

COUPLES WORKGROUP:

Excerpts From Government Reports

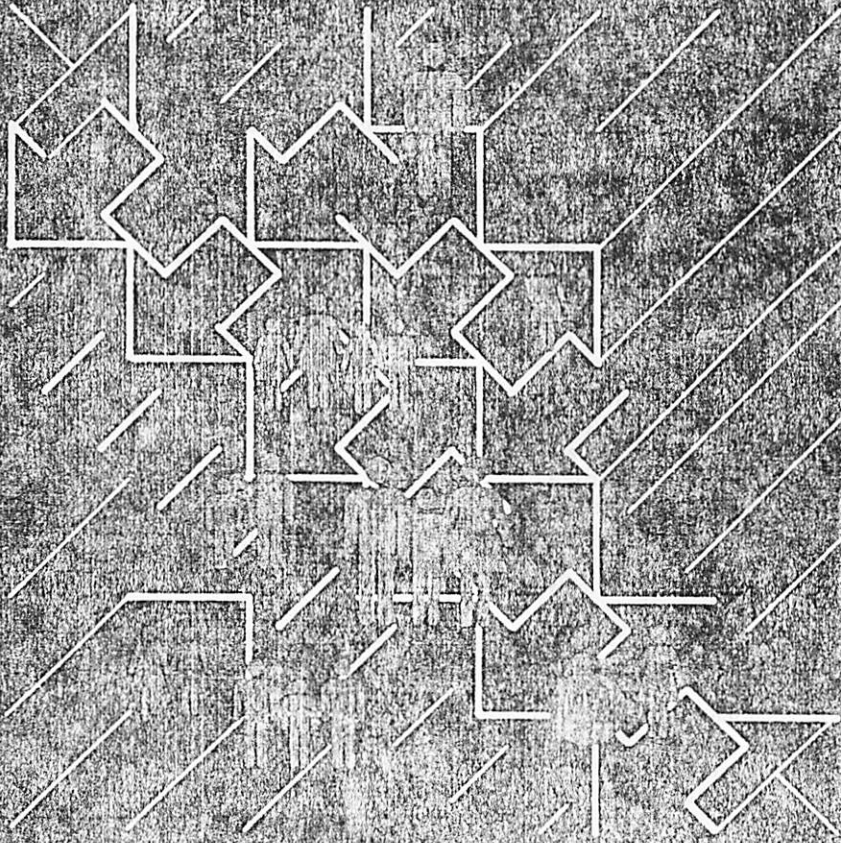
Task Force on Family Diversity
City of Los Angeles
May, 1988

Commission on Racial, Ethnic, Religious
and Minority Violence
California Department of Justice
April, 1986

Family Economic Policy Task Force
League of California Cities and
County Supervisors Association
February, 1988

Task Force on Family Diversity

City of Los Angeles



Final Report

Excerpts

*“Strengthening Families:
A Model for Community Action”*

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CALIFORNIA FAMILIES

Introduction

California families share characteristics with other American families, although Californians are a more diverse lot than Americans are nationally.

Traditionally, family law has been a matter of state, rather than federal or municipal, regulation.¹ Therefore, many decisions affecting Los Angeles families are political and are made in Sacramento.

Los Angeles families are also part of a larger network of California families whose domestic concerns are primarily governed by state policies and programs. Therefore, a review of information on family issues from a statewide perspective is crucial to the study of Los Angeles families.

Throughout the 1980s, Californians have been examining changing family demographics, definitions, and issues. The California Task Force on Families, organized under the auspices of the state's Health and Welfare Agency, issued a report to the Western Regional White House Conference on Families in April, 1980.² The California Census Data Center reviewed 1980 census information from a statewide perspective.³ Friends of Families, a coalition of northern California religious, labor, political, and service-oriented organizations, founded by Oakland Councilman Wilson Riles, Jr., issued a "Bill of Rights for Families" in 1982. The Governor's Commission on Personal Privacy studied family relationships in California and issued its report in December, 1982.⁴ The state's Employment Development Department analyzed socio-economic trends in California.⁵

The California Legislature also turned its attention to family issues. In April, 1987, the state Assembly held hearings on "The Changing Family."⁶ The state Senate initiated a number of family-oriented research projects and released its findings in a series of reports published in 1987.⁷

The subject of family diversity is the common denominator of these state studies and reports. They reveal that to tap a most valuable resource, the state must recognize, embrace, and nurture the rich diversity of its people and their most basic institution, the family.

California Task Force on Families

It should be the policy of the government and all private institutions to accept diversity as a source of strength in family life which must be considered in planning policy and programs.

— California Task Force on Families
Report, April, 1980

The California Task Force on Families was convened in 1979 as a part of the White House Conference on Families. After holding 12 public hearings throughout the state and after reviewing materials submitted by local committees, the state task force published a report to which nearly 2,000 Californians contributed.⁸

The report identified as important areas of concern to California families. Its general goals are consistent with the mandate of the Task

Force on Family Diversity: identifying ways to improve the quality of life for Los Angeles families. Local lawmakers and administrators should be aware of these goals and should keep them in mind when adopting ordinances, passing resolutions, or determining how to implement programs affecting families living in the City of Los Angeles.

GOALS OF THE STATE TASK FORCE ON FAMILIES

Pluralism: Encourage cultural, ethnic, linguistic, and religious pluralism for the purpose of opposing discrimination and racism.

Public Policy: Require a "family impact analysis" prior to implementation of new laws, regulations, or programs.

Housing: Ensure affordable and safe housing; stop discrimination because of age, location, disability, sexual orientation, or family size.

Recreation: Improve and develop local recreational facilities.

Taxation: Create a pro-family federal tax structure by providing credits for dependent care, e.g., care of children, elderly, and disabled.

Employment: Encourage public and private employers to develop assistance programs for unemployed; adopt flexible work schedules.

Violence: Develop more prevention, intervention, and treatment programs, and services such as child care, respite care, etc.

Schools: Improve family life education programs; revise social science curricula to accurately reflect diversity and historic contributions of ethnic minorities, women, gays, and other groups who have been negatively portrayed or eliminated from historic documentation.

Health: Ensure mental health services are available to all families in stress; ensure adequate health care for all, regardless of location, language, ethnic background or income; have more sensitive alcohol and drug prevention and treatment programs.

Foster Care: Discourage separation of families; encourage reunification of families; arrange permanent placement in other situations.

Immigration: Ensure that immigration policies stress efforts toward family reunification, making family unity the number one priority.

Media: Encourage media to more effectively assist families in making consumer decisions; encourage more responsible programming, i.e., programming that accurately portrays ethnic and social groups, and contributes toward integration, and respect for social diversity.

State Census Trend Analysis

There was a spectacular decline in the importance of the traditional family unit (couples with children) since 1950, dropping from 54% of all households to 28% in 1980.

— *Socio-Economic Trends in California*
Employment Development Department
Report, 1986

Census data can provide policy shapers with valuable information about family life in California. Sometimes, of course, census figures tell the obvious. Other times, however, they reveal subtle and distinct changes which have profound implications on public policy decisions.

Information compiled by the Census Data Center of the Southern California Association of Governments conveys the following facts about California families as they were constituted in 1980.⁹

One-Person Households. People living alone made up 24.6% of all California households. This was in contrast to the national average of 22.7% of all households.

Single-Parent Families. In California, 22.3% of families with children were maintained by a single parent, second only to New York as highest state in the nation on this score. The national average was 19.1%.

Education Level. Almost 75% of Californians over the age of 25 were high school graduates, ranking California 10th highest in the nation. About 20% of California adults had four years of college or more.

Language at Home. A language other than English was spoken in nearly one-fourth of California households. This contrasts with the national average of 10%.

Housing. In California, more than 55% of housing units were owner-occupied. The national figure was 64.4% owner-occupied. Housing units are slightly newer and slightly smaller than in the rest of the nation.

Families of Color.¹⁰ The number of California's racial and ethnic minorities has been steadily growing. From 1940 to 1980, Latino, Asian, Black and other ethnic groups have grown from 10% to 32% of the state's population. Over 15% of California's population in 1980 was foreign born. Among the different groups, Latinos had the smallest decline in the "traditional" family unit (couples with children), while Blacks had the highest decline. In 1980, 47% of all Latino households in the state were still "traditional" families. Only 22% of Black households consisted of "traditional" families. In 1980, the total income for ethnic families was \$24,400 for Asian families, \$18,220 for Black families, \$18,670 for Latino families — compared with \$26,720 for Anglo families.

Seniors.¹¹ In the past three decades, the relative size of California's elderly population (65 years and older) nearly doubled from 5.6% in 1950 to 10.1% in 1980, while the percentage of children (0 to 15 years) declined from 32.2% in 1950 to 23.8% in 1980. Whites (non-Spanish surname) had the highest percentage of elderly and Latinos had the lowest percentage of elderly and the highest percentage of youths.

Employment Trends.¹² The rate of participation in the California labor force for persons 16-years-and-older increased from 55% in 1940 to 64% in 1980. The major reason for this growth was the movement of women into the labor force. The labor force participation rate (LFPR) swelled from 28% in 1940 to 52% in 1980. This shift was most pronounced for Latino females whose LFPR surged from 22% in 1940 to 52% in 1980. The increase for Black females was much smaller since they have traditionally had a high LFPR in previous decades (40% in 1940 and 1950). The LFPR for prime-age (25 to 64 year-old) males declined about 5% overall, but the decline for prime-age Black males dropped about 15%, from 93% to 78%, indicating a significant withdrawal from the labor market.

Throughout the past four decades, prime-age Black males suffered nearly three times the unemployment rate encountered by their White counterparts.

Self-employment declined over the past four decades, dropping in general from 16.8% to 9.5%.

From 1940 to 1980, about seven out of every ten employed persons were in the private sector, although government employment peaked at 17% in 1970. Sectoral employment patterns varied considerably among ethnic groups. Latinos were disproportionately concentrated in the private sector, while Blacks were disproportionately located in the government sector.

Construction and agricultural jobs sharply declined in the past four decades in California, although the largest shift in the distribution of jobs was from manufacturing to services other than personal services.

Poverty. In 1980, over 11% of California families lived in poverty.¹³ The groups with the highest poverty rates were the Black and Latino female-headed households.¹⁴ The largest growth during the 1970s in absolute numbers of Californians in poverty came from Latino couples.¹⁵

Marital Status.¹⁶ More California men and women tended to remain unmarried than men and women in the rest of the nation. Nationally, more than 60% of men over 15 years old are married and 30% single. In California, 56% are married, 32.5% are single, 9% divorced or separated, and 2% widowers. Among women over the age of 15, 54.8% in the nation are married, and 23% single. Among California women, 52.9% are married and 23.5% are single, 9% divorced or separated, and 2% are widowed.

Household Relationships.¹⁷ The state had 8,629,866 households in 1980. The majority of them (55%) contained a married couple. Unmarried couples made up about 7% of California households. Over 22% of households with children were maintained by a single parent. Nationally, there were only 19.1% single-parent households.

State Legislative Hearings

Healthy individuals, healthy families, and healthy relationships are inherently beneficial and crucial to a healthy society, and are our most precious and valuable natural resources. The well-being of the State of California depends greatly upon the healthiness and success of its

families, and the State of California values the family, marriage, and healthy human relationships.

— California Legislature
Statutes of 1986, Chapter 1365
Approved by Governor,
Sept. 29, 1986

Acknowledging the diversity of California families, the state Legislature has declared that each family is unique and complex and that the state should not attempt to make families uniform.¹⁸

Building on this premise, the California State Assembly held hearings recently, looking into changing family structures, changing family populations, and changing family economics.¹⁹ Topics addressed at these hearings included: the two-paycheck family, families headed by unmarried teens, extended families, the "graying of California," the emergence of a multicultural population, labor market trends, and dependent care.

The testimony at the hearings reflects a growing awareness that California families are experiencing tremendous social and economic changes.

Dual-Wage Earner Families.²⁰ The biggest change in family structure over the past 30 years is the increase in two-paycheck families. This has been caused by more mothers entering the workforce. In 1987, 62% of mothers with children under 18 held jobs outside the home, compared with 45%, 10 years ago and 28% in 1950. Mothers with children under three years-old now are the fastest growing segment of the workforce. Today's families are relying on two paychecks to maintain, rather than to improve, their standard of living. Many two-paycheck families complain of stress because of the double strain of working and parenting with inadequate social supports.

In 1986, 50% of all married-couple households in the state had two wage earners.²¹ It is predicted that by 1995, that figure will rise to 66%.²²

Single-Parent Families.²³ The number of families headed by a single parent — 90% of them are headed by women — has doubled in the past decade. In these households, the struggle is one of survival. Half of all female-headed households live below the poverty line today.

Teenage Mothers.²⁴ California has the second highest teen pregnancy rate in the nation, and most teens who give birth are unmarried. Forty percent of all female high school dropouts leave school because they are pregnant. This, of course, reduces their income potential.

Seniors.²⁵ By the year 2000, increased life expectancy will mean that about 15% of Californians will be seniors. It is anticipated that the number of seniors over 85 years-old will increase by 81% by the turn of the century.

Ethnic Diversity. By the century's close, Asians, Blacks and Latinos will form the majority of California's population.²⁶ More than 75% of the state's population growth in the next seven years will come from racial and ethnic minorities, primarily Latinos and Asians.²⁷

Legislative Task Forces

Both major political parties have proposed legislation aimed at a myriad of family related issues. Assemblyman Tom Bates, taking the

lead for Assembly Democrats, introduced a 10-bill package to ease family problems. One of the bills would create an Office of Family and Work to assist the private sector in developing employment policies — like child care, flex-time options, parental leave — to help employees balance work and family obligations. Other Bates' bills would: provide child care to low-income parents participating in job training; give a 4% cost of living increase to state subsidized child care programs; provide economic development funding to counties with high unemployment rates to increase the job prospects for GAIN participants who have children; require new or renovated public buildings with 700 or more employees to include child care facilities; establish pilot projects to train parents how to teach their children to read and how to teach their children to learn computer skills; give student assistance to persons training to become child care workers; step up enforcement against delinquent child support obligations; and help homeless families by allowing counties to increase deed recording fees to fund housing and job-related services to the homeless.²⁸

On child care issues, Assembly Republicans have proposed legislation to reduce the cost of insurance at day care centers, lower the student-teacher ratio requirements for state-subsidized child care, help fund training for day care providers, and give tax credits to employers who build on-site day care centers.²⁹

Task Force on Family Equity. In the past two years, the California State Senate has also concentrated on family issues. A Senate Task Force on Family Equity was formed in 1986.³⁰ The Task Force found "an alarming relationship between the economic consequences of divorce and the feminization of poverty — the growing number of women and children living below the poverty line in single-parent female-headed households."³¹ This phenomenon is particularly significant in California which has the highest number of single-parent female-headed households of any state in the nation.³²

The Senate Task Force found that divorced women and their children suffer a drastic decline in their standard of living in the first year after a divorce — an average decline of 73% — while divorced men are economically better off than they were during the marriage. The standard of living of divorced men rises an average of 42% in the first year following a divorce.³³ This disparity continues over time. One study showed that even seven years after divorce, the financial positions of ex-husbands is strikingly better than that of ex-wives.³⁴

This post-divorce household income disparity between ex-husbands and ex-wives was explained by the Senate Task Force.³⁵ In two-paycheck families, the wife's outside income typically amounts to only 44% of the husband's earnings. Thus, the husband's departure leaves a precipitous drop in income available to the wife. Additional reasons were cited for the post-divorce income gap: (1) courts rarely award spousal support — only 17% of women in California are awarded spousal support; (2) child support usually falls largely on the mother, while the father is allowed to retain the major portion of his income for himself; and (3) only 50% of custodial mothers due support actually receive full payments. The Task Force also found that the system of dividing community property in California often produces unequal results.

After nine months of discussing the results of empirical research, the Senate Task Force on Family Equity produced 23 legislative proposals to help post-divorce families cope with the plethora of problems they face. The package includes proposals that would: (1) defer the sale of family

homes so children and the custodial parent would not be immediately uprooted in order to divide community property; (2) force self-employed parents who are delinquent in child support payments to establish security deposits equal to 12 months of child support; (3) take into consideration the value of career enhancements through education and training when setting child support and alimony payments; and (4) require judges to consider a history of child or spousal abuse when determining custody. Some of the proposed reforms are opposed by fathers' rights advocates.³⁶

Also in 1987, the state Senate received a report recommending more than 15 ways to improve California's divorce mediation program. According to the report, more than 33% of the current generation of children will experience a parental divorce before they reach the age of 18.³⁷

Senate Office of Research. During 1987, the Senate Office of Research released findings regarding family income.³⁸ The economic facts are revealing. In the past 10 years, California's families have become poorer overall. While the poorer families have lost ground, the richest families have prospered. The real income of the poorest of California's families fell 9% in the past ten years, while the real income of the richest families rose 14% between 1977 and 1986. Although the top 40% of California families have continued to increase their prosperity since 1977, the other 60% have either suffered a loss of prosperity or barely stayed even. Female employment and the increasing amount of work by women was cited as the main reason why family income did not fall more than it did between 1977 and 1986.

Senate researchers compared economic prosperity along racial and ethnic lines.³⁹ Black families have not fared well. Black families in the bottom 60% of the economy have seen their real purchasing power fall by about 5% between 1977 and 1985. Latino families virtually have remained economically the same. Latino families in the lower 60% of the economy have gained a slim 1% in purchasing power since 1977. Anglo families fared much better. Although the number of Anglo families has remained constant since 1977, in 1985 there were 7,000 fewer Anglo families in the bottom 20% of the economy and 6,000 more Anglo families in the top economic quintile than in 1977. Asian and Native American families in California had a percentage loss in middle-class status, and had larger increases in the percent of their poor families than of their wealthy families.

Proposed Commission on the Family. Citing the dramatic changes that have taken place in family structures, demographics, and income and poverty levels in California, Senator Diane Watson has proposed that the State of California establish a 15-member California Commission on the Family.⁴⁰ The two-year commission would study the dynamics of family structure in California and provide the Legislature with recommendations for incorporating findings into policy development. The recommendations would address the proper role of government in providing services to families and suggest ways to better coordinate programs that serve families.

Assemblyman Bates has summed up the California family situation:⁴¹ "We've got to face the reality — families and their needs have changed. The family policies of our state are stuck in the 50s. Now it's time to move into the 80s and 90s."

Joint Select Task Force on the Changing Family. The commit

ment of Assemblyman Bates and Senator Watson to improve family life in California has been recognized by the state Legislature. These two leaders were selected to co-chair a newly created Joint Select Task Force on the Changing Family. The new task force in comprised of 6 state legislators and 20 public members.⁴² It will study family trends and issues and file a report with the Legislature by the end of 1988 recommending steps that can be taken to bring public policy into line with the reality of contemporary family life in California as it is now and as it will be in the 1990s and beyond.

CALIFORNIA FAMILIES: RECOMMENDATIONS

5. The Task Force recommends that the Legislature's Joint Select Task Force on the Changing Family review this report and its recommendations prior to issuing its own report to the Legislature in November, 1988.

6. The Task Force recommends that the Legislative Policy Statements of the City of Los Angeles be amended. Since 90% of single-parent families are headed by women, it would be appropriate for the city's "Policy Statement on Women's Issues" to include a section addressing the needs of single-parent families. The Commission on the Status of Women could assist the city in implementing this recommendation.

7. The Task Force recommends that the Los Angeles City Commission on the Status of Women review the Final Report of the California State Senate Task Force on Family Equity, and the legislative proposals arising out of that report. Based on this data, the Women's Commission may wish to propose additional legislative policy statements involving judicial education, community property, child support, spousal support, and mediation.

8. The Task Force recommends that the California League of Cities sponsor a "Family Diversity Forum" at its next annual meeting and encourage its members and participants to create appropriate mechanisms in their own jurisdictions to study changing family demographics and issues.

California Families: Notes

¹ *Pennoyer v. Neff* (1878) 95 U.S. 714, 734-735.

² "Issues Affecting California Families," *Report Submitted to the 1980 Western Regional White House Conference on Families* by the California Task Force on Families and the California Health and Welfare Agency (April, 1980).

³ *1980 Census Summary Report*, California State Census Data Center (September, 1981); Dembart, Lee, "Census Compares State with Nation," *Los Angeles Times*, May 23, 1982.

⁴ *Report of the California Commission on Personal Privacy* (State of California, 1982); "Report of the Committee on Family Relationships," *Supplement One*; "Family and Household Use Survey," *Supplement One*.

⁵ *Socio-Economic Trends in California: 1940 to 1980* (Employment Development Department, 1986); Castaneda, Ruben, "Blacks, Hispanics Slowing Down in Economic Gains," *Los Angeles Herald Examiner*, May 2, 1986.

⁶ Bancroft, Ann, "California Families Turn into a High-Profile Issue," *Los Angeles Times*, April 24, 1987.

⁷ *Family Income in California*, Senate Office of Research, April, 1987; *Final Report: Senate Task Force on Family Equity*, June, 1987; *Report of the Advisory Panel on the Child Oriented Divorce Act of 1987*, April, 1987.

⁸ "Issues Affecting California Families," *supra*.

⁹ Dembart, *supra*.

¹⁰ *Socio-Economic Trends*, *supra*.

¹¹ *Ibid*.

¹² *Ibid*.

¹³ Dembart, *supra*.

¹⁴ Castaneda, *supra*.

¹⁵ *Ibid*.

¹⁶ Dembart, *supra*.

¹⁷ *Ibid*.

¹⁸ 1986 Stats., Ch. 1365 (AB 3657, Vasconcellos), Sec. 2(m).

¹⁹ *The Changing Family to the Year 2000: Planning for Our Children's Future*, State Assembly Human Services Committee, March 20-21, 1987.

²⁰ "Fact Sheet on the California Family Today," prepared by Assembly Human Services Committee Staff, March, 1987.

²¹ Yoshihara, Nancy, "State's Wage-Earners May Have to Run Harder Just to Stay Even," *Los Angeles Times*, July 9, 1987; Report, Center for the Continuing Study of the California Economy, July, 1987.

²² *Ibid*.

²³ Fact Sheet, *supra*.

²⁴ *Ibid*.

²⁵ *Ibid*.

²⁶ *Ibid*.

²⁷ Yoshihara, *supra*.

²⁸ Press Release, April 3, 1987.

²⁹ Bancroft, Ann, "California Families Turn Into a High-Profile Issue," *Los Angeles Times*, April 24, 1987.

