to recommend that the Insurance Commissioner not permit insurers to consider marital status for the purpose of determining eligibility for family insurance coverage. Third, and most importantly, I urge this Commission to recommend in the strongest possible terms that it be the public policy of this State to end discrimination by employers against gay, lesbian and unmarried heterosexual employees in providing employment benefits. Toward that end, I urge this Commission to take on the task of devising alternative definitions for the word "spouse" and procedures which would be administratively feasible and make them available for the use of employers and insurers who desire to facilitate the expansion of eligibility for employment benefits beyond the traditional basis of legally married spouse. And I stand ready to assist this Commission and its staff in that regard in any way I can. Thank you.

COMM. PINES: Thank you. We're going to take advantage of that offer knowing of your capabilities. Any questions?

COMM. ALBERTSON: I repeat the question that I asked of the first witness ... do you have a working definition of "family"?

MR. TODD: As part of this process, it would definitely be necessary to come up with one. I do have one that I have worked on and I have access to some materials in other areas of the country where people are working on this problem and I would be happy to share it with the commission.

COMM. PINES: It would also be helpful if you could provide us in writing with some of your recommendations.

COMM. COOPER: Do you see "stable relationships" being defined in State legislation as opposed to various cities making the recommendation, or what is your position? What is your recommendation on that?

MR. TODD: I was thinking about that in preparing today's remarks this morning. My understanding is there is pending in the Legislature, and there has been for some time, I think it is AB-1, legislation which would ban discrimination in general on the basis of sexual orientation. That could probably be interpreted to cover some of the specific problems that would exist in the area of redefining the concept of "spouse" for the provision of employment benefits. I decided not to recommend to the Commission that specific piece of legislation be drawn up where the State Legislature would impose as a matter of State law various definitions of this alternative spouse. I think if the Commission were to study it, to look at the possible alternatives, and would come up with one and disseminate it, and make its knowledge available to employers, government or private, who are interested, and to insurance companies, if they're interested in dealing with the administrative problems which could exist, on something like this, that that would be sufficient.

COMM. FLEISHMAN: Is there any problem with just having a mechanical situation where a person states that "This is my spouse as of now" — you register that, and then when you want to change, just de-register. So you don't have any problems of trying to define what is stable or not. In other words, the person can themselves decide that, as of now, this is the relationship and so there are no administrative problems everybody is talking about. You record that, like you record a deed, and thereafter, if you want to change it, you say that the deed is changed. Would that solve the whole problem?

MR. TODD: It would certainly make it a lot easier. It would go along toward solving the whole problem.

COMM. FLEISHMAN: Is there any problem with it?

MR. TODD: I don't see one, really. The only concern I guess some people would have is that you could go and record a change once a week if you wanted, but a suggested means of handling that would be to say that you don't change the spouse "to whom you are not lawfully married" anymore frequently than you could change the spouse "to whom you are lawfully married," i.e., you would have to wait the six months, the period of time for a divorce, before you could record in effect a different individual.

COMM. FLEISHMAN: Would there be any invasion of privacy, in your estimation, in having to report it?

MR. TODD: That would be the least, the methodology, which would provide for the least likely invasion of privacy. There are really some very difficult balancing considerations here because in order to insure that an employee is not taking advantage of an employer or an insurance company, I suppose there is a certain amount of information, unless the proposal that you just made would be adopted, that would have to be required -- and depending on how far you go, you get into real problems invading privacy in order to insure the kind of insurance ... if you force the employee to choose between no insurance protection, or a rather monumental invasion of privacy. Some of the suggestions include so far as to ask about family finances, how much of the finances entangle the two people that are involved and so on, and so on. I would, of course, advocate being as simple as possible to avoid that kind of infringement of privacy.

COMM. PINES: Thank you, Mr. Todd -- we appreciate your help.

MR. HAROLD GREENBERG: I am an Attorney at Law in private practice. I am a former Deputy District Attorney and a former Deputy Public Defender. I believe I have been invited here today because of the case that was recently heard in the Court of Appeals, In re Wesley W., 123 Cal.App.3d, which will now be before the California Supreme Court. I'd like to discuss that case briefly, a case involving the State Bar, and another case in Municipal Court.

We have a situation, for instance, let's assume that today, one of us sitting here at this time is arrested outside of this building and charged with rape or robbery or whatever the crime, and is booked. We now have a permanent arrest record. What happens ten years from now when an employer says "How come you've been arrested?" Or you go before the State Bar after you've passed the attorney's exam, and they refuse to certify you to the Supreme Court. Or you passed the Real Estate Broker's exam, and the Real Estate Board refuses to certify you. Or the C.P.A. Board? These are actual cases I have handled and this is the problem. Let me give you a few examples.

In the case before the State Bar, a young man who was a Professor of Law at Glendale was a client of mine. Eight police officers from Glendale broke into his housing unit. He was the only individual there. They beat him beyond recognition. I could not recognize him the next day. Criminal charges were filed against him. I was successful in having those charges dismissed without prosecution. Three years later, after he passes the State Bar, the Bar refuses to certify him. It took a five-day hearing in order that we were able to prove that he was of fit moral character. Originally, they said that he was into S&M, (Sado-Masochism), and because of that, he would take unfair advantage of his clients. I asked them, in a domestic case, because I am heterosexual, would I take unfair advantage of my female clients, and obviously, there was no response. This is because there was a criminal arrest record, even though he was never prosecuted, even though he was never convicted. He has that blemish on his record.

The case before the California Court of Appeals, and soon before the California Supreme Court, In re Wesley W., involves an eighteen year-old man, never arrested before, never subsequently arrested. He is now in his 30's. He is sitting in a men's restroom, on the john. A police officer comes into the restroom, gets down on his hands and knees, and at a 30-degree angle, looks up underneath the door, through a wire mesh, and sees that the young man (what the officer said) appeared to be masturbating for a period "of five seconds"! Based on that, this young man is convicted in California. He is a registerable sex offender in California. His case went to the Appellate Department of Superior Court in the mid-sixties and they upheld the conviction.

When I took over the case in the early 1970's, it was because this man was refused the right to be a CPA. They said: "You had a conviction, you were a registerable sex offender, and therefore, you cannot be a CPA." I appeared before the Commission, I got him his ability to practice as an Accountant. Subsequently, when he passed a Real Estate Broker's Board, once again they refused. I fought that, I was successful, he's now a Broker.

Here's what the problem is. There's a case today called In re Pryor, which states that if today, an act between consenting adults or an adult, in an area which is not open to the public, or if open to the public, if the individual does not know someone else is present, if it would not be a crime, such as Lewd Conduct, it would not be a crime, and it has retroactive application. I attempted to go into court on that case and in another case involving a young man at UCLA who was never prosecuted, who was not even charged by the City Attorney's office, but has an arrest record. We have arrest records which constructively are holding these people in custody, emotionally and economically. What happens when you go for insurance, the Medical Information Bureau, runs you and it is picked up. For loans it is picked up. So you have a long tail that affects you for many years.

I approached several assemblyman. Assemblyman Tom Bain offered to carry a bill for me, but I needed a Republican. I spoke to the then Assemblyman Robert Cline, a conservative Republican, and he said: "Harold, even if a man is innocent, and was innocently arrested, and he has a permanent arrest record, an employer is allowed to know this. He should know this in hiring." I said: "Assemblyman, we're talking about a man who was innocent, not someone who the jury acquits for insufficiency of evidence, but someone who should never have been arrested, not on a technicality. He was in the wrong place at the wrong time. You're blotting this man, you're blaming this man, you're hampering him."

That is the state of the law today in California. What do we do about a situation like this, gentlemen? This is the epitome of an invasion of privacy. In the In re Wesley W. case, what do I do now if the man is a successful broker, CPA? Do I parade him in the public and say: "I want to clear this man's record. Do I have to disclose his name?" The California Court of Appeal handled it by saying that no, you don't have to use his last name, you'll just take In re Wesley W. This is the situation we present. Thank you.

COMM. PINES: Thank you. If you want to follow up with any written recommendations, we certainly welcome these. Mr. Fleishman . . .

COMM. FLEISHMAN: Were you satisfied with the way the court handled it in terms of Wesley W., or whatever it was? Is that a satisfactory solution to the problem?

MR. GREENBERG: It is a better solution than we had before but I think there can be a better one than that because by fighting it in the courts, I'm actually giving him more publicity than if I had let it ride.

COMM. FLEISHMAN: What is the better solution?

MR. GREENBERG: I don't know at this stage, but I think there has to be some -- let me give you an example -- I recall a case that I had some significance with involving O. Richard Casey, who used to be head of the Civil Service Commission. Many of you recall that situation involving his daughter, Baxter Ward and the Sheriff's Department. When the powers-that-be wanted that record destroyed, Randy Casey's records, arrest records, were destroyed, and that became the Baxter Ward investigation. They can be done. What I'm talking about is pulling a person's name, an arrest record, from the computer, when a person is factually innocent.

COMM. ESKIN: It seems to me you touched upon several things. The Wesley W. case name suggests perhaps that unrelated to the problems associated with arrests, that criminal cases should be captioned without using a person's full name. Generally, why expose them to that public notoriety? Is that something that comes out of In re Wesley. W.?

MR. GREENBERG: No, not at all, because I think many times public notoriety has a medicinal effect to others, if not to this individual. What I'm talking about is when a person is factually innocent, why should he be damned because he defends himself? If a person is convicted, and there is no question of factual or legal guilt, I see no fault in publicizing it.

COMM. ESKIN: The only relief now is available under 849(b) where a person gets a certificate of detention if nothing happens other than his arrest?

MR. GREENBERG: Almost. It is 851.8, which allows for destruction as long as as there is no material dispute as to facts and as long as the City Attorney's Office and the District Attorney's office doesn't fight it. But the case I just had in West Los Angeles, the City Attorney's Office, under Mr. Pines, did not prosecute,

did not issue a complaint. In other words, the young man, 18 or 19 at the time, was arrested. But, the City Attorney's office, when I went down to diss it, refused to file. The City Attorney's office, when I went in under 851.8, agreed not to fight it out. The District Attorney's office fought it, and the D. A. who came into the court (Judge Sherman Smith's Court, Division 94, West Los Angeles), a few months -- the D.A. didn't even know the file, didn't even know the facts, but as a matter of course, he objected. This is the problem with a lot of known attorneys in the D.A.'s office. If the defense is for it, they're against it, and don't confuse them with the facts!

COMM. ESKIN: So you would basically recommend amendments to 849, 851 and 1203.4 to expand their effectiveness?

MR. GREENBERG: That is correct. Also, I would point out to the various prosecuting agencies they are not just there to get convictions. They are there to serve the public. An individual who is accused of a crime is a member of the public, too.

COMM. FERTIG: How long has this been on the record for this Wesley W.?

MR. GREENBERG: Since 1966. In the California Court of Appeals, I brought a Writ of Habeas Corpus. They said, "Mr. Greenberg, the man is no longer in custody, actual or constructive." I said, "Your Honor, he is still being hampered, because when his name is there, it affects him economically, emotionally, and every other way."

COMM. FERTIG: Are you saying that there is no statute that takes these names off of the record?

MR. GREENBERG: That is correct.

COMM. PINES: Thank you, Mr. Greenberg.

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FERNANDO GARCIA: I am a Staff Attorney with the Department of Fair Employment and Housing. We enforce the Fair Housing Law of the State -- namely, what was previously the Rumford Fair Housing Law, which is now contained within the Fair Employment and Housing Act. What people don't know is that we also enforce the Unruh Act.

There is a procedural lag in the Unruh Act that fails to reference the fact that it's enforceable through the administrative process. No diligent research would allow somebody taking a look at the Unruh Act to know that they can actually go to the State and file a complaint, as a result of which the number of arbitrary discrimination cases that we take has been lowered substantially because people don't become aware that we do enforce the Act unless through a fluke they go to the Government Code which has no relation and is not cross-referenced.

On the other hand, the Government Code does cross-reference to the Unruh Act, but unless you happen to go to the Government Code first, which is very unlikely, you would not come across this information. We take a number of housing cases, but due to the fact that even though marital status discrimination is contained within the Rumford Act, any other types of arbitrary discrimination can only be taken under the Unruh Act, and thus we have not had a very high number of sexual preference complaints, which we can take under the provisions of the Unruh Act which prohibit all arbitrary discrimination, in addition to the basics covered on the actual statute itself.

COMM. PINES: In other words, even though sexual preference might not be stated in the Unruh Act, your agency views that as a violation and will enforce discrimination in housing on the basis of sexual preference.

MR. GARCIA: Yes, there is case law that interprets the Unruh Act, namely a case by the name of In re Cox, in which the California Supreme Court held that the bases that are covered on the face of the statute itself are only illustrative and that the Act covers all arbitrary discrimination and sexual preference claims can be taken under that provision.

TOM COLEMAN: Mr. Garcia, you were kind enough to bring some literature from your department -- posters and other forms of literature that are disseminated to the public -- earlier this morning, you brought it by the Commission's office. In reviewing that literature, how would a gay person, (let's say), who is discriminated against in housing, know that your Department could handle that case? I didn't see any reference to anything of that nature on your literature or even a reference to the fact they handle Unruh Act cases.

MR. GARCIA: That's correct. The posters that we have only list the bases that are covered on the face of the statute itself and there is no reference at all to any other type of arbitrary discrimination.

TOM COLEMAN: Why is that?

MR. GARCIA: Agency policy. That's the best I can explain it.

COMM. PINES: In other words, the literature that you've been sending to the public doesn't even indicate that you're available to handle sexual preference discrimination?

MR. GARCIA: That is correct.

TOM COLEMAN: Are there any recommendations with respect to the Unruh Act that, or literature or anything, that you would ask us to look into?

MR. GARCIA: The biggest thing is to cross-reference so that by picking up the actual Unruh Act itself which is in the Civil Code, it would refer you to the actual mechanisms for enforcement which are contained in the Government Code. That would fill the gap.

COMM. PINCU: Is the Unruh Act sufficient by itself or are there amendments or recommendations or changes that you would like to see in the Act itself?

MR. GARCIA: I believe that the Act is sufficient if you look at it in conjunction with the case law interpreting. There is a California Supreme Court case on it which pretty much reads the Act very liberally and extensively and I don't think there is a real need to change the Act in substance. It could be made more explicit, but I don't believe that it is necessary. I believe that it actually is covered.

COMM. PINCU: So it's basically a matter of public awareness.

COMM. SMITH: Has there been any of the bills introduced into the Legislature to remedy the situation?

MR. GARCIA: Not to my knowledge.

COMM. ESKIN: Is the Supreme Court case to which you make reference just now, In re Cox, do you happen to know the citation?

MR. GARCIA: Yes I have it right here. It is 90 Cal.Rptr. 24.

COMM. PINES: Are there any other recommendations you could give us for improving the level of enforcement by your agency in cases of discrimination based on sexual preference or marital status or sex?

MR. GARCIA: I believe by disseminating more information and making it available, that people if they were aware that they could, would file more of these cases. I believe a lot of it is just ignorance of the law. I think the reason why they are not filed is because of just plain ignorance, they don't know there is a provision that covers it.

COMM. SMITH: If the Unruh Act were amended to cross-reference for clarity in this area, do you anticipate that there would be too considerable of an additional burden financially on your agency to handle the cases or do you think we can assume that the -- at least in the initial years, that there would not be a huge number of cases?

MR. GARCIA: I don't think there are going to be thousands of people knocking the door down the first day. I think it would take a while for the complaints to start coming in, in which time they could be streamlined to the system without any severe hardship.

COMM. SMITH: Then you would not anticipate that it would create too much of a burden on the agency in the current funding of the agency if this were handled?

MR. GARCIA: Not right away, no.

COMM. PINES: Thank you Mr. Garcia.

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REV. ROBERT ILES: I wish to speak to the issue of personal freedom of choice related to sexuality and the need for sex education. I come from a background of three different professions which are related to this particular subject. First and foremost, I'm an Episcopal Priest and I'm on the staff of the Episcopal parish of St. Michael and All Angels in Corona del Mar. I'm also a Psychotherapist in private practice and I'm an instructor in Human Sexuality at Santa Monica College.

I entered the field of sexuality back in 1967. I was one of the founding members of the Clergy Counseling Service for Problem Pregnancies. In the initial years of the California Therapeutic Abortion Act, thousands of women came from all over the western United States to terminate pregnancies in Los Angeles and after having personal contact with many hundreds of these women myself, I became aware of the fact that the solution to the problem of abortion is sex education - the ability of people to make choices about their own lives and choosing to contracept. I became a sex educator as a result of that experience and was shocked to discover that 80% of American female teenagers use no contraception, although they are sexually active. In contrast to that, 80% of Swedish female teenagers do use contraception when they're sexually active, and I thought that this astonishing piece of information is due to the fact that sex education in Sweden is mandatory. If parents of a high school student in Sweden wish for their child not to receive sex education, they have to appear before the Board of Education to plead their case.

