November 28, 1989

Consumer Task Force on Marital Status Discrimination

Testimony of Bill Press

Good Afternoon!

I am very grateful for this opportunity to appear before you today.

Our recent sad experience with Measure M in the City of Irvine an Prop. S. in San Francisco proves that ignorance and phobia and hatred of persons with different lifestyles is very much alive in California - despite all the progress we have made - and I congratulate you and thank you for your efforts to continue to raise these issues, to seek consensus, to search for solutions, until this insidious form of discrimination - discrimination against persons based on their alternate lifestyle or alternate form of relationship - is eliminated.

Your efforts, of course, build on the excellent work and final reports of the City of Los Angeles Task Force on Family Diversity and the California Task Force on the Changing Family.

I am here today wearing at least three hats.

Yes, first, as an exploratory candidate for the position of State Insurance Commissioner, to be elected for the first time next year, one who will have great responsibility for carrying out the recommendations of this task force - and I already eagerly look forward to doing so!

Second, as a KABC-TV commentator, who has spoken out many times over the years on the issues we are talking about today.

Third, as a proud and long-time Governor and Director of MECLA - an organization which has as its very raison d'etre the rights of women and gays and lesbians and all Americans whose sex or sexual preference or living arrangement is considered, by some, to be outside the norm.

As a member of the Board of MECLA, seven or eight years ago, I first became aware of the very real discrimination against persons of alternate lifestyle practiced by insurance companies. And, while it may be considered risky for someone like me to praise anyone in the insurance industry, I must

tell you it was Tony Melia - also a member of the MECLA Board at that time - who first raised these issues and organized the community around them.

You're going to hear from Tony soon. But I want to thank him and salute him for his pioneer and still pioneering leadership in this area.

Now - first - a couple of brief remarks about the problem - and then my comments on your specific questions.

Because the problem - as I learned from Tony and others - is that the business of insurance is, by its very nature, the business of discrimination...Discrimination, in its broadest sense...Sorting out whom you're going to sell a policy to, and whom you're not..To a limited extent, as a business decision, that kind of sorting out is expected and acceptable.

The evil is - as we have all experienced - that insurance companies have made the need to discriminate in its broadest form a license to discriminate in its most narrow form: discriminating against persons or classes of people for reasons that have nothing to do with risk, that merely

reflect and perpetuate the hatred of the day.

Until the 1960's, in this country, insurers charged black customers more for life insurance because, they said, black people were statistically more likely to die young. A 1961 insurance textbook even justified race-based discrimination as "rational discrimination.":

Jews, expected to live longer, were given better breaks on life insurance. But not for disability insurance. "Jews are expensive", warns a classic insurance manual, because "Jews eat too much, with higher than average incidence of obesity and diabetes."

Fortunately, most insurance companies have ceased basing their rates on religious factors.

Racist ratings, however, continue in the form of redlining of automobile insurance rates in California's urban areas. And gender-based discrimination is still official industry policy. As late as last year, the National Association of Insurance Commissioners condemned race-based rates but refused to condemn gender-based rates.

As a result, all women pay more than men for health and disability insurance and receive less in pensions and annuities.

And, as the National Organization for Women points out, even though four out of five adult drivers now pay "unisex" premiums, women still end up paying proportionately higher than men because they only drive half as many miles a year and have half as many accidents.

And now, thanks to your efforts, the spotlight is also on discrimination based on martial status - discrimination which the insurance industry doesn't even yet admit, but which is nonetheless real - and you know the results:

*some companies refuse to issue a joint homeowners policy in the names of two same-sex householders;

*most companies will not offer a family discount on automobile insurance to an unmarried couple who live together and share cars, even though such discounts are routinely offered to married couples;

*some companies refuse to issue a life insurance policy if

the consumer names a beneficiary who is not related by blood, marriage or adoption.

*unmarried couples also experience lifestyle discrimination when attempting to purchase renters insurance.

And these are just a few of the more blatant examples.
There is no actuarial basis for such discrimination.
There is no moral basis for such discrimination.
And all forms of such discrimination must stop.

1. There is no doubt that refusing to issue joint policies, denying coverage or charging higher premiums on the basis of marital status of an individual or couple violates both the letter and the spirit of Proposition 103.

Among its many provisions, Prop. 103 explicitly makes insurance subject to the Unruh Civil Rights Act, which bars all forms of arbitrary discrimination by businesses of every kind.