³⁰ Senate Resolution 28 established the Task Force and requested it to study the growing body of academic and government research documenting the economic hardships created by the current family law system. In addition to Senators Roberti, Hart, Lockyer and Morgan, Task Force membership included family law scholars, judges, private and public attorneys, and advocates for women's and men's rights.

³¹ *Final Report*, Senate Task Force on Family Equity, June, 1987.

³² *Ibid*.

³³ *Ibid*.

³⁴ *Ibid*.

³⁵ *Ibid*.

³⁶ Cage, Mary, "Divorce Reforms Bring Fathers' Ire," *Daily Journal*, August 4, 1987.

³⁷ Report, Advisory Panel on the Child Oriented Divorce Act of 1987, April, 1987.

³⁸ "Family Income in California," Senate Office of Research Issue Brief, April, 1987.

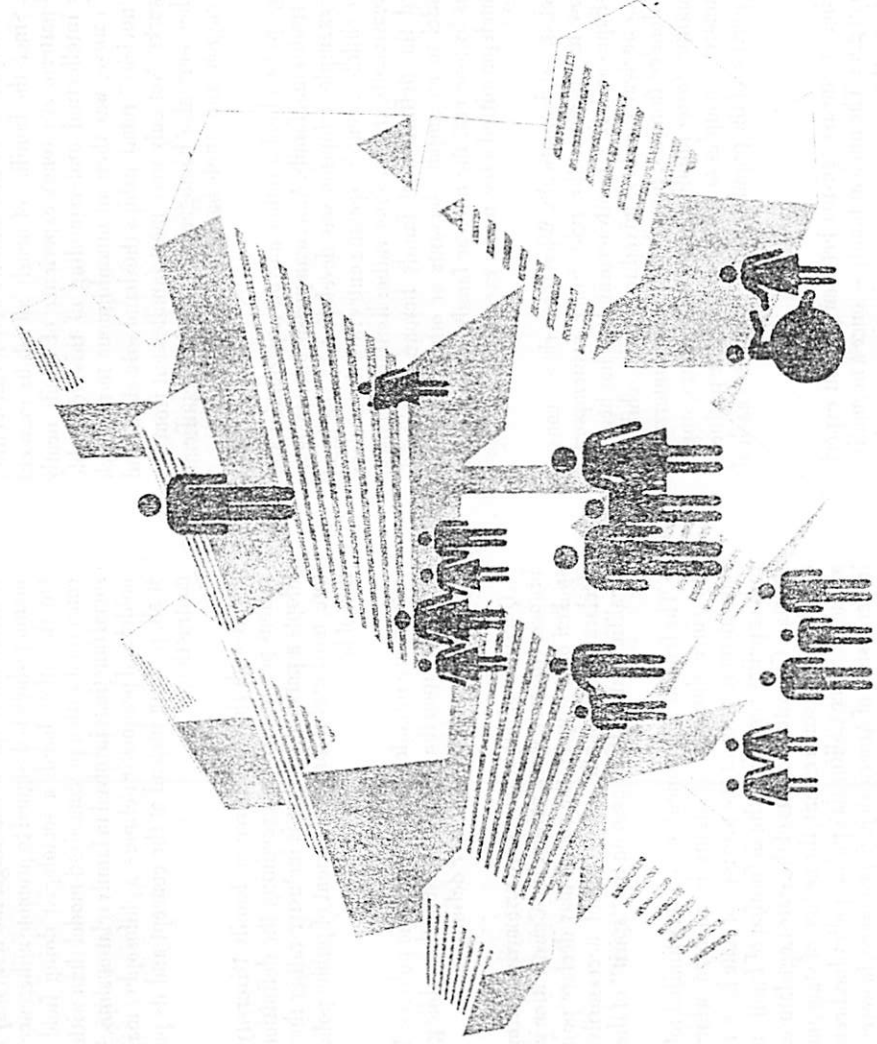
³⁹ *Ibid*.

⁴⁰ Senate Bill 163, introduced January 13, 1987.

⁴¹ Press Release, April 3, 1987.

⁴² Assembly Concurrent Resolution No. 89, filed with the Secretary of State on September 18, 1987.

Public Policy



Definition of Family



PUBLIC POLICY AND THE DEFINITION OF FAMILY

"Family" may mean different things under different circumstances. The family, for instance, may be a group of people related by blood or marriage, or not related at all, who are living together in the intimate and mutual interdependence of a single home or household.

— California Supreme Court
*Moore Shipbuilding Corporation
v. Industrial Accident Commission*
(1921) 185 Cal. 200, 196 P. 257

In the recent past, Americans had no reason to debate over the definition of "family." Everyone knew that families were created either by marriage or birth. Since the families of nearly all adults were cut from the same social pattern, everyone's experience of family neatly coincided with their intellectual understanding of this venerable institution. Family, of course, was then an unambiguous term which referred to so-called "nuclear" relationships (husband-wife-child) and extended kinship networks. Not only were most families cut from the same social pattern, they were also homogeneous in other significant ways, including race, religion, and ethnic background.

Although the average person held a rather narrow experiential and intellectual view of the traditional family, American jurisprudence was a bit more flexible. For example, adoption was developed by the legal system to accommodate childless couples seeking entry into the nuclear family mainstream. Occasionally, and for some rather limited purposes, the law even stretched the definition of family beyond the blood-marriage-adoption model to encompass servants or other household members. Thus, in this bygone era, the nuclear family was the social norm, albeit a norm which permitted a few minor exceptions.

Today, the picture is changed dramatically. What formerly was considered the exception now has become the rule. Since contemporary families exist in many shapes and sizes, family terminology has become complex. People refer to nuclear families, mixed marriages, childless couples, step families, blended families, binuclear families, interracial families, dual-career families, foster families, extended families, single-parent families, and unmarried couples or so-called domestic partners. Moreover, a significant portion of the population now comprises each of these variations.

Society is experiencing an uneasy tension between present experience and leftover social dogma. The nuclear family — once a normative reality — today is simply another variation, and a minority one at that; as a perceived ideal, the nuclear family is now a myth. Thus, since most people want to be "normal," many feel somewhat guilty because their nonnuclear living arrangements have missed the mark, deviating from the lingering perception of the social norm.

This report does not seek to supplant old ideals with new ones. Neither does it intend to substitute one definitional straightjacket with another. Rather, the mandate and goal of the Task Force is to examine the realities of contemporary family living. Definitions will help describe what actually exists; for the Task Force, definitions are tools for understanding, passive reflections rather than a shoehorn designed to make one size fit all.

As this report demonstrates, people live in a wide range of committed family relationships. Fortunately, the law and society's institutions are flexible enough to accommodate this reality.

Family Definitions from a Legal Perspective

The definition of family, like the definition of any term, is a function of the perspective of the definer, the context in which the term is used, and the user's purpose in employing the term.

A layperson understands family in one way.¹ When he or she refers to family in a social conversation, a dictionary definition may suffice. However, a member of the clergy may understand family in quite another way.² If a pastor is delivering a sermon intended to reinforce institutional religious teachings, the term may be used in a restrictive manner which is designed to promote adherence to a designated model. On the other hand, a sociologist doing field research may be less concerned with a preconceived model than with actual and observable social functions involved in family relationships.³ In contrast to both the model and pragmatic definers, a philosopher may resist defining family at all, probing instead at the concept and its possible expansions and contractions.⁴

Although the Task Force on Family Diversity has considered these various perspectives in examining the definition of family, this report adopts a perspective that is inclusive rather than exclusive and, therefore, most useful for development of public policy and the administration of law.

Laws are intended to further public policies. Public policy is generally based upon the public interest or the public good, admittedly vague concepts not subject to precise definition.⁵

Questions of public policy are primarily determined by the legislative branch. However, when neither the Constitution nor the Legislature has spoken on a subject, the courts may declare public policy.⁶ A judicial declaration of public policy is not necessarily dependent on technicalities but is often based on the "spirit" of the law.⁷

The federal government plays a very limited role in the area of family law since domestic relations is an area which our constitutional federalism regards as the province of state law.⁸ Therefore, California's public policy regarding the definition of family must be gleaned from the state Constitution, acts of the state Legislature, decisions of the state courts, and, to some extent, the actions of state and local administrative agencies. Since California's public policy has been developed within the larger system of American jurisprudence, however, it is generally consistent with the flexibility inherent in American family law.

The word "family" is derived from the Latin term "familia," which means household, i.e., the body of persons living in one housing unit under a common head.⁹ In American jurisprudence, family conveys the notion of some relationship, by blood or otherwise, which is of a permanent and domestic character. When the word is used without reference to an established household, family may refer to all blood relatives or, in a more restricted sense, to spouses and their children.¹⁰

Generally, the central characteristic underlying family is mutual interdependency. Thus, family may refer to a group of unmarried persons not related by blood, but who are living together and who have

some obligation, either legal or moral, for the care and welfare of one another.¹¹

The definition of family has been litigated in American courts in many factual contexts: single-family zoning, restrictive covenants, insurance policy exclusions, property tax exemptions, anti-nepotism regulations, and victim's compensation, to name a few. Whether American courts have granted or denied family status has depended on the particular circumstances of each case. For example, in some cases, disabled persons, delinquent teenagers, or religious novices living in group homes have been considered families. Courts also have ruled that communal living arrangements involving student roommates in dorms or fraternity houses were not family relationships.

With this legal background in mind, the Task Force has examined California's public policies involving family definitions. Those policies are grounded in constitutional considerations, legislative enactments, administrative decisions, and judicial interpretations.

Constitutional Considerations

The California Constitution declares that all people are by nature free and independent and have inalienable rights. Among these enumerated fundamental rights are enjoying and defending life and liberty, acquiring, possessing, and protecting property, as well as pursuing and obtaining safety, happiness, and privacy.¹²

Although the California Constitution and the United States Constitution have many similar provisions, the state Constitution is a document of independent force. State court judges have the personal obligation to exercise independent legal judgment in ascertaining the meaning and application of state constitutional provisions — even if their interpretations vary from the views expressed by the United States Supreme Court as to the meaning and scope of similar federal constitutional provisions.¹³ Consistent with federalist principles, the State of California, through its own state Constitution, is free to confer greater rights upon its citizens than the federal Constitution generally confers upon Americans.¹⁴

Since family law traditionally has been a matter of state, rather than federal, regulation, public policies governing family definitions are also grounded in the state Constitution. The California Supreme Court has the ultimate responsibility to define the meaning and scope of state constitutional provisions, and it does so when asked to decide specific cases and controversies. Some of these cases and controversies have involved the definition of family.

One such case was decided by the Supreme Court in 1980.¹⁵ The City of Santa Barbara adopted a zoning ordinance that restricted who could live in areas zoned for single families. The city defined a single family unit to include any size group related by blood, marriage, or adoption, as well as a group of unrelated occupants not exceeding five persons. The Adamson household violated the rule of five. It consisted of a group of 12 adults living in a 10-bedroom, 6-bathroom mansion. The Adamson householders were a close group with social, economic, and psychological commitments to each other. They lived much as a family would, sharing expenses, rotating chores, eating evening meals together, lending each other emotional support, and often taking vacations together. They regarded their group to be a family.

The Supreme Court termed the Adamson household an "alternate family" because the group's living arrangements achieved many of the personal and practical needs served by traditional family living. The court noted that the group met half of Santa Barbara's definition of family because it was a "single housekeeping unit in a dwelling unit." However, it failed to meet that part of the definition that required residents, if they were greater than five in number, to be related by blood, marriage, or adoption.

In declaring the city's restrictive definition of family violative of Article I, Section 1 of the California Constitution, the Supreme Court cited precedents in New Jersey and New York:¹⁶

Some courts, confronting restrictions similar to the rule-of-five here, have redefined "family" to specify a concept more rationally and substantially related to the legitimate aim of maintaining a family style of living. For example, in New Jersey a valid regulation of single-family dwellings would be "a reasonable number of persons who constitute a *bona fide* single housekeeping unit." *Berger v. State* (1976) 71 N.J. 206. "The fatal flaw in attempting to maintain a stable residential neighborhood through the use of criteria based upon biological or legal relationships is that such classifications operate to prohibit a plethora of uses which pose no threat to the accomplishment of the end sought to be achieved. Moreover, such a classification system legitimizes many uses which defeat that goal. . . . As long as a group bears the generic character of a family unit as a relatively permanent household, it should be equally as entitled to occupy a single family dwelling as its biologically related neighbors." *City of White Plains v. Ferraiolo* (1974) 34 N.Y.2d 300, 306.

Thus, the state Constitution protects the right of all Californians to form "alternate" family relationships, i.e., relationships not based on blood, marital, or adoptive ties, and to live with these chosen family members in a single dwelling without undue government interference.

On the other hand, in 1982, the California Supreme Court upheld a state prison regulation limiting overnight visitation with eligible inmates to persons with whom inmates were related by blood, marriage, or adoption. A prisoner claimed he had a long term nonmarital relationship with a woman. The woman and her daughter wanted to participate in the prison's family visitation program. The Department of Corrections, citing its restrictive definition of family, refused. In a three-way split, the majority of the court concluded that public policies favoring administrative efficiency and prison security overrode the inmate's interest in maintaining overnight visitation with his "alternate" family. A majority of the court, however, indicated that the scales of justice may have tipped in the inmate's favor had society provided "alternate" families with a simple method of authenticating their relationships. The court found unacceptable the idea of "mini" trials in which bureaucrats would have to decide which family relationships between prisoners and their potential visitors were authentic and which were not. The two justices whose votes were pivotal to the outcome of the case explained:¹⁷

The definition of "family" in our society has undergone some change in recent years. It has come to mean something far broader than only those individuals who are united by formal marriage. Many individuals are united

by ties as strong as those that unite traditional blood, marriage and adoptive families.

However, the very diversity of the groups of people now commonly referred to as "families" highlights the difficulty that would be created if the prison authorities were required to grant family visits to prisoners who were not married. The prison authorities do have a security interest in prohibiting visits by transients, whose ties to the prisoners may be fleeting or tenuous at best. In the absence of a marriage certificate or a valid out-of-state common law marriage [common law marriage has been abolished in California], it would be extremely difficult for prison officials to distinguish between the valid long-term commitments that constitute a "family" and transient relationships. Further, the evidentiary hearings that such determinations would require would pose a significant administrative burden on prison officials. . . .

In the absence of any reasonable alternative to distinguish between families and nonfamilies, the limitation of family visits to those who are married under the laws of this or another state is a valid restriction.

These and other cases support the individual's constitutionally-based freedom to choose whether to form and maintain a traditional family unit or to live in an alternate family form. Legislative or administrative decisions restricting this freedom of family choice may be invalidated or upheld, depending on the balancing of competing interests. Often the courts defer to legislative and administrative judgments in deciding how to strike the balance.

Legislative Enactments

The California Legislature has found and declared that the family unit is of fundamental importance to society in nurturing its members, passing on values, averting potential social problems, and providing the secure structure in which citizens live out their lives.¹⁸ Through actions on a wide variety of subjects, the Legislature has expressed its judgment that family units can be diverse in their structures. As a result, there is not one uniform definition of family in California law. Instead, there are family *definitions*.

In some contexts, the Legislature has defined family in a restrictive manner. For example, in describing those persons entitled to family allowances pending the administration of estates, the Probate Code uses the traditional blood-marriage-adoption definition.¹⁹ Similarly, the legislatively created veterans-home-purchase program defines "immediate family" as including only a spouse or adopted or natural dependent children.²⁰

Other contexts have merited and received the benefit of broader legislative definitions. In authorizing programs to rehabilitate child molesters who have abused youthful family members, the Penal Code defines family member in terms of being a "member of the household" of the victim.²¹ In providing remedies to persons who suffer violence caused by other family members, the Legislature has defined family in terms of residents of the same household.²² In domestic violence legislation in which the goal is specifically to prevent partner abuse, "family members" include a variety of adult household members, including

spouses, former spouses, and other adults having sexual relations with each other.²³ In the worker's compensation context, the Legislature extends survivor benefits to dependent relatives (blood-marriage-adoption), or to surviving dependent household members of deceased employees.²⁴ Here, the Legislature has reaffirmed the expansive definition of family by rejecting attempts to limit worker's compensation benefits to survivors related to deceased employees only by blood, marriage, or adoption.²⁵

In other situations, the Legislature uses the term family without defining it. For example, in establishing the Victims Restitution Fund, which provides assistance to crime victims and their families, the phrase "member of family" is used without definition.²⁶ In addressing the functions of Conciliation Courts, the Legislature sets a goal of keeping families intact. Here also, family is nowhere defined.²⁷ In these situations, the Legislature may have delegated definitional authority to the administrative and judicial agencies operating these programs.

Although the Legislature is aware that the definition of family varies from context to context, its definitional choices are not beyond critical analysis. For example, in 1986 the Legislature passed a law allowing members of a victim's family to be present during a criminal preliminary hearing that is normally closed to the public. The Legislature evidently determined that the families of victims have a greater interest than the general public in attending preliminary hearings and that the victim has an interest in having his or her family present for emotional support.²⁸ However, the definition of family was limited to the alleged victim's "spouse, parents, legal guardian, children, or siblings."²⁹ This restrictive definition fails to acknowledge the needs of victims whose closest family members do not fall within the definition. For an elderly victim, the only available relative might be a grandchild or nephew or niece who resides with the victim. Under this definition, the lifemate of a gay or lesbian assault victim would have to remain in the hallway while the victim faced the courtroom trauma alone. The expanded "household member" definition of family certainly would have been appropriate in this law. The Legislature's failure to use the expanded definition may very well have been merely an oversight.

This definitional survey shows that the Legislature recognizes diversity in family structures and does not entertain the goal of creating a singular definition. Rather, the term family is defined by the Legislature only as a method of furthering other public policies. While one policy may sometimes call for the use of a narrow definition, another policy may call for an expansive definition. The overriding principle is clear: public policy requires flexibility in the definitional process; the ultimate definition is guided by a keen understanding of the state's ultimate objectives when dealing with a particular problem.

Administrative Discretion

The State of California has a tripartite system of government. Like the federal government, its coequal branches are executive, legislative and judicial. The legislative branch passes laws and declares public policies. The judicial branch, the ultimate authority on constitutional issues, interprets laws in the context of specific cases and controversies. The executive branch, including administrative agencies, administers and enforces laws as passed by the legislative body and interpreted by the courts.

In operating their programs, administrative agencies have broad discretion in adopting rules, regulations, and definitions. Of course,

Public Hearing Testimony

The Task Force on Family Diversity received testimony on the subject of defining family.³⁸ Wallace Albertson, President of the Los Angeles Community College Board of Trustees, appeared before the Task Force in her capacity as Commissioner of the California Commission on Personal Privacy, for which she had served as the Chairperson of a subcommittee on Family Relationships.

Her testimony focused on the diversity of family forms and the problems that arise from a misplaced presumption that the traditional nuclear family is the social norm. The study of the Privacy Commission indicated:³⁹

- * A dilemma surrounding the meaning of the word "family" exists both in a sociological/theoretical context and in social work practices.

- * The presumption that "family" means a married, heterosexual couple with children no longer applies to most of the population.

- * Persons whose family forms do not fit this presumed model suffer exclusion from legal, tax, and services protections.

- * The nature and variety of family forms in current society warrants definitions that are inclusive rather than exclusive of nontraditional family forms.

- * The right of personal privacy involves the right of an individual to choose intimate and familial associations without undue restriction.

- * Any definition of family should consider the following elements: continuity of commitment, mutuality of obligation, economic and/or domestic interdependence, as well as love and caring.

The Task Force on Family Diversity has found these points consistent with its overall research into family definitions and has taken them into consideration in determining its recommendations.

Research Team on Legal Definitions

The Task Force on Family Diversity received a topical report from its research team on "Legal Definitions of Family."⁴⁰ That report addresses the impact of legal definitions of family, how these definitions can serve government goals, the compatibility of flexible and traditional definitions, and government's responsibility to families.

Addressing the issue of definitional compatibility, the report stated:⁴¹

[T]he notion of expanding the definition of family, or making the definition flexible to achieve government goals, is not a process suggesting revolution, discarding of traditional values, or offending in morally sensitive areas. There is an important difference between the way family-type groups exist and function every day and what we believe, or feel, a family should be. And it is to the former

their discretion is not unlimited; administrators must act within the Constitution,³⁰ and their actions must conform to the will of the Legislature.³¹ However, within these confines, executive agencies are given wide latitude in setting definitional parameters for their operations.³² Very often, the Legislature, after declaring a general policy and fixing a primary standard, will confer upon administrative officers the power to fill in the details necessary to carry out the legislative objectives.³³

In 1982, the California Commission on Personal Privacy examined 96 federal, state, and municipal agencies which utilized the terms "family" or "household" in operating their programs.³⁴ Respondents were asked to indicate whether they used the standard Census Bureau definition of family (blood-marriage-adoption) or broader definitions. Program managers were also asked if their program definition and eligibility criteria included or excluded members of "variable" families, i.e., "two or more persons domiciled in the same household and operating as a single housekeeping unit, who are *not* related by blood, marriage, or adoption." The Privacy Commission survey revealed the following facts:³⁵

- * 75% of respondents were not bound by a definition based solely on blood, marriage, or adoption.

- * The greatest autonomy to adopt broader definitions existed at the municipal level of government.

- * 63.5% of respondents actually served variable families during program year 1981.

The survey showed that administrative discretion was often used to define family in an expanded way.³⁶ For example, in connection with its Child Care Program, the United States Department of Agriculture defined family as a "group of related or non-related individuals who are not residents of an institution or boarding house, but who are living as one economic unit." In its School Health Program, the State Department of Education defined family as "a unit of intimate transacting and interdependent persons who share the same values and goals, responsibility for decisions and resources, and a commitment to one another over time." In its Genetically Handicapped Program, the Monterey County Social Services Department defined family as a "group of individuals who live together on a continuing basis and share their income and expenses and are dependent upon the group's resources." In connection with its Child Protective Services Program, the San Diego County Social Services Department defined family as "primary caretakers, siblings, or significant others living together." The Probation Department of the Tulare County Family Court defined family as including "cohabiting individuals and natural parents (married or unmarried), their offspring, and other significant individuals concerned about children (e.g., grandparents)."