I have taught Human Sexuality since early 1975. During that time, I have found that my students have become more and more ignorant in the subject of sexuality, even though in our time, sexual activity is becoming more and more prevalent among young people. I am appalled at the opposition to having good sex education in schools. When I was in the seminary, I passed through a marble door to the library; it had carved in stone: "Seek the truth, lead where it may, cost what it will." As a Christian, I believe in the biblical statement that "the truth shall make you free." I am very disturbed at the forces in our society who are opposed to people learning the truth about human sexuality. My belief as a Christian is that God gave us all personal freedom and that personal freedom implies a great deal of responsibility. And one is not capable of making responsible decisions without information. The conspiracy to prevent people from having information about sexuality, I think, is inhuman and immoral.

The type of information that is taught in a college course in Sexuality is more appropriately learned at a much younger age. The information has to do with issues of identity, the issues of being male and female. It has to do with the issues of relationships, and the question "When is it appropriate and effective for me to be sexually intimate with another person?" "How can I express myself in that way?" And many studies have indicated that young people who have more information about sex-

uality also have less sexual behavior, and less inappropriate sexual behavior. We place particularly the young females in our society in a very severe double bind. We orient young children to please people. The young girl is particularly oriented to please her father and to please other men. At the same time she may not have the knowledge that she has the freedom to say "no" when she is asked to be sexually intimate when she doesn't choose to. In my private practice, I have seen many young teenagers who do not experience sexual pleasure, that don't believe they have the freedom to say "no" when asked to provide sexual intimacy.

The areas of ignorance that are conspiracy against sex education, I would like to describe some of the consequences of them. Most people in our society confuse the subject of gender identity, that is, being masculine or feminine, with the issue of sex-object orientation, that is, as one responsive to people of the same sex or people of the other sex. My students are astonished to discover that these are independent areas.

The issue of personal safety is not covered. When it comes to reproductive sexual behavior, the most dangerous thing that the female can do is have unprotected coitus. We read in the press a great deal of the dangers of the various kinds of contraception. But where is it told publicly that it is far more risky to one's health to have unprotected coitus than to use oral contraception.

The most important learning about sexuality is in the first six years of life when human beings learn half of all of the bits of information they shall learn in a lifetime. For people to wait until college to take a course in Human Sexuality is to have them learning information which they are much better suited toward learning when they are far younger.

Another area of ignorance is in the issue of Sexuality and Aging. Sexual pleasure and companionship is life-long and grows in importance through the life cycle. A recent study done at the City University of New York, of a large number of aging people, found that a strong interest in sex was indicated by 97% of respondents between age 60 and 79, and 93% of the respondents between ages 80 and 91. The popular stereotype of aging people is that they are non-sexual. To view them in this way is to deprive them of the freedom of choice and to invade their personal privacy and I would simply file by title the appalling situations in those facilities that take care of aging people who don't provide them the opportunity for sexual intimacy. We see children and grandparents as being non-sexual, and in fact infants and children and our aging grand and great-grandparents are very sexual and it is important for us to take this information into account.

Recommendations I would make is a much stronger emphasis on human development from the perspective of sexuality, particularly for those who are training to be in the health care professions, and a much broader and deeper program in sex education

that would be at all levels of education. Thank you.

COMM. PINES: One of the areas we're going to be examining is the invasions of privacy that go on in nursing homes and convalescent homes or other places where the elderly are cared for and restrictions on any kind of intimate behavior that exist, probably based on the kinds of assumptions that you mentioned. Any further questions?

COMM. COULSON: I have a question about guidelines for people who will be teaching Sex Education. Do you know of any that exist and would you have any problems on how one would choose the people who will teach these courses?

REV. ILES: Yes, it is a very important question. I began my work as a Sex Educator before there even was such a profession and as such I have no qualifications to teach what it is that I teach. No, I don't have suggestions about guidelines. There are some assumptions about sexuality that terrify me. For instance, it is not possible to have value-free sex education, and lots of people assume that they want sex education done value-free. That is an illusion. We all bring our values to that subject. One's comfort with the issue and comfort with one's own sexuality is intrinsic to being a good sex educator and working with people in any area related to sexuality, formal guidelines and formal training are probably secondary to personal attitude.

COMM. FLEISHMAN: In connection with the lack of use of contraception by teenagers in this country, do you have any thoughts on how there can be a broader dissemination of information so that that can be corrected?

REV. ILES: That is an enormously complicated question and there are lots of suppositions. It is interesting to compare sex education with drug education. We believe that we will prevent people from abusing drugs if we give them lots of information about drugs. At the same time, we believe that we will keep young people from being sexually active if we deprive them of information about sex. That is obviously a contradiction. We must inform young people of how they make choices, how they choose to become parents or not to be parents, and we must give them information about how to choose fertility control, and make it readily accessible to them to encourage them to make responsible decisions about their fertility. If we assume that young people are not going to be sexually active, there is no basis for that assumption. I think that is where contraceptive ignorance comes from in large part.

COMM. FLEISHMAN: It is my understanding -- correct me if you know to the contrary, that there is a prohibition against advertising birth control contraception information on television and radio. If you know whether that is right or wrong, and is that a problem in terms of disseminating information?

REV. ILES: Yes, I think it is a problem. We see most of the personal products that we use advertised. Our life context has the personal products presented to us on television. That terribly important personal product of fertility control we don't see it there, and thus it isn't in the consciousness of many people. We don't see situation comedies, for instance, where a member of a family goes to the pharmacy and buys condoms. So we have the fertility products abstracted from our daily living. It isn't part of our consciousness to include them in our activities.

COMM. McWHIRTER: As a representative of the Clergy, one of the traditional questions that arises in this area is one that I'd like to pose to you. The Church's position about the area of human sexuality and sex education traditionally expects that the parents are responsible for providing that for their children and that seems to me one of the baselines of the privacy issue. On the other hand, it seems to me that in some way, we're making or what we're reporting about sex education tends to take away from the parents and put it more into the public arena. I wonder if you could make some comment about that.

REV. ILES: I'm very sympathetic with that dilemma. I rephrase that concept. All sex education takes place at home. Unfortunately, most of what parents teach their children is fallacious -- because the parents are not informed themselves sexually and they are not comfortable with their sexuality.

COMM. McWHIRTER: You can say that as an "expert" -- but I'm not sure all religious groups say that -- you take a large percentage of fundamentalist religions have a very different opinion -- who is to say who is correct on that?

REV. ILES: In our pluralistic society there are lots of different attitudes. For one thing, the Christian church has no position on sex. There are probably a hundred positions within the Christian tradition, and many of them are in contradiction. Speaking theologically, I believe that sexuality is a very positive value, and it is God's gift. The Jewish tradition has been very explicit on having a positive view of sexuality. Within the Jewish tradition, the most appropriate behavior for the Sabbath is sexual intercourse. Much of the Christian tradition has been very negative towards

sex and that branch of the Christian tradition does have difficulty dealing with sexuality in young people in the home. Contrary to popular opinion, many of the best curricula in sex education have been published by the churches. In Los Angeles County, for instance, the best sex education in schools is in the Roman Catholic schools and the very worst is in several of the public school districts. The Lutherans, the Unitarians, the Methodists, have all had very formal programs of sex education which have been done in the context of the church, but the right wing fundamentalist churches, you're correct, have tended to have no sex education, or very negative sex education. I'm grateful for that pluralism.

COMM. BALADERIAN: I am wondering what age you're talking about for the need to be educated younger than college and some of the problems you are describing of young teenage pregnancy, what age would you say in the public educational setting sex education should begin and also do you have recommendations for curriculum that you would like us to submit and recommendations for the Legislature for educational requirements within the Education Code.

REV. ILES: Well, when I speak of Sex Education, I am speaking very broadly and not referring primarily to information about reproduction. I am concerned much more with relationships. In kindergarten, we start teaching children about relationships, and I think it is imperative that at the kindergarten level we deal with the issue of relationships because those relationships lead in many cases to sexual intimacy. I would like to see all aspects of the curriculum revised to include sexuality. In history courses, let's include the history of different sexual practices and sexual attitudes. When we show school children the family study, let's show them the diversities that we know exist in families. Commissioner Albertson asked for a definition of the family. We must have a much broader definition of families portrayed in the textbooks of early childhood education than just the middle class mother and father. That is sex education. So all aspects of the curriculum that deal with human beings must include relationships that have the potential for intimacy and then as the children grow older and more capable of dealing with the issues of reproduction, then it is appropriate to put those subjects in all aspects of the curriculum.

COMM. WAXMAN: When you are out teaching young people, how often do you come across the young person who doesn't realize they have a right to receive these type of services?

REV. ILES: That's a very common understanding. There is still a prevailing understanding that minors are not able to receive fertility control, for instance, and that is not the case. A doctoral study on contraception done at UCLA which came up with the conclusion that in the minds of the young adolescent, making babies is associated with being married and there is an unspoken mythology in the mind of the adolescent that if he or she is not married, there won't be any babies made, regardless of their behavior. Nobody has ever told them that explicitly, but our general learning has led that to be an association. So, many people associate buying contraception with being married also, and I think that is a large part of why unmarried adolescents do not contracept.

COMM. SMITH: Given that sex education, as you say, can't be value-free, how do you see sex education handling the issue of homosexuality?

REV. ILES: Today, in my class, I began the lecture with an attempt to derive a definition of sexual health and I had the students contribute what they regarded as a sexually healthy relationship. The main thing that they came up with was that a healthy sexual relationship is one which enhances mutual self-esteem and which is non-coercive and all of the students agreed that that really covered the whole issue of sexual values. Then I proceeded to present a lecture on the subject of homosexuality and showed two films depicting homosexual intimacy. At the end of the lecture this morning, the class agreed that what they had seen, depicted sexually healthy relationships because those relationships met those criteria. At another level, my own value system regarding homosexuality is that it is part of one's identity and my belief in a benevolent God says that God doesn't create things that are inherently bad.

COMM. PINES: Thank you very much, Reverend Iles.

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VIRGIL CARPENTER: I am Virgil Carpenter. I am with the Los Angeles County Department of Mental Health Services, and I represent the Patients' Rights Section. I am speaking to you from the viewpoint of the patient here. I have five separate issues and I'll be brief as I can in identifying them and I'd like to direct your attention, being sensitive toward the patient's view on this.

The first one would be that there currently are laws protecting the confidentiality or identification information on any mental patient. This information that is given by the providers or staff working with mental patients. There is no such penalty or law that is corresponding against information being given out by third party payers which provide most of the payment for the people receiving such care. We think that a law should be stretched to provide penalties against any information being released by a third party payer.

The second thing that I'd like to address your attention to is that currently many of the ex-patients are residing in board-and-care homes. There are on the books at this time, laws and regulations that stress that the patient be allowed to receive unopened mail. However, the fact is that the patients constantly complain that their mail is opened by management or owners of the homes, in particular, this is true when it appears to be mail of government origin or possibly containing checks, etc. We believe that these ex-patients should be permitted unopened correspondence and a violation or penalty ensued for anyone opening their mail. This particularly also applies when the patient is a conservatee.

The third issue is that many of these patients living in in-patient type facilities should have the right for appropriate privacy in caring for their personal needs, and particularly, I'm talking about bathrooms. Some of the older facilities do not have any provision for doors or any kind of privacy. It is in a large, sometimes the barracks type of bathroom facility for large groups of people, which certainly is not personal privacy for those indeed.

My other concern is in regard to the right for private communications. This applies to the patients who are residents of in-patient facilities. We feel that these people should have a right for some private setting within the facility for visits with their family or for visits with others outside the facility, as well as a right for private conversations with others who might be in the facility. Currently, what usually takes place is that any conversations must be held in a room with the doors open and they are under observation. We are requesting that some arrangements be considered for this.

The last is the need for some state-wide development of the policy of personal searches. I'm referring to the fact that facilities are often concerned that patients are bringing in contraband, such as drugs, if they're out on a pass from the facility.

So, when the patient returns, they often conduct searches, sometimes strip searches, as the patient returns. Because of this abuse, the County Mental Health Service has developed a policy as a guideline on this issue. The essence of this policy is one which says that there can't be systematic searches. Any such searches should be limited to a specific individual and to a specific instance which is based on probable cause. We feel that such a policy should be implemented state-wide because of course this is simply County policy. Thank you . . .

COMM. PINES: We'd like to have you available as we progress . . . you obviously have a lot of information in areas we are looking at and I thank you for visiting.

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CECILY GREEN: My name is Cecily Green. Professionally, I do many things. Possibly - because of some of my professional experience - I was invited here to address you today.

My work is in the areas of acute and chronic illness, doing a number of things. Dealing directly with patients and with families and working through private practice as well as referrals from some private health agencies. Among the specific things that I do is to work as a sex surrogate. This is a partner for a person who is going through a process of sex therapy. I work only under the supervision of a licensed psychotherapist and it is because of my experience working as a surrogate partner as well as my experience working with people with acute and chronic illness, mostly cancer patients and other life-threatening diseases, as well as being a patient and an unabled person myself, that I have been invited here today. I want to address you on the basis of a private citizen and share with you a few of my personal experiences which may illustrate for you some of the injustice that I have experienced.

One of the anecdotes that I would like to share is the one I experienced just recently. Among the many other things that I do, is I stay on a "tumor board" specifically for diseases of the breast, for breast cancer. Through members of the tumor board, I met all kinds of physicians, medical oncologists, surgical oncologists, pathologists, psychologists, psychiatrists, plastic surgeons, etc. I am there in the capacity as a psychosexual counselor.

One of the cases which came up recently was the case of a 71-year-old lady. After we had discussed completely all of the medical information that was necessary for us to make a recommendation as to the proper treatment to be suggested to this lady, the doctor presenting the case said, "I would like to ask how everyone feels about whether or not she should be offered reconstructive surgery as part of the package that we are suggesting for her." And somebody asked him why he was bringing that up. He said, "Well, I specifically want to bring it up because (remember), this is a 71-year-old lady." Another doctor said, "Well, if she has a boyfriend, I think we should offer it to her, but if she doesn't, why bother?"

This is a problem of the unpartnered person -- being "valued" only if you are connected or about to be legally committed and recognized.

Another anecdote. This recently had to do with a case that I was sitting in on where the medical information was all gathered and there was a question posed by the neurologist whether or not the patient should be offered a penile implant. They said "Well, if he wants it, OK," without any consideration whatsoever for the fact that he was in a married committed relationship. No questions whatsoever whether or not any counselling was done beforehand, but the very fact that he was married, it was OK for him -- but if he weren't married -- in that particular case, it would not be an

appropriate recommendation. This I do not understand.

My experience as a surrogate partner has been many, many times that two of the clinics where I work have men who are single, uncommitted, unpartnered men and they have been given penile implants because of impotence and of course, the penile implants don't make them any more potent than they were beforehand. The whole issue of sexuality is not how stiff you can get it and what you can tick it into, but the issue of sexuality really is how you feel about yourself, whether or not you feel valued and appropriate, whether or not you respect your own right to care and relate with another person by choice. It is not supposed to be whether or not somebody else decides that this is appropriate or not.

From my eight years experience working with critically ill people, many of whom are in the dying process, those who maintain their healthy, sexual self-image, regardless of their opportunities to express themselves with sexual behavior, were the ones who responded most positively to treatment. The ones who did not believe in their own worthiness, who were not treated by the health care personnel, as well as their family physician or institution, as if they were worthy of being cared for in whatever way they choose and their partner's choice — these are the people who responded and continue to respond very, very poorly to treatment. Because most of these people are people who cannot, out of their pocket, pay for their medical health care, it is either the State or the Federal government paying for it, or their private insurance carriers, and we, the taxpayers are eventually paying for it. It seems to me it behooves us all to do everything that we can to get treatment that is given to be the most effective it can be so that people, patients or not, have the right to be treated in a respectful manner, the same as all the young vigorous people that we so often pay our homage to.

COMM. BALADERIAN: Would you say that the sexuality training of the members of that Tumor Board was representative of the sexuality training of the entire medical community?

MS. GREEN: Well, I certainly wouldn't propose to speak for everybody in the Board. But I have personal opinions about it because I've sat on such bodies many times in the past, and for the older physicians who ever had an opportunity to have any sexuality training in medical school, they are the ones who have the most difficulty with these issues. For the younger physicians who have had this kind of training incorporated in their medical school background, as well as a lot of other experience in enhancing their sensitivity to the humaneness of working with human beings, they are inclined to have a much more positive attitude.

COMM. PINCU: I have a question about your role as a surrogate. Do you fear the abusive prostitution laws against you in your role as a surrogate?

MS. GREEN: No, personally, I don't. There is no law that is opposing sex surrogacy, as well as no law that establishes or invalidates it. It has been going on within this community for something like ten years that I know of. I have been practicing for over six years myself. I know that it is available in many other communities in the United States, certainly on the eastern seaboard, but in the last two or three years, I have had indications that it is available in many more communities.