The Privacy Commission survey reported that a substantial majority of administrative agencies had no legal restrictions which prevented them from serving members of "variable" families. Nearly one-fourth of the respondents, however, did conclude that federal or state statutes or regulations prevented them from venturing beyond the traditional blood-marriage-adoption definition of family.³⁷

Flexibility, therefore, is the prevalent pattern which emerges from a study of governmental responses about the definition of family, whether those definitions are formulated by California's judges, legislators, or administrators.

set of questions — what are the facts concerning the make-up of families in a given area, such as the City of Los Angeles — upon which we must base our decisions about how government should relate to family units. Legal definitions of family are not attacks on morality or religion; rather, both legal and layman's definitions of family can and do co-exist without [conflict]. The judicial decisions summarized earlier in this report illustrate the non-conflicting nature of the relationship between lay definitions and those created for the legal process. These holdings define family not as an end in itself, but only as a means of advancing specific legal policies.

The report stresses that the concern that government should use family definitions which are tailored to the way people actually live is based on the assumption that government has a positive and affirmative responsibility to encourage and support families. It emphasizes the important public policy goals which are served by the utilization of definitions that reflect the diversity of contemporary family structures;⁴²

Families of all definitions have traditionally cared for society's dependent members, like children, the elderly, the disabled, the sick, and the poor. Families discipline their members, and to the extent they are successful, contribute to the general peacefulness of society. Families live in groups, or neighborhoods, providing stability for surrounding commercial and cultural activities. And on the most personal level, families provide a haven and a source of renewal for those who are their members. Families are a great source of meaning and satisfaction to individuals, and the loss of a family arrangement or relationship can leave individuals disoriented and alienated. If government benefits are unavailable or closely restricted, families can become destabilized and will eventually pose further problems for which governments will have to expend funds. There is a general intuition among scholars, service providers, and ordinary citizens that family destabilization is a major cause of the majority of our society's ills.

The Task Force on Family Diversity urges those who make laws, those who administer them, as well as those who challenge them, to become and remain sensitive to the reality of contemporary family living arrangements. No legitimate secular policy is furthered by rigid adherence to a definition of family which promotes a stereotypical, if not mythical, norm. Rather, the appropriate function of lawmakers and administrators is to adopt policies and operate programs that dispel myths and acknowledge reality.

The Task Force on Family Diversity finds that current public policy favors the adoption of laws and the implementation of programs that support and strengthen families. Demographic trends indicate that family structures are diverse and that this pattern may last indefinitely. Public policy, therefore, is best served by the continuing use of flexible family definitions.

PUBLIC POLICY AND THE DEFINITION OF FAMILY: RECOMMENDATIONS

11. The Task Force recommends that the City Council develop a comprehensive family policy for the City of Los Angeles. A family policy would set standards to assist the Chief Legislative Analyst, Council members, and other city officials in assessing proposed legislation.

12. The Task Force recommends that lawmakers, such as the City Council and the state Legislature, and those with responsibility for drafting and analyzing proposed legislation, such as the Chief Legislative Analyst and City Attorney at the local level and the Legislative Counsel at the state level, should be sensitive to the fact that "family" now is a term of art, capable of many variable definitions. When the term family is used in proposed legislation, the Task Force encourages such officials to consider relevant definitional options and to favor inclusive rather than exclusive terminology.

Public Policy and The Definition of Family: Notes

- ¹ Green, Matthew, "Defining Family," *Report of the Task Force on Family Diversity: Supplement - Part Two*, p. S-600.
- ² Donovan, E.H., "Religion and the Family," *Report of the Task Force on Family Diversity: Supplement - Part One*, p. S-547.
- ³ McCord, Ellen, "Report of the Committee on Family Relationships," *Report of the California Commission on Personal Privacy: Supplement One*, p. 4.
- ⁴ McDonald, MR, "The Philosophical Definition of 'Family'," *Report of the Task Force on Family Diversity: Supplement - Part Two*, p. S-851.
- ⁵ *Peterman v. International Brotherhood of Teamsters* (1959) 174 Cal.App.2d 184; *Noble v. City of Palo Alto* (1928) 89 Cal.App. 47.
- ⁶ *Safeway Stores v. Retail Clerks International Association* (1953) 41 Cal.2d 567.
- ⁷ *Altschul v. Sayble* (1978) 83 Cal.App.3d 153, 162.
- ⁸ *Pennoyer v. Neff* (1878) 95 U.S. 714, 734-735.
- ⁹ "Family," 35 *Corpus Juris Secundum*, p. 935.
- ¹⁰ *Ibid.*
- ¹¹ *Ibid.*
- ¹² Cal. Const., Art. I, Sec. 1.
- ¹³ *Committee to Defend Reproductive Rights v. Myers* (1982) 29 Cal.3d 252.
- ¹⁴ *Ibid.*
- ¹⁵ *City of Santa Barbara v. Adamson* (1980) 27 Cal.3d 123.
- ¹⁶ *Ibid.*, at p. 133.
- ¹⁷ *In re Cummings* (1982) 30 Cal.3d 870, 875.
- ¹⁸ Welfare and Institutions Code Section 11205.
- ¹⁹ Probate Code Section 6540.
- ²⁰ Military and Veterans Code Section 985.
- ²¹ Penal Code Section 1203.066.
- ²² Penal Code Section 273.6; Code of Civil Procedure Section 540.
- ²³ Welfare and Institutions Code Section 18921.
- ²⁴ Labor Code Section 3503.
- ²⁵ Assembly Bill 890 (1983).
- ²⁶ Government Code Section 13960.
- ²⁷ Code of Civil Procedure Section 1730.
- ²⁸ Assembly Bill 1797, amending Penal Code Section 868.
- ²⁹ *Ibid.*
- ³⁰ *Southern Pac. Transp. Co. v. Public Utilities Commission* (1976) 134

Cal. Rptr. 189.

³¹ *Miller v. Woods* (1983) 148 Cal.App.3d 862.

³² *Pacific Legal Foundation v. California Unemployment Ins. Appeals Bd.* (1981) 29 Cal.3d 101.

³³ 15 *Op. Atty. Gen.* 267 (1950).

³⁴ "'Family' and 'Household' Use Survey: How Government Agencies Use These Terms in Operating Their Programs," *Report of the California Commission on Personal Privacy - Supplement One* (1982).

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ Testimony of Wallace Albertson, "Defining 'Family,'" *Public Hearing Transcript*, p. 84.

³⁹ *Id.*, at p. 85.

⁴⁰ Campbell, Lee, "Legal Definitions of Family," *Report of the Task Force on Family Diversity: Supplement - Part One*, p. S-1.

⁴¹ *Ibid.*, at p. S-14.

⁴² *Ibid.*, at p. S-16.

DOMESTIC PARTNERSHIP FAMILIES

The 1980 census documented a marked increase in the number of unmarried-couple households.¹ Although the Census Bureau noted a "greater [public] acceptance of new living arrangements,"² the agency continued to designate such households "nonfamily."

This section of the Task Force Report focuses on local domestic partnership families — unmarried couples living together in the City of Los Angeles. They are functioning, it is apparent, as legitimate family units, and have special concerns about discrimination and improving the quality of life for themselves and their family dependents.

Estimating the Population

The exact number of unmarried couples in the population is difficult to determine. When the government gathers marital status data from the nation's households, couples are merely asked if they are married; no verification is required. Undoubtedly, some answer in the affirmative solely to avoid the social and religious stigma often associated with unmarried cohabitation. This tendency would result in higher numbers of reported marriages than actually exist.

However, despite inflated marriage statistics, national census figures show a tremendous increase in the number of unmarried couples living together. A 700% increase was reported between 1960 and 1970.³ A jump of 300% occurred between 1970 and 1980.⁴ The Census Bureau has estimated that 1.9 million unmarried-couple households existed in the nation in 1984, increasing to 2.2 million in 1986.⁵ Last year, the most comprehensive survey of families ever conducted by a nongovernment organization estimated that unmarried couples comprise 6% of all family units in the nation.⁶

Not surprisingly, the number is slightly greater in California, where unmarried couples comprised 7% of the 8 million California households counted in the 1980 census.⁷ That census also showed that a slightly higher percentage, 7.4%, of Los Angeles households contain unwed couples as cohabitants.⁸

Modifying this data with appropriate adjustments for growth in the city's population since the last census, the Task Force on Family Diversity estimates that there are about 100,000 unmarried-couple households in the City of Los Angeles in 1988.

Partnership Variations

There are a variety of reasons why couples decide to live together outside of marriage. For same-sex couples, there are legal obstacles to marriage. For young opposite-sex couples, "trial marriages" may be prompted by fear of making a wrong decision, a fear perhaps justified by the high divorce rates. Long periods, sometimes years, of cohabitation may provide an answer for divorcees trying to avoid renewing old mistakes. For elderly widows or widowers, unmarried cohabitation may be a matter of economic survival, since remarriage can trigger the loss of marital survivor benefits. Economic disincentives or so-called "marriage penalties" prevent many disabled couples from marrying.⁹

Opposite-Sex Couples. Over the past few decades, both law and societal attitudes have evolved relative to unmarried cohabitation. Twelve years ago, the California Legislature passed the "Consenting

Adults Act" — manifesting a policy decision to remove government from the bedrooms of consenting adult partners. Despite the fact that common law marriage is not recognized by California law,¹⁰ the state Supreme Court established a major precedent in *Marvin v. Marvin* — affirming that cohabiting partners may, during the course of their relationship, acquire property rights closely resembling the "community property" rights associated with marriage. The court refused to stereotype unwed couples, noting a wide range of motivating factors underpinning these living arrangements:¹¹

[A] deliberate decision to avoid the strictures of the community property system is not the only reason that couples live together without marriage. Some couples may wish to avoid the permanent commitment that marriage implies, yet be willing to share equally any property acquired during the relationship; others may fear the loss of pension, welfare, or tax benefits resulting from marriage. . . . Others may engage in the relationship as a possible prelude to marriage. In lower socioeconomic groups, the difficulty and expense of dissolving a former marriage often leads couples to choose a nonmarital relationship; many unmarried couples may also incorrectly believe that the doctrine of common law marriage prevails in California and thus that they are in fact married.

Same-Sex Couples. The Task Force on Family Diversity estimates that, as of 1987, about 264,000 gay and lesbian adults lived in the City of Los Angeles.¹² City demographics show that about 50% of adult residents pair off into couples, and recent studies suggest that gays and lesbians fit that general pattern — about half of the gay and lesbian population have lifemates.¹³ Based on this data, the Task Force estimates that about 132,000 lesbians and gay men living in the City of Los Angeles cohabit with a same-sex partner, thus creating 66,000 same-sex domestic partnerships.

No matter how long they live together, same-sex couples are excluded from marital benefits because the law specifically defines marriage in terms of opposite-sex relationships.¹⁴ Many witnesses informed the Task Force that discrimination against same-sex couples occurs in Los Angeles.¹⁵ A survey of recent periodicals confirms that such discrimination exists in all regions of the nation:

* A San Francisco newspaper prohibits surviving mates from being listed in death notices.¹⁶

* An Orange County photographer at a high school reunion refused to include the photo of a male couple in the reunion album.¹⁷

* Cousins of a deceased man in Louisiana challenged a provision in his will leaving part of the estate to his surviving lifemate.¹⁸

* New Hampshire recently began enforcing a new state law prohibiting homosexual couples from becoming foster or adoptive parents.¹⁹

* A Minnesota court refused to allow one partner in a four-year relationship to visit her severely disabled lesbian lover in the hospital.²⁰

* The City of Philadelphia rejected the attempts of a gay employee to name his seven-year lifemate as the beneficiary on his life insurance policy.²¹

Such widespread discrimination has stimulated the development of a national movement for couples rights. For example, last year thousands of same-sex couples staged a protest against unfair laws and policies outside Internal Revenue Service headquarters in Washington D.C.²²

Witnesses appearing before the Task Force enumerated systematic discrimination against same-sex couples in employee benefits, including sick leave, bereavement leave, health and pension plans;²³ insurance, including homeowners, renters, auto, life, and health policies;²⁴ health care services;²⁵ granting of special family membership discounts;²⁶ domestic violence victim protection;²⁷ and school curricula and counseling programs.²⁸

As the Task Force's Team Report on Gay and Lesbian Couples points out, a change in public policy, with participation in the process by lesbians and gay men, is needed:²⁹

Given all of this, what would constitute a responsible public policy which can balance the political realities against the legitimate needs of a significant and perhaps more-comfortably-ignored part of the population? While gays and lesbians have always existed in America, the Stonewall Riots of 1969 were the first signal that homosexuals would not accept their invisibility and second-class status any longer. The AIDS crisis has intensified that by making invisibility more difficult, and for many impossible. Homosexuality is now in the minds of Americans, as is the system that has for so long punished homosexuals for any measure of honesty regarding their orientation. Since the Gallup Poll first began surveying people on their feelings about homosexuality in 1977, there has never been a majority of people who favored criminalization of homosexual activity between consenting adults (compare this with the 25 states which still have such laws on the books), and the most recent study in 1986 found that acceptance had continued to increase despite widening public knowledge about AIDS. Given this increasing, but still not universal, tolerance and acceptance of homosexuals, what can be done to ease the discriminatory policies of the past, and address the issues that are only now arising?

That policy can no longer exclude the evidence, opinions, feelings and facts of homosexuals themselves. Any policy regarding homosexuality will, of necessity, affect the most fundamental aspects of the lives of millions of men and women who are gay and lesbian, and to formulate such a policy without their input would be unconscionable and inhumane, going against just about everything we as a society believe about the dignity and self-determination of the individual, and his or her position with regard to the state. For too long in this country laws have been passed against homosexuals, which depend on a mostly unstated understanding that homosexuals were, *de facto* criminals who had no place in society, no moral human worth, and no right to say anything to the contrary, particularly with respect to government.

A review of recent actions by the legislative, executive, and judicial branches of state government demonstrate a major shift in public policy regarding the rights of homosexuals *as individuals*. The finding of the California Commission on Personal Privacy that "it is the public policy of the State of California to protect and defend the personal privacy of all its inhabitants and to encourage the elimination of discrimination based on sexual orientation" is supported by the following events:³⁰

* Governor Jerry Brown signed an executive order prohibiting sexual orientation discrimination in state employment.³¹

* Attorney General Deukmejian published an opinion affirming the illegality of sexual orientation discrimination in state employment.³²

* The California Supreme Court ruled that private employers may not discriminate against openly gay men and women.³³

* Voters overwhelmingly rejected the "Briggs Initiative" which would have allowed schools to fire gay and lesbian teachers.³⁴

* Sexual orientation discrimination in housing was declared illegal by the Department of Fair Employment and Housing.³⁵

* Attorney General Van de Kamp published an opinion that private employers may not discriminate against lesbians and gay men.³⁶

* The Court of Appeal ruled that the Boy Scouts of America may not discriminate against members on the basis of their sexual orientation.³⁷

* The California Legislature affirmed right of lesbians and gay men to freedom from violence and intimidation;³⁸

* Governor Deukmejian signed legislation increasing penalties for hate crimes against lesbians and gay men.³⁹

Similar shifts in public policies concerning sexual orientation discrimination also have occurred locally in recent years:

* City Attorney Burt Pines issued a formal opinion that discrimination against lesbians and gays in civil service positions was illegal.⁴⁰

* The city Civil Service Commission removed "overt homosexuality" from civil service rules as a job disqualification factor.⁴¹

* The city Personnel Department eliminated a "homosexual tendencies" question from the pre-employment health questionnaire.⁴²

* Mayor Tom Bradley added "sexual orientation" to the city's equal employment opportunity policy.⁴³

* Police Chief Gates issued a policy statement declaring that the police department would not discriminate in employment on the basis of sexual orientation.⁴⁴

* The City Council adopted an ordinance prohibiting sexual orientation discrimination by private employers, landlords, and businesses.⁴⁵

The Task Force on Family Diversity commends these officials and agencies for taking decisive action to help eradicate decades of systematic discrimination against lesbians and gay men. The Task Force notes these actions have not addressed discrimination against same-sex couples, as *families*. The Task Force finds that discrimination against gay and lesbian, as well as other, domestic partnerships is widespread. It is also unjust and merits further attention.

Defining and Authenticating Relationships

California law recognizes that people who are not related by blood, marriage, or adoption, but who are living together in the intimate and mutual interdependence of a single home or household, may be considered a family.⁴⁶ As with the foster parent-child relationship,⁴⁷ or the step parent-child relationship,⁴⁸ the law does extend family rights and benefits to unmarried couples in some situations. However, the State of California does not have a uniform policy with respect to the rights and responsibilities of unmarried couples. Legal principles regarding the status of unmarried couples have developed on a piecemeal basis.

For example, unmarried couples have a constitutional right to live together as a single family.⁴⁹ But they are not automatically entitled to the same rights and benefits as married couples.⁵⁰ Although domestic partners may acquire property rights during the course of their relationships, they cannot use the Family Law Court to mediate disputes which often arise when they separate. Instead, they must take their controversies to Civil Court — the same as would business partners.⁵¹ In some situations the state specifically refuses to extend so-called “family benefits” to nonmarital couples,⁵² while in other situations such benefits are allowed.⁵³

Two practical problems must be solved before family benefits can be extended to unmarried couples on a larger scale.⁵⁴ The first issue is that of definition, determining which relationships qualify for family benefits and which do not. The second is authentication — giving the public notice as to what proof will be required to show that any given relationship qualifies under the chosen definition. Family law specialist Roberta Achtenberg addressed these issues at the public hearings conducted by the Task Force:⁵⁵

Now, when you talk about developing criteria for the definition of “family,” people say, “There’s no way to know. You want the city to be involved in trying to figure out which are legitimate and which are not legitimate relationships?” In terms of the way you analyze this problem . . . [I] believe the criteria will vary, depending on the . . . issues being addressed.

If we’re talking about family library privileges, for example, we’re talking about something that doesn’t cost the city money and where presumably it would be equally as legitimate for me to be able to designate someone who

would be entitled to what we often call a spouse-related privilege. I should be able to designate someone who the librarian would have identifying information about and who is probably no more likely to steal library books than my spouse would be if, in fact, he were someone of the opposite sex and I were married to him. So, if you are talking about library privileges, we don’t have to have a lot of criteria about whether or not people live together in the same household and the like — it’s just not relevant to whether or not you extend library privileges to the employee and his or her family partner.

On the other hand, if you’re talking about benefits that have a large price tag attached to them, and which places the City as an employer in some position of risk — like health benefits, for example — then you do need guarantees against something called “adverse selection.” Let me say that I do believe that it is possible to develop legitimate criteria that both include established, stable, nonmarital family relationships by definition and do protect the City as employer or the insurer or whomever we’re talking about against the problems of adverse selection. And it has been demonstrated. [Los Angeles] would not be the first entity — if you were to adopt a recommendation for the city as employer to provide health care benefits to its employees and its employees’ family partners as well as to its employees’ spouses — you would not be the first entity to do something like that. Certainly you could look to the experience of other entities to see how it is they avoided problems like adverse selection. There are a number of successful programs in operation now. You don’t have to reinvent the wheel and there are a number of ways of insuring against people choosing someone merely because they need the benefit rather than appointing someone who is in fact their family partner.

The flexibility suggested by Ms. Achtenberg is consistent with the approach adopted by existing state law. The criteria and proof required under present law usually depends on the financial interests at stake. Stricter criteria are used as the financial risk increases to a third party, such as the government or an employer. When nonfinancial interests are at stake, the couples are permitted to deem themselves a “family” without undue restriction by the state. For example, unmarried couples are afforded an absolute right to live in a single family residential area.⁵⁶ They also have the absolute right — without regard to their living arrangements — to designate each other as “next of kin” for purposes of rendering consent in a medical emergency.⁵⁷ On the other hand, when financial interests are implicated, the state may insist that some indicia of a family relationship exist. For example, the couple must reside in the same household before the state government will afford a state employee paid bereavement leave upon the death of a nonmarital partner.⁵⁸ To obtain worker’s compensation survivor benefits even more is required. Survivors must prove not only that they resided with a worker at the date of death, but also that they were at least partially dependent upon the worker.⁵⁹ Again, stricter criteria are used to screen family partners as the financial risk to a third party increases.

Several years ago, a state commission recognized the need for government to develop methods of authenticating nonmarital and nonblood family relationships in order for unmarried couples and their depen-

dents to fully participate in family rights and responsibilities.⁶⁰ Ultimately, the answer may rest in the adoption of a Domestic Partnership Act by the State of California, and, perhaps, a Uniform Domestic Partnership Act by states generally. Until a comprehensive policy is adopted delineating the rights and responsibilities of domestic partners, experimentation with different criteria and proof is continuing at the municipal level of government, in private employment, and with labor unions.

Eradicating Discrimination

The Task Force finds that the family as an institution functions to provide to its members important societal values, economic stability, and emotional and psychological bonds, all of which benefit the entire community. For these and other reasons, society needs to promote and encourage the formation of long-term committed relationships.⁶¹ Discrimination against those in domestic partnerships has the contrary effect, and such discrimination should be discouraged and, ultimately, eradicated.

Although several recommendations concerning domestic partners are directed to the City of Los Angeles, the Task Force on Family Diversity is mindful that most reforms affecting these families must occur at the state level, through either legislation, judicial decisions, or administrative regulations. The Task Force recommends that the Legislature's Joint Select Task Force on the Changing Family recognize the diversity in the relationships of contemporary couples, whether married or unmarried, and suggest ways in which the state can strengthen these important family bonds.

Employee Benefits. Several municipalities have adopted measures in recent years to extend benefits to employees and their domestic partners. The Task Force team on Employee Benefits surveyed some of these plans.⁶² A comprehensive study was recently conducted by the American Civil Liberties Union.⁶³

The A.C.L.U. study revealed that some employers and insurance companies provide economic benefits, such as health or dental coverage, to employees and their domestic partners.⁶⁴ For example, the National Organization of Women holds a group policy with Consumer's United which requires 90 days of cohabitation before a partner is covered. The American Psychological Association offers domestic partnership coverage through Liberty Mutual which has a one-year cohabitation requirement. The City of Berkeley has provided employees with health and dental coverage for domestic partners since 1984. About 6% of the city's 1,300 employees participate in this coverage. Cohabitation, plus other indicia of mutual family responsibilities, must be demonstrated under the Berkeley plan. Blue Cross underwrites domestic partner medical coverage for employees of the Berkeley Unified School District. A self-insured domestic partner benefit plan is operating in the City of Santa Cruz, California.

The A.C.L.U. also reported that several small employers who could not offer group coverage to domestic partners overcame this obstacle by purchasing individual health or dental policies for the family partners of their employees.⁶⁵ Other employers, such as the State of California, the City of West Hollywood, and the Service Employment International Union, provide "noneconomic benefits" such as sick leave, bereavement leave, and parental leave to employees and their domestic partners.⁶⁶

For a number of other cities and unions, an examination of domestic partnership benefits is reported to be "in process."⁶⁷ In New York City, such benefits are being sought by employees at New York's Museum of Modern Art, by the Communication Workers of America (CWA) AFL-CIO Local 1180, and the American Federation of State, County, and Municipal Employees, District Council 37. In Philadelphia, the executive board of the Federation of Teachers has approved a resolution to seek domestic partnership benefits in upcoming negotiations with the school system.⁶⁸ In Madison, Wisconsin, the Institute for Social Legislation has been guiding an Alternative Families Ordinance through city government. The ordinance's definition of family partner includes a mutual support clause and a six month cohabitation requirement. Two proposals are being considered by the San Francisco Board of Supervisors.

The Task Force on Family Diversity commends those employers, unions, and insurance companies who currently offer domestic partnership benefits, as well as those who have initiated negotiations intended to achieve more equitable treatment of domestic partners. The Task Force recommends that public and private employers, unions, and insurance companies in Los Angeles phase such coverage into employee benefits programs for local workers.

Specific proposals regarding domestic partnership benefits for employees of the City of Los Angeles are found elsewhere in this report.⁶⁹

Housing. State law prohibits discrimination against unmarried couples in public housing.⁷⁰ Fair housing statutes also prohibit private landlords from discriminating against cohabiting couples.⁷¹ Additionally, a local ordinance makes such discrimination against same-sex couples illegal in the City of Los Angeles.⁷²

Despite the existence of such fair housing laws, landlords continue to discriminate against unmarried couples. In the San Fernando Valley, for instance, discrimination against unmarried couples is reported to be the third highest type of fair housing complaints.⁷³

Housing discrimination of this sort can be reduced through the education of both consumers and landlords and through aggressive enforcement of fair housing laws. The Task Force on Family Diversity recommends that literature prepared by, and educational programs conducted by, the state Department of Fair Employment and Housing and local fair housing councils specifically mention that state laws prohibit housing discrimination against unmarried couples. The Task Force also recommends that the Los Angeles Apartment Owners Association periodically communicate this message to their members.

Insurance. The Task Force examined the problems experienced by unmarried couples because of discriminatory insurance practices. For example, unmarried couples are often required to pay double what married couples pay for the same coverage, especially in the areas of auto, homeowners, and renters insurance.⁷⁴ Some life insurance companies refuse to allow policy holders to designate a domestic partner as beneficiary.⁷⁵ Often underlying these problems are inherent ambiguities in the law as to the extent to which insurance companies may engage in such discrimination.

The subject of insurance and specific recommendations to deal with lifestyle discrimination are addressed elsewhere in this report.⁷⁶

Health Care. Health care becomes, at least some time during a long-term relationship, a major concern to domestic partners. As a result of its examination of this critical area, the Task Force found that the law has progressed in many ways to eliminate discrimination against unmarried couples in medical or mental health care settings.

When one partner is hospitalized, will the medical facility grant the other partner the same type of visiting privileges granted a spouse? If one partner is temporarily incapacitated, will the other partner be treated as next-of-kin for purposes of medical decision-making as would a spouse or blood relative? If the couple has executed a durable power of attorney for health care, then the answer to these questions is yes; under these circumstances, domestic partners are treated no differently than are married couples or blood relatives.⁷⁷

Under other circumstances, treatment is not the same. If one or both partners have a need to live for extended periods of time in skilled nursing, continuing care, or community care facilities, they often find that these facilities develop ways to accommodate the intimate needs of spouses but not domestic partners. For example, spouses may be allowed private conjugal visits when the other spouse is institutionalized. A double bed may be provided when both spouses are hospitalized.

Several years ago, the California Commission on Personal Privacy studied these issues and recommended revisions in several state regulations to protect the freedom of intimate association of adult residents of health care facilities. The Task Force agrees. Further, the utility of such intimate association can be great; the love, touching, and intimacy of one's partner-in-life may be important factors in renewing one's sense of well-being, one's determination to fight, one's connection with the outside world, and, in some cases, one's will to live. To the extent such rights as conjugal visits or shared sleeping arrangements are afforded married couples, they should, therefore, also be extended to domestic partners. The Task Force on Family Diversity recommends that the state departments of Health Services, Social Services, and Mental Health promulgate regulations amending Title 22 of the California Administrative Code to prohibit discrimination based on marital status and sexual orientation in connection with conjugal visits or shared sleeping quarters for adults in licensed health care facilities.

Discounts for Consumer Couples. Business establishments, such as credit card companies, travel clubs, car rental companies, or health clubs, often provide price discounts to married couples. For example, Holiday Spa Health Club, which runs facilities in several areas of Los Angeles, has four basic membership programs, including a financially advantageous "husband/wife option." An unmarried couple would pay \$207 more than would a married couple, given current rates.⁷⁸ Such pricing disparity appears to be a form of marital status discrimination.

The Automobile Club of Southern California (AAA) presents another example. The club provides a wide range of services to its members, including road service, free maps, travel advice, free travelers checks, and license renewal services. Basic membership is \$34 per year, and a member's spouse can join as an associate member for an additional yearly \$12. Under the club's by-laws, two unmarried adults living together must pay two master memberships, or \$68 per year.⁷⁹ Last year, as the result of input from members, the club formed an internal management task force to review membership practices with a view toward possible reform.⁸⁰

California's Unruh Civil Rights Act prohibits any form of arbitrary discrimination by any business that provides goods, services, or accommodations to the public.⁸¹ Granting discounts to married consumers while denying them to unmarried consumers appears to be arbitrary discrimination. The Task Force recommends that business establishments discontinue the practice of extending consumer discounts on the basis of marital status. The Task Force also recommends that the City Council request an opinion from the City Attorney regarding the legality of such pricing disparity under current municipal and state civil rights laws that prohibit marital status and sexual orientation discrimination. If current law prohibits businesses from extending discounts to consumer couples on the basis of their marital status, then associations such as the Chamber of Commerce should educate members regarding their obligations under the law. If such pricing practices are not presently illegal, then the City Council should adopt an ordinance to prohibit such discrimination by businesses operating in the City of Los Angeles. Of course, businesses would be free to continue general discounts such as "two-for-the-price-of-one," so long as any two consumers would qualify regardless of marital or cohabitation status.

Victim and Survivor Rights. While the law often gives crime victims and their families civil recourse against wrongdoers, serious gaps in the law have the effect of excluding certain families from the legal process. A few examples demonstrate the inequities.

If a drunk driver runs into a married pedestrian, causing severe injuries, including irreversible paralysis from the waist down, the relationship of the husband with his wife would be altered dramatically in many ways, from financially, to socially, to sexually. Under such circumstances, the husband or wife can sue for his direct damages, and the law allows the other spouse to recover for the injury to the relationship, so-called "loss of consortium." Notwithstanding the importance of the victim's rights movement, this remedy has not yet been extended to unmarried couples who are living in a "stable and significant relationship."⁸² Public policy should not favor the drunk driver over domestic partners who are victimized by the driver's negligence.

If a drunk driver strikes a pedestrian whose sibling witnesses the event, that sibling, emotionally traumatized by the experience, could sue the drunk driver for "negligent infliction of emotional distress," based on the closeness of the relationship with the injured person. A spouse can also recover under this theory. However, no matter how long they have lived together and no matter how close the relationship, neither an unmarried heterosexual couple,⁸³ nor a homosexual couple,⁸⁴ have such redress.

Finally, if the home of a young interracial married couple is fire-bombed by a racist neighbor, killing the husband or wife, the law allows the surviving spouse to sue the wrongdoer for "wrongful death." He or she can recover damages for loss of companionship in addition to lost wages the deceased partner would have contributed to the relationship over the years. If the victimized couple was comprised of two men who had lived together as domestic partners for ten years, given the same facts, the survivor could not sue the arsonist for wrongful death; unmarried couples are not within the class of persons who may bring wrongful death actions.⁸⁵ Public policy should not favor the perpetrator of a hate crime over the victim's surviving domestic partner.

The Task Force on Family Diversity has noted the irrational inequity that results when cohabiting adults living in stable and significant

relationships are legally ineligible to sue wrongdoers for loss of consortium, negligent infliction of emotional distress and wrongful death. The Task Force on Family Diversity recommends that the Joint Select Task Force on the Changing Family bring this inequity to the attention of the Legislature so that rights of domestic partners as victims and survivors may be more adequately protected by California law.

Marriage Penalties. Despite the professed public policy promoting the establishment of marital relationships, for some segments of the population — particularly disabled adults and elderly widows or widowers — significant disincentives to marriage exist, so-called “marriage penalties.”

Often an elderly widow or widower receives survivor benefits from social security or pension plans based on the deceased spouse's earnings during the marriage. If the survivor finds a new mate and falls in love, remarriage may be economically unfeasible because of the rule ending survivor benefits upon remarriage. Thus, out of economic necessity, many seniors cohabit with, but never marry, their new mates. Recognizing this reality, the Legislature has taken steps to protect the right of unmarried elders to cohabit together in dwelling units reserved for seniors.⁸⁶

The Task Force on Family Diversity recommends that the Joint Select Task Force on the Changing Family review the legal and economic barriers that impede elderly widows or widowers from remarrying. The decision of seniors to live in unmarried cohabitation instead of marriage should be founded upon free choice rather than coerced economic necessity. The California Legislature might enact a “Vesper Marriage Act” to cure this problem.⁸⁷

Disabled adults are economically penalized whether they marry or whether they merely cohabit with a person of the opposite sex. Building upon testimony provided to the Task Force on this subject,⁸⁸ the Team on Disability Issues addressed the problem of marriage disincentives in its report:⁸⁹

Many Los Angeles residents with disabilities rely on government aid programs to help them meet basic survival needs. Four of the most commonly used programs are: (1) Supplemental Security Income (SSI) — Social Security cost-of-living payments for people who are too disabled to work (funded by state and federal sources); (2) In Home Supportive Services (IHSS) — funding administered through the county for personal attendant services; (3) MediCal — state health-care funding; and (4) Section 8 Rent Subsidy — supplemental rent funding available under the Aftercare Program (federally funded and county administered).

Eligibility for these programs is determined through means testing, that is, the determination of the applicant's income and resources. Unfortunately, when a disabled person gets married, all of the income and resources of the spouse are “deemed” available to the disabled spouse. This immediately raises the officially determined means level of the disabled person, resulting in funding cuts or even termination of benefits. In essence, this procedure imposes a harsh penalty on any financially solvent person who falls in love with and wishes to marry a disabled

person. As it stands, the law requires both partners to give up their means of financial security so they may sink together (and possibly with their families) into poverty. This brutal practice transforms marriage into the assumption of a burden.

Sadly, this law destroys the possibility of a much brighter and pragmatic alternative, for it is a widely known fact of medicine and sociology that people who are part of a love relationship or family tend to live longer and are healthier throughout life. . . . The laws regarding benefit eligibility and deemed are vicious because instead of supporting the possibility of increased independence, physical health, and emotional well-being for disabled people, they insure poverty, isolation, and demoralization. . . .

Consequently, people with disabilities and their loved ones suffer greatly. In some cases, the individuals involved try to ignore religious convictions and values about marriage, deciding to live together unmarried. Needless to say, this often puts another strain on an already challenging commitment. Also, it does not solve the difficulty, in that the law allows such couples to be considered married in practice if not by law, if they hold themselves out to the community as husband and wife. In other cases, couples marry but keep it a secret. Such couples are not only deprived of the social and emotional benefits of expressing their marital commitment openly, but they also must live in realistic fear of exposure and severe financial penalty for their deception. These stresses threaten happiness and integrity of countless relationships.

The Task Force on Family Diversity recommends that the Legislature's Joint Select Task Force on the Changing Family study the issue of marriage penalties for disabled people, finding ways to eliminate discrimination against cohabiting disabled couples and remove economic disincentives that discourage disabled persons and their mates from marrying.

DOMESTIC PARTNERSHIP FAMILIES: RECOMMENDATIONS

81. The Task Force recommends that the Legislature's Joint Select Task Force on the Changing Family recognize the diversity in the relationships of contemporary couples, whether married or unmarried, and suggest ways in which the state can strengthen these important family bonds.

82. The Task Force recommends that public and private employers, unions, and insurance companies in Los Angeles phase domestic partnership coverage into the employee benefits programs of the local workforce.

83. The Task Force recommends that literature prepared by, and educational programs conducted by, the state Department of Fair Employment and Housing and local fair housing councils specifically mention that state laws prohibit housing discrimination against unmarried couples. The Task Force also recommends that the Los Angeles Apartment Owners Association periodically communicate this message to their members.

84. The Task Force recommends that the state departments of Health Services, Social Services, and Mental Health promulgate regulations amending Title 22 of the California Administrative Code to prohibit discrimination based on marital status and sexual orientation in connection with conjugal visits or shared sleeping quarters for adults in licensed health care facilities.

85. The Task Force recommends that business establishments discontinue the practice of extending consumer discounts on the basis of marital status. The Task Force also recommends that the City Council request an opinion from the City Attorney regarding the legality of such pricing disparity under current municipal and state civil rights laws that prohibit marital status and sexual orientation discrimination. If current law prohibits businesses from extending discounts to consumer couples on the basis of their marital status, then associations such as the Chamber of Commerce should educate members regarding their obligations under the law. If such pricing practices are not presently illegal, then the City Council should adopt an ordinance to prohibit such discrimination by businesses operating in the City of Los Angeles.

86. The Task Force recommends that the Joint Select Task Force on the Changing Family study and propose revisions in laws regulating causes of action based on wrongful death, loss of consortium, and negligent infliction of emotional distress, so that the rights of domestic partners as victims and survivors may be more adequately and equitably protected by California law.

87. The Task Force recommends that the Joint Select Task Force on the Changing Family review legal and economic barriers that impede elderly widows or widowers from remarrying. The decision of seniors to live in unmarried cohabitation instead of marriage should be founded in free choice rather than coerced economic necessity. The California Legislature might enact a "Vesper Marriage Act" to cure this problem.

88. The Task Force recommends that the Legislature's Joint Select Task Force on the Changing Family study the issue of marriage penalties for disabled people, finding ways to eliminate discrimination against cohabiting disabled couples and remove economic disincentives that discourage disabled persons and their mates from marrying.

Domestic Partnership Families: Notes

¹ Nelson, Bryce, "Census Reports 300% Increase in Unmarried Living Together," *Los Angeles Times*, October 26, 1981.

² "Marital Status and Living Arrangements: March, 1980," *Current Population Reports: Population Characteristics*, Bureau of the Census, U.S. Department of Commerce (October, 1980).

³ *Marvin v. Marvin* (1976) 18 Cal.3d 660, 684, fn. 1.

⁴ Nelson, *supra*, note 1.

⁵ "The Nation," *Los Angeles Times*, September 16, 1985.

⁶ "American Families in 1987," *Philip Morris Family Survey*, conducted by Louis Harris and Associates (1987).

⁷ Dembart, Lee, "Census Compares State with Nation," *Los Angeles Times*, May 23, 1982.

⁸ See "Table 2: Household Patterns — Living Arrangements," in the section of this report on Family Demographics.

⁹ Gill, Carol, Ph.D., "Disability Team Report," *Report of the Task Force on Family Diversity: Supplement — Part One*, p. S-382; Knipps, Linda, "Marriage Penalties for Disabled Couples," *Public Hearing Transcript*, p. 165; "Rights of Disabled: Marriage Penalty in Benefits Pro-

grams," *Report of the Commission on Personal Privacy: Supplement Four (Public Hearing Transcript)*, State of California (1982).

¹⁰ *Marvin*, *supra*, at p. 676, fn. 11.

¹¹ *Id.*, at p. 683.

¹² See the chapter on Family Demographics, "Estimating the Gay and Lesbian Population," *supra*.

¹³ San Francisco AIDS Foundation Survey, reported in *Gay Life*, Nov. 22, 1984; Chicago "Social Issues Survey" reported in *Windy City Times*, Oct. 2, 1986.

¹⁴ California law recognizes only opposite-sex relationships. (See California Civil Code Section 4100 as amended by A.B. 607 [1977]); The federal government does not recognize marriage between same-sex partners. (See *Adams v. Howerton* (9th Cir. 1982) 673 F.2d 1036). Same-sex partners do not have a constitutional right to marry. (See *Baker v. Nelson* (Minn. 1971) 191 N.W.2d 185, appeal dismissed, 409 U.S. 810). In fact, no nation formally recognizes same-sex marriage on the same par with opposite-sex marriage. The closest any nation has come to such recognition is Sweden. Last year the Swedish Parliament passed a law giving gay and lesbian couples the same rights as "common law" opposite-sex couples. *Lesbian News*, Aug. 26, 1987. That law stopped short of legalizing same-sex marriage, per se. Two years ago, the A.C.L.U. became the first major national organization to formally endorse the legalization of same-sex marriage in the United States.

¹⁵ Achtenberg, Roberta, "Gay and Lesbian Couples/Families," *Public Hearing Transcript*, p. 253; Conger, Jean, "Domestic Partnerships and Other Lesbian Concerns," *Public Hearing Transcript*, p. 287; Graff, Leonard, "Lifestyle Discrimination by Insurance Companies," *Public Hearing Transcript*, p. 114; Melia, Tony, "Lifestyle Discrimination in Property/Casualty Insurance," *Public Hearing Transcript*, p. 189; Moore, Sue, "Maintaining Stable Gay and Lesbian Relationships," *Public Hearing Transcript*, p. 263; Nance, Brendt, "Lifestyle Discrimination in Health/Life/Disability Insurance," *Public Hearing Transcript*, p. 196; Nordquist, Joyce, "Employee Benefits for Domestic Partners," *Public Hearing Transcript*, p. 185; Rosencrantz, Barbara, "A Personal Experience and the Need for Education," *Public Hearing Transcript*, p. 51; Uribe, Virginia, "Gay and Lesbian Issues in School Programs," *Public Hearing Transcript*, p. 11; Warshafsky, Lynn, "Violence Within Gay and Lesbian Relationships," *Public Hearing Transcript*, p. 277; Weinberger, William, "Employee Benefits for Domestic Partners," *Public Hearing Transcript*, p. 185; Taylor, Mary, "Teacher Training in Family-Life Education," *Public Hearing Transcript*, p. 149.

¹⁶ For example, the policy of the San Francisco Chronicle is to publish the names of spouses and immediate blood relatives as survivors.

¹⁷ "Gay Couple Sues Over Reunion Photo," *Los Angeles Daily Journal*, Sept. 8, 1987.

¹⁸ *The Advocate*, March 3, 1987.

¹⁹ *The Advocate*, Sept. 1, 1987.

²⁰ *Lesbian/Gay Law Notes*, October, 1986.

²¹ *The Advocate*, March 3, 1987.

²² "The Nation," *Los Angeles Times*, Oct. 11, 1987.

²³ Testimony of Roberta Achtenberg, Joyce Nordquist, and William Weinberger, *supra*, note 15.

²⁴ Testimony of Leonard Graff, Brendt Nance, and Tony Melia, *supra*, note 15.

²⁵ Testimony of Jean Conger, *supra*, note 15.

²⁶ Testimony of Leonard Graff, *supra*, note 15.

²⁷ Testimony of Lynn Warshafsky, Lora Weinroth, and Robert Canfield, *supra*, note 15.

²⁸ Testimony of Virginia Uribe, Barbara Rosencrantz, and Mary Taylor, *supra*, note 15.