I happen to be a very active member of a professional society for trained surrogates. I am not here as representing the society so I didn't mention that. My experience as being a training administrator, as well as the media chairperson for that professional group, and being in correspondence with therapists, with consumer agencies across the United States for the last several years, I want to tell you that this is a very viable form of therapy for certain kinds of problems, particularly in the area of the unpartnered person. It is my personal belief that the most fundamental learning takes place during the process of intellectual, emotional and physical response to whatever the data is. For example, we don't learn to ride a two-wheeler bike by going to the library and looking up a set of instructions and reading visual diagrams or even seeing movies, and we know how very valuable audio-visual materials are in the learning process. In order to learn to ride a two-wheeler bicycle, we must have one available, and must get on top of it, and we must fall many times. It is a combination of intellectual and emotional and physical response. Likewise, I think that for an unpartnered person to develop social skills and learn to behave in a sexual and socially appropriate manner, to validate the laws and the rules that is permitted him, he must have someone with whom to practice.

COMM. PINCU: I have no question about the usefulness and even the appropriateness of surrogates. One more question: Are surrogates used for gay relationships, or are they only used within the heterosexual context, for people with sexual problems?

MS. GREEN: Surrogates are never used. However, surrogate partners, under the supervision of trained therapists, work with all kinds of orientations. That is really a very small part of it. For people who have accidental traumas as well as congenital defects, they must have an opportunity to actually work through relational as well as physical processes to learn and to get comfortable with them.

COMM. ESKIN: It's your understanding that there is no statutory or administrative regulation of the services provided by sexual surrogates?

MS. GREEN: That is my understanding, yes. About four or five years ago, there was a national conference held here at UCLA entitled "Surrogate Therapy and the Law," which I attended and Mr. Fleishman attended also, and probably some other people here. This was a discussion of the law in regards to surrogates across the country, as well as here in our own community. It is my understanding as a result of that (and sitting for three days in a whole bunch of presentations), that there is no law.

COMM. ESKIN: Have there been any prosecutions?

MS. GREEN: There have not even been any charges levelled.

COMM. ESKIN: Do you believe there should be a series of regulations governing this area of practice?

MS. GREEN: Yes, I think there should be. However, how to define them to draw up the guidelines, I really am not very comfortable with. One thing I feel very strongly about is that anyone who works as a surrogate partner needs to be specially trained for it. It is not just good intent and compassion for your fellow man, as well as comfort with your own sexuality, that makes you an effective tutor.

COMM. FERTIG: Does your association attempt to certify and regulate its membership?

MS. GREEN: Yes, we do. We publish a code of ethics which we have and we share with any other professional organization in the country to which we require our members to appear. We also have a training class. We have several a year where we are very, very careful in the selection of candidates who apply for the training. The training consists of three months of very specific experiential and course work in the whole area of human sexuality, as well as in therapeutic techniques, as well as everything that is necessary to know about lifestyles, postures for relationship issues, communication and specific things that being an ethical professional partner in a therapeutic team requires. To this, is added a six month, closely supervised internship, written and oral examinations, constant counselling and therapy and so on.

COMM. FERTIG: Where do most of the clients emanate from — the therapists?

MS. GREEN: Always from the therapists. A client cannot call up a surrogate and say: "I want you to work with me." You can't do that if the client has no therapist to supervise the therapy, the surrogate or our referral service would be happy to recommend three appropriate therapists in the client's community, but the client must choose the therapist themself.

COMM. FERTIG: And the records are kept by the therapist?

MS. GREEN: The records are kept by the therapist.

COMM. WAXMAN: How is sex therapy paid for right now and how does that affect the opportunity for someone who lives on SSI?

MS. GREEN: Sex therapy is paid for as any other therapy is paid. If you have insurance that covers psychotherapy, then your insurance carrier will pay the supervising therapist directly on a professional hourly basis. If your insurance carrier does not cover psychotherapy, then the sex therapy is paid out of their own pocket. For people who are on State, County or Federal aid, there is no coverage at all. Insurance does not specifically pay for the surrogate therapy part of this whole experience. However, many, many policies, and particularly when the surrogate works as an outside contractor, perhaps bills the clinic agency directly. Payment to the surrogate is made through the supervising therapist or a clinic and the clinic bills the carrier directly for total services. This would include not only the services of the supervising therapist, but any ancillary services such as physical therapy, occupational therapy and so on. For people without means, unfortunately, there is just no opportunity.

COMM. FLEISHMAN: Do you know whether the Veteran's Administration makes the services available to disabled veterans if they need sexual rehabilitation? Is that one of the services of the Veterans' Administration?

MS. GREEN: The Veterans' Administration does not, to my knowledge, make this available. However, I do know a number of referrals from specific doctors at the Veteran's Administration.

COMM. FLEISHMAN: Paid for then by the VA?

MS. GREEN: No, not paid for by the Federal Government. I really don't know who was paying for it.

COMM. McWHIRTER: Being a sex therapist myself, I'm not aware of any insurance carrier who will cover sex therapy.

MS. GREEN: No, I'm not either, specifically, but there are a number of psychotherapy identifications and most sex therapists believe that they are psychotherapists, although not all psychotherapists are sex therapists.

COMM. McWHIRTER: The point I want to make there, however, is that we still, if insurance companies themselves do not consider sexual health an issue that should be covered under regular health insurance, psychotherapists must identify some other difficulty such as depression or anxiety or some other emotional state that has a label, that may be ascribed to it, in order to pay for that service. As far as I know, there are no insurance carriers that will cover surrogate therapy yet.

MS. GREEN: What we're really talking about is the fact that somebody has to be labelled "sick" in order to get the same opportunities, the same respect, as we healthy people have. I think that is very unjust.

COMM. PINES: Thank you very much.

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CHRISTINE MASTERS: My name is Christine Masters, and I am a trial attorney for the United States Equal Employment Opportunity Commission. The EEOC was first initiated by Title VII of the 1964 Civil Rights Act. It was created by Congress to enforce laws which prohibit discrimination in employment on the basis of race, sex, color, national origin and religion and I believe it is to this end that I have been invited here today, to speak to when sexual harassment or a right to personal privacy in your sexual relations rises to a violation of the Federal laws on discrimination on the basis of sex.

You had a gentleman here earlier from the California Division of Fair Employment and Housing and there is a State statute that prohibits sexual harassment in employment that I would relate the two with slight jurisdictional differences, but it is basically that the law prohibits sexual harassment in employment.

The Commission has recently issued guidelines on the definition of what constitutes sexual harassment in employment. It affirms a long-standing policy similar to racial discrimination and intimidation, where there may be verbal or sexual conduct which rises to a violation of discrimination laws. Our guidelines, which I didn't bring copies of, but I would be happy to provide to you, provide that unwanted or unwelcomed sexual advances, requests for sexual favors, verbal or physical conduct of any sexual nature, may violate the law where submission to this kind of conduct is made a term or condition of employment, or where rejection of sexual advances is used as a basis for an employment decision. For example, if an applicant went to a job site and was told by the interviewer, "If you sleep with me, you have this job," that's where submission to or rejection of this advance could become discrimination.

In the final aspect of when sexual harassment violates the law, Title VII specifically, and other laws, would be when it becomes a term and condition of your employment, where it creates a hostile or intimidating or offensive working environment, such that it unreasonably interferes with your work performance.

I think this relates to what issues you are dealing with here today in that, as an individual, male or female, you have a right to be judged on your individual merits for employment, rather than your engaging in sexual conduct with either a supervisor, a co-worker or an interviewer. To this end, we have an administrative process similar to the Division of Fair Employment and Housing, which provides for investigation and, perhaps in certain instances, litigation of allegations of sexual harassment.

The fact that sexual harassment is widespread is without question. I think that, starting in 1975 or 1976, there were a number of surveys which found that anywhere from 40 to 75% of respondents to questionnaires were victims of sexual harassment or had experienced some form of sexual harassment on the job, and remarkably, a lot of this sexual harassment goes on in the Federal Government.

I think it is important to remember that sexual harassment cuts across all lines — it happens to men, it happens to women, it happens at age 20, it happens at age 60, it happens to black women, it happens to white women, it happens to any kind of individual.

While we do have certain laws that deal with this problem in employment, I don't think it adequately addresses what is going on. I think several of the other people who testified here today, have alluded to the fact that we need education in this area of sex, sexual stereotypes, sexual identification. We can have all the lawsuits in the world and the theory being that money damages might deter people from taking certain actions, but I don't believe that simply having laws on the books is going to deal with it. I think, if I could recommend anything to this Commission, it is that they implement some of the suggestions that are being made because by the time a person comes to our agency or the State agency, complaining of sexual harassment or discrimination on the basis of sex in their employment, nobody wins in that situation. The employer has lost, it's the employee's loss, the applicant's loss. While we may be able to compensate individuals for certain damages they may have incurred, I don't believe that lawsuits are the ultimate answer to this problem.

I could talk to you about several of the cases that have been coming down in this area, where they find that sexual harassment as a term and condition of one's employment, where you just go to work and daily somebody makes a comment about your body, or daily somebody makes a comment about "won't you go to bed with me?". It pervades the atmosphere. Courts have now been finding that those things are violations of the law and damages are going to lie. There are also cases where homosexual advances have been made to applicants and employees and that has also been held to be a violation of sex discrimination law. In the early stages, where the person of one gender made an advance to the person of the same gender, the argument was that that's not "discrimination on the basis of sex" because it is from the same gender, but I think the courts are changing their views now and more and more we are seeing that these kinds of behavior are being found unlawful in the employment context.

I'd be happy to supply any kind of information. The Commission receives probably ten-to-fifteen charges of sexual harassment every week here in Los Angeles alone. Since 1980, when our guidelines were first promulgated, we brought three matters to litigation. They have all settled before trial. This is just an indication, though, of the widespread problem that is going on.

In closing, I'd just like to say that there may be a difference between the fact that the State prohibits certain forms of discrimination, including sexual harassment, sexual orientation, sexual preference, while the Federal Law doesn't reach those

issues, I still think the laws are serving a valid purpose, but I'm just not sure that they go far enough. I hope your Commission can take the recommendations and go even further.

COMM. PINES: Thank you. Of course, we would appreciate any written materials you would like to provide to us.

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STEVEN KELBER: My name is Steven Kelber ... I am an attorney in West Hollywood. My clientele is basically gay. I deal in probate and estate planning as a portion of my practice. I'd like to address some of the problems that are encountered by gay couples as it relates to the unequal tax treatment provided by the State of California in the area of inheritance tax. I would also like to briefly address the question in discrimination in housing, but I'd like to spend the bulk of my time on the question of inheritance tax.

Being passed out now is a chart which I prepared which illustrates some situations and indicates the unequal tax treatment that is provided. For any members of the Commission that do not know exactly how California Inheritance Tax works, it is based on separate categories, depending upon the relationship of the recipient of the estate to the deceased.

The most favored category here are married couples where under recent changes in the law, the entire estate passes to the surviving spouse without tax. Going down the line, you have minor children, adult children, people who are related by blood through aunts and uncles and then finally all other people who are categorized "strangers." Now the peculiar situation as it applies to gay people is that your lover of 40 years is a stranger and you are taxed as if you are giving your money to a complete stranger as far as the State is concerned. This also would apply to unmarried heterosexual couples, but a heterosexual couple at least does have the option to marry and thereby save themselves a lot of tax dollars. Gay people, however, do not have that option under the present state of the law.

The inequalities come at two stages. The first inequality comes in any gay relationship that even in an estate as small as each party in the relationship having an estate of 150 thousand dollars, which would mean just about any couple that jointly owns a house in Los Angeles. You can end up with tax on the first death of in excess of \$22,000. I have administered estates where a sale of the house was forced because that was the only asset, the estate was not liquid, and the stated legislative intent in the recent change in the tax laws was to protect just exactly this situation as it applies to married couples, that they wanted, especially in small estates, not to take away the family home on the death of one partner -- that remains a problem for the gay community -- there was a gross tax discrepancy under the old law and there is even greater margin of discrimination under the new statute.

The second discrepancy happens when you are talking about the ultimate estate planning purpose which is to pass the wealth from one generation to the next. I have laid out a hypothetical lesbian couple, each with one child, and compared them with a married couple with two children. Not only is there initial tax on the first of the gay couple to die, but there is also a discrepancy in the passing of the

estate to the children. Assuming that this couple wants to leave, as is normal, first, to my surviving spouse, then equally to our children. The lesbian couple cannot adopt each other's child. Two divorcing members of heterosexual couples who marry, each having the custody of one child, can mutually adopt each other's children. A lesbian couple can't do that. You can't have a mother and an adopted mother. You can't have a father and an adopted father.

There is an added drawback that, in the gay situation, before the first step and in the surviving child problem, that if you do go through an adoption, you are foreclosed from taking by intestate succession from your original natural family. So, even though that holds out some slight tax benefit, you can at least rise to the category of child as opposed to stranger, but you are then foreclosed from your rich uncle dying without a Will and passing his estate to you. You are foreclosed from being named executor in line for your father who dies without a Will. Obviously, this isn't a choice that a person should have to make in order to get semi-equal tax treatment under the law.

You have the additional problem if you go through an adoption that your family is notified. There are a lot of people who simply do not want to notify their family. I have a number of estate-planning clients who are awaiting the death of their parents in order to go through an adult adoption. I think it is a sort of sad state of affairs that the State would force you to take this kind of risk when there is the amount of money involved (as sometimes is) to wait to prevent hurting your family's feelings. So you take a risk. You risk the quarter-of-a-million dollars rather than offend your 80-year old father. This is well and fine.

Back to our lesbian couple. The first dies, a tax is paid. The second dies, and in her Will, there is a provision that her entire estate is to be divided equally between her child and the child of her predeceased lover. Her child takes, as any child would, with the tax that any other child would pay. Of course, there is less of an estate to pass because you paid the tax at the first step. The other child, however, has the portion of the estate passing to that child taxed again as a stranger, so you would have a double tax inequality in passing it one generation. I think that if you would glance at the chart, you would see that just the percentages of the estate passing from generation-to-generation is really quite remarkable, and in the last example, we are talking about a combined estate of \$2,000,000 — the net result is that there is an additional \$250,000 paid in State Inheritance Taxes. In addition to this, the Federal Government also has unequal treatment, and basically, you can end up with about HALF of the estate that you would, did the law allow you to marry!

In conclusion on this particular subject, I would like to point out that the choice of a living partner is a purely private matter. For the State to encroach on your choice by penalizing you to the extent that these Inheritance Tax laws penalize you, could almost be considered enough to cause you to reconsider your lifestyle choice. I will grant you that this is not a concern of most gay people and the reason it is not a concern is because they simply are not aware of it. The entire structure of our law of succession is based upon the reasonable heterosexual white male. If a gay person wants to leave his estate to the people who are actually his family, which in many cases -- at least, in the case of people with conservative backgrounds -- their family has disowned them, disinherited them, or what have you, their natural choice to pass their estate is going to be their lover, their dear friends. A huge chunk of their estate is going to be taken because of their personal choice to select a family that is supportive of them as opposed to a family that has rejected them.

Moving very briefly to housing -- I know that you had people from the Fair Employment and Housing Commission, and from other Commissions, here talking about protection under the Unruh Civil Rights Act, and it's nice that the Housing Commission is moving the way it is. Unfortunately, apparently the courts are not moving in the same direction. I am currently handling a matter where I am trying to establish that the Unruh Act, insofar as it extends to all arbitrary classifications, also includes discrimination against gay people in housing. Now, my municipal court seems to feel that discrimination against gay people is either not arbitrary, or for some other justification, does not come under the ambit of the Act. It is my belief that even if we get rulings in some appellate court to the contrary, that this is going to be a problem until there is action on the State level to specifically indicate that gay people are people -- that to discriminate against us is arbitrary because, well let's face it, we are not the most-favored class of people as far as the society as a whole goes! To have to battle this out on an item-by-item and on a case-by-case basis is simply that you're going to run out of ACLU funds, and you are going to run out of gay lawyers who have the time to push these things. I would prefer seeing some State action on this, rather than ultimately ending up in the Court of Appeals with another Dred Scott decision. That is basically what I have to say today.

COMM. PINES: Thank you -- appreciate your work. I'm sure there are a number of questions. Ms. Albertson . . .

COMM. ALBERTSON: Let Mr. Berg go first . . .

COMM. BERG: Thank you for your provocative and lucid comments, Mr. Kelber. I'd like to refer to the first part of your presentation and the current tax structure. I, too, have experienced in my private practice in San Francisco, similar problems that you allude to. The Commission is charged with making recommendations and I am wondering if you have any suggested solutions that you might present to the Commission for consideration.

MR. KELBER: As an avowed liberal, I am loathe to urge the repeal of the last progressive tax in the State of California, but it seems to me that some provision has to be made to allow a person to pass a certain amount of his estate tax-free without regard to the relationship between the testator and the beneficiary. Now, if this was keyed in terms of protection for unmarried persons, that would be fine. It could be keyed in any terms, in any way you'd like. A switchover to an estate taxation might accomplish this, assuming that there were no marital deduction. Unfortunately, the State has a tendency to follow on the heels of the Federal Government, and I think there would be a great uproar if marital property were not exempted. It would appear that the only way that you are going to get equal treatment without moving backwards, vis-a-vis, married couples, is to simply eliminate the requirement of the marital relationship for the passing of an estate up to a certain size and then tax beyond that. I suppose that language to the effect that persons who can, that any individual by way of Will could designate a person as a life-partner, to take care of it and make some provision in the intestacy statute that, lacking a Will, that a person can demonstrate a quasi-married status for purposes of inheritance by demonstrating an on-going relationship of "X" duration. It is messy.

COMM. PINES: You sure don't want the government prying into the relationship to determine whether it need meet a multitude of criteria. You're saying that it would just require length of duration.

MR. KELBER: I wouldn't say that you are going to want to demonstrate a monogamous relationship, certainly.

COMM. PINES: This is a similar issue that Mr. Todd was struggling with when he came to the City, this is something that he dealt with when I was City Attorney, trying to provide some protection against outright fraud, but yet not have the government involved in examining that relationship to any specific extent.

MR. KELBER: I think it would be a reasonable compromise, assuming that there was a real effort to publicize in the gay community the change in the laws, to simply enable gay people to take appropriate legal action to protect their life-companion. Even if you let the intestacy statutes alone, simply enabling somebody to qualify the partner for the marital deduction or to receive the status of the marital partner by way of Will, would eliminate the problem, at least in the estates where it really makes a material difference. We are still left with unequal treatment because gay people who are either uninformed or have a hang-up about writing a Will, or what-have-you, are still going to be left with unequal treatment -- but at least it would eliminate the problem that we are currently faced with, that there is no solution, and that there is no way to avoid the unequal tax treatment.

COMM. FLEISHMAN: Do you have any thoughts in terms of a solution being in the possibility of having homosexual marriage, for example?

MR. KELBER: I'm personally opposed to that approach, but that is a personal bias. I would really like to see an approach that would allow for more flexibility in terms of lifestyle. I would like to see a situation where if I decided that I would have two life-mates, that I can leave my estate equally to both of them, or they can both be treated the same under the law. I would say that that approach would be better than none, but I don't think it allows the flexibility that is really necessary because I think that the tendency, at least on the forefront of the gay movement, is not to attempt to parody the straight relationship, but rather to find the relationships that are most fulfilling.

COMM. BALADERIAN: This may sound like a ridiculous question but, is there any reason why the marital status should have anything to do with what one does with their money?

MR. KELBER: I don't believe so. Apparently the State Legislature does.

COMM. BALADERIAN: Is that reasonable assumption or --

MR. KELBER: You have to understand that our laws are based on traditional family patterns and that, for instance, the intestacy law assumes that if a man does not leave a Will, that his first desire would be to leave his property to his wife, to his children, barring that, to his parents, to his brothers and sisters, then to his cousins, and beyond first cousins, the State assumes that the reasonable man would prefer that the money go to the State rather than to his third cousin!

COMM. BALADERIAN: How do you find out if that is the reasonable man?

MR. KELBER: The law has stated that that is what a reasonable man wants. Obviously, today that is not true. Maybe a hundred years ago, if you polled 100 people, 98 of them would have agreed with it, and anybody who did not agree with it was free to make a Will and leave his property in any way he wanted and was penalized for deviating from the norm with an increased tax load. Be that as it may, and perhaps the State has a valid interest in promoting the family and promoting the transmittal of wealth to surviving spouses and to surviving children. By the same token, I don't see that the State has an interest in penalizing someone for passing their property to someone who is a natural object of their affection but doesn't happen to have had the opportunity to legally formalize the relationship. It is very difficult because, in proposing anything at all, you have to understand that the vast majority of the population still is heterosexual and still is living in family units, however volatile those units may be, and the main concern of the Legislature is still for the majority of the population and to deal with their concerns, and that is exactly why we increase the marital exemption to 100%, to eliminate the tax burden at the death of the first party. I don't see that as bad, I don't see that as something that needs to be reversed, but it certainly does add an extra complication in terms of trying to equalize treatment for non-married people.

COMM. PINES: We had one witness that we told we would try to get him on by 2:30 because he had to return to his office. Any more questions?

COMM. ALBERTSON: You've noticed that we have been struggling for a definition of family. It seems to me that what you are saying is that we should be looking not only at how a "family" is defined, but at "alternative relationships" as well, that may or may not be considered family in the broadest sense of what that term might be....

MR. KELBER: I agree very strongly with that. I think that there is definitely a move, not only in the gay community, towards more opened, less defined relationships, where it is permissible to have more than one special person. Certainly, if you have more than one special person, you should have the option to treat them equally.

DR. D: First of all, I want to apologize for going by an initial. I am quite open about being gay, have been for the last six years, but I am discussing something today about adopting, and it appears as though the only way for a gay couple to adopt is through methods that are dishonest, if not illegal, and we are still looking, we have not given up the possibility of adopting a child sometime in the future and it is my fear that there might be someone here in the audience that might make that more difficult for us in the future should we go ahead and proceed. Some of you know me already, so I think you know that I am open about my gayness. I am not at all in the closet anymore and neither is my lover. We have been trying to get information about adopting children. I'm 37, my lover is 34, and we've been together eleven years. I'm a physician (my lover and I work together, he is my office manager), and most of our friends are non-gay and have families. We have a home out of town, at the beach, on the water, and they often come to spend weekends with us, so we are around children quite a bit; about one-fourth of my practice is children, and for the last five years, I've done volunteer work over at a home for emotionally disturbed children up in the Valley as a Los Angeles County volunteer, so we miss not having children. It is the one thing about being gay, I think, that is most difficult for us --the fact that obviously you have to be a childless couple.

So, for the last year, we have been looking into the possibility of adopting a child or children. From the very beginning, our attitude was that it would be impossible for us to adopt through traditional means. The first inquiry I made was in Mexico. I also do volunteer work with the Baja Crippled Children's Program in Mexico. I made inquiries down there and was referred to an attorney in San Ysidro who told me how easy it was to adopt in Mexico. He said, we'll have a baby for you within two months. No questions asked, very, very simple. We went ahead and proceeded, and sure enough, in two months, he had a 2-1/2 month-old baby for us. However, when he started to talk about smuggling the baby across the border, it became quite apparent to us that we were going to be getting an illegal alien and we discussed it at length and decided that we would not go that route, because you never know, any day Immigration could be knocking at your door. Eventually, I fired that attorney and went ahead and we didn't get our 2-1/2 month-old baby. But, we then went ahead and made inquiries about the possibility of actually adopting here in the United States through ordinary, legal means, and I have a patient who is a social worker and discussed it with her, and she referred me to the Los Angeles County Bureau of Adoption to speak to one of their social workers, and she recommended that I go ahead and be open. I discussed our relationship with her and was completely open about it. She really didn't know if it would be possible or not. She got back to me in three weeks, however, and told me that it was not possible through Los Angeles

that the child in the future could possibly sue the Bureau of Adoption for placing a child in our home. Of course, we are hearing more and more about children even suing their own parents when they grow up so I can understand this possibility.

So, I gave up on that. I then started looking at other options: the possibility of adopting overseas in a legal way. This is a complicated procedure and it also requires a Home Study. The Home Study can be done either by the Department of Social Services or by a private adoption agency. I started making inquiries with private adoption agencies. My mother is working on her MSW and she has a friend that was the Administrator of Vista Del Mar Adoption Agency. I spoke to her first and she told me to go ahead and be open and discuss the entire situation with the private adoption agency and tell them the whole truth. It is really true that I wouldn't really be attempting an adoption if I was by myself. The fact that we are a couple is really the reason we feel that we can provide for a child.

I was open about the fact that there were two of us and that we are a gay couple and the social worker I spoke to at first was very positive. She stated to me that she had just placed a child with a gay man but he had not told them he was gay. She said that they knew he was, I don't know exactly how they knew, but somehow she knew he was gay. She said he was a nice person, would be a good parent, so they went ahead and placed a child with the gentlemen. She said the fact that you told me right at the start does make things a little bit different, I will have to discuss this with the Administrator. She did, and a week later, he called back to inform me that it would not be possible for them to help us because the Home Study would have to include the information that we were gay which would then make an adoption impossible. The Administrator spent some time discussing with me the possibility of merely going to another agency and lying, not telling the truth, which is an uncomfortable thing for me because as I say, we really wouldn't be attempting an adoption, I certainly wouldn't if I were alone. The fact that there are two of us, I think, makes the situation more of a family situation and we are more able to take on that kind of responsibility. In any case, he spent some time going over the types of questions that I would be asked and advised me to go on with another adoption agency and just not be so open. I also went back and spoke to the woman who had referred me to that adoption agency. She spent over an hour actually going over the questions and what kinds of lies I could tell -- the actual answers, the types of answers that would be believable.

We are still looking into alternatives to adopting -- such things as surrogate parenting and the different ways that we might proceed in adopting, perhaps overseas, but there is still the problem of a Home Study. The fact that not only would I have to lie a great deal, but my friends and my neighbors would probably have to

lie as well because sometimes they do ask neighbors. Interestingly enough, they are all willing to lie. I've discussed the possibility of going that route. It is possible at some time in the future I may show up at an adoption agency as a single male adult and try to be that deceptive in order to get a child. We haven't quite decided whether to do that or not, I am not that good of a liar and it is going to be rather difficult for me to be convincing when it is something this important.

COMM. PINCU: I am very much concerned about what is obviously the hypocrisy of your speaking about that. If you weren't out front and open about it as a single parent. Probably you have all of the qualifications for adoption, whereas being out front and open about your sexual preference, you don't. The question has occurred as to obviously there are some attitudes in society, objections to gay adoptions, and I'm wondering whether you can respond to that. Are you getting the attitude that there are myths that, for example, gays would molest the children, things of that kind, or in terms of the role-models determining the sexual preference of the offspring? I'm interested, if any of these are your considerations, and how do you respond to all that.

DR. D: Are you referring to my attitudes, or the attitudes of other people?

COMM. PINCU: Actually the attitudes of what you seem to be getting.... Obviously, these agencies must be able to have some reason to want to exclude you from parenthood.

DR. D: Well, I'll tell you really, the attitude that I've gotten from the social workers that I've spoken to is that they are not themselves against the idea of us adopting. They feel that it is impossible because of the procedures. Actually, the ones I've spoken to have spent quite a bit of time with me, and certainly behaved as though they were genuinely sorry they were not able to help us. As I say, one social worker spent well over an hour on the phone with me, explaining exactly how I could go about adopting if I was willing to lie. I might also add that our friends in the community where we live are very supportive of the idea of us adopting and most of our friends, as I say, are non-gay people and family people. And people have been extremely supportive, much to my surprise. At first, when we were discussing the idea of adopting, I and my lover were a little hesitant to discuss it with some of our straight friends. But little by little, we have discussed it with just about everyone I know, and the support that we've gotten from people individually has been really gratifying.

COMM. ESKIN: Following up on Mr. Pincu's question, no one has taken the time to explain to you why your sexual preference would disqualify you from adopting?

DR. D: Well, the one social worker I was speaking to that spent the time with me over the phone indicated to me that they would have to include it in the Home Study and that procedurally, for instance, in a case of a foreign adoption, the Home Study would go to the Bureau of Immigration and they would have to approve the visa for the child to enter the country. You have to go through Immigration, and it was their belief that Immigration would not approve the visa. In addition the Home Study would also go to the foreign adoption source. In many cases, these are adoption agencies in Latin American countries operated by the Catholic Church and Mother Superior of so-and-so adoption agency in Bogota, Colombia, is not going to give up a child to us.

Even here locally, not adopting overseas . . . first of all, the County said it is simply not their policy to make these adoptions. The private adoption agency said that the fact that I was open about being gay, that they could also not place a child with me. I might add, the Department of Social Services is another, or other people that I have spoken to. I spoke long distance to a man in Sacramento who gave the same advice: lie.

COMM. ESKIN: Did anybody take the time to explain to you the reasons for the policy that would guide whomever would receive the Home Study, and decide that a person who is homosexual is unfit to be a parent and therefore could not adopt?

DR. D: They certainly didn't explain to me in any other way but to say that it was not the policy to place children in gay households.

COMM. ESKIN: But the reasons for the policy were not articulated?

DR. D: I assume that even the social worker might not know exactly the reason why the policy was such.

COMM. ESKIN: Do you know if the policies were in print?

DR. D: No, I do not. I know the woman from the L. A. County Department of Adoptions had to go check with her superior. She took three weeks to get back to me about it and she apparently went and spoke to some of the people higher up

in the Department of Adoptions here in Los Angeles County. Three weeks later, she got back to tell me that, because of matters of liability, because the child might sue later on, you know. For instance, say they place a child with our family, the child grows up, 18 or 19 years from now, and decides to sue them because, for one reason or another, the child feels that he or she was improperly placed.

COMM. ESKIN: Apparently the person to whom you spoke in turn spoke to a bureaucrat who said it is our policy not to do this but so far as you know that policy is not public.

DR. D: As far as I know, it is not.

COMM. PINCU: That is my concern also, is that, were you running into some personal homophobia of the Administrator or actual set policy? I gather you don't know . . .

DR. D: I have no way of knowing for sure. I know the people that I spoke to gave every impression of being very supportive. What their true feelings were, I could only speculate.

COMM. FERTIG: Doctor, being involved in an adoptive process myself, could either of these agencies refer you to any other source for child?

DR. D: The private adoption agency told me to go ahead and proceed with some of the other private adoption agencies that are here in Los Angeles, of which I had a list. There are about five private adoption agencies in Los Angeles that a person can go through other than the ones that I inquired at.

COMM. FERTIG: Is this after you advised them that you were in a gay living situation?

DR. D: From the very beginning I explained that, from the very start.

COMM. FERTIG: After they turned you down, they still . . .

DR. D: They said refer to your list of adoption agencies. There is Children's Home Society, there's Holy Family Services, there's Latter Day Saints, but they only deal with people from the church. There's two or three other adoption agencies here

in Los Angeles that are private and they referred me to those and they told me to lie. The man from Department Social Services also told me to go ahead and file with DSS herein Los Angeles and just not give them that information. This man was in Sacramento. He said, file in Los Angeles, I won't say anything, you don't say anything and it will go through. There is a wait of about a year for Home Study through DSS and even through some of the private adoption agencies there is a wait from six months to a year. We may, after we take enough time to really think about whether or not we're going to be able to be that deceptive, because in a matter this important, I'm going to have to rehearse a pretty good act. Every one without exception, both private adoption agencies and Department of Social Services, have told me that I will have to lie.

COMM. PINES: No one has shown you anything in writing. No regulation or any rule that would prohibit a child being placed in your home?

DR. D.: No one has shown me any printed material. They've all indicated to me, however, that unless I lie, there is no way possible.

COMM. PINES: Thank you very much . . .

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RICK MARTIN: I'm Rick Martin, and first let me say that I'm not in the habit of testifying before Commissions of any sort, but one thing my observations over the years have been that Commissions at State and Federal levels both have written more reports that have never been read than anything else. I thought, well, I wonder if anything will come of such a Commission as one on Personal Privacy. But then I found out that Tom Coleman and Barbara Waxman were two of the Commissioners and I felt that with a group of people of that calibre, they're certainly doing it for their own satisfaction to do everything they can to see that the recommendations of the Commission are implemented. So, I thought I would give my views briefly.

The reason for carrying my briefcase is not because I have a speech to make here, it's because I have more than one item that I wanted to carry and it is easier to carry due to a physical handicap of using only one hand, it is much easier to use a briefcase.

I want to briefly tell you how I became very interested in the matter of personal privacy which goes back to my youth. I was in college at the time of Pearl Harbor and was called into the military service which turned out to be as a pilot in the Air Force. I serviced for a period of the duration of the war and then went back to college and then I was offered a regular commission in the Air Force. I went back in on a four year obligation to serve as a regular commissioned officer (and a pilot), and I had not really given much thought at that time to the fact that here I am, a man with gay inclinations, going into a military organization which does not, according to their rules and regulations, allow such activity. I really didn't give much thought to that because, during wartime, I was so busy in training and flying combat missions, I sublimated my sexual inclinations almost completely.