- ²⁹ Diane Himes, David Link, Linda Poverny, "Report of the Research Team on Gay and Lesbian Couples," *Report of the Task Force on Family Diversity: Supplement — Part One*, p. S-192.
- ³⁰ *Report of the Commission on Personal Privacy*, State of California (1982).
- ³¹ Executive Order B-54-79 (April 4, 1979).
- ³² 63 *Ops. Cal. Atty. Gen.* 583 (1980).
- ³³ *Gay Law Students Assn. v. Pacific Telephone Co.* (1979) 24 Cal.3d 458.
- ³⁴ *Privacy Commission Report*, *supra*, note 30, at p. 422.
- ³⁵ *Id.*, p. 431; *Hubert v. Williams* (1982) 133 Cal.App.3d Supp. 1.
- ³⁶ 69 *Cal. Atty. Gen. Ops.* 80 (1986).
- ³⁷ *Curran v. Mt. Diablo Council* (1983) 147 Cal.App.3d 712.
- ³⁸ Civil Code Section 51.7, as amended by Stats. 1984, ch. 1437.
- ³⁹ Stats. 1987, ch. 1277, approved by the Governor on Sept. 28, 1987.
- ⁴⁰ Opinion No. 74-174 (May 9, 1975).
- ⁴¹ *Privacy Commission Report*, *supra*, note 30, p. 411.
- ⁴² *Ibid.*
- ⁴³ *Ibid.*
- ⁴⁴ *Id.*, at p. 412.
- ⁴⁵ Los Angeles Municipal Code, ch. IV, art. 4, Sec. 49.70 et seq.
- ⁴⁶ *Moore Shipbuilding Corp. v. Industrial Accident Commission* (1921) 185 Cal. 200, 207.
- ⁴⁷ *In re B.G.* (1974) 11 Cal.3d 679; *Katzoff v. Superior Court* (1976) 54 Cal.App.3d 1079.
- ⁴⁸ *Loomis v. State* (1963) 39 Cal.Rptr. 820.
- ⁴⁹ *City of Santa Barbara v. Adamson* (1980) 27 Cal.3d 123.
- ⁵⁰ *Hinman v. Employment Development Department* (1985) 167 Cal.App.3d 516.
- ⁵¹ *Marvin v. Marvin* (1976) 18 Cal.3d 660.
- ⁵² *Norman v. Unemployment Insurance Appeals Board* (1983) 34 Cal.3d 1.
- ⁵³ *Donovan v. Workers Comp. Appeals Board* (1983) 138 Cal.App.3d 323.
- ⁵⁴ *In re Cummings* (1982) 30 Cal.3d 870 (see concurring opinion).
- ⁵⁵ Testimony of Roberta Achtenberg, *supra*, note 15.
- ⁵⁶ *Adamson*, *supra*, note 49.
- ⁵⁷ California Civil Code Section 2430 et seq.
- ⁵⁸ California Government Code Section 19859.3.
- ⁵⁹ *Donovan*, *supra*, note 53.
- ⁶⁰ *Privacy Commission*, *supra*, note 30, p. 127.
- ⁶¹ Among the many reasons for promoting long-term commitments is the not insignificant medical risk resulting from having multiple partners. According to the *Surgeon General's Report on Acquired Immune Deficiency Syndrome*: "The risk of infection increases according to the number of sexual partners one has, male or female. The more partners you have, the greater the risk of becoming infected with the AIDS virus. . . . Couples who maintain mutually faithful monogamous relationships (only one continuing sexual partner) are protected from AIDS through sexual transmission. . . . This is true for both heterosexual and homosexual couples."
- ⁶² Michelle Buehler, Diane Goodman, and Katherine J. Hamilton, "Team Report on Government Employee Benefits," *Report of the Task Force on Family Diversity: Supplement — Part One*, p. S-450.
- ⁶³ Green, Richard, "A Report on the Status of Domestic Partner Benefits," (Draft Report prepared by the Lesbian and Gay Rights Project of the A.C.L.U., dated June 25, 1987).
- ⁶⁴ *Ibid.*
- ⁶⁵ *Ibid.*
- ⁶⁶ *Ibid.*
- ⁶⁷ *Ibid.*
- ⁶⁸ *The Advocate*, July 21, 1987.
- ⁶⁹ See *infra*, "Institutional Influences — The City As Employer."
- ⁷⁰ *Atkisson v. Kern County Housing Authority* (1976) 59 Cal.App.3d 89.
- ⁷¹ *Hess v. Fair Employment and Housing Commission* (1982) 138 Cal.App.3d 232.
- ⁷² L.A.M.C., *supra*, note 45.
- ⁷³ Testimony of Kelly Brydon, Coordinator of the Fair Housing Council of the San Fernando Valley, *Public Hearing Transcript*, p. 89.
- ⁷⁴ Testimony of Leonard Graff, Legal Director of National Gay Rights Advocates, *Public Hearing Transcript*, p. 114; Tony Melia, President of National Business Insurance Agency, *Public Hearing Transcript* p. 189; Brent Nance, President of Concerned Insurance Professionals for Human Rights, *Public Hearing Transcript*, p. 196.
- ⁷⁵ *Ibid.*
- ⁷⁶ See section of this report, *supra*, "Insurance — Lifestyle Discrimination."
- ⁷⁷ California Civil Code Section 2430 et seq.
- ⁷⁸ An interview with a staff member on December 23, 1987 confirmed the following rates: *individual rate* of \$18 per month for 23 months = \$414; *married couple rate* of \$27 per month for 23 months = \$621.
- ⁷⁹ The Auto Club of Southern California is not alone in its discriminatory pricing. The Chevron Travel Club, for example, charges \$36 per year for basic membership. A spouse can be added for only \$3 more per year. Thus, an unmarried couple would pay \$33 more per year than would a married couple.
- ⁸⁰ Bush, Peggy, "Discrimination Wars," *Los Angeles Weekly*, March 6, 1987.
- ⁸¹ Civil Code Section 51; See also, "Unlawful Discrimination: Your Rights and Remedies," *Civil Rights Handbook*, California Department of Justice.
- ⁸² *Edlen v. Sheldon* (1985) 164 A.C.A.3d 745, hearing granted by California Supreme Court, 2 Civ. No. B006873; but see, *Butcher v. Superior Court* (1983) 139 Cal.App.3d 58.
- ⁸³ *Kately v. Wilkinson* (1983) 148 Cal.App.3d 576.
- ⁸⁴ *Coons v. Joseph* (1987) 237 Cal.Rptr. 873; also see pending appeal in *Crabtree v. Spradlin*, Fifth District Court of Appeal, No. F004959.
- ⁸⁵ *Ledger v. Tippit* (1985) 164 Cal.App.3d 625.
- ⁸⁶ California Civil Code Section 51.3.
- ⁸⁷ The Virgin Islands adopted a Vesper Marriage Act in 1981. This unique form of marriage is limited to persons aged 60 and older. Although the parties are considered legally married, for the purpose of "taxation and the receipt of pension benefits, parties to a vesper marriage shall be considered and treated as single persons as though they had not entered into the marriage contract." See, VI. Code Ann., tit. 16, Sec. 81-86. (Supp. 1982-1983).
- ⁸⁸ Testimony of Linda Knipps, *supra*, note 9.
- ⁸⁹ Gill, *supra*, note 9.

Attorney General's
Commission on Racial, Ethnic, Religious
and Minority Violence



Final Report
April 1986

CHAPTER ONE: HATE VIOLENCE IN CALIFORNIA

Hate Violence Today

Hate violence poses a serious threat to California communities. In every region of the state, incidents have occurred in which racial, ethnic, religious, and sexual minorities have been harassed, intimidated, assaulted and even murdered. In some communities, acts motivated by bigotry have sparked widespread community disruption.

Although reliable data on the incidence and severity of hate violence is not available, testimony from community organizations who receive and track reports; from law enforcement officials; and from victims, documents that violence motivated by bigotry is widespread in California.¹ In some communities reported hate violence appears to be increasing.

The Commission has heard testimony from victims and concerned citizens about recent outbreaks of hate violence in every region in California.² Examples include:

A Black woman from a rural community reported that her children have been taunted, threatened, and assaulted on school buses so often that they are afraid to go to school.³

A community organization representative relayed reports of threatening phone calls and crossburnings.⁴

A legal advocate described systematic attacks on Hispanic farmworkers.⁵

A trade association representative expressed his concern at the lack of official response to violent attacks on Southeast Asian fishermen.⁶

A human rights organization administrator detailed a vicious attack on a Black man married to a White woman in a suburban area.⁷

A service provider warned that AIDS hysteria is causing more violence against gay men.⁸

A community organization representative noted an increase in desecrations and other attacks on synagogues.⁹

A violence prevention program worker described police and private-citizen attacks on gays and lesbians in both urban and rural areas.¹⁰

A community leader described the disturbing trend of anti-Asian violence.¹¹

Other victims and advocates testified about hate vio-

lence manifesting in forms ranging from insidious discrimination to life threatening assaults.

Reports from communities across the state documented the pervasiveness of violence motivated by bigotry in California in 1985 and 1986. There are indications that anti-Asian violence and anti-gay violence are increasing.¹²

Witnesses before the Commission cited the high levels of distrust, fear, and alienation in minority communities in California. Black, Hispanic, Asian, American Indian, gay and lesbian, and disabled community representatives reported discrimination and physical abuses by public officials, particularly police, that continue today.¹³ Those abuses are significant because they prevent minority persons from reporting crimes against them and seeking other government assistance.



Diane C. Yu

"Violence committed against minorities has to be confronted and stopped. The Commission's work is an effort to respond forcefully and effectively to that challenge."

Causes of Hate Violence

The roots of hate violence appear to be planted in alienation and fear. Some risk of hate violence exists in every community where people of different races, religions, ethnic groups, and sexual orientations live together. Perceived differences in standards of living, in representation in government, in treatment by government officials, and in the options and conditions for employment lead to tensions between those who are more fortunate and those who are deprived.¹⁴

Fear and alienation are nurtured by stereotypes and myths about minorities. The role that ignorance plays in hate violence is clear in the incidence of violence against Asian Americans and Hispanics. Often the victims are perceived as foreign nationals when in fact they are American citizens. Citizenship is not credited to people whose appearance, language or custom are different from the majority population. Similarly, witnesses before the California Commission on Crime Control and Violence Prevention testified that a lack of understanding forms the nucleus of the anti-gay violence problem. According to public health and mental

health experts, perpetrators of crimes against gays and lesbians possess an irrational fear of victims' real or perceived sexual orientation.

The risk of tensions between groups building to crisis proportions is highest in communities where political and economic inequalities are clearest and where some citizens believe minority groups threaten their well-being. In those communities, alienation, fear, and bigotry combine to threaten the peace and safety of all citizens.

Although accurate data is not available, testimony before the Commission gives credence to Governor Edmund G. Brown Jr.'s Task Force on Civil Rights' dire prediction that hate violence would increase as economic conditions and social program funding decreased.¹⁶ Victims and advocates reported statements from hate crime perpetrators who use reasons such as protecting their jobs and tax dollars to justify their actions.



Judge Alice
Lytle

"Someday we must learn to value the richness and beauty of our diverse racial, ethnic, and cultural heritage. We will all be the better and safer for it."

The History of Hate Violence in California

The Commission did not conduct a review of the history of hate violence in California. Rather, Commissioners relied on the work of Governor Edmund G. Brown Jr.'s Task Force on Civil Rights in this area. The Governor's Task Force chronicled hate violence against racial, ethnic, religious, and sexual minorities in every chapter of California history and concluded that tacit support from some public officials and even in state laws can be found in the history of hate violence.¹⁷

Anti-minority violence is not new in California. Throughout the eighteenth and nineteenth centuries there were outbreaks of violence motivated by bigotry against all minority groups in the state.

In the twentieth century, violence motivated by bigotry continues. The creation of the first Ku Klux Klan in California in the 1920's, the attacks on Hispanics during the so-called "Zoot Suit Riots" in 1943, the internment and assaults on Japanese Americans during World War II, and the increase in anti-Black and anti-Semitic attacks in the 1950's mark low points in California history.

In 1982, Governor Edmund G. Brown Jr.'s Task Force on Civil Rights assessed the extent and sources of racial, ethnic, and religious violence in California. The Task Force concluded that the pattern of hate violence was continuing and even escalating throughout the state.

Recently, organized efforts by minority groups to protect the rights guaranteed them under law have been accompanied by increases in hate violence activity. The experience of gays and lesbians are illustrative.

The California Commission on Personal Privacy in its 1982 report documented the history of violence against gays and lesbians in California. In the 1970's when gays and lesbians began to identify themselves publicly and to organize to defend their rights, they became more visible and subject to attack. Similar reprisals have followed civil rights movements by Blacks and Hispanics.¹⁹ Organized efforts by minority groups to protect their legal rights have been accompanied by increases in hate violence activity.

Today, the influx of Asian immigrants has led to disturbing increases in anti-Asian violence. The resurgence of anti-Asian sentiment in the United States over the past few years has been documented in a growing number of incidents reported in the media.

The 1982 Governor's Task Force on Civil Rights report detailed the history of organized hate groups in California, including the KKK, the American Nazi Party, the Christian Defense League, and the National States' Rights Party. The Task Force noted that "organized hate groups have historically been only the most virulent expression of much more widely distributed anti-minority attitudes and actions. In the 1970's and 1980's, too, these groups have been only one part of a much larger problem."²⁰

Preventing Hate Violence in the Future

The 1982 Governor's Task Force also concluded that "growing violence is not inevitable if we have the will and the commitment to attack its roots."

The Commission has concluded that the incidence of hate violence in California can be reduced. A review of successful legislative, community, and law enforcement efforts in California and other states provides convincing evidence that Californians can work together to develop practical programs to end the cycle of hate violence.²¹



Thomas F.
Coleman

"Homophobia is nurtured by myths and stereotypes about lesbians and gay men and is perpetuated by ineffectual communication."

Preventing hate violence is not and will not be any easy task. It will require commitment and resources from state and local governments, from community organizations, and from citizens. Reports from successful programs operating now convinced the Commission that California can adequately respond to and prevent hate violence.

Footnotes

- ¹ See Appendix A.
- ² See Appendix A.
- ³ Muslimah Salahuddin, Testimony before the Attorney General's Commission on Racial, Ethnic, Religious, and Minority Violence, Fresno, October 21, 1985.
- ⁴ Otis Smith, President, Rialto-Fontana Chapter National Association for the Advancement of Colored People, Testimony before the Attorney General's Commission on Racial, Ethnic, Religious, and Minority Violence, Riverside, August 26, 1985.
- ⁵ Susan Brown, Legal Counsel, Mexican American Legal Defense and Educational Fund, Testimony before the Attorney General's Commission on Racial, Ethnic, Religious, and Minority Violence, Francisco, October 7, 1985.
- ⁶ Chieu Pham, Executive Director, Vietnamese Fishermen's Association of America, Testimony before the Attorney General's Commission on Racial, Ethnic, Religious, and Minority Violence, San Francisco, October 7, 1985.
- ⁷ Clara Harris, Executive Director, Heartland Human Relations Commission, Testimony before the Attorney General's Commission on Racial, Ethnic, Religious, and Minority Violence, San Diego, December 13, 1984.
- ⁸ Diane Christiansen, Executive Director, Communities United Against Violence, Testimony before the Attorney General's Commission on Racial, Ethnic, Religious, and Minority Violence, San Francisco, October 7, 1985.
- ⁹ David Lehrer, Western States Counsel, Anti-Defamation League, Testimony before the Attorney General's Commission on Racial, Ethnic, Religious, and Minority Violence, Los Angeles, May 23, 1985.
- ¹⁰ Op. Cit., Christiansen.
- ¹¹ Henry Der, Executive Director, Chinese for Affirmative Action, Testimony before the Attorney General's Commission on Racial, Ethnic, Religious, and Minority Violence, San Francisco, October 7, 1985.
- ¹² Op. Cits, Der and Christiansen.
- ¹³ See Appendix A.
- ¹⁴ Fred Persily, Planning Community Peace, Sacramento, California Governor's Task Force on Civil Rights, 1982, pp. 2-3.
- ¹⁵ California Commission on Crime Control and Violence Prevention (in Report of the Commission on Personal Privacy), Sacramento, State of California, 1982, p. 328.
- ¹⁶ Governor's Task Force on Civil Rights Report on Racial, Ethnic, and Religious Violence in California, Sacramento, State of California, 1982, p. iv.
- ¹⁷ Ibid., pp. 10-24.
- ¹⁸ Op. Cit., Report of the Commission on Personal Privacy, p. 328.
- ¹⁹ National Gay Task Force, Anti-Gay/Lesbian Victimization, New York, 1984, p. 6.
- ²⁰ Op. Cit., Governor's Task Force, p. 24.
- ²¹ See Appendix M.

**THE EMPLOYEE'S FAMILY:
THE EMERGING EMPLOYMENT CHALLENGE**

**Report of the Family Economic Policy Task Force
of the League of California Cities and the
County Supervisors Association of California**

February, 1988

Tailoring Traditional Fringe Benefits to Meet Family Needs

Tailoring Traditional Fringe Benefits To Meet Family Needs

In meeting employees' family needs, the local agency should not overlook the opportunities to tailor its existing fringe benefit programs to better fit its employees' needs. Group plans, employee assistance plans, and the various social insurance, and even leave programs, all provide ways to ease the burden placed on employees.

This section reviews a number of traditional as well as new fringe benefit programs cities and counties may find valuable in improving their employee relations. In most cases, the discussion both describes the benefits as well as some of the advantages and problems associated with them.

FAMILY-RELATED LEAVE PROGRAMS

Leave programs are a traditional form of fringe benefit present in every public agency. They are authorized periods of time away from the job without loss of employment rights. They can be paid or unpaid and traditionally relate to an employee's time for family health, education, or leisure. They have developed in each public agency based on past practice, formal labor relations agreement or other forms of law or precedent.

Maternity/paternity and parental leave (also known as child care, infant care, or primary care leave) have a special relationship to family economics. Maternity/paternity leaves relate to the immediate period of disability due to childbirth. They may be integrated with the agency sick leave program. Parental leave is time-off beyond the period of disability allowing new mothers and fathers to "bond" with the newborn or newly adopted child and to make satisfactory arrangements for subsequent child care.

Sick leave is often a benefit extended to include time off for the care of dependents during illness including children and the spouse.

Flexible Time-Off or Paid Personal Leave, sometimes referred to as Annual Leave, combines traditional sick leave, vacation, or optional holiday leaves into one accrued benefit. It enhances employee choice and may reduce absenteeism. Each employee may use annual leave for leisure, health care, or the care of others.

HEALTH INSURANCE PROGRAMS

The Task Force has summarized several insurance-related fringe benefit alternatives which are designed to serve family needs:

Families with only one group health insurance plan available to them benefit most from maximum contributions to dependent coverage.

The typical practice of city and county employers contributing all or most of the cost of dependent health insurance coverage is an approach that favors families, especially those with dependent children. If only one parent has group health

coverage, his/her benefits are vital to the family because of the high cost of medical care.

In most local agency group insurance plans, the employer contributes up to a maximum dollar amount for group coverage. The employee who needs dependent coverage benefits most from this approach.

Families with dual group health coverage benefit most from plans which permit options of equal dollar value. When two parents in the same family work and each is separately covered by group medical insurance, there is a duplication of benefits. One group plan is the primary insurer and the other, at most, pays any deductible or co-insurance amounts. The duplication of benefits is not needed by many dual income families, and therefore, could be eliminated or replaced if options were available.

CASH-BACK PROGRAM - One option is a "cash-back" program in which dual income families can get cash in place of group insurance coverage.

Attorneys, familiar with the laws applying to group health insurance, advise that it is risky for an employer to permit an employee to waive health insurance all together. With this type of option, therefore, it is wise to require that each employee make an informed choice, be aware of any tax liability associated with receiving cash, and carry, at least, some form of catastrophic health insurance plan.

(This benefit would likely only be selected by families with dual insurance because those with only one insurance coverage usually find the group health plan more valuable than the cash equivalent of premiums.)

GROUP INSURANCE FOR PART-TIME EMPLOYEES - Group insurance coverage for part-time or temporary employees may serve the needs of both employer and employee.

Typically, cities and counties do not provide group insurance benefits for "temporary" workers. However, many agencies employ workers on a long-term basis even though their payroll category may be "temporary" or other than "regular." In various categories where regular staffing patterns are supplemented on an on-going manner by "temporary" employees, agencies may well find that recruitment and retention of such workers would be enhanced substantially by offering group insurance benefits. Eligibility for such benefits could be tied to some minimum length of service in a full-time, temporary status, such as one year.

Employers often do not offer group insurance benefits under any circumstances to "part-time" employees. Those who would prefer part-time employment so they could spend time caring for small children, are forced to seek full-time jobs because of the need for health insurance benefits. The employer, as a result, may experience increased lost time by full-time employees facing this dilemma. "Permanent part-time" categories, including prorated benefits based on the number of hours worked, might well prove valuable additions to the personnel systems of local public agencies.

EXTENDED GROUP INSURANCE - Continuation of group health insurance benefits is now required by federal law.

When a covered worker leaves employment, he or she is eligible for a continuation of individual or family health insurance coverage. Employers must offer the coverage continuation under the provisions of the federal Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). The former employee may continue coverage, at his or her own expense, for up to eighteen months following separation from employment. That person would continue to be a regular member of the group plan. The COBRA law also protects spouses and children who are separated from group health coverage because of divorce from or death of the working spouse. Their coverage can continue for up to three years.

CAFETERIA PLANS - Cafeteria plans, also known as "flexible benefit plans" or "flexible compensation," allow employees to choose among nontaxable benefits (like medical insurance or dependent care) and cash. The most complex plans allow employees to trade one benefit for another benefit or cash. For example, in a two-income family, one spouse would elect medical benefits for the whole family while the other would trade medical benefits for dependent care benefits. Another type of flexible benefit plan is the "flexible spending account" (FSA). With an FSA, all employees might have the same medical benefits, but those who also need child care, could elect to have their salaries reduced to receive tax-free dependent care benefits. A bibliography is included at the end of the report on flexible benefits including cafeteria plans.

EMPLOYEE ASSISTANCE PROGRAMS

Employee Assistance Programs provide confidential counseling for employees and expert assistance for managers who are faced with personal problems. The Employee Assistance Program is for an employer to help employees meet personal and family crises and other problems hurting job performance. It is a resource for an individual employee to use to get help, confidentially and professionally, in facing and overcoming increasing problems of alcohol and substance abuse and problems with child or spousal relationships. It is a practical tool, relatively simple to establish and administer, for an employer to visibly demonstrate that the connection between success, loyalty and longevity on the job and helping the employee meet personal crises is understood and appreciated. It is a labor relations asset, offering unions and management the chance to work constructively together and produce "win-win" outcomes.

Lost productivity, poor morale and unnecessary expense from ignorance of the benefits of Employee Assistance Programs. Active support for such programs make good business sense for public and private organizations. The Association of Labor-Management Consultants on Alcoholism reports that about 40 companies had such programs in 1950. In 1986, the number reached 10,000.

STATE DISABILITY INSURANCE

State Disability Insurance (SDI) - is a supplement to local government employees' income is when they must take time off from work to recover from an illness or disability, including childbirth.

SDI would be most helpful to new employees and others who have not accumulated

much sick leave as well as to temporary or part-time employees who receive no sick leave benefits.

Public employees are covered only if the agency approves SDI benefits and asks the State Employment Development Department (EDD) to provide such coverage. Sick leave benefits can also be integrated with SDI so that an employee can receive 100 percent of net pay. Sick leave and vacation benefits are used at a reduced rate under such SDI integration and employer cash costs are reduced as a result.

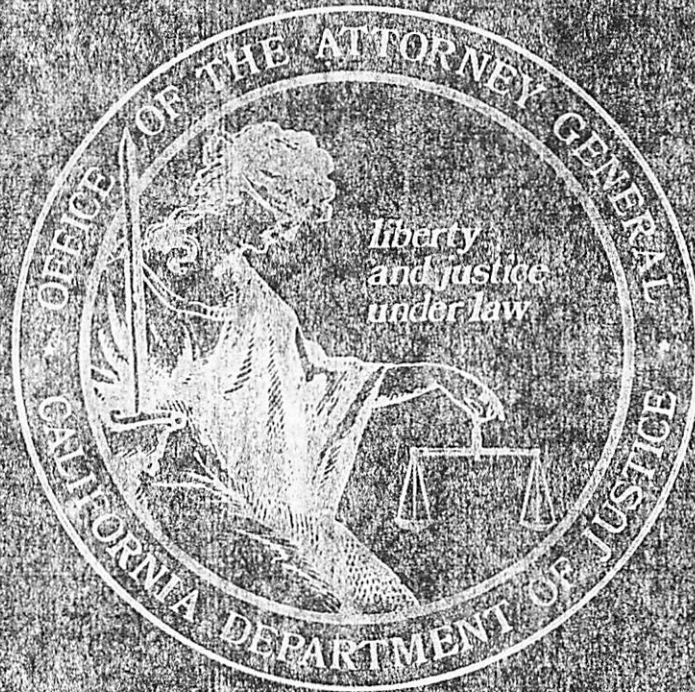
In California, employees pay for the SDI premiums through payroll deduction. There are, however, some administrative burdens associated with payroll deductions and integration of benefits.

SALARY CONTINUATION FOR INJURED EMPLOYERS

A fairly common practice in local government is their partial continuation of an employee's salary who is receiving workers' compensation benefits. Since the benefits are tax free, agencies often coordinate a portion of salary and workers' compensation benefits to provide the injured worker with a percentage of his or her regular salary. A two-thirds or a 70 percent of salary benefit is one such example. Another alternative is to allow the worker to use a portion of unused sick leave or vacation time in conjunction with the workers' compensation benefits.