Then after I had been back in for three years as a regular officer, I began to realize that unusual things were going on and that people were watching everything I was doing. I couldn't figure out why for a long period of time, but one day I was a junior officer stationed at Air Force Headquarters, and I was called away from my desk to go to a certain office in another part of Washington and I was accused by the Senior officer of having performed homosexual activities and he pointed to a stack of pictures on the desk and said "We have photographic evidence of your activities and we are asking for you to resign from the service or to be courtmartialed. Your alternative is that you resign now with a discharge under conditions other than honorable or you will be courtmartialed." So I picked the resignation. It took me many years to get the discharge changed to honorable, which I finally did a couple of years ago. They made quite a fight on that. So I know the consequences of being denied personal privacy in any way, and I would hate to see our society ever reach a point where civilians were treated the way the military treats persons who have

different ideas about what they want to do privately than some other people in society have.

With that in mind, I would like to say that I am a gay man who will be 60 years old this December twenty-second, and when I looked at your list of committees, and you have one on Aging and Disability, I could relate to the disability right away because I have the use of only one hand and I have limited active use of my left foot as a matter of fact. About the aging, I thought, well you're still a young man by most people's standards of aging. Then I realized that my father died at the age of 68, so that makes me interested in the fact that, unless I can outlive my father by a lot of years, maybe I'm reaching old age as far as that is concerned.

You also have a committee on Employment Discrimination and I had a very bitter experience on that which is the reason I retired at age 55. The company I had worked for for twenty-one years said they no longer had a job for me and though they did not give the reason that they didn't have a job for me, being that I was physically disabled, there was quite a bit of indication that that was the primary reason. So I have a lot of interest in what your Commission is planning on studying here. I want to say that I am currently active as the Second Vice-President of the California Association of the Physically Handicapped, Los Angeles Chapter. I'm not here representing CAPH, because it is a State organization and I'm only a member of a local chapter and I am not a State Officer. But I do have some information on CAPH available if anyone on the Commission would be interested in finding out more about what the Association does.

COMM. ALBERTSON: Does the Association have a provision at all on personal privacy or is the association probing, as this Commission is probing?

MR. MARTIN: I can find out more about that for you from the State Officers, but I can't answer that off-hand. Maybe Barbara Waxman already knows.

COMM. WAXMAN: I'd like to answer that. Around a year ago, more than a year ago, I started the Committee on Sexual Rights for CAPH and the present administration of CAPH. That committee was ended a few months ago.

MR. MARTIN: I wish you much success. I think what you are doing is important to all of us as citizens.

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DONNA SMITH: My name is Donna Smith and I am here not as an expert, but from my own personal experiences . . .

When the woman with whom I shared my life for 40 years died a few years ago, we had known that she was terminally ill. We had gone to attorneys. We had never been warned about the Inheritance Tax, we just seemed to be told, well, this \$100,000 is exempt. Later, I found out from related persons, that only \$300 is exempt at that time (now it is \$3,000), and the rest would be taxed at least 50%, because everything was in joint tenancy -- our savings, our home -- and it would be taxed at not what we had paid for the home, but at the current market value. The assessed value then would have been probably \$110,000. I went back to the attorney and by proving to him that I had earned the largest percentage of the income (about 85%), and she had earned some, but mostly had run the home, I avoided the Inheritance Tax, and am the only one I know of that did. It cost me several thousand dollars in attorney's fees, of course, to do so, but I had to reconstruct my earnings back over forty years. I had to go back to employers, I had to explain and there was a great deal of invasion of privacy at this time, of course. She had been a rather private person. I was more open, I have now "come-out" since her death, I am out as a gay person, but they told me that I would have had to pay like \$10,000. At that time, I would have had to sell the home and liquidate it to pay those taxes! On top of that, they would reassess the property for the Real Property Tax, and here again, they would reassess it at current value, not what we had paid for the home. I would have been billed probably \$100 a month for taxes.

At this time, two years later, I still do not know whether the property will be reassessed. I sit on tenter-hooks waiting. I just got my property bills, they are still in her name and my name, although the Grant Deed has been transferred to my name several months ago by the attorney. If they decide to take her name off and reassess it, I will then be forced to sell the home, as I cannot pay those kinds of taxes unless I take the Senior Citizens Property Tax Exemption. I am 62 - will be 63 - but I think you have to be 65 I'm not sure.

I would like to mention that at the time my friend died, and I went to the hospital about four o'clock in the morning, to see her body for the last time, to say goodbye, I was not left alone in the room with her. They insisted that a man be there because I was not a related person. When I broke down in tears, he said, "Oh, was she your mother?" She was nine years older than I, but dying of Cancer, yes, she looked as old as my mother. I just stared at the man. I couldn't answer him. I finally did say, like the girl in Well of Loneliness: "She was a friend."

I then asked for an autopsy, because the doctor had not been sure what type of cancer it was. They refused that. They questioned me why I would have the right.

I said she had no relatives, I had no relatives, and I demanded the autopsy, and it was not until my doctor backed me up, and they said, "Oh, he can't do it, either." Between the two of us, we did get the autopsy performed. We have had papers signed to protect her rights of cremation. If I had not had those papers, the Coroner would have stepped in, snatched the body, done with it whatever they wanted, as I would have absolutely no rights -- so I felt, as I say, a great invasion of privacy during this time. Yet, when I was, although it is not unexpected, I naturally was suffering and I wouldn't want someone else to go through what I went through, especially at an unexpected time.

Now, some of my friends have had similar experiences, only a little worse. In one case, two women bought a home together back in the early 40's, for which I think they paid \$7,500, it was a very small home on a very small lot, but they had a very small swimming pool and they turned a little BBQ outside into a small guest house and they had it all complete and lovely. One died, after about thirty years of living together. She was forced to sell the home to pay the Inheritance Tax because again it was assessed, not at \$7,500, but the current value, ten years ago.

A sister stepped in, took her into court, took over some property that she supposedly was going to inherit, but she never did inherit it. The sister claimed it and got it. If she had been able to sell that property, she could have saved her home. She lost it in the sense that she was forced to sell.

Another friend lost her friend after twenty-eight years together, just the same year I lost mine, two years ago. She was assessed approximately I believe, about \$18,000 in Inheritance Tax. She had to sell everything she inherited to pay the Inheritance Tax except for the home. To save the home, she sold every piece of stock she had inherited, which amounted to approximately \$19,000. The home was assessed at \$125,000. They had paid something like \$30,000. Then she was reassessed on the Property Tax, and that is a horror story in itself -- you should see the bills. She has received six Property Tax bills in this last year. We have spent days downtown with the Property Tax people trying to get it straightened out. The taxes have now been finally reassessed at a little bit better than \$1200 a year. She is on Social Security at less than \$200 a month, so of course, she is now in a situation of having a home that is eating her up, but the mortgage is almost paid up, she would like to hold onto it, she would like to pay off the mortgage, she'd like to live out her life there. She is 69 years old and she may be forced into selling a home, making this move, (she is not too well, she had a brain hemorrhage last year), it is a very traumatic experience for her.

Another friend, two men, again cancer hit this home, and one of the gentlemen died just last Christmas after a long illness. They went to attorneys for a whole year

trying to solve the problem of how they could avoid some of this Inheritance Tax. They were unable to do so. He is sitting in the home, not knowing whether or not he will be able to keep the house that they had together -- again, for about twenty-some years.

This is just a sample of some of the stories that I've known of my friends. I think one of the solutions might be the simple solution. If you are not familiar with the actual percentages of taxes (spouse is of course exempt), whereas we can be charged up to 24% as unrelated persons. That's only a special deal -- a starting point might be, to have that first line read "spouse or joint tenant" because this is not just a problem for the gay community. More and more of the elderly people are finding they cannot afford a home by themselves, so that have to have a friend or maybe a distant relative who is really considered an unrelated person, share a home as a joint tenant. Men as well as women are finding this situation and it is affecting many people, this Inheritance Tax, and forcing, particularly the elderly people, out of their homes because the State is not giving us any consideration for the fact that we shared a life with somebody or shared a home or are a joint tenant with somebody. They do give us up to 50%, true, but when they charge us maybe 20-25% of the value, that wipes out the benefit of only paying on 50%.

I think that is really all I have to say.

COMM. ALBERTSON: Thank you very much . . .

DR. SHARON RAPHAEL: I am Professor of Sociology and Gerontology at Cal State University, Dominguez Hills. On October 24 and 25, 1981, I convened the First National Conference on Lesbian and Gay Aging. It was held at Cal State University, Dominguez Hills. The purpose of the conference was to gather information and to focus attention on the needs and issues affecting a much-neglected and invisible population group, older lesbians and gay men.

In California, we are talking about approximately 230,000 persons who are 60 plus, and gay or lesbian. People from many walks of life attended and participated in the conference, including older lesbians and gay men, gerontologists, doctors, nurses, students, educators and service providers — individuals all interested in improving the situation of older lesbians and gay men, including Commissioner Wallace Albertson. 250 persons from all over the country registered for the conference, which I think underscores the interest in the subject.

Many experiences and common feelings came out of this conference, some of which I would like to share with you here today. Some of the topics covered were death of mate, lesbian and gay issues, medical/social issues for the physically challenged older lesbians and gay men, legal concerns, housing alternatives, substance abuse, historical experiences and economic realities and challenges. I chaired the panel which dealt with educational issues and curriculum development. There was wide concensus on this panel that programs need to be set up to train and educate professionals and staff persons to work in the field of aging to be sure that these persons are educated and sensitized to the special needs of lesbians and gay men in their service areas. A state-funded educational training program is already operating in the State of Minnesota to do just this kind of training under the direction of Gay Community Services in Minneapolis. It seems to me that all persons working in the field of Gerontology who are licensed by the State, such as doctors, nurses, psychologists, convalescent care administrators, and other social service providers in Gerontology, should be required to take courses or receive training on the topic of lesbian and gay aging — training that will include information on the legal protections and issues that affect this special population.

Legislation should also be enacted that would protect people in nursing homes and other State-funded facilities from being discriminated against on the basis of sexual orientation. At the conference, instances were reported in which gay couples were denied access to nursing homes because of their relationship status. These individuals were told that one of them could move in, but the other one must be helped elsewhere.

Although heterosexual activities among older persons in nursing homes is kept limited and restricted, sexuality for older gay persons in such facilities is never even

considered. One elderly blind gay man who attended the conference (let's call him Jim) shared with us the loneliness and social isolation he experienced since entering a retirement home where he finds himself totally separated from the gay community or any network of supportive peers. Homophobic attitudes at this residence prevent Jim from "being himself", in his final years. Jim would prefer to be out of the closet and part of the gay community. Instead, he is very "in the closet" in this place, afraid and feeling alone. Jim's dilemma highlights the need for special programs and housing projects to be developed for senior gays and lesbians to better serve those individuals within this population who would prefer to live mostly with other gay/lesbian persons.

Research in Gerontology has shown that living with social peers contributes to better mental health and improved support systems in later life. At the same time, it is imperative that gay and lesbian men and women be guaranteed that if they do choose to enter non-gay oriented residences or facilities, that they not be subjected to harassment or abuse as a result of homophobic attitudes. Both legislative changes and education are needed to correct this situation.

Another case reported at the conference was of a lesbian who, as a result of a car accident, entered a public hospital for treatment. The doctor in charge of the case wrote the word "homosexual" on her chart for all the staff to see. The woman was not uptight about being a lesbian, but she did not want to be a target for abuse in a setting which was new and scary to her. A nurse asked the doctor to remove the word homosexual from the chart. He refused. In terms of the right of privacy in this case, it seems to me that it is up to gay men and lesbians to decide when and where to reveal who they are, not up to the medical establishment or any other group or individual.

Another instance was reported of an elderly lesbian living in a convalescent home whom the staff knew to be gay. Homophobic attitudes gave staff members permission to refuse to give this woman a bath on a regular basis. A lesbian interning at the home discovered her situation and took on as part of her assignment, the giving of baths to the older woman. (By the way, I have no way of knowing whether, since she left her internship, whether this woman is getting baths.) Additional programs are needed to help the bereaved and to deal with the myriad of legal problems uniquely encountered by older lesbians and gay men. Safe atmospheres must be created, in which older lesbians and gay men can live out their later years with dignity in these establishments.

We did professionally tape all the sessions at the conference and if the members of this Commission would like these to be made available to them, there is a sheet that is being passed around that you can look at to find out how to obtain those or any other information that you'd like to get from the conference.

COMM. FLEISHMAN: Are there any places now where homosexuals or lesbians can go as an institution?

DR. RAPHAEL: Not at this time. In terms of a housing facility you mean? There are some proposals to do such in the gay community. There are people trying to raise funds to do this kind of project, but it is so costly and expensive. At this point, that kind of money has not been raised. There is a program in New York City called Senior Action in the Gay Environment which does home health care services for the home-bound gay elderly in the New York service area, but they do not have a residence. This is to keep people in their own homes.

COMM. FLEISHMAN: Was it your recommendation that there be such residences?

DR. RAPHAEL: Oh, yes, certainly -- that would be my recommendation, that we make not just one but --

COMM. ESKIN: Did the conference deal with the sources of homophobia? Are there publications or other materials available which deal with that subject and what do you suggest should be done to confront homophobia and its sources?

DR. RAPHAEL: We did have a session on the roots of homophobia and agism, in a sense trying to relate the two because there, in many cases, is a relationship in that being older, as well as being gay, is considered to be somehow not part of society that supports being young and straight -- in other words, not fitting into the very mainstream kind of knothole. I think that we know there are many sources of homophobia in this society. Some people think that if there is an economic base as well as a religious base that will allow everybody to be considered equally, then there wouldn't be enough economic resources and financial supports and opportunities for everybody.

COMM. PINES: Would you agree that much of homophobia is based on certain myths and stereotypes?

DR. RAPHAEL: Yes, although I think that the myths are there for reasons, in order to keep people in competition with each other. There are a lot of negative myths. Well, first and important in terms of aging homosexuals, aging gay people, and certainly when I was growing up as a gay person, was that we'd never get to

be old, or we'd kill ourselves first. Certainly, all the movies and media seem to give us the sense that we wouldn't, if we did somehow manage to make it to be old, we would be old and degenerate, decrepid and totally without support, and I think the society has in some cases, made this a self-fulfilling prophecy for many gay people. I think elderly gay people, from my observations and research, certainly seem to have survived very well considering the circumstances. This doesn't mean, however, that they didn't do it in spite of the system. They're not allowed the opportunity to grow old with dignity, but I think many have overcome this.

COMM. ALBERTSON: Has your organization given any thought to what a redefinition of "family" might be?

DR. RAPHAEL: Not the National Association of Lesbian/Gay Gerontologists, but as a sociologist, it seems to me that if we could move more toward a definition that involved the sharing of a residence, sharing of common resources, something a little more economically-worded, might be one way to get out of the bind, although that would not include situations where people live apart. It seems that no matter what definition you come up with, you exclude somebody. The only problem in that case would be people serving overseas, who live great distances from each other, who still consider themselves in a relationship. I mean, there are married people who are straight that don't live with each other.

COMM. WAXMAN: This is perhaps a unique question. For those gay and/or lesbian couples who have physical disabilities and who need attendant care, has there been any problem in this State in receiving State support pertaining to attendant care?

DR. RAPHAEL: I am not familiar with specific instances in that case. I think one of the most difficult problems is when the service provider in that kind of a case doesn't include the other member of the couple as part of the treatment situation, but I do not know about the economic implications of that, but there is an assumption that there isn't this other person or other part of the family support, and this can create a lot of problems in terms of how the money gets directed or distributed, and in what ways. There are people in our organization who could testify on this.

COMM. PINES: I just happen to have someone else from your organization, Myna Robinson, who is going to amplify or extend your comments.

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MYNA ROBINSON: I'm a Gerontologist. Two years ago I completed socio-logically based research on a small number of older lesbians, aged 50 to 75. One of the major purposes of this research was to explore the family support systems available to older lesbians. It had already been ascertained in research done by Ethyl Shamus, documented in her book "Aging in Three Industrial Societies", that heterosexual women over the age of 60 have strong kinship networks that are for various types of supportive help. The older heterosexual is apt to live with one of her children or siblings, or live near enough so that when the older adult is ill, or otherwise in need, purchase and preparation of food, rides to the doctor, help with daily chores and financial aid is often provided. I found this not to be true for this age cohort of older lesbians. Those women who did have children were often in the closet with their children and therefore would not live with or near them. In some cases, the adult children disapproved of their mother's lesbianism and would have nothing to do with her. In only a very few instances the adult children and/or siblings knew about the woman's lesbianism and "approved" of it. In these instances, the older lesbian had the same strong chance of a close kinship tie as her heterosexual counterpart.

The implications of these findings are several: unless a woman is out of the closet, she has virtually no chance of maintaining a close family support system with her own children, if she has any, or with her siblings. The issue of being able to "come out" is an important one to the lesbian and gay community. We have often been told by our oppressors or would-be oppressors, such as John Briggs, that if only we would stay in the closet, everything would be OK. We could keep our teaching jobs and no one would know. I believe this is a concrete example of why our privacy regarding our sexual/affectional orientation may not be in our best interests. My research clearly documents that staying in the closet results in lack of a family support system in old age. It is most important that we be able to be open about our lesbianism or gayness.