Attorney General
John K. Van de Kamp's

Commission on the Prevention of Drug & Alcohol Abuse



Final Report

May 1986

RECOMMENDATION 4:

THE COMMISSION RECOMMENDS THAT PRIVATE INDUSTRY, PUBLIC EMPLOYERS, AND EDUCATIONAL INSTITUTIONS ADOPT AND IMPLEMENT EMPLOYEE ASSISTANCE PROGRAMS FOR EMPLOYEES AND THEIR FAMILIES EXPERIENCING DRUG AND ALCOHOL PROBLEMS.

Discussion:

Employee Assistance Programs (EAPs) are not new. They have been around since the 1940s. These programs originally were designed to intervene with employees who were showing evidence of an alcohol problem. The earlier programs, some still in existence today, were called Employee Alcohol Programs.

EAPs are designed to assist employees, and, many times, family members, who are experiencing difficulty on the job due to personal problems. Many programs were initially established to deal with alcohol and drug problems but were later expanded to include financial, legal and marital problems. EAPs generally provide intervention and counseling services, referrals to professionals in the community, and assistance to supervisors in making referrals to the program.

Today it is estimated that there are over 5,000 programs nationally and that approximately 60 percent of the Fortune 500 companies have some sort of EAP in place.

The National Institute on Alcohol Abuse and Alcoholism considers these programs to be cost effective and highly effective for intervening in alcohol problems.²

The Commission supports the implementation of these programs at the work site and finds them to be a valuable tool in assisting families who experience drug and alcohol problems.

- *Employee Assistance Programs (EAPs)*—These programs, established through management policies and procedures, are designed to assist supervisors to identify and refer employees who are experiencing personal problems, such as drug or alcohol abuse, that interfere with work productivity to the EAP for assistance and appropriate referrals. These programs are often available to employees and family members on a self-referral basis as well.

COUPLES WORKGROUP:
Miscellaneous Research Materials

S.N.

GOVERNMENT OF
THE VIRGIN ISLANDS OF THE UNITED STATES

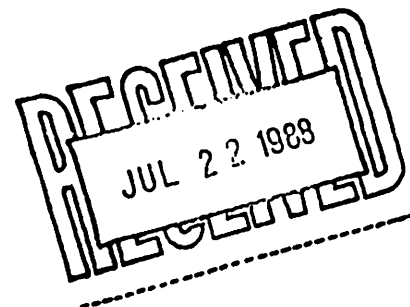
DEPARTMENT OF LAW

P. O. Box 280
Charlotte Amalie, St. Thomas, V.I. 00801

July 19, 1988

In reply please refer to our
File No. _____

The Honorable
Thomas H. Bates
Member of the California Assembly
District Office
1414 Walnut Street
Berkeley, California 94709



Re: The Vesper Marriage Act, 16 V.I.C.
Section 81-86

Dear Assemblyman Bates:

Thank you for your interest in the above-referenced Vesper Marriage Act. We herewith respond to your questions thereon with the best information available to us at this time.

1. What has been the public's reaction to the Vesper Marriage Act?

As far as we can ascertain, there has been no unfavorable public reaction to this Act.

2. How many applications for a vesper marriage license have been filed? How many licenses have been issued?

While no separate statistical information is currently maintained for vesper marriage license applications, there appears to be less than five (5) applications filed and licenses issued within the past two years.

3. How many Notice of Terminations have been filed? What are the policy reasons for the difference in terminations between marriages under a year and those over a year?

July 19, 1988

* 2 *

We have no information available
on Notice of Terminations.

4. Are parties to a vesper marriage considered and treated as single persons for other benefits such as: (a) Federal Social Security, (b) public assistance, and (c) private pensions plans? What has your experience been in these areas?

Section 84(c) of the Act states:

"For purpose of taxation and the receipt of pension benefits, parties to a vesper marriage shall be considered and treated as single persons as though they had not entered into the marriage contract."

We know of no adverse experience in these areas.

5. Are there any plans to expand the application of the act to include other couples, for instance handicapped couples? Why or why not?

These questions should more appropriately be addressed to the Virgin Islands Legislature or a member of that body.

6. What issues prompted the enactment of the act? What, if any, are the arguments against the act?

Again, these questions could be more accurately answered by the Legislature.

7. Do you know if any other jurisdictions have adopted or are considering anything similar to the Vesper Marriage Act?

We do not.

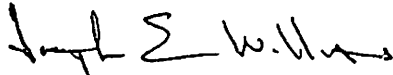
The Honorable
Thomas H. Bates

July 19, 1988

* 3 *

If we can be of further assistance in this or other concerns,
please let us know.

Sincerely,



JOSEPH E. WILLIAMS
Assistant Attorney General

JEW:mf

husband were repealed and that a wife could sue for usurpation of her property or rights in the same manner as her husband could, was not a positive legislative enactment of the doctrine of interspousal immunity; therefore, omission of the provision from the code adopted in 1957 is not evidence that the legislature intended to repeal the doctrine. Id.

§ 67. Separate estates

1. **Historical.** Where a husband and wife were married prior to 1921, all their property is community property and each is owner of one-half of the property. 1 V.I.Op.A.G. 104.

2. **Generally.** Virgin Islands is not a community property jurisdiction. Dyndul v. Dyndul, C.A.3d 1976, 13 V.I. 376.

§ 71. Contracts and liabilities of wife

1. **Construction.** Under the Virgin Islands Married Woman's Act, a wife may during coverture, sue and be sued in tort as well as contract in her own name and without joinder of her husband. Paiewonsky v. Paiewonsky, D.C.V.I. 1970, 8 V.I. 52, 315 F.Supp. 752, affirmed C.A.3d 1971, 8 V.I. 421, 446 F.2d 178, certiorari denied 405 U.S. 919 (1972).

Where legislature, in adopting this section, modeled it after the code of the then Territory of Alaska, and at that time the most recent pronouncement by a court having jurisdiction over Alaska had held that the Alaska statute did not abrogate the doctrine of interspousal immunity, the legislature must be considered to have intended to retain the doctrine, and that Alaska Supreme Court subsequently construed Alaska statute to permit a wife to sue her husband in tort did not compel such a construction in the Virgin Islands. Paiewonsky v. Paiewonsky, C.A.3d 1971, 8 V.I. 421, 446 F.2d 178, certiorari denied 405 U.S. 919 (1972).

2. **Interspousal immunity.** This section does not abrogate the doctrine of interspousal immunity. Paiewonsky v. Paiewonsky, C.A.3d 1971, 8 V.I. 421, 446 F.2d 178, certiorari denied 405 U.S. 919.

Subchapter IV. Vesper Marriage

§ 81. Definition

A vesper marriage is a civil contract by and between two competent persons of opposite sex, each of whom shall have attained the age of sixty years, by which the parties agree to live together in the relationship of husband and wife without acquiring any interest in or claim upon the marital estate, property and income of the other and without any legal right of inheritance, one from the other, in accordance with provisions and conditions of this subchapter.—Added Oct. 27, 1981, No. 4655, Sess. L. 1981, p. 272.

§ 82. Application for and issuance of license

(a) Upon a form to be provided by the clerk, the parties may apply to the Territorial Court for a license to contract a vesper marriage. The application form shall contain the following statements:

(1) That each of the parties has attained the age of sixty years;

(2) That each of the parties is free to marry and is not married to any other living person, and

(3) That each party acknowledges that, upon contracting a vesper marriage, he or she forever renounces all right, interest and claim of right or interest in the estate of his or her intended spouse except as herein provided.

(b) Each of the parties applicant shall execute the application in the presence of the clerk or his deputy and shall acknowledge before such officer that he or she does so freely and with full understanding of the content of the application.

(c) If satisfied that the parties are legally competent to be married, a judge of the Territorial Court shall issue, upon payment of a fee of \$5.00 by the applicant, a license authorizing any qualified officer to perform the marriage ceremony and issue a Certificate of Vesper Marriage.—Added Oct. 27, 1981, No. 4655, Sess. L. 1981, p. 272.

§ 83. Qualification of officer performing ceremony and issuance of certificate; fee; time limitation

(a) The clerk, his deputy, any ordained minister of an established church or any officer authorized by law of the Virgin Islands to administer oaths and take acknowledgments is qualified to perform a Vesper Marriage Ceremony.

(b) Upon the performance of a vesper marriage the officer or minister shall issue a Certificate of Vesper Marriage, drawn upon a form furnished by the clerk, certifying that the parties have been joined in vesper marriage upon the date stated in the certificate.

The original of the certificate shall be handed to the parties and a copy shall be delivered forthwith to the Territorial Court for filing. Failure of the officer to deliver a copy of the certificate for filing shall be punishable as a misdemeanor with the maximum fine of \$100.00.

(c) If the license is not exercised within ten days after its issuance it shall be null and void.

(d) If the marriage ceremony is performed by a judge or the clerk of the Territorial Court, the clerk shall collect a fee of \$5.00. All fees collected under this subchapter shall be covered into the Treasury of the Virgin Islands.—Added Oct. 27, 1981, No. 4655, Sess. L. 1981, p. 272.

How many Mar 11?

§ 84. Rights and privileges; obligations; taxation and pension exception

(a) Couples joined in vesper marriage are entitled to and shall enjoy all of the rights and privileges afforded married couples generally, except as otherwise provided herein and as pertains to taxation and the receipt of pension benefits.

(b) Each party to a vesper marriage shall owe to the other the duties and obligations of care, maintenance and support so long as the parties cohabit. These duties and obligations shall cease in the event that the parties shall separate one from the other and discontinue cohabitation, except as otherwise provided herein.

(c) For purpose of taxation and the receipt of pension benefits, parties to a vesper marriage shall be considered and treated as single persons as though they had not entered into the marriage contract.—Added Oct. 27, 1981, No. 4655, Sess. L. 1981, p. 272.

§ 85. Termination and dissolution

(a) (1) At any time during the first year of the marriage either party may terminate the marriage relationship by ceasing to live with the other party, notifying the other party in writing of his or her intent to file a Notice of Termination and by filing a Notice of Termination in the Territorial Court upon a form to be furnished by the clerk. The marriage relationship shall be considered as terminated ten days after the notice is filed.

(2) Proof of service of the notice of intent to file Notice of Termination may be established by receipt signed by the other party, by affidavit reciting personal service or by personal service by the marshal of the Territorial Court or his deputy.

(3) A copy of the Notice of Termination shall be mailed without delay to the other party at his or her last known address by the clerk.

(b) (1) After one year of the marriage the relationship may be terminated only by separation and mutual agreement of the parties. Upon such agreement the parties shall file a Notice of Termination and Dissolution, executed by each party in the presence of the clerk or his deputy, in the Territorial Court. The marriage relationship shall be dissolved upon the filing of this notice.

(2) Absent an agreement of the parties, after one year of marriage, a vesper marriage can be dissolved only by an action filed in and determined by a court of competent jurisdiction to hear and determine marital disputes and grant decrees of divorce. In

such action no award of support or alimony shall be granted unless it shall be made to appear that one of the parties has been rendered dependent by reason of the marriage and that the other party is financially able to contribute to the other's support. Upon such showing the court may award an amount sufficient to maintain the dependent party within the means of the other. Such an award shall not become a charge against or upon the contributor's estate.

(c) A fee of \$10.00 shall be collected by the clerk for filing a Notice of Termination or a Notice of Termination and Dissolution.—Added Oct. 27, 1981, No. 4655, Sess. L. 1981, p. 272.

§ 86. Property held by the entirety; testamentary disposition to spouse

Nothing contained in this subchapter shall be construed as prohibiting the acquisition, by the parties to a vesper marriage, of property by the entirety nor shall it be construed as preventing or limiting the right of either spouse to dispose of his or her estate by testamentary disposition including the right to bequeath and devise property to his or her spouse. The right of either spouse to inherit under the will or testament of the other shall not be affected by the provisions hereof.—Added Oct. 27, 1981, No. 4655, Sess. L. 1981, p. 272.

Chapter 2. Remedies for Domestic Violence

SECTION ANALYSIS

91. Definitions
92. Statement of rights
93. Domestic Violence Report
94. Arrest for probable cause
95. Officers not liable
96. Complaints
97. Hearing; relief
98. Emergency relief
99. Criminal proceedings

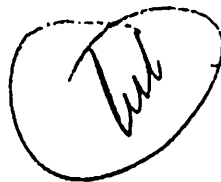
Establishment and requirements of Domestic Violence Training Program and domestic crisis teams. Act Oct. 18, 1984, No. 5013, § 10, Sess. L. 1984, p. 353, provided:

“(a) The Commissioner of Public Safety [Police Commissioner] is hereby authorized and directed to establish a Domestic Violence Training Program as part of the core cadet curriculum. The training shall stress the enforcement of criminal laws in domestic situations, the protection of the victim, the use of available community resources, and the sensitization of police officers to the emotional and psychological trauma suffered by the victim of domestic violence.

THE CALIFORNIA POLL

THE INDEPENDENT AND NON-PARTISAN STATEWIDE SERVICE OF
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**MANY CALIFORNIANS THINK INSTITUTION
OF MARRIAGE HAS WEAKENED DURING
THE PAST DECADE.**

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The California public is slightly more inclined to believe that the institution of marriage has become weaker than stronger during the past ten years. The proportion who thinks it has weakened (44%) is somewhat larger than those who believe marriages are stronger (35%). Another 19% do not see much change.

Among a cross section of adults, marital faithfulness ranks at the top of the list of nine aspects that contribute to a successful marriage. Nearly all Californians (93%) rate faithfulness as being very important.

Other aspects that the public thinks are very important are living separately from in-laws (70%), having common interests (70%) and sharing household chores (61%).

Having an active sex life (47%) ranks in the middle of the importance scale.

Other lower ranking aspects seen as being very important in successful marriages are: having enough money (40%), having children (34%) and having similar upbringings (27%).

Only 8% think having the same political views is very important to marital success.

An examination of the opinions of men and women shows a divergence on what each feels contributes to a successful marriage concerning sharing household chores -- 65% of the women say it is very important to a marriage, whereas just 57% of the men think this way. On the other hand, men attach somewhat greater importance to having an active sex life than women do (53% to 42%). Almost one in three women (32%) think a husband and wife should have similar upbringings, but just 21% of the men feel this way.

Forty percent of married people in the sample rate having children as being very important to a successful marriage. However, among those adults who have never married, or who are separated, widowed or divorced, only about one in four feel this way.

Those in the 18 to 29 age group are also less inclined than older people to think having enough money and having similar upbringings as very important elements to successful marriages, while they are more inclined to attach high importance to sharing household chores.

Table 1
Strength of the institution
of marriage during past ten years

	<u>Weaker</u>	<u>Hasn't changed much</u>	<u>Stronger</u>
Statewide	44%	19	35
Men	46%	22	31
Women	42%	16	39
18-29	47%	22	30
30-39	36%	18	43
40-49	41%	19	37
50-59	43%	21	36
60 and over	53%	16	28
Married	44%	18	38
Never married	46%	23	29
Separated/widowed/divorced	44%	16	34

(Differences between 100% and the sum of each row in this and the following table equal the proportion of people with no opinion.)

Table 2
Importance of nine aspects
contributing to a successful marriage

	<u>Very important</u>	<u>Somewhat important</u>	<u>Not important</u>
Faithfulness	93%	6	1
Having common interests	70%	28	1
Living separately from in-laws	70%	20	8
Sharing household chores	61%	34	5
Having an active sex life	47%	47	5
Having enough money	40%	54	6
Having children	34%	43	22
Having similar upbringing	27%	50	23
Having same political views	8%	39	53

Soon after The California Poll began operations in 1947 it measured public opinion on the subject of marriage. While the questions used then are not directly comparable with today's survey, it is possible to observe how in some respects the basic outlooks of men and women differ from contemporary views on marriage.

The 1947 survey found that men believed being a good housekeeper was the most important quality in a wife, far more important than good looks, intelligence and personality. Men also ranked having a good disposition, being a good cook, a hard worker, honesty and a woman who would stay at home as very important attributes in a wife.

High on the list of important husbandly traits as ranked by women were thoughtfulness, being a good provider, love and honesty. Most wives in the 1947 survey supported the idea that a woman will stick by her husband if he is nice to her, isn't too irritable and hard to get along with, no matter what else he does.

The statistical findings in this report are based on interviews with a statewide cross-section of 503 California adults during the period July 24 - August 1, 1987. The overall findings are subject to sample tolerances of plus or minus 4.4 percentage points. Findings based on subgroups of the overall population are subject to somewhat higher error estimates.

There are other possible sources of error for which precise estimates cannot be calculated. Different results could occur because of different question wording or undetected flaws in sampling, interviewing or data processing procedures.

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INFORMATION ABOUT THE SURVEY

SAMPLE DETAILS

The survey was taken among a representative sample of 503 California adults. Interviewing was conducted between July 24 and August 1, 1987 during the late afternoon and evening on weekdays and all day on weekends. The sample was weighted to bring it into conformity with parameters of the population statewide.

The bases of subgroups reported in this report are as follows: men 233, women 266, married 288, never married 108, separated, widowed, or divorced 101, 18-29 years old 111, 30-39 139, 40-49 77, 50-59 50, 60 or older 120.

QUESTIONS ASKED

Compared to ten years ago, do you think the institution of marriage is now stronger, weaker or hasn't changed much?

I am going to read a number of things that some people think are important for a successful marriage. For each one, please tell me whether you think this is very important, somewhat important or not important for a successful marriage. (See release for categories rated)

Poll Operation and Sponsorship

The California Poll has operated continuously since 1947 as an independent, non-partisan media sponsored public opinion news service. The Poll is owned by Field Research Corporation and since 1976 has been operated by The Field Institute, a non-profit, non-partisan research group engaged in conducting studies of public opinion on issues of social significance. The Institute receives its financial support from academic, governmental, media and private sources.

Survey Method

Interviews in this survey were made by telephone. Sample homes are drawn in accordance with a probability sample design that gives all areas of the state and all neighborhoods a properly proportionate chance to be included. Telephone numbers are randomly generated by computer in proportion to local prefix allocation density to remove non-listed telephone biases. Up to four calls are made to each number at different times to reach one adult in each household. An adult respondent is selected for the interview using an objective procedure to provide a balance of age and sex.

Accuracy of the Findings

Several factors must be considered in assessing the accuracy of the findings in this and other California Poll reports. One is the amount of tolerance in the findings due to the presence of random variations inherent in the sampling process itself. Another are any inaccuracies caused by judgemental factors such as question wording and sample design; and a third are the effects of external events.

Sampling Tolerance

The amount of sampling tolerance in these survey findings can be estimated quite precisely by the use of well-tested statistical formulas. The California Poll uses an advanced method known as replicated sampling that provides an empirically determined estimate of the range of so-called sampling error for each item of information developed by the survey. This method takes account of the size of the sample, the degree of variability in response to each item, sample design effects (clustering, weighting), and the effects of variable interviewer and coder performance.

An estimate of the sampling error range for this survey is shown in the table below. The sampling tolerance has been calculated at two statistical confidence levels which are customarily used by social scientists — the 95% and the 99% level. To use the table, first select the sample size on which the percentage in question is based. Then note the plus and minus range of sampling tolerance for the degree of confidence desired and apply this to the percentage figure. The resulting "high" and "low" estimates show the range within which we can have 95% (or 99%) confidence that if the whole population of the state had been surveyed with the same questionnaire, the results of such a complete coverage would fall between the two figures obtained from the data in the table.

The sample tolerance figures shown in the table are average figures derived from the actual experience of a number of recent surveys. They represent maximum tolerances for the sample bases shown, i.e., for survey findings where the division of opinion is around 50%-50%. Survey findings that show a more one-sided distribution of opinion, such as 70%-30% or 90%-10%, are usually subject to slightly lower sampling tolerance than those shown in the table.

Table of Sampling Tolerances for Data from Surveys of The California Poll
Plus/minus percentage range of sampling tolerance at —
Sample Size 95% confidence 99% confidence

1200	3.0	4.0
1000	3.3	4.3
800	3.7	4.9
600	4.2	5.6
400	5.2	6.9
200	7.5	9.9
50	15.0	19.8

Other Possible Sources of Error

In addition to sampling error, there are other important sources of potential inaccuracies in these (and in other) poll findings. These sources include the effects of possibly biased or misleading questions, possible systematic omission of relevant segments of the population from the survey sample, and the effects of significant events that occur during or after the time the survey interviews are made. There is no standard measure of these effects; each must be evaluated judgmentally. Furthermore, since the influence of these factors on the ultimate accuracy of the survey findings may be many times greater than the amount of sampling error, it is important that they also be carefully weighed.

So that the reader will have information needed to judge the possible importance of these effects, The California Poll provides this bulletin with each release, describing the question(s) used, the size and type of sample used, and the dates of interviewing.

The California Poll has an excellent record for accuracy in reflecting public opinion during its 33 year history. The staff of The California Poll takes great care to formulate questions which we feel are objective and unbiased and to carefully supervise the data gathering phases and other research operations upon which the Poll's findings are based. Nevertheless, users of this (and any other public opinion polling data) should be continually mindful of *all* of the factors that influence any poll's accuracy. Sampling error is not the only criterion, and we caution against citing only the sampling error figure alone as the measure of a survey's accuracy, since to do so tends to create an impression of a greater degree of precision than has in fact been achieved.

Suggested copy for editors to use when presenting California Poll data in publication or newscast

Surveys of the kind reported here by The California Poll are subject to variability due to sampling factors and to other possible sources of influence on their accuracy. The statewide sample results shown in this report are subject to a sampling tolerance of plus or minus approximately _____ percentage points. The (reader) (viewer) (listener) should also be aware, however, that there are other possible sources of error for which precise estimates cannot be calculated. For example, different results might have been obtained from different question wording, and undetected flaws in the way the sampling and interviewing procedures were carried out could have a significant effect on the findings. Good polling practices diminish the chances of such errors, but they can never be entirely ruled out. It is also possible, of course, that events occurring since the time the interviews were conducted could have changed the opinions reported here.