What then does happen to the older lesbian? If she is not living with an adult child, or with or near a sibling, where is she living? Donna Smith has just given testimony on the situation of property-owning lesbian mates when one of the couple dies. The legalization of lesbian and gay relationships, whether one calls it marriage or some other name, could be the solution for lesbians and gay men in love relationships. This would not resolve the unfair situation that both gay and non-gay non-coupled people labor under.

That is, caring friends who can name each other as beneficiaries of their estates, are taxed at extremely high rates. The state is confiscating funds that could help provide for people's old age. In these days when we are increasingly being told

we must not look to government for help and the Social Security itself is in danger of collapse, it would seem that we should be encouraged and even be given incentives by the State, for taking care of each other, certainly not penalized.

Antiquated zoning laws forbidding more than two or three unrelated persons from living together must be removed. It is imperative in an era when housing, whether owned or rented, particularly for those on fixed incomes, has become prohibitive in cost, that shared housing be a viable alternative for those who wish it. State laws must be strengthened which would outlaw discrimination on the basis of sexual/affectional preference, including those which affect programs and institutions which serve the needs of older people. We should never again hear of situations in which lesbians and gay men are refused access to convalescent care, or worse yet, be admitted to care and to then be mistreated or abused, particularly at this time in a person's life when they are most vulnerable. Never again should a lesbian or gay man of any age not be able to rent an apartment or house or to be evicted from same or to have to live in fear of an eviction because of sexual/affectional preference. The economic and psychological cost is great. Having personally experienced all of these situations regarding rental housing, I can tell you, the stress is enormous. When my mate and I were evicted, I called the Fair Housing office in my area. They said, "Sorry, we can't help, there is not a State law about not evicting gay people. Landlords can discriminate against you."

Another area I would like to speak of is the discrimination I encountered as the lesbian mate of a State employee for the past ten years. PERS (The Public Employees Retirement System) operates the fund which provides the benefits for State employees, including medical plans, dental plans and the pension plan. The State of California, mandated by State legislation, picks up almost the entire tab for medical and dental plans for both the employee and his or her legal spouse, children under eighteen and in some cases, dependent parents. This is true during the working life of the employee and may continue after retirement should the retiree so elect. Depending upon which of the four retirement options available that the individual chooses, if the heterosexually-married retiree dies, his or her survivor may continue to receive survivor's pension benefits and to continue to be eligible for medical and dental coverage.

Several years ago, my mate and I made inquiry as to whether I, at that time, an unemployed student, totally dependent upon my mate for financial support, could get health insurance coverage. The personnel department said sure, we'd be happy to, but it is up to Kaiser, the health care provider, and to PERS. So we called both. Kaiser will not accept a gay or lesbian mate as a family member. I believe the State should not be doing business with institutions who discriminate against lesbians and

gay men. They could be forced to change their anti-gay policy. PERS said the California state law specifically refers to and interprets the law as covering only legally married spouses, children etc., and they said they don't discriminate against gays, as heterosexuals living together without being legally married are also denied benefits.

Well, I would like to see this law changed to include all people who identify themselves as mates or spouses. I would also like you to note that heterosexuals have the option of legally marrying should they so choose, in order to obtain all of their benefits. I, and other lesbians and gay men, do not. I believe our relationships should be legalized. Should my mate, whose earning capacity far exceeds mine, die before me, I will not receive Social Security Survivor's Benefits. I will not receive a survivor's pension from the State and I will not be eligible for medical or dental benefits from the State. I will be taxed on the inheritance I receive at a high rate accorded 'strangers', not spouses. If we are able to save enough money to buy a house, I would probably have to sell it to cover Inheritance Taxes, and if we are still renting, I will probably have to move to much cheaper quarters as I won't have either her income from salary or her pension. This scary-but-realistic scenario does not even deal with the need for access to Intensive Care Units, medical records and decision making responsibility for our loved ones that heterosexually married couples take for granted. There are some legal steps that lesbians and gay men may take to protect themselves, such as signing medical consent forms in advance, giving access to records, etc. However, this places an unfair burden on the gay person. We have to be educated enough to know we need these things and then we must have the money to afford an attorney to draw up these legal documents. The vast majority of Americans do not even have Wills, no less medical consent forms or choice of guardianship papers, but we must protect ourselves, until the law changes to include us. This is grossly unfair.

In summary, I believe changes are needed in the following areas: 1) Lesbians and gay men must have their rights protected in such a way that they need not fear being out of the closet; 2) Unfair Inheritance Tax laws must be changed so that lesbians and gay mates are not treated as strangers under the law; 3) We need to end the discrimination against single people in the area of Inheritance Taxation so that they could leave money to friends without being penalized; 4) Zoning laws must be changed to allow more than two or three unrelated persons to live together in residential areas; 5) The term "sexual and affectual preference" must be added to all the areas where the law forbids discrimination against other groups, including all institutions and programs that serve the public, and in the area of rental housing. I would like to note that the few city ordinances that exist regarding housing discrimination against gays

always exclude single family dwellings and small apartments. Why? I don't believe anyone should be allowed to discriminate, whether we are talking about a large quarter landlord or an individual; 6) The California State Legislature should change the laws which exclude lesbian and gay mates from benefit coverage for State employees; 7) The State should refuse to do business with any organization, program or corporation which discriminates against lesbians and gay men; 8) The medical/legal establishment must own up to ways in which they discriminate against lesbians and gay men and find ways to end that discrimination; 9) Lesbian and gay male relationships should be able to be legalized, and finally, it should be remembered that discrimination in youth will impact on the person as they age.

This list of suggestions is certainly not exhaustive, but I believe it would make a fine beginning. Thank you for hearing my testimony.

COMM. PINES: Thank you for your recommendations.

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SUSAN McGRIEVY: I specifically wanted to speak to a certain issue today and that was relative to an arbitrary series of complaints which I have received from individuals who have applied for Police Department work throughout the State of California. In my particular case, since I am a staff attorney for the ACLU, and I deal with gay-rights litigation, it's been primarily limited to Southern California.

I think the problem is that almost all police departments require polygraphs in order for a person to be hired as a member of that police department. Most of those police departments have limited the questions which you can ask in a sexual area, but they have not totally done away with them. What they do now is they ask questions like "Have you ever been involved in any outrageous sexual activity?" For most homosexuals, that results in a little blip on the polygraph. The problem is, of course, that the individuals are not then "discriminated against" by virtue of being homosexual.

There is a requirement in most police departments that you be free for a certain period of time in the use of marijuana. Usually, it's one year, that you not use marijuana for a year. Now, I have received a minimum of six to seven complaints, (I can't give you the names of those individuals, because I respect their rights to privacy), one young man who I will tell you about, indicated to me that he had been living in New York, graduated from school there, and had then been notified by the Los Angeles Police Department that he was going to get a job here. He gave up his apartment, flew out here, and took the polygraph, where he was asked this question about having ever had outrageous sexual activity, went blip, and then followed these questions, according to him: "Have you slept with a man?", "When did you sleep with a man?", "Did you commit oral copulation?", "Did you commit sodomy?" Sort of a voyeuristic approach. Then he was told that they re-examined his application for the Police Department and he had used marijuana within the last year period and although it was waivable, they weren't going to waive it in this instance. I now perceive a pattern of practice in rejecting homosexuals from the Los Angeles Police Department by using other means.

The problem is that the use of those kinds of questions at all in determining job qualifications — that is what worries me, and it seems to me that would be responsive to legislation.

The next thing I'd like to point out is that I know the Boy Scout that is coming in here today, (if he hasn't already), to testify. In the course of that litigation, the issue of the Constitutional Right to Privacy, which we have in California, came up. One of the problems with the right of privacy in California is that it appears from the initiative ballot in front of legislative intent that the right to privacy is to apply to private organizations. It also appears from the language of the initiative that

that is limited perhaps to business records, and that is to say that, a company like Arco can't take business records of yours, or the Bank of America can't take your bank records, and release them. There is, however, language in that initiative, which comes straight from Justice Brandeis, about the right to be free in one's thoughts, emotions, etc. What is not determinable from the legislative intent is whether or not there are non-innumarated rights of personal identity, which are protected under the right of privacy, against private corporations in California. It seems that once again legislation and some sort of legislative intent record on the part of the Legislature would clarify that in terms of people who are litigating under the Constitutional Right of Privacy in California. I think that such a clarification in terms of legislative intent would greatly broaden the scope of the litigation that could be brought under that particular right of privacy. In my opinion, this would probably do away with the necessity of separate legislation for homosexuals relative to employment and housing discrimination because people would simply be protected for the rights of intimate personality against invasions like that by private organizations. I hope by suggesting that today that perhaps I could get you to look at the possibility of getting some sort of legislative intent in the record around that particular right.

Other than that, I've been dealing with these issues for a long time. I do feel that those are the most significant statements that I could make. Unless there are any questions, I'll let you proceed.

COMM. FERTIG: When one approaches the authorities, do they indicate in response to the reason they ask these questions is to see if the person is being truthful? I just want your comment.

MS. McGRIEVY: There are all kinds of things that you can test truth on. Let me give you examples. I think perhaps the most outrageous one was this officer that was already on the police department; he'd been serving some seventeen years and unfortunately he was married and I have been unable to this date to get him to sue. He ended up, not him but the person he was with, was told as a result of a police investigation that he had to take a polygraph or he would be fired. This is not speaking to that issue so much, but I'm just saying that there are other ways of going about it. Let me tell you the story of this man . . . who had an absolutely impeccable service record. He went into a gay bar one night. He was a religious man. He was very distressed with himself because he had these drives that he couldn't control. On his way out, his wallet was taken. This happened within the last three years in one of our "major" divisions which is supposed to be pro-gay. His wallet was taken and somebody started using the credit cards and it therefore came to the attention of the

department that the wallet had been lifted, and they did some investigation and they ended up learning that the man had spent the night with another man. Then began a series of intimidating meetings. I cannot get this man to come forward. He was given the third-degree for some period of time, broke down, went into a nervous breakdown. The man that he was with was grilled at length and when it was time to determine that no act of sex had taken place between them, that man swore that he was intoxicated. This man was retired from the City of Los Angeles, on disability insurance, for being homosexual. The reason I'm bringing that out is that I think that it is very indicative of the attitude -- you can't allow these kinds of polygraphs to go into this privacy area, of this intimate nature, because of the prejudices within these departments are so extreme, there is no way of protecting against the abuses. There have to be other ways of establishing honesty than asking people who they are sleeping with.

COMM. PINCU: Forgive my ignorance here, but I'm under the impression that the polygraph is a very unreliable instrument. It certainly is not admissible in court, etc., etc., and I'm wondering how come or why they can use it in this kind of case -- such an unreliable instrument.

MS. McGRIEVY: Just off the record, I had someone come to me during Administrative Hearing and say "I'll give your clients some drugs and we'll put them under certain techniques and they'll be able to pass any polygraph examination, but the point is that he said we could do it in one session. It is just totally unreliable to anybody who has any experience!

COMM. PINCU: Is there no legislation protecting against the use of the polygraph?

MS. McGRIEVY: I'm not an expert on that. I think there are other people you can call that would be better informed. I suggest that there are other people at the ACLU who are experts on the polygraph.

COMM. PINES: Commissioner STEVE SCHULTE has joined us. He was the Executive Director of the Gay/Lesbian Community Services Center.

COMM. SCHULTE: There are a number of people interested in the whole process of recruitment in the law enforcement agencies . . . I'd be curious if you could give the Commission a breakdown of local jurisdictions, municipalities, etc., that use

polygraphs or not.

MS. McGRIEVY: All I know is that the majority of the complaints that I have received — there is one from the Monrovia Police Department and the rest have been entirely from the Los Angeles Police Department. I have never received one from the Sheriff's Department in Los Angeles County.

COMM. SCHULTE: To my knowledge, at least, it is very difficult to get at people who have in fact tried to challenge the system, so to speak, to get them to come forth. I'm wondering if you can perhaps write up a series of illustrations that might give us some further information on kinds of questions they ask. A deterrent has to be pushed. In my view, strictly an opinion, I think there is a reluctance to come forth because a lot of people think they can't possibly get through the system of police recruitment. I think that is not quite true, but I'd like to see if we can get some people to move on this.

MS. McGRIEVY: I think I just illustrated pretty much. I have a few other illustrations I could give you. I cannot give you their names.

COMM. SCHULTE: Can we have that in writing, because I think that will help us too.

MS. McGRIEVY: Yes, sure.

COMM. PINES: Thank you very much . . .

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MICHAEL BALTER: I am Coordinator of an organization called the Citizens Commission on Police Repression, which is a joint project of the ACLU of Southern California and the American Friends Service Committee here. Susan McGrievy just testified on the type of scrutiny that the police agencies bring upon their own members and I'd like to talk a little bit about the type of scrutiny that the police agencies bring down upon other members of society -- in fact, just about everybody else in society.

In the last four years, our group has worked to reform the intelligence gathering operations, most specifically of the Los Angeles Police Department. The L.A.P.D. has a sixty-year history of spying on the political, social and religious activities of citizens of this city and the intelligence unit has been known colloquially for many years as the "red squad," to denote the fact that people that Chiefs of Police at various times have considered to be radical or subversive, have always formed the main targets of that surveillance. Over the past several years, we have found out more and more about the wide net that is cast by the intelligence gathering of a police department such as the L.A.P.D., particularly under former Chief Ed Davis, and currently under present Chief Darryl Gates.

The issue in Los Angeles came to a boil again around 1975, when the fact that 2,000,000 political intelligence file cards had been destroyed over the winter of 1974-75 was leaked to the media. People concerned about the personal privacy of their activities, whether they be political or religious or social or what-have-you, demanded from the City Government, from the Los Angeles Police Commission, that something be done about this. As a result, in 1976, guidelines were issued, essentially for the first time, by the Los Angeles Board of Police Commissioners, which set a standard for record-keeping and keeping or gathering of information on members of the Los Angeles community that put it on a very strict criminal standards; in other words, the only justification for police surveillance of individuals or organizations was to be if they were engaged or about to be engaged in planning criminal activity.

Around 1978, we released the famous list of 201 organizations which had been kept under surveillance by the Los Angeles Police Department through the middle 1970's and the list reads really as an "honor roll" of social change organizations in the Los Angeles area, with some exceptions. Out of the 201 organizations listed, perhaps 15-20 at the absolute most were organizations that could ever have been suspected of engaging in criminal activity. The types of organizations which form the rest of the list included such groups as The World Peace Council, The First Unitarian Church of Los Angeles, The Southern Christian Leadership Conference, The National Council of Churches, The United Farm Workers, The East Los Angeles Health Task Force, and I think more importantly for our purposes today, The Gay Community Services Center,

The Gay Liberation Front, The Gay Community Alliance and feminist organizations such as all twenty chapters of The National Organization for Women, The National Women's Political Caucus and The Feminist Women's Health Center.

Now, it was the hope of civil libertarians, after the issuing of the 1976 guidelines, that this would put a stop to this type of police activity and police surveillance on purely lawful activity. However, it became clear around the year 1978, to our groups and to the ACLU with whom we work very closely, that in fact the spying on lawful political activity had not stopped. As a result of that, we entered into litigation against the City, against the Police Department, and the Police Commission, on behalf of what is now almost one hundred individuals and probably about two-dozen organizations, all of whom, individuals and organizations, had been involved in purely lawful activity, but who had been infiltrated by undercover Los Angeles Police Officers. As a result of these lawsuits, we have currently received about 2,000 pages through lesgal discovery of raw police intelligence reports that were prepared on these individuals and organizations.

I think, without going into a lot of detail, I can summarize these documents by saying that, first of all, there is not any hint of criminal activity in any of this documentation, and the only example of criminal activity that could possibly be construed from them was a case where an undercover Police Officer, John Dial, had offered to provide a particular organization with weapons, and made that offer on a number of occasions. However, the documents do indicate an interest by the Police Department in the personal lives of individuals. I'll give just a couple of examples that I think are very relevant today.

There is a case of one political organization, and to protect the privacy of the individuals involved, we also are under court order which protesets the privacy, and I will not be mentioning any names, but there was in fact one particular political organization which had a debate going on among the membership about the question of whether to allow gays or not. About half of the organization was anti-gay in their attitudes, the other half of the organization was more enlightened on the subject and believed that gays should be allowed to be members.

Around this time, and as part of this debate, a particular member of the organization came out of the closet and made the fact that he was gay known to the organization as part of that debate. A number of police reports, that were prepared during this period of time, go into excruciating detail about this debate on gay membership and in particular detail on the emotional and personal problems that this particular individual (who had come-out of the closet, but who was loyal and dedicated to this organization), went through. Later, the organization held a national conference in New York City . . . this undercover L.A. Police Officer went to that

conference and came back and reported on who this gay individual had slept with, another gay male, while they were in New York.

So, these are examples of the type of indiscriminate intelligence gathering that the Los Angeles Police Department has engaged in and, despite the fact that this has come under very severe attack in the media, from public officials, City Councilpersons (who themselves have been the subject of surveillance by the L.A.P.D.), the current police administration under Darryl Gates, has shown an incredibly arrogant refusal to reform their activities. Chief Gates has said, "I will keep gathering intelligence until someone makes me stop, the court or somebody." Just last year, we had the spectacle where City Attorney Burt Pines (at the time) had to inform Chief Gates that yes, he did have to tell the City Council how much money he was spending on intelligence operations if they asked him, something that Gates had up to that point refused to do.

So what we have had then, is a failure in our ability to oversee police operations. We feel that the Police Commission has been demonstrably failing in its role in keeping track of what the police are doing and in the intelligence gathering operations. And there are two recommendations on State level that we would make at this point. One, would be that the State of California Public Records Act, which is supposed to provide access for individuals to State records, provides a blanket exemption for law enforcement records. In our view, and consistent with the Federal Freedom of Information Act, that Public Records Act should be amended to remove that exemption along the lines of the Federal Freedom of Information act, which allows those types of records to be released if it does not endanger an ongoing investigation or someone's right to a fair trial and a number of other exemptions which balance the confidentiality of police investigations with the public's right to know what kind of files are on them.

We also believe that on the State level (and have in the past proposed this type of legislation), that there should be specific State Legislation with criminal penalties which provide that intelligence gathering can only be done by State and local law enforcement in the event of criminal activity, and that all intelligence gathering on other non-criminal activity by the citizens of this State should be outlawed in California.

COMM. PINES: Let me ask you a question. Let's assume for a moment that police, using an undercover officer, are targeting a criminal that everyone can see ought to be examined. Terrorist organizations devoted to bombing buildings or innocent people, whatever. Clear-cut terrorist organizations where there is proven need from past situations, for covert operations. Let's say an individual goes into an ACLU

meeting and the officer, the covert operative, is assigned an individual and instructed to stay with him. How do you feel about the officer going into an ACLU meeting in order to keep on the target and not blow his cover, and secondly, should the officer be able to record anything that is said at the meeting, and third, if so, should those notes be maintained or destroyed if they don't pertain to criminal activity?

MR. BALTER: First, let me give sort of the answer in principle to your question, and then refer to some of the kind of the history that we look at.

First of all, the standard that we advocate is one where the intelligence on an individual or organization should follow a probable cause standard at all times. In other words, legally there is no justification for infiltrating an organization or watching an individual unless a criminal activity is real imminent with some probable cause to believe what is going on. For an undercover police officer to follow a supposed terrorist into an ACLU meeting, in my opinion, and I think it is consistent with what we put forward in the past, the officer would have to have probable cause that this individual was going to engage in criminal activity while they were in that meeting. If the officer is just sort of following an individual around because they might at some point in the future engage in some kind of criminal activity, then we would say that that is unconstitutional activity. In any event, we believe that undercover officers have no right and are violating the First, Fourth, Fourteenth and what-have-you, Constitutional rights of individuals, if they take down any First Amendment-related activity, speech, etc., that is not directly related to a criminal investigation.

The third way that I would answer the question is that I think that we have already produced an incredible amount of information, an incredible amount of documentation, that in fact what the police have done has been to go into organizations that have no record, past, present or future, of criminal activity and indiscriminately written down everything that goes on -- who was at the meeting, what was said by individuals. As a matter of fact, I brought with me -- now this doesn't relate to the sexual privacy area, because I think if I were to produce that type of document, that I really would not even ask an individual to consent to a release of the document of that type. It would be such an invasion of privacy. I have brought with me sort of a similar document. This is a document that was prepared by a police officer named Eddie Solomon who is still on the police force. It was received by us through discovering his documents already-released publicly. The individuals who are named in this document have given their consent to the release so that, and in the cases where people did not give their consent, the names have been blacked out. We have protected their privacy.

This is a document, a police officer's own characterization of this meeting. He has gone to a private home on Fulton Avenue in Van Nuys. The event is an informal discussion on school desegregation at this private home. The individual goes on to give details on who was there, what their feelings were about school desegregation, who ran the projector when a film strip was shown on the issue and so on. There is no hint, obviously, of criminal activity here, and yet we have 2,000 pages just like this. I think it would be interesting for the Commissioners to take a look at this type of document and see the incredible abuse that this represents and the incredible potential for abuse in very, very personal areas of peoples' lives when police officers can engage in this kind of activity.

COMM. COOPER: You call for State Legislation. I'd be interested in the level of detail the legislation you seek would have — would you go into limiting dissemination, purging types of things, for intelligence information purging standards, different maintenance and management types of criteria, or would you allow, permit regulation, I guess would be the criteria, the standards to be set by the Attorney General? Do you want to see it set in the Legislature?

MR. BALTER: I think it needs to be set in the Legislature and codified in the legislation itself because we have seen, even here in Los Angeles, where the Police Commission here has issued a set of guidelines which give a very clear criminal standard to the intelligence gathering. They, then, have later failed to follow-up effectively on the enforcement of their own guidelines. So, I guess what I'm trying to say, is that even if you have it down there in black and white, specifically what it is that you want them to do and not to do, you have enough trouble with the enforcement. Minimally, that type of very specific regulation has to be in that code. I don't think it can be left loose at all.

COMM. PINES: There certainly needs to be some surveillance guidelines, along with the file retention guidelines done on the part of the Police Commission.

MR. BALTER: They have issued these guidelines, but they have not been followed. There were supposed to have been nine audits performed of the Public Disorder Intelligence Division — the L.A.P.D.'s intelligence unit — since December, 1976. Only three have been done, the third is scheduled to be released next week. We have been able to show time and time again, that these audits totally overlooked things then that we later found out about which should have been caught in these audits — organizations that were infiltrated for years without any hint of criminal

activity, beyond the period of time when both the guidelines were promulgated and the audits were completed.

COMM. FLEISHMAN: Are the guidelines satisfactory? That is to say would you like to see those guidelines come to legislation?

MR. BALTER: We are not satisfied with any of the guidelines that the Police Commission of Los Angeles have put forth so far. We believe they contain some major loopholes and that those loopholes have contributed heavily to the continued surveillance.

COMM. FLEISHMAN: Is there any place in the nation where there are guidelines that you find satisfactory, and where?

MR. BALTER: There are some excellent guidelines that were passed by the City Council of the City of Seattle. Those are the only type in the nation that actually make it a criminal offense for a police officer to engage in violations of intelligence gathering on First Amendment freedoms. Combined with the Washington State Public Information Law, which does not have this California exemption for police records, individuals are not only able to bring suit against the police department as a result of this ordinance, if their rights are violated, but also able to without having to go to court, get ahold of the documents themselves.

COMM. PINCU: Do you have any idea how widespread this is through other police departments and sheriff's departments and other law enforcement agencies throughout the state, and secondly, do these various law enforcement agencies share this information with each other?

MR. BALTER: The answer to the first question is that I think that most big city police departments, especially during the 50's, 60's and 70's, engaged in very heavy political intelligence — in New York, Chicago, and Detroit — places like that, they are close to settling lawsuits against those cities' police departments.

The Los Angeles Police Department is unique, I think, in the intensiveness to which they continued the surveillance through the latter half of the 70's, when political activity obviously did drop off somewhat. As far as sharing information goes, the Los Angeles Police Department was the initiator back in 1956, of an organization called the Law Enforcement Intelligence Unit = The L.E.I.U., which is a national, supposedly private organization, of State and local law enforcement agencies through-

out the country, which shares information. The research that we have done, and there were hearings at the state level a couple of years ago on this, show that political intelligence gathering have been among the type of information that was gathered. Ironically, the L.E.I.U. was formed by local police departments because of J. Edgar Hoover's reluctance to share F.B.I. intelligence information with local police departments.

COMM. FLEISHMAN: Is the stuff computerized?

MR. BALTER: They have moved to computerization, yes. Our knowledge is that the Los Angeles Police Department intelligence records are now computerized and that the Los Angeles Police Department does participate in a computer hook-up in the whole L.E.I.U. structure.

COMM. FLEISCHMAN: So that any police department, then, who belongs to this, could probably tap into and get this kind of information?

MR. BALTER: We know that this has happened, yes. We know that intelligence dossiers on activists in Los Angeles have ended up in the files of the Chicago Police Department and vice-versa. So this type of information-sharing definitely has gone on.

COMM. FLEISHMAN: If another police department wants to pull something out on an individual from the system is there any record kept as to who pulled it out or can it go just anywhere?

MR. BALTER: With the Los Angeles Police Department, the last set of guidelines that was issued by the Police Commission, do require that type of record keeping and spell out certain conditions under which the Los Angeles Police Department can then disseminate records to other police agencies. We do not have any information as to how closely that is actually being followed.

COMM. COOPER: I am interested in your definition of intelligence information. Does a criminal act have to have taken place for you to see information being collected and stored or, under your definition, could certain types of criminal activity be anticipated and then information be collected on that? What would you propose?

MR. BALTER: Again, the probable cause standard is spelled out in the Fourth Amendment of the Constitution. I am not an attorney and probably I'm not the best one to give a real specific definition of "probable cause", but I know that it does include the necessity that there be some very specific information that a crime is in the course of being planned or is going to imminently be committed or is in the actual process of being committed or has just been committed or has recently been committed. Definitely what would not be included in this category would be the stance which the police department seems to have taken which is: that this group may, or this individual may at some point, because of his or her political beliefs, engage in some sort of criminal activity in the future, therefore, we must watch them to make sure they don't do it. That is not a Constitutional standard for the police. It should be a very strict standard.

Let me make one final comment about this. I know that people are very concerned about the question of terrorism now and with the 1984 Olympics coming up, Chief Gates has been asking for at least one year now for an expanded budget for the Public Disorder Intelligence Division in order to deal with possible terrorism at the Olympics. When we live in a democratic society, we have to take certain risks. It is one thing for the police to try to do what they can to prevent criminal activity from going on. It is another thing for them to use that as an excuse for randomly and indiscriminately spying on the citizens of Los Angeles or the citizens of any other city, for that matter. The main answer to terrorism is the most democratic society possible. Democracy and more democracy. Because terrorism rises out of frustration, and that type of feeling on the part of people who are politically committed and politically active that they cannot get any other type of redress of their grievances. Societies which have instituted police states, such as a number of countries in Latin America, or Spain under Franco, or any other society which has instituted a police state, have not been free from terrorism. If anything, these countries are ridden with terrorism and it is a much more serious problem than we have ever had it here in the United States. The idea that if you spy on more and more people and come down with more and more police power, you are going to deal with terrorism that way, I think, is historically untrue. We need more democracy, more privacy, and not less, to deal with these kinds of problems.

COMM. FERTIG: Do you have any information that would indicate to you whether or not any of this information has been placed into your file and stays there for any great length of time?

MR. BALTER: We do have that information. The documentation that we receive through discovery (we do not get everything, we get a portion of it, of which the judge consents to release to us) and so it is not always possible for us to tell when a particular individual who is named in the report that I'm submitting to you is actually then the subject of a dossier. What happens is that the raw report is then handed on to the undercover officer's superiors and then they decide who is going into files or not. We do have many documents which contain a notation next to the names of individuals: IDF. That means "In Division Files", which means the Public Disorder Intelligence Division has a dossier, a file, on that particular individual or organization. So, oftentimes we are able to look at a document and get an idea of who they actually have a completed dossier on.

COMM. FERTIG: Let's go a step further. An individual will have a dossier and then later become involved in some felony. Would that information carry forward and end up being in that file?

MR. BALTER: That is information that this point in the litigation we don't have. We are generating more and more information through the litigation and finding out more and more about Public Disorder Intelligence Division's operations as a result of the lawsuits. As we get that information, I will be happy to pass it on to the Commission.

COMM. PINES: Thank you . . .

JIMMY: Thank you for asking us here. We are glad to be here. My name is Jimmy. I live in Bellflower and I work in a Sheltered Workshop. I receive \$465.70 a month in Social Security. I make about \$25 a month at the Workshop. That makes a total of \$485.70 -- my living expenses, rent, utilities and food, clothes, transportation and grooming things cost me about \$430 a month. I put money into the emergency account.

Betty and I go out on dates and we've been thinking about marriage. We've been dating for a year -- we love each other very much. If we get married, they will cut our Social Security and Medi-Cal. I read that in the pamphlet at the Social Security Office when I was there.

No, I cannot get married without Social Security. I like to pay my bills, rent, utilities, transportation and clothes and food. I don't think it's fair, because of the law. I've got a future ahead of me, and a family. I like marriage and want to get married. Because I want to live with Betty, I don't want to lose my Social Security -- I don't think the government should interfere in our personal lives. That's what they're doing when they cut our Social Security when we get married. Thank you for asking us here.

COMM. PINES: I believe you're going to make a statement, too . . .

BETTY: Thank you for asking me to come ... my name is Betty. My boyfriend and I want to get married, and we can't. I'm going to school for work training. I'm training to be a Librarian Assistant. My training doesn't pay me. I get \$430 a month from Social Security for my rent, food, transportation, clothing. Those things generally come to \$390 -- I need my Medi-Cal because I can't see good without medication. If I get married, I will lose my S.S.I. and my Medicare.

My boyfriend and I will be _____. And also, I know how it hurts friends because one of my friends got married and lost S.S.I. and Medicare (Medi-Cal?). My Mom and Dad won't help me with money, but my friend's parents do. I believe that the Bible says that it is a sin to live together and not get married. I wouldn't go against the Bible. I couldn't live without Social Security. They are trying to boss my boyfriend and I -- they shouldn't boss handicapped people around. That's what they are doing when they cut S.S.I. for married people. It's none of their business if they're getting married or not. I love Jimmy and I want to marry him. Thank you for listening to me.

DANIEL BRZOVIC: Good afternoon, I'm Daniel Brzovic, I'm with the Western Law Center for the Handicapped, and I'd like to talk to you today about the effect of certain rules in public assistance programs have on married people -- most of the effects are detrimental. Also, I'd be happy to answer any questions that you might have concerning the benefits of the couple that just spoke and the effect on them.

The programs I want to talk about specifically are the supplementary security income program, SF-5 -- the in-home supportive service program which is the State attendant care program for disabled individuals, and also the Medi-Cal program.

What I'm doing is that I'm starting with the assumption that the law should be neutral with respect to marriage. They should neither encourage nor discourage marriage or divorce. But the way the laws are set up now, they do discourage marriage. They encourage divorce. This is a problem I see every day and that's why I'll talk to you about it.

First of all, on the S.S.I. program, if a married couple receives S.S.I., they only receive one and one-half times the amount of S.S.I. that a single person receives. That in itself is discrimination against people, since they receive less than they'd receive basically if they lived together.

One of the real problems, though, with the programs is the way they treat couples when one individual receives S.S.I. and the other individual doesn't. Now, all public assistance programs are going to have some means for taking into account the income and resources of relatives of recipients, and also making those individuals support their relatives. Under the S.S.I. system, all of the income of the spouse, who is not eligible for S.S.I., is deemed available to the eligible recipient. What that means is that if the spouse has income, all of that income will reduce the S.S.I. grant whether it's available to the recipient or not. That means that if the spouse is working, at a certain point, their income will mean a dollar-per-dollar reduction, and if an individual makes about a thousand dollars, their spouse will receive no S.S.I. at all.

The same applies to the In-Home Support Services and Medi-Cal programs. That may be appropriate, but it works in very odd ways in certain programs. For example, in the IHSS program, a lot of people who have spouse providers, simply because only the spouse can provide the types of services that they need. Now, when the spouses are paid by the IHSS, that payment is then considered "deemable" income and when the spouse receives it the recipient's SSI is reduced, based on the spouse receiving that income.

In certain cases, the IHSS payment itself is reduced because it's being paid to the spouse. That causes a hardship for married people.

Now if that weren't enough, they have a new provision to the IHSS law, which says, that not only will a spouse be financially responsible in this way, but the spouse will be required to provide certain IHSS services for free. What this means for some of our clients is that the only income for the whole family will be the individual's S.S.I. -- the family will not be able to make it on that money, and the S.S.I. recipient will have to be institutionalized. I have two clients that will have to be institutionalized if the law stands the way it's written.

Also, in the Medi-Cal program, the deeming provisions work in the same bizarre fashion. For a married couple, the provisions apply. If one member of the couple is institutionalized, placed in long-term care, Medi-Cal is willing to say that this couple should not be considered a family any longer and their income should be considered separately. What they do is, they will require the individual in long-term care, or if he's institutionalized, to use all his separate income, or their share of community property to support themselves before Medi-Cal will pay. The State has a very strange way of counting the spouse's share of community property. What they do, is that they say that even after the spouse spends all of their community property, the other spouse still has community property -- it's still fifty-fifty, so they have to keep spending that fifty percent. And fifty-percent of what's left until both spouse's community property is spent down to the \$1500 resource level, which would make them eligible for Medi-Cal.