How to Stay Married

The age of the disposable marriage is over. Instead of divorcing when times get tough, couples are working hard at keeping their unions intact. And they are finding that the rewards of matrimony are often worth the effort

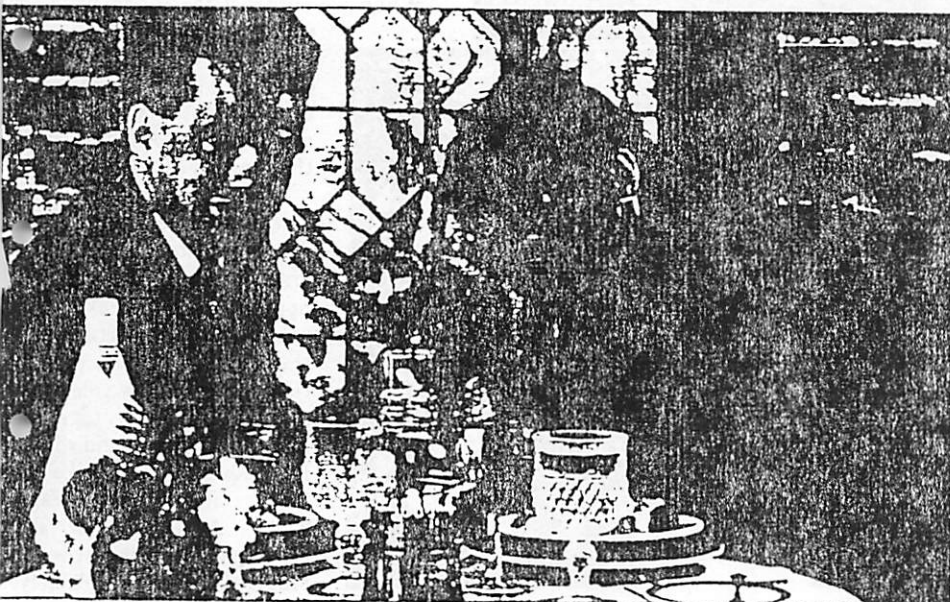
Sharon and Dan McGill began their marriage last year by buying a three-acre horse ranch in the hills above Los Angeles. The move to the quiet, rural area was symbolic of their new life together. Dan, 38, had been living in Marina Del Rey, a freewheeling beach community where, he says, the general attitude toward marriage was: "If it ain't working, bail out." Like Dan, Sharon, 43, had been married before and considered

herself a veteran of the singles scene after a series of long-term relationships over the past 15 years. This time, they've promised each other, it's going to last forever.

In Boston, Jose and Divina Masso are an oddity to their children's friends because they are still married after seven years. The four Masso children, Jose says, "can go down whole lists" of their friends' parents who are divorced or separated or living

with different boyfriends. "We don't seem normal," he says. "We tell them this is the way it *should* be; you *should* have a mommy and a daddy." Jose and Divina, both 37, are determined to make their marriage work. Too many people, they say, give up too easily, and the children suffer.

The last two years have been the most trying of Dwight and Sharon Albers's 15-year marriage. Dwight's father committed suicide, and then Sharon lost her job as an account clerk. Even though Dwight was still working in a food-processing plant, the bills piled up. Six months ago the Walters, Minn., couple declared bankruptcy. The financial pressure caused tremendous tension in their household, but they never considered divorce. Dwight, Sharon and their three sons live in the farmhouse where Dwight grew up. They're staying together, says Dwight, because "we are a family."



RANDY TAYLOR—BLACK STAR
Sam and Lori Owen

'With both of our parents, the father is king and the mother is subordinate. We want our relationship to be much more equal'

3 MONTHS

Americans are taking marriage more seriously. The new bywords are commitment and responsibility. More and more couples are finding that breaking up is hard to do. The institution of marriage may have been battered and bruised by the greater social acceptance of divorce and the easing of old legal barriers as well as the increase in cohabitation in the last 20 years. But Americans haven't given up on it. Most people still want to be half of a married couple. Maybe it's the eternal dream of true love or possibly just a new pragmatism. Sexual freedom doesn't seem quite so appealing in the age of AIDS. "I don't think people think marriage is more fun than it used to be or somehow see a more ideal form," says Andrew Cherlin, a sociology professor at Johns Hopkins University who has studied marriage and divorce patterns. "But the alternatives to marriage look less promising."

After a 15-year rise, the divorce rate has



RANDY TAYLOR—BLACK STAP

The Blooms now, and on their wedding day

'It took lots of talk and lots of years for me to understand that I am not in this relationship to change him.'

40 YEARS



leveled off and is even beginning to drop. The 1986 rate, 4.8 per 1,000 people, was .2 percent below 1985—and the lowest since 1975. Meanwhile, the median length of marriage is increasing, from 6.5 years in 1976 to slightly more than seven years in 1986. The median age of first marriage is also rising, from 20.6 for women and 22.5 for men in 1970 to 22.8 for women and 24.6 for men in 1984—an indication that people may be waiting until they are sure before they take the Big Step.

How times have changed. In the 1970s, when the going got rough, couples did what everyone else seemed to be doing—they got out. Breaking up is certainly still a popular option: Americans have the highest divorce rate in the world. What's new in the late '80s is that, increasingly, divorce is seen as more of a last resort. "I think there has been some apprehension that we, as a society, have made it too easy for people to divorce," says Frank F. Furstenberg, a professor of sociology at the University of

Pennsylvania. "We have gone from seeing all the rosy sides of divorce as an antidote to an unhappy marriage to seeing the negatives, especially the economic disadvantages. We're now taking a sober, realistic view about the relative trade-offs."

The landscape is littered with victims of the divorce epidemic: ex-wives raising their children alone; former husbands trying to start new lives and still be good fathers to kids they see only on specified days; and the children themselves, often torn between two warring parents (page 58). In a recently completed 10-year study of 60 divorced middle-class families in northern California, psychologist Judith Wallerstein found that only 10 percent of the ex-spouses said they had both succeeded in improving their lives. Divorce, Wallerstein says, "has been a wrenching experience for every family I've ever seen."

Economically, women with children are usually the biggest losers—especially if they haven't been working. Their average standard of living goes down while their husband's rises. Couples who have been dependent on two incomes to support their families may find that they can't make it on just one paycheck. "Divorce in the '80s is divorce on hold," says Marna S. Tucker, a divorce attorney in Washington, D.C. "When we subtract taxes and figure out

what's the minimum amount they need to live on, and then we see what's left, a lot of them are saying, 'Maybe when the kids are grown-up.' And they stay in the marriage."

Some of the new attitude toward marriage is a function of demographics. The baby boomers are heading into middle age now, past the peak divorce years of the early 20s through the early 30s. They want to settle down. The new role models are couples who stay together, like the husbands and wives of hit television series like "The Cosby Show" and "Family Ties." Advice books about staying together have become a staple of the "self-help" shelves, crowding out the guides to

divorce. Earlier this year Maggie Scarf's "Intimate Partners" hit the best-seller lists. Her detailed synthesis of research on marriage and family therapy includes instructions for exercises aimed at improving communication between husband and wife—not exactly the usual ingredients of a blockbuster book.

The hunger for information shows up in the therapist's office. "People used to come to me and say, 'I want a divorce. How do I get out of this marriage?'" says Was

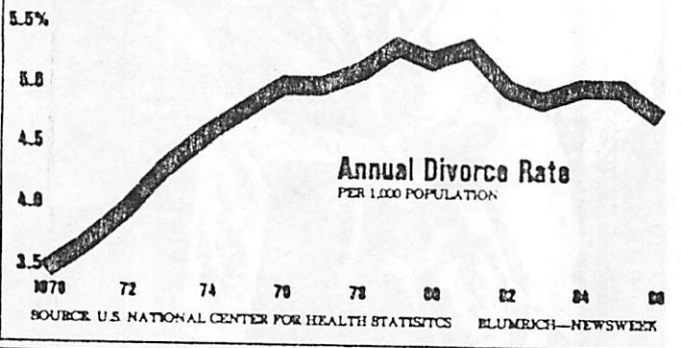
ington psychiatrist Dr. Margaret Clancy. "Now they say, 'I want to stay in my marriage, but I'm very unhappy in it. How do I fix it?'"

Psychologists do have some new answers. While there are no sure-fire guarantees of wedded bliss, researchers have been able to identify some characteristics of long-term marriages. "Successful couples regard their spouses as friends, the kind of person they would want to have as a friend even if they weren't married to them," says Robert Lauer, coauthor with his wife, Jeanette, of "Till Death Do Us Part."

In a recent study of 351 couples married 15 years or more, the Lauers found that the most admired qualities in a spouse were integrity, caring, sensitivity and a sense of humor. A sense of commitment was crucial, says Lauer, "commitment to the marriage itself, commitment to the spouse as an individual and a commitment to a fulfilling relationship." Happy couples never took each other for granted, says Lauer; they worked at being a

A Divorce-Rate Reversal

After rising sharply between 1970 and 1980, the divorce rate has leveled off and even begun to decline. It is now at its lowest point since 1975.



couple. "There's a tendency," he says, "especially when children are young, to focus on children, or, when there are two careers in a marriage, to have people on different schedules, like two ships passing in the night. Long-term successful couples keep coming back to the fact that their main commitment is to being a couple."

Therapists have devised exercises to

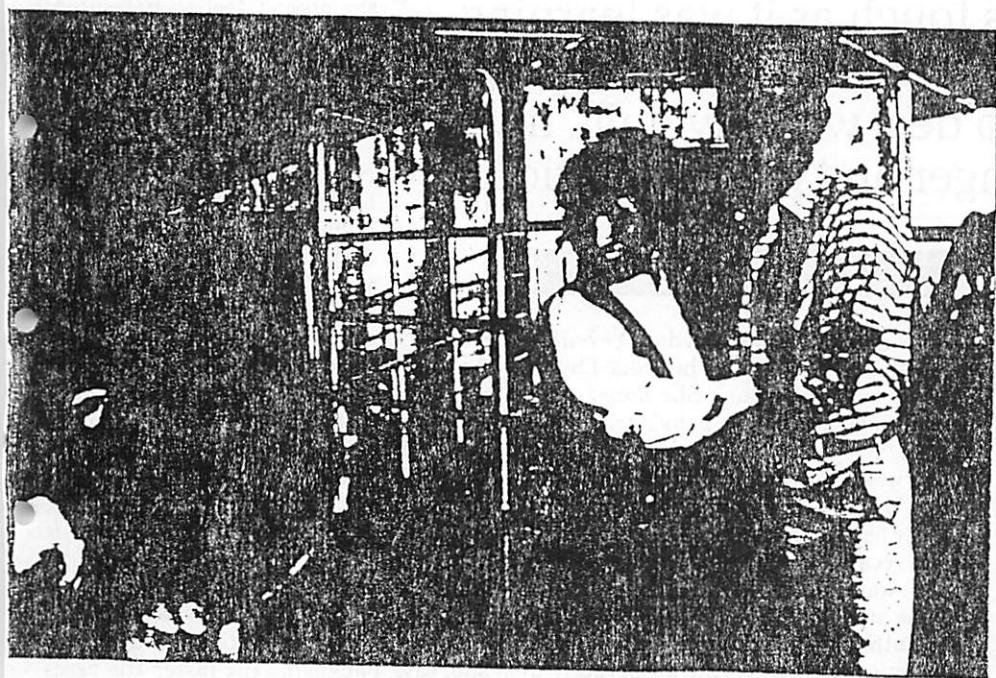
help couples work through their problems. In the program he runs at the University of Denver, psychologist Howard Markman teaches couples how to communicate. One spouse is designated a "listener" and the other a "speaker." At specified intervals, the listener has to summarize what the speaker has said. There are similar exercises in Scarf's book. For example, she suggests setting aside an hour during the week when the couple can work together without interruption. For the first half hour, one spouse gets to talk—only about herself. Her partner makes no comment. Then it is his turn. She also has to keep silent.

Psychologists see marriage as a progression. At each stage, conflicts are inevitable. Couples who learn to resolve problems early on have a better chance of making it in the long run. In the first years, couples are getting to know each other. In the middle years, they try to balance work and children if they have decided to have a family—and redefine their relationship as a couple. After the children are gone, the relationship enters a mature phase. They are alone again and struggling to fill the "empty nest."

Starting out: Experts say that patterns of behavior are set early in a marriage. If newlyweds fail to resolve their problems, they set the stage for future discord. "A lot comes up that can fester and diminish the richness of a marriage," says Dr. Samuel Pauker, a clinical instructor of psychiatry at Cornell University Medical College and coauthor of "The First Year of Marriage." In a study of 75 couples, Pauker and his wife, Miriam Arond, found that most of them said the first year was either the easiest or the hardest year of their marriage. "Those who said it was the hardest were the ones who worked things out," he says, "and the ones who said it was the easiest didn't work through problems and came up looking naive."

Some therapists offer formal courses for newlyweds. Lori Gordon, director of the Family Relations Institute in Falls Church, Va., has developed a 16-week program that, she says, provides a "tool kit" for marriage—practical lessons in how to communicate better, develop empathy for a partner, understand hidden expectations and deal with sexual problems.

But even without a course, new husbands and wives can head off difficulties by confronting differences in a constructive way. Lori and Sam Owen have been married only four months and already they're trying to



MARK SENNET—ONYX
Dan and Sharon McGill on their ranch

'Now it's socially acceptable to be married and stay married. You're forced into negotiating instead of packing your toothbrush and leaving'

1 YEAR

write the rules of their relationship. Who cooks dinner? "We're negotiating that right now," says Lori, 28, a Miami banker. "Some days I don't mind being barefoot in the kitchen and doing the cooking. But many days I don't have the energy for it, or the patience for it, or I have an 8 a.m. meeting the next day." They keep separate bank accounts and a joint house account. That was Lori's decision, the result of watching her mother, a housewife who "depends on my father for every dime." Says Lori: "Every time she needs money, she hems and haws about it before asking him. I've always said to myself, 'I never, ever, want to have to grovel for money.'" Sam, 27, an account manager at Xerox, understands. "I can't ever tell her how to spend the money she has earned," he says.

Their greatest conflicts are over when to have children. Sam wants kids right away. Lori doesn't. "I like to work," she says. "I can't see interacting with a three-year-old all day." It's a question of equality, she says. "It's not like I can have one and he can have one. Some things are equal—this is not. It's difficult in my job to be pregnant. I'm required to be out a lot at night, on my feet, making presentations." Sam accepts the idea of equality. "With both of our parents," he says, "the father is king and the mother is subordinate. We want our relationship to be much more equal." But neither of them has figured out how to translate that idea into reality.

New parents: Waiting too long to resolve differences can have painful repercussions later on, especially after the birth of the first child. The wife often becomes preoccupied with her new role as a mother; fathers frequently feel left out of the picture. On the night of Jan. 8, 32-year-old Cathy Anton kept an anxious vigil in the living room of her suburban New Jersey home. As her nine-month-old son Michael slept quietly in his room, terrible visions crept through her mind. Her husband of nearly four and a half years, Ken, 29, had said he would be home early. She worried that he was in an accident—and perhaps lying dead on a highway. Finally, just before 3 a.m., she heard him come in the door. He had been out drinking with friends from his job as a construction manager. No



MARK SENNET—ONYX

Steven Bochco and Barbara Bosson

'As tough as it was learning how to work together, we had to deal with my guilt, my anger and her frustration'

18 YEARS

words were exchanged; Ken didn't even see her sitting in the dark as he passed by on the way to the bedroom. She dozed off at 5 a.m.; an hour later the baby's cries woke her up. Ken had already left for work. There was a note on the kitchen bulletin board. "He wrote that he hoped I could find it in my heart to forgive him just one more time," recalls Cathy. I wrote, 'Screw you!'"

That was their moment of greatest crisis, but the storm clouds had been gathering for months. Cathy was furious about Ken's long hours. She was trying desperately to hold things together at home. A difficult labor, the culture shock of being home all day instead of on the job, the tensions of new motherhood—it was all too much. As far as Cathy was concerned, Ken's only contribution was his paycheck. It wasn't enough. She dressed her son, packed up some clothes and went to her sister's home on Long Island because, she says, "if I had stayed home, I would have killed him."

But Ken was also feeling pressure, especially at work. If he didn't put in the extra hours, he was afraid that someone else

would and that guy would be promoted instead of him. At home, he thought Cathy was intent on becoming Supermom. When Ken tried to hold the baby, she acted as if he were a total klutz. "It was, 'Don't drop him, watch his neck, don't do this, don't do that,'" he recalls. "I guess I sort of said, 'Fine. I won't touch him at all.'" More and more, at quitting time, he found himself out with the boys instead of on the road home.

Cathy consulted a lawyer. She felt the situation was beyond salvation. But when confronted with the very real possibility of divorce, Ken told Cathy he would try to change if she would. Cathy agreed, motivated by economics as well as love: "I don't have any money. I have a baby, and he comes first. I was thinking about his future." Ken has stopped going out with his friends and tries to be home by 7:15. He spends more time with Michael. Cathy has hired a babysitter a few hours a week so she doesn't feel so pressured. "We share the private jokes, which we haven't done in a long time," Ken says. "I feel like we've grown stronger."

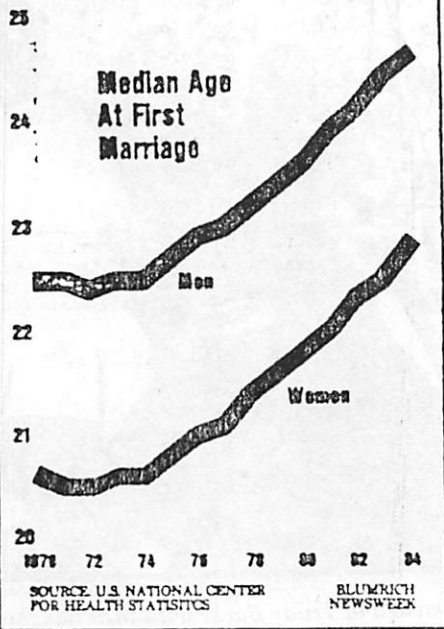
The Antons were pushed right to the edge. Before their big blowout, they had been exhibiting classic signs of trouble. Although signals of distress vary, Ken's late hours and Cathy's inability to share child-rearing chores with Ken indicated that they were growing apart. The signals became public when Cathy left. That open admission of trouble often comes near the end, says Boston College sociologist Diane Vaughan, who interviewed 103 partners for her book, "Uncoupling." "One of the rules of relationships is that we keep our problems to ourselves," she says, "and we don't reveal the other person's flaws publicly." But sometimes drastic action is the only way to get the other person's attention and, says Vaughan, "the faster the cards are placed on the table, the better chance couples have of saving their relationship."

Middle years: After the adjustments of early marriage, couples enter a new phase—trying to maintain the delicate balance between work, their relationship and raising children if they have decided to have a family. There never seems to be enough time for anything—particularly each other.

For Barbara Bosson and Steven Bochco,

Waiting Longer

The median age of first marriage has risen two years for men and women in the last decade and a half.



who have been married 18 years, all those issues came to a head during the filming of "Hill Street Blues," the television series that Bochco created and Bosson acted in (as Faye Furillo, ex-wife of Capt. Frank Furillo). The show was crucial to both their careers. "I had never, ever had a work experience like it," says Bochco, 43. "I had never, ever been passionately in love with my work up until that point. And I don't think I ever, in my work, felt truly powerful until then." For Bosson, 47, it was also a chance to shine. She had worked only sporadically since their marriage—in between raising two children, Melissa, 17, and Jesse, 12. "I needed that feeling of putting yourself on the line and succeeding or failing," she says. "Those things don't happen when you're at home with a baby."

But when they started working together, the pressures were intense. He would ask her advice about a problem on the set. She would give him an honest opinion—not just as his wife but also as a member of the cast. Bochco sums up the situation in one word—warfare. "As tough as it was learning how to work together," he says, "we had to deal with my guilt, my anger, her frustration, her envy."

Out of necessity, they learned how to separate roles—husband and wife, boss and employee—and find time to listen to each other. "Most of the time, what you want is to be heard," says Bochco. "What you don't want is to be advised. Say Barbara comes to me with a work problem and I—

Mr. Smart Guy—say, 'Well, you should do this and you should do that.' Suddenly, I'm in a brawl. Instead, I should be saying, 'Gee that's tough,' and 'Let me give you a hug.'" Work, they say, is the forum for the rough-and-tumble exchange of ideas. And marriage? "Marriage," says Bochco, "is where you want someone to rub your toes."

Hard times: At any point in a marriage, even the most carefully balanced relationships can collapse under pressure from events outside of the marriage. Money problems are among the most difficult to manage. In the fall of 1985, David and Trudy Burke of Johnstown, Pa., were squeezing by. For David, a 41-year-old electrician, life was a tense regimen of lay-offs and callbacks. Trudy, 40, worked for the minimum wage in a card shop. Their combined annual income of \$30,000 was just enough to provide for themselves and their three daughters.

But even that slight feeling of financial security disappeared just before Thanksgiving when his company eliminated David's job. Their debts mounted as his unemployment benefits dried up. David had several friends whose relationships had cracked under the strain of financial hardship. And soon the Burkes were showing the same signs of trouble.

"There were days when it was rough to be around him," says Trudy. "The depression of not having a job... He was taking it all on himself. Normally we try to cheer each other up, but it was hard." As their frustration grew, the talking nearly stopped. They became angry and sullen with each other. "Looking back, I don't know if we were communicating on any level," says David.

David began seeing a psychotherapist, with money left from his unemployment benefits, and Trudy eventually joined in. It was the therapist, Trudy says, "who got us on the road to communicating." Gradually they found their way back to each other. "It doesn't matter how you communicate," says David. "Even if you hurt the other person, [he or she] can come back and say, 'You hurt my feelings.' Then at least you have a dialogue going. Great! You can't have a monologue." David took some college classes in electrical engineering and got a new

job earlier this year. "The lean times in the past year and a half were probably the best thing that ever happened to this marriage," says David. Now, they say they are closer than ever. Adds Trudy: "The marriage has surpassed my expectations."

Sometimes, however, the times are so hard that it's best for everyone if the marriage ends. As important as it may be for some people to stay together, there is also a time for letting go. Psychologists say some marriages last too long because of unhealthy dependencies. "Some people really work on their problems," says Gay Kitson, a researcher at Case Western Reserve University. "But others' reasons are not so positive. They come from violent homes, alcoholic families, and one person gets entangled with the other person and they can't pull away. Perhaps they don't have strengths of their own or they blame them-



PETER YATES

Alex and Nancy Allen

'We spend a lot of time together on simple stuff. If I go to gas the car, I say, c'mon along'

29 YEARS

elves for the other person's problems."

Although it's impossible to get really accurate figures on infidelity, researchers estimate that more than half of all husbands and nearly half of all wives have affairs before they turn 40. The numbers for women have been increasing in recent years as they enter the workplace. Scarf says that even though adultery is so common, it still comes as a shock. "It is a disaster," she says, the death of innocence in a marriage. The worst thing, she says, is not the sexual activity but "the lying and deception and hypocrisy."