Now I want to emphasize that under those three programs there are real hardships for married people, some of them insurmountable, and when people come to me and say "Look, I want to get married -- or I am married and this is what they told me -- is this right, what should I do?" I'm in a position of telling people that in effect it's better not to be married. I can't say to people, "Don't get married or get divorced," but I do have to say to people, "Here's what happens if you're married -- here's what happens if you're not married, now make your own decision." And I don't really like being in that position, it's uncomfortable for me I don't think people should be encouraged or discouraged and I think that the law should be changed.

COMM. PINES: Thank you. You heard the comments of the prior two witnesses . . . if they were to get married, what is your understanding of what would happen to their benefits.

MR. BRZOVIC: Well what would happen is he would lose his Social Security benefits because he's the recipient of a child's disability benefit, probably. That is, benefits he receives on account of his parents, rather than his own work. What happens in a case of a child's disability recipient is that when they get married, they

lose the benefits. There's an exception if they marry someone who receives Social Security Disability benefits, and an exception if they receive Child's Disability benefits. But if they marry someone who receives S.S.I., they lose it all the same.

COMM. PINES: What would happen to Betty's benefits?

MR. BRZOVIC: She would probably continue to receive S.S.I. Now if she married someone who was receiving regular Social Security Disability benefits, or some other sort of pension, then she'd lose her S.S.I. and Medi-Cal.

COMM. PINES: Is there a possibility that both could lose all their benefits?

MR. BRZOVIC: I don't think both would lose their benefits, but both would get much less than what they have now.

COMM. PINES: Thank you very much for your assistance and if you want to provide us with any written recommendations in this area, we'll appreciate it, because it is quite specialized.

DAVID HALL: I want to deal with discrimination with reference to the laws that exist at the present time in terms of education, or really limiting laws. I want to read my letter to Mr. Leroy Walker (a Commission staff member), which is really an introduction to what I have to say, and then deal with a few of the issues in the time that I have left.

"The State of California has contributed toward a conspiracy of silence that is helping to deprive citizens of all age groups and every type of sexual lifestyle. On basic educational information regarding human sexuality in its broadest sense. This lack of information is due primarily to restrictive legislation which limits and intimidates the work of small personnel and to a lack of available funds and commitment for community education programs that could be designed to reach other segments of the population outside the schools. The result of this lack of education can be seen in a variety of problems. The Statewide pandemic of sexually transmitted diseases, the ever-increasing number of teenage mothers, the problems of rape, incest, and child-molestation. The continual exploitation of human sexuality by all forms of mass-media. The increasing problems of violence and killing of gay men and women. The lack of awareness of sexual needs of special population groups like the physically handicapped and senior citizens, and divorces, due in part at least, to unresolved sexual issues, to mention just a few."

For the past twenty years, I've worked as a Community Health Educator in Los Angeles County. And in all of those years, I've worked with issues of human sexuality, beginning with family planning, abortion, and going on from there, into issues of working for three years with mentally disturbed sex offenders, and at present, I'm working in Community Education and Mental Health. As a result of that work, all of the issues which I read in my list are things that I have been dealing with.

Now I'd like to point out to the Commission that there is no law in California which prohibits sex education. What the law does is it limits sex education and it literally intimidates people so that they are afraid to deal with it, which is the result of that law that exists, which to my knowledge has not been examined by the State since it went into effect in 1967. The law was authored by Senator Schmitz, and is referred to by educators as "the Schmitz Bill". The law places sex education in a special category, different than any other. What tends to happen, because it's placed in a special category, is that we reverse our thinking about it. Reverse thinking goes in this direction -- we believe that if we educate people about the dangers of drugs, for example, drugs and alcohol and nicotine and so on, that that will bring about a more positive utilization of those commodities in our society. We reverse our thinking when it comes to sex education and we say that if you give anybody information about sexuality, they will become either sex acting-out maniacs or sexually disturbed, or

whatever. So we have reverse thinking in this one mystical area, which is an interesting kind of fact.

Where I don't say that human sexuality education is a panacea for everything - certainly, it isn't going to solve all the problems of incest, it isn't going to solve all the problems of rape, it isn't going to make the people who operate centers for senior citizens stop their incredible discrimination. For example, at the present time, in the majority of centers in California, if a married couple who have been married thirty, forty, fifty years, go into a center to live, they are placed in male and female wings of those buildings. There is no place in those facilities for any privacy. So any sex life between even a married couple, let alone unmarried individuals are completely done away with. The assumption being that they're not going to be sexual because they're old people. The same is true of physically handicapped people - you get tremendous discrimination in terms of where they live, the kind of information that's available to them and so on.

In terms of the issue of teachers dealing with sexuality even outside of the classroom, in spite of the fact that the 1967 law says that it applies only to required time in class, in required classes. That's spelled-out in that sense. Still counsellors are afraid to even involve themselves in preventing issues. For example, before I came here today, I was talking to a friend of mine who said to me, "If I had a gay student come to me and ask for help, what can I do - I don't want to run away from home, but I can't talk to my parents," the counsellors in the majority of schools in this community at least, would be afraid to give them any kind of information for fear that something might happen to them and it's at that level that I think that this Commission can get itself involved. My recommendation from this point-of-view is that you have the opportunity to examine what I consider discriminatory legislation i.e., the Schmitz Bill and question the value of it, the constitutionality of it, and the value in keeping the piece of legislation like that on the books. I would also request that you question the health agencies of the State in 1), their lack of funds available for anything dealing with human sexuality, and 2), their lack of commitment to the needs of the citizens of this State for sex education across the board.

TOM COLEMAN: Thank you very much. Are there any questions at all?

COMM. PINCU: Do you have a copy of that in writing?

MR. HALL: Just the letter I gave Mr. Walker - a copy of the letter I wrote.

RALPH BOCHES: Mr. Chairman, members of the Commission -- my name is Ralph E. Boches. I'm a retired Law School Professor, specializing in the area of juvenile delinquency and am presently a student in the field of Criminal Investigative Studies at the Claremont Graduate School.

I speak to you today in my capacity as President and active General Counsel of the Hollywood Youth Defense and Research Association. HYDRA, as it's known for short, is a charitable religious association whose members are members of the Hollywood hustling (male prostitution) community. My remarks today will be directed to two subjects: the laws against prostitution, and laws that make it illegal for any minor to engage in sex with an adult or another minor no matter what the ages of the parties involved.

Other speakers will be directing their remarks toward prostitution, so my remarks will be directed primarily towards laws relating to unlawful sexual intercourse. Turning first to prostitution, the law forbids all lewd acts committed for money or other consideration. The persecution of prostitutes and their customers is big business in California. In the City of Los Angeles alone, during the first eight months of 1981, more than 3,000 arrests were made. Law enforcement officers who should be ferreting out dangerous criminals, instead work in teams of two or three to entice (or all too often entrap) a prostitute or customer in the soliciting act of prostitution. When these cases go to court, sentences are harsh. The usual sentence for a first offender is five days in a county jail. Sentences of fifteen days for second offenders and forty-five days for third offenders are mandatory. Police practices almost always result in a prostitute rather than a customer being the target. Recently the Los Angeles Police Department has been using female decoys against prospective customers. When a customer is arrested, the penalty is an added one of public disgrace and all too often, loss of employment and the destruction of marital relationships. All because of what was intended to be a private transaction between consenting adults, illegal solely because money or other consideration was involved. Present law burns the barn to roast the pig! Prostitution has been with us since time immemorial. It should be treated as a zoning problem, not one of morality.

The constitutional and practical issues were treated in depth in professor John Denver's treatise, "Prostitution - Regulation and Control." We endorse his proposed Model Prostitution Control Act with a proviso that cities and counties be required to establish zones of prostitution in most geographic areas, in which it has historically flourished. I submit to you that during the session today, you will have heard many people speaking on many issues relating to privacy and that in terms of the numbers of persons arrested each year, this issue ought to be one that stands at the head of your list.

Next, turning to the question of minors and sex, I will make a number of proposals to you. Each already is embodied in the laws of one or more states or in the Model Penal Code of the prestigious American Law Institute. Each proposal is a common sense proposal. First, let me summarize existing law for you.

Any sex act between a minor and an adult or two minors is against the law. Whether the partners are fourteen and seventy-seven, or both are seventeen, the law is the same. The laws apply equally to relationships between members of the opposite sex or the same sex. In addition, Penal Code Section 288 imposes even harsher penalties for committing a lewd or lascivious act upon the body of a child under fourteen. A good faith reasonable belief that the party is over the age of consent, i.e., over eighteen, is a good defense. It is not a good defense under Penal Code Section 288 relating to those under fourteen.

Before going on to our suggestions for change, and I want you to know that I speak to you as a father of a daughter who is seventeen and a son of eleven, it is appropriate to point out that morals and the law are not the same thing. Homes, family, schools and religious institutions shape the morals of our youth. The law, on the other hand, should set only the outer limits of what is allowed, permitting only that which most reasonable persons, youths included, agree should be outside the pale.

Our proposals for change are:

- First, no criminal sanctions should be imposed if the age difference between partners is less than four years. This rule is followed in Colorado, Delaware, Hawaii, Kentucky and Main and is recommended in the Model Penal Code.
- Second, the age of consent should be lowered to sixteen years of age. More than three-quarters of the States set the age of consent at sixteen or below. California is out of step with the times.
- Third, Penal Code Section 288 should be amended to lower the operative age from fourteen to ten. That is, the lowest age at which puberty likely begins and is a logical breaking-point, the one used by the Model Penal Code.
- Fourth, the statute should be amended to explicitly provide that a good faith, reasonable belief that a person is sixteen is a good defense, whereas a ten year-old it is not. Once again, the Model Penal Code follows this approach, which analogously is existing case law that needs to be codified.
- Fifth, emancipated minors should be exempted from the provisions of the law. Those who are living on their own, whom the law permits on their own consent, life-threatening surgery, also should be deemed confident to consent to sex.

- Sixth, we believe a minor who has become a prostitute should not be governed by the law. The Model Penal Code goes even further and exempts all minors who have lead a promiscuous life. This, we believe, goes too far. Exempting prostitutes is enough.

Finally, I should note that existing laws made the same ages apply, irrespective of the sex of the parties. This concept is sound and should be retained.

If you have any questions, I would be happy to answer them.

COMM. ALBERTSON: I would like to address myself to your recommendation about lowering the operative age from fourteen to ten. That bothers me. I don't understand why you think that should take place.

MR. BOCHES: There is some kind of bottom line that has to be established. As I pointed out, if you make an honest mistake of age, a kid says that he is seventeen and he turns out to be fourteen, the law says, you are okay. At some level, you're going to say that no child of this age, no matter how old they are, how mature he or she may seem, is capable of consenting to sex no matter how he or she presents themselves. The Model Penal Code uses the age of ten simply because it does represent the very onset of puberty. No normal person would have any kind of sexual interest in a child below that age. Many children older than ten and younger than fourteen are very sexual.

COMM. ALBERTSON: Do you have any background on this that you can provide us, any kinds of studies?

MR. BOCHES: I am referring primarily to the tentative drafts of the Model Penal Code which are available across the street in the County Law Library. I might say that many other States, use around the age of ten, as their basic breaking line. This is not to say that sex with children over ten would be legal. The age that I have suggested is sixteen. All I'm saying is that the maximum penalties shouldn't be brought into play in a little over the age of fourteen.

COMM. PINES: Any other questions? Thank you . . .

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EDITH BERG: I'm representing the Federation of Feminist Women's Health Centers. There are four such centers in the State of California, one in Chico, one in Los Angeles, one in Santa Ana and one in San Diego.

The issue that I want to bring forth today, concerns the use of information collected on investigations and dissemination of that information. We have, during the past year, been the target of two investigations -- one from the Attorney General's Office for potential Medi-Cal fraud in the Chico Center -- and all of the California Health Centers were under investigation during the past year, by the Investigation Unit of the Department of Health Services.

Just as a preface and note, I want to say that there have never been any charges brought, there have never been any substantial claims brought forward. I want to discuss the way the investigations were carried out and how the information had been used.

In the Medi-Cal fraud investigation that took place in Chico, the Health Center was under investigation for at least six months possibly longer, before anybody from the Attorney General's Office came to them and interviewed them at all. They discovered that women who had been into their clinic and also by way of background, in our clinics we provide birth control services, abortion services and pregnancy screening, primarily. We provide essentially the same services in all of our Health Centers. In Chico Health Center it should be noted that they are the only abortion service in the county. They have women coming to them from all over the State, all of over Northern California and from adjoining States. They discovered that women had come into their clinics using Medi-Cal, had been contacted and investigators had gotten their names from the Welfare Office and from the Computer Sciences Corporation that actually processes the billing of Medi-Cal payments. These women were contacted by telephone. They were searched out in their homes, in their places of employment, and also at schools and were interviewed by investigators who, many of the women stated, intimidated them to the point that they weren't sure whether or not they were under investigation. Many of these women were questioned in great detail about the services that they received in the Health Center and since many of them received abortion services, you can imagine that this was a matter of grave privacy while I think it is pretty obvious that any medical services should be considered a private matter.

These women did eventually get in touch with the Health Center and the Health Center got in touch with them, once the Health Center was aware that there was investigation going on and they have many affidavits of these women's experiences.

This is one example that I want to bring forward. The other issue that I wanted to discuss was the investigation of the Health Centers by the Department of Health

Services. Particularly Los Angeles, we've been the target of a great deal of abuse. We learned in April of this year that an undercover agent had come into the Los Angeles Health Center twice in December of 1980 and also March of 1981. We also learned that this same undercover investigator came to work in our organization as a typist for four days. The information that she collected and gave to the Department as part of her investigation not only became information that was shared by the Department with Legislators but also was information that was shared with a reporter of New West magazine. I don't think it coincidental the same month the New West article appeared containing the information that had been obtained from this investigator, all four of the Feminists Women's Health Centers had their clinic contracts that we had with the Office of Family Planning cut-off.

We learned for certain that these actions had taken place because the ACLU, on our behalf, filed a suit against the Department of Health Services under the Freedom of Records Act. This is one of the basic recommendations that I wanted to bring forward. We've had to expose officials from the Department of Health to obtain some of the copies of information that were shown to Legislators and that was given to New West magazine. It is our firm belief that policies that lead to such extreme abuses of power be looked into. We also think it is important that any type of information that might be released under the F.R.A., include provisions for the people about whom the information deals.

For example, we think that it would be highly appropriate for any information that might be given out to any outside source, that first the Department get in touch with whomever the people are (that are involved) so that they have a chance to see those records also, and have a chance to respond to them, and in some way evaluate whether or not they're even true or appropriate. In our case, we had to depose officials and were shown copies of documents. The other point of this abuse, is that, as a community organization, for our support, we turn to the community and we turn to our representatives in the Legislature. Obviously, misrepresentations, which these reports were, I should add, being released to the media and being shown to the Legislators, greatly damaged our reputation. I don't know that we will ever be able to regain the damage, no matter what the outcome is. Those certainly were the two most likely audiences to harm us.

COMM. PINES: What was the purpose of the investigation?

MS. BERG: We have never been given a specific report or any specific information beyond the fact that the Department of Health Services apparently had this secret complaint and they were investigating us to see whether or not we complied

with standards for the Office of Family Planning Contract that we had. The Medi-Cal fraud investigation also apparently was based on some type of complaint. We have never been told what that complaint was and we have never had any information brought to us saying "This is what you are doing and this is what is wrong with it."

COMM. McWHIRTER: I don't know if you are aware of the fact that Medi-Cal routinely investigates, because there is a very high level of fraud perpetrated in claims. I can tell you from personal experience, that my patients have been questioned, they've gone to their homes to determine whether or not the services that have been billed Medi-Cal have indeed been delivered. When that initially happened to me, I was concerned about it and when I discovered that they do that routinely and I was just one of the random selectees, as long as your act is clean, that is the end of it.

MS. BERG: I am now aware that the Medi-Cal fraud unit is one of the largest units of the Investigations Department and I also know there has been abuse of Medi-Cal. However, I don't think that that gives them the prerogative to violate the privacy of a patient. It is possible to get information about a person's services by getting a release from them, or by some other way than going to the home. Just to give you an example of how this was done: One woman had an investigator come to her home while she had a house-full of relatives and this investigator was forcing her to talk about the details of her medical service in the presence of a number of other people.

COMM. ESKIN: I didn't understand during your presentation what invasions of personal privacy had occurred and now you just touched on one. Was the information that was disseminated to the Legislature and to New West magazine -- did that include dissemination of the information about individual patients?

MS. BERG: It did. Including names. The interesting thing is that when we confronted them, in depositions with officials with the Department of Health, they did agree that patient confidentiality had not entered into their decision about our investigation or about the release of those particular affidavits, although they did admit that they do have policies about confidentiality, especially about patients.

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