Often, spouses turn outside the marriage when they're getting ready to make a break. They are, in a sense, creating a new life before giving up the old. Jim, a 38-year-old Denver professional, had three affairs during his first marriage. He eventually married the last woman he was involved with. Now, he says, he would never have an affair. "I have a woman who is, I believe, a soul mate," he says.

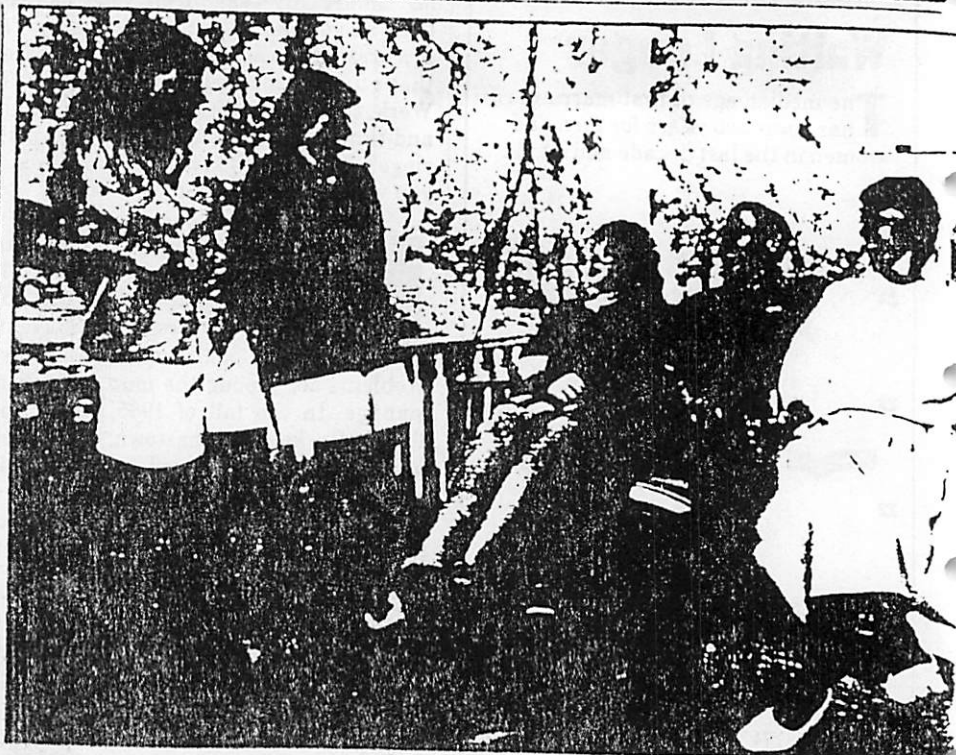
Empy nest: Couples who pass through the crises of the middle years with their marriages intact face new challenges when their children are grown. If their main bond has been the family, they may find that they have nothing left to talk about.

Or they may be in for the best years of their lives. Alex and Nancy Allen's life changed completely last September when the youngest son left for Howard University. Although they've been married 29 years, Alex, 52, a state court judge in Michigan, and Nancy, 49, acting director of Detroit's Museum of African American History, say they feel like honeymooners.

The Allens say they were able to cope with the empty nest because they had worked at staying close. They've never been separated for more than a week. "We spend a lot of time together on simple stuff," says Alex. "When I go to the carwash or to gas the car, I say, 'C'mon along with me.' For years, we've been eating lunch together." Adds Nancy: "He's my buddy."

As couples learn to accept life after the children are grown, they discover a new freedom. The shared experience of surviving rough times forges a strong bond. Herbert and Marilyn Bloom have been married for 40 years. As they sit side by side on the couch in their Miami Beach condominium—sometimes laughing, sometimes gently stroking each other's back—they think back on how they managed three children and two careers.

One moment stands out as a turning point. It was 1955, and Herbert, who was 37, had a heart attack and nearly died. From then on, a Biblical passage became their blueprint: "This is the day which the Lord hath made: we will rejoice and be glad in it." Although they are not particularly



LEIF SKOOGFORS—WOODFIN CAMP & ASSOC.

David and Trudy Burke with their daughters

"The lean times were probably the best thing that ever happened to this marriage. It gave us a chance to say, 'We're really not communicating'

20 YEARS

religious, they were drawn to the truth in those words. "We began to live that way and to try to find some enjoyment, some joy in our life as often as possible," Marilyn says. "I don't want to paint rosy colors. Young people have to realize—and I know they do—that no matter how many years you have been married, there are ups and downs. It takes commitment, hard work and also a sense of fun."

They are a team, and they have nurtured each other through the years. Herbert, 67, tends to keep his feelings locked inside. "But I learned a lot with Marilyn's help to get it out, to deal with it and not let it fester," he says. "We need to share with each other what we feel or are thinking and how to..."

"... Accept each other for what we are and not our visions of what we think we are," says Marilyn, 61, completing his thought without missing a beat. That was her hurdle, rushing to judgment—especially when it came to what she perceived as Herbert's faults. "I had wanted Herb—before we had really worked things out—to behave the way I wanted him to behave, not

the way he was. It took lots of talk and lots of years for me to understand that I am not in this relationship to change him."

What makes a strong marriage? The goal has always been to build a fulfilling life together. But Americans expect a lot out of marriage—romance, empathy, excitement, security. And often they have felt cheated by reality. The simple answer of the 1970s—getting out—has turned out to be not so simple after all. Now there are new strains. "It's not easy being married these days with two careers and day care and all the other problems that make it a daily struggle," says Clancy. "I'm surprised marriages are not more fragile." The reason they're not may be that couples have learned a lesson from the painful experiences of the past two decades: if they're willing to try, they can make it work.

BARBARA KANTROWITZ with PAT WINGERT in Washington, JEANNE GORDON in Los Angeles, RENEE MICHAEL and DEBORAH WITHERSPOON in New York, ERIK CALONIUS and DAVID L. GONZALEZ in Miami, BILL TURQUET in Detroit and bureau reports

From Africa's bush people to Western urbanites, divorce most often occurs four years into a marriage. It looks as if nature doesn't care for eternal fidelity

Just married—but will it last?

Americans call it the seven-year itch, but you've actually beaten the odds if you make it that long. In scores of cultures around the world, the number of divorces peaks at about the fourth year of marriage. As for that old wives' tale that couples split when the children grow up and leave home, that's a canard, too. Divorces worldwide are highest for childless or single-child couples who are between the ages of 25 and 29. And don't believe what you've heard about midlife crises, either. Neither the U.S. nor any other country shows a rise in divorces among men in their 40s and 50s seeking the attentions of, say, a Donna Rice.

This demythologizing of divorce comes from work soon to be published by anthropologist Helen Fisher of the American Museum of Natural History in New York City. Combing United Nations demographic yearbooks, she tabulated divorce data for 58 countries, regions and cultures between 1947 and 1981, the most recent year for which international statistics are available.

Fisher was startled at her own findings. After all, societies vary enormously in their laws, attitudes and even the ways they collect divorce-related census data. Yet she found strong evidence of a four-

year itch in young married couples from Greenland to Australia, from industrialized nations to agrarian societies. When she assembled the data, which came from 150 different studies, she found that more marriages ended after four years than at any other time, although the itch frequently showed itself after two or three years of marriage as well—in the U.S., it was two years, for example. The early itch must be powerful, says Fisher, to show up so often. Prehistoric pattern?

In Fisher's view, the divorce pattern reflects a reproductive strategy that evolved 2 million years ago, when the growth of the human brain made the head too large to slip easily through the birth canal. In evolutionary terms, that development favored women who bore babies who were smaller and therefore less mature.

With a helpless infant at her side, Fisher argues, a mother needed male support and protection at least until the baby was weaned. As Fisher notes, four years happens to be how long it takes women to wean their young in modern-day hunter-gatherer societies, such as the !Kung tribe of southern Africa's Kalahari Desert and the aborigines of Australia, groups whose



A Las Vegas wedding chapel and a mother and child of Africa's Kalahari Desert would seemingly have little in common. But marriages in the two cultures they represent—and in many others—tend to fall apart at about the same time

way of life is thought to mirror that of our early ancestors. Because breast-feeding tends to inhibit ovulation, there generally is a four-year space between births in these societies.

"It seems that nature has a strong interest in seeing humans pair-bonded for at least long enough to rear young," says Fisher, "but it's hard to imagine that there's a strong selective process to keep people pair-bonded for life. There's an advantage to having genetically varied offspring."

For that reason, monogamy is rare in nature. Exceptions include foxes and many bird species, which bear young needing the care of two adults. Even among these species, however,

A NEW STATE OF AFFAIRS FOR U.S. DOMESTICITY

Now for the good news

Not too long ago, every marriage in the U.S. seemed to be breaking up. Demographers took the mounting census of shattered unions, and social pundits voiced alarm when the charts showed that a walk to the altar carried close to a 1-in-2 risk of ending up in divorce court. But the divorce curve in America began flattening out in the early 1980s—and now may be starting a gentle descent.



"Itch" girl: Passes?

A tantalizing little dip in the 1986 curve, appearing in preliminary estimates from the National Center for Health Statistics, led Andrew Cherlin, professor of sociology at Johns Hopkins University, to proclaim: "The great rises of the '60s and '70s are no more." He and others caution that it's much too soon, however, to turn a statistical wiggle into a trend—or to suggest reasons.

The divorce rate is usually expressed as the number of divorces per 1,000 Americans. The 1986 rate was 4.8 per 1,000, according to the NCHS, down from 5.0 in 1985, and its peak, in 1981, of 5.3. The 4.8 figure for 1986 was the lowest since 1975 and represented only the second time in 12 years that the rate has edged below 5.

Not necessarily blues
The numbers, says Cherlin, don't necessarily put the United States on the road to connubial success. Since they are based on the entire U.S. population, not just married couples, the figures do not directly reflect the pool of couples actually at risk for divorce. For the same reason, a decline in the marriage rate in 1986, to 10.0 for every 1,000

EDDING APEL



the bond usually lasts only as long as a single breeding season. Human beings, says Fisher, despite avowing eternal fidelity, are likely to follow the same pattern. "That's why people have to work on their marriage after an initial period of grace," she says.

Fisher's work dovetails neatly with

research done by other academics on the early stages of love. Dr. John Money, an expert on human sexuality at Johns Hopkins University in Baltimore, reports that the infatuation phase of love typically lasts two to three years. Money stops short of suggesting that brain chemicals could underlie infatuation, but he notes that when the pituitary gland malfunctions early in life, causing hormonal deficiencies, individuals grow up "love blind." Explains Money: "They are normal in most respects, except that they are unable to fall head over heels in love."

Fool for love

Psychiatrist Michael Liebowitz of the New York State Psychiatric Institute came to much the same conclusion—from quite a different direction—in the course of treating people he calls "attraction junkies." The emotional opposite of the love blind, these are people who are constantly falling in love. Their history consists of one disastrous romantic relationship after another. Liebowitz and his associate, Dr. Donald Klein, found that drugs that boost phenylethylamine—the brain's natural amphetamines—helped attraction junkies settle down so that they could make better romantic choices. This discovery led the researchers to conclude that the giddy thrill of falling in love is triggered by amphetaminelike compounds. "Attraction junkies," says Liebowitz, "may simply have a bigger craving for the amphetaminelike boost that is a

normal part of falling in love."

Some may find it hard to believe that a four-year divorce peak is tied to a 2-million-year-old habit. Anthropology's *eminence grise*, Ashley Montagu of Princeton University, certainly does. "It has nothing to do with natural selection," declares Montagu. "It seems perfectly logical that it would take four years of shilly-shallying all over the place before an unhappy couple would arrive at a divorce. All this is explicable on psychological grounds."



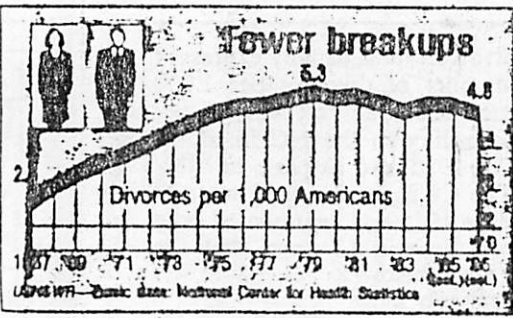
Anthropologist Helen Fisher: Lifelong bonds may not be natural

But Fisher isn't impressed with Montagu's version of the war between the sexes. "If psychology is key," argues Fisher, "you'd expect to see enormous variation in the duration of marriages across cultures. But you don't. The pattern is remarkably stable over time and place."

Whatever the cause of the global four-year itch among young couples,

Fisher's work contains an encouraging message for the huge population of baby-boomers in their mid-30s who have managed to stay married thus far: They've passed the point of highest divorce risk. As they continue to age, their chances of divorcing, at least measured in statistical terms, will decline further. In the U.S. (see box), the divorce rate has begun to flatten out in the last few years. Baby-boomers in this country and abroad, says Fisher, are heading for a period of tranquil waters—maritally speaking, anyway.

by Kathleen McAuliffe



Americans from 10.2 the year before, should not be taken at face value.

Even if overall numbers continue to drop, Arthur Norton, assistant chief of the Census Bureau's population division, says that the oldest baby-boomers,

now in their late 30s to early 40s and well past the age of highest risk (see story above), have already assured their place in history as the generation with the highest divorce rates ever. A 1985 Census Bureau survey showed that nearly one third of the women age 35 to 39—those born during the first five years of the baby boom—had already divorced once.

Norton and Jeanne Moorman, co-authors of a noted paper on marriage trends, also predict a marked drop in the percentage of women who make it to the altar. When Norton and Moorman looked at women age 25 to 29 in 1985, only 74 percent of them had married—as opposed to 87 percent of women that age in 1975. Norton and Moorman expect

that the marriage rate for the 1985 group may never climb above 90 percent, 5 percentage points below the historic rate. These women, says Norton, "will have to do a lot of marrying in a hurry" if they are to match their mothers.

A turnaround in marital breakups would still leave the U.S. at the top of the world's divorce charts. Compared with the 4.8 per 1,000 rate in the U.S., even French marriages disintegrate at a more sedate 2.0, and it's 1.4 in Japan. In the U.S., "people should not assume that we will ever see as dramatic a decline as there was an increase," Norton says, "because society has accepted divorce as legitimate."

by Eric E. Goode

Experts predict divorce — before the marriage

By Jamie Talan
Newday

IMAGINED MY friend's parents as the all-American couple. Their huge suburban house was filled with three decades' worth of shared possessions. They skied on weekends, occasionally went to the theater and led what seemed the proverbial Ozle-and-Harriet lifestyle.

Last year, Sue told me that her parents had split up — something about a midlife crisis her father was experiencing. We stood together on a busy sidewalk, the news staging in the summer air, and wondered whether successful marriages really exist. Today, with one out of every two marriages ending in divorce, psychologists are

asking similar questions as they follow couples through the marriage cycle. The studies are showing that successful marriages — even divorce — can be predicted based on information gleaned from a couple before they actually marry. The hope, experts say, is to turn prediction into prevention.

Other researchers have spent endless hours analyzing questionnaires from couples with long histories together in an effort to understand exactly what makes marriages work.

According to psychologist David Olson, a professor of family social science at the University of Minnesota, the most common predictors of a good marriage include communication, the ability to resolve conflict, personal compatibility, realistic ex-

pectations and agreement on religious values. Olson has developed a "marriage inventory" called PREPARE — Premarital Personal and Relationship Evaluation — for use in counseling couples. The 125-item inventory identifies relationship strengths and weaknesses.

To test the effectiveness of the counseling tool, Olson analyzed the responses of 150 couples and found that he could predict who would be married or divorced after two years. He was right more than 80 percent of the time.

Also, those who postponed or canceled their wedding — about 10 percent of the group — scored low on the test, suggesting that they probably would have gotten divorced had they tied the knot, Olson said.

In a second study, with 200 more couples, Olson obtained similar results. How couples describe their relationship on PREPARE before marriage is very predictive of how they will succeed later in their marriage, the psychologist said. "What surprised us is that couples say these things six months before marriage," Olson said. His findings were published recently in the *Journal of Marriage and Family Therapy*.

Studying the marriage cycle has actually proved quite difficult and, of course, time consuming. There are so many factors that can make or break a relationship that it seems nearly impossible to come up with guidelines for a good marriage.

See MARRIAGE, page 3

Marriage

Continued from page 1

Howard J. Markman, director of marital and family studies at the University of Denver, is one psychologist who has accepted the challenge of figuring out what makes a successful marriage. Speaking at a recent meeting of the American Association of Marriage and Family Therapy, Markman shared his research news with the enthusiasm of a teenager in love. He suspects that he is on the verge of something big: a way to prevent the distress that often settles into modern relationships.

IN ONE STUDY, he asked couples of all ages to rate problem areas during different stages of married life. What he found — that money is the top priority in the first two years and slips to third place when couples begin having children and problems of communication and sex take the lead — is helping target problem areas for prevention and marriage counseling.

Markman and his colleagues have been following 150 couples, meeting with them annually for interviews, couple interactions and questions about their married life. The couples are videotaped and researchers spend about 20 hours analyzing each hour of footage.

Our findings indicate that the quality of the couple's communication before marriage is one of the best predictors of future marital success, with financial and sexual problems usually red herrings wrongly blamed for breakups and dissatisfaction," he said.

Couples most at risk for marital stress include those who leave conflicts unresolved because they do not know how to end them and those who are anxious and tense about being alone together or when normal conversations are no longer satisfying, Markman added.

But Markman believes there is a way to avoid marital stress and thus prevent separation. In a recent study, the Denver team, in collaboration with psychologist Frank Floyd of the Illinois Institute of Technology, taught communication and problem-solving skills to 21 premarital couples. An equal number of couples received no such assistance.

Couples who received the 15 hours of instruction were taught active-listening and speaking skills; how to monitor their own and their partner's behavior; brainstorming; and problem-solving. Sessions also included information on unconscious expectations about the partner and marriage and exercises to enhance sexual pleasure.

Eighteen months later, the researchers interviewed both groups and found that couples who took the instruction were more satisfied with their relationships than those with no training. The results also stood up in the third year of marriage, where the couples who received training reported more sexual and emotional satisfaction and fewer and less-intense problems.

The numbers were impressive. By the first follow-up, no one in the trained group had separated or divorced, whereas four couples (19 percent) of the control group, the untrained couples, had. After three years, one couple from the trained group (5 percent) and another five control couples (24 percent) had separated or divorced.

The study appears in this month's issue of the Journal of Consulting and Clinical Psychology. "We feel it is important to note that prevention programs such as ours probably capitalize on relationship qualities not found in marital-therapy programs that are delivered after stress sets in." Markman and his colleagues wrote in their study report.

Studies carried out in the Denver laboratory suggest that there are not many behavioral differences between happy and unhappy couples. Instead, differences emerge when couples are asked how they feel. "What seems to count in making marriage work is not the differences between couples but how the differences are handled," Markman said.

Researchers are also attempting to understand how a person's family influences marital choice. Dr. Frederick S. Wamboldt, a psychiatrist at George Washington University Medical School, said philosophers and social scientists have long suggested that social homogamy — the "birds of a feather flock together" tendency — helps explain why certain people marry and stay together for long periods of time.

ON A DEEPER level, Wamboldt believes that much of what brings people together rests in a person's "family of origin." In other words, positive family experiences are predictive of later marital success. Wamboldt found in a recent study that it is important for women to have a partner whose parents communicate well. Women say it makes their partners more aware of their thoughts and feelings.

On the other hand, men are least satisfied with a relationship if their partner continues to have high conflict with her family. Wamboldt also found that those who came from un-

happy homes often chose partners whose families were completely opposite from their own. "It's like jumping ship," Wamboldt said. He suspects that this is a healthy way to deal with one's own childhood.

What about long-lasting marriages?

David Fenell, a psychologist and chairman of counseling and guidance at the University of Colorado, surveyed 143 couples married for at least 20 years. All had been screened to assess whether they were truly happy. On separate marital-satisfac-

tion checklists, husbands and wives agreed that six factors contributed to the success of their marriages: commitment to the institution of marriage; loyalty to their spouse; strong moral values; desire to have children and raise them well; good sexual relations; and faith in God or some other spiritual commitment.

Granted, this sounds like an insight that Grandma could have provided to you for free. But Fenell said that, though it seems obvious, "many people don't know what it takes to make a marriage work."

COUPLES WORKGROUP SURVEY
of
Selected Employers and Insurers
on
Employee Leaves and Benefits

Conducted by:

Pricilla Karratti
Forest Lawn
Memorial-Parks

September, 1988

MAINTENANCE OF COUPLE RELATIONSHIPS

Family Leave

Questions asked - Leave for medical problems?
Leave for family members; i.e., spouse,
child, parent, significant others.
Right to return?
Does medical insurance remain intact?
Is leave a matter of right, or is it case
by case?

Those surveyed - A major bank
A hospital
An HMO
Two service organizations
A security company
An long-term union official/representative

A definite pattern emerged: companies tended to be paternalistic...PATERNALISTIC AND PROUD OF IT! Each company had a set of guidelines; however, they were just that--guidelines. Determination of family leave (even for "significant others") was on a case-by-case basis. Factors included, but were not limited to, absence history, years with the company, importance of job, etc.

A difference was noted in companies with unions. Whatever the union contract spelled out for the union employees, the non-union employees enjoyed...with some bonuses. (It is my opinion that the non-union employees received more liberal treatment in order to keep them non-union.)

Counseling

Because family problems usually result in job-related problems, three health plans were surveyed.

Questions asked - Do plans include psychological counseling?
Individual or couple counseling?

Those surveyed - Blue Cross
Kaiser
Allstate

All plans included psychological/psychiatric counseling. However, couple counseling occurred only in the traditional setting; i.e., where spouse was covered under the primary subscriber. In the non-traditional setting, couple counseling was available only when both partners were primary subscribers.

Unemployment Counseling

Questions asked - Do you make counseling referrals after extended periods of unemployment?

Office surveyed - Local Department of Unemployment

The Department of Unemployment does not officially refer; however, it will recommend that the applicant (person unemployed) apply to the Department of Rehabilitation/Counseling Services in cases where the applicant does not seem to adjust. It is on a case-by-case basis, and the applicant, or family of applicant, must apply.

With regard to the question: "What would your reaction be to a law requiring referrals of this nature?" The answer was: "We would be more than happy to comply."

September 19, 1988