2. Under Section 790 of the State Insurance Code;, the Insurance Commission not only can, but should, prohibit marital status discrimination as an "unfair practice."

Companies which refuse to change their policies or continue to discriminate based on marital status should have their license suspended or revoked.

Catching, tracking and taking action against these violations, of course, requires the presence of a strong, consumer-oriented and action-oriented Consumer Protection Division within the Department - which does not now exist, and will not exist until there is an elected Insurance Commissioner.

3. In order to ensure maximum consumer protection, the Insurance Commissioner should - and this Insurance Commissioner will - routinely refer verified cases of discrimination to the State Attorney General, to County District Attorneys and to City Attorneys with possible jurisdiction - so that they are aware of such fraudulent practices and can also take appropriate enforcement action.

While this is a good beginning, there are at least two other enforcement actions which I, as Commissioner, would undertake immediately:

1. To adopt a policy making ratings based on sex, sexual preference or marital status illegal in California for all lines of insurance.

That would make California the fourth state in the nation - after Montana, Massachusetts and Pennsylvania - to adopt gender-neutral ratings - and the first state, to my knowledge, to outlaw discrimination in insurance based on marital status.

2. To outlaw the practice of many insurance companies who refuse to write health insurance policies to any single male, sick or healthy, gay or straight, just because they happen to live in certain zip codes. This is redlining at its worst. This is immoral. This can no longer be tolerated.

Again, Mr. Chairman and Members, thank you for the opportunity to appear before you.

Whatever happens, I am committed to continuing to work with you on these issues - and I hope I have the opportunity to implement your recommendations as California's next Insurance Commissioner.

Statement of Walter Zelman

I'm pleased to have this opportunity to support the recommendations in the report of the Task Force on Family Diversity. These recommendations touch on some important issues and I want to emphasize that, as Commissioner, I would implement them aggressively.

The unwillingness of the present Commissioner to enforce these proposals reveals the continuing dark-age-mentality that frequently pervades today's Department of Insurance.

I believe that the Commissioner does have the authority to disallow discrimination based on marital status and that the Commissioner should rule such discrimination to be an "unfair practice".

To be sure, we should distinguish specifically what we are talking about. We are not necessarily talking about individuals sharing the same house -- we are talking about couples living together in marriage-like circumstances.

The latter grouping raises the easier question, in my mind. People should not face discrimination because of their sexual orientation or because they chose to live as a couple without getting married.

Our society should adopt this posture even if insurance companies can demonstrate -- and I doubt they can -- that the actual wearing of a wedding band makes one a better risk. In short, there are some areas of bias we must not accept. There's nothing new in this concept. We apply it in all kinds of social, economic, and political relationships; we should apply it in insurance as well.

The issue of rating individuals differently because they are single as opposed to living as a couple is a slightly more complicated matter. I suspect that insurance companies can make a case to suggest that 25 year old single males are, as a class, a higher risk than married 25 year old males, or males living in marriage-like relationships.

But I doubt that distinction lasts very long. I suspect that by the age of 30 or 35, any such distinctions don't exist and become bias -- a bias that, more than anything else, may impact the gay members of our society.

In addition, I want to say a few words about one other aspect of the Family Diversity Task Force Report. I was surprised that the section on child care did not consider the insurance issue. Insurance has been a critical issue and problem in child care with many facilities at different periods in time, unable to obtain or afford insurance.

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SUMMARY TESTIMONY TO THE CONSUMER TASK FORCE ON MARITAL STATUS DISCRIMINATION

November 28, 1989

ZOO ASSOCIATION BACKGROUND

The Greater Los Angeles Zoo Association was founded in 1963 as the non-profit support vehicle for the Los Angeles Zoo. The Association operates under a multi-year contract with the City of Los Angeles to raise money for Zoo improvements and animal conservation efforts, to manage the food and merchandise concessions at the Zoo, and to support the public education mission of the Zoo. One hundred percent of the Association's net income is used for Zoo improvements. Recent projects have included support of species survival programs including the Sumatran rhino and building a new $8.3 million children's zoo called "Adventure Island". Future projects will include joint funding of a Master Plan for Zoo redevelopment in the 1990's, a new hospital and quarantine area, and a refurbishment of the education and directional graphics.

MEMBERSHIP

The Association is one of the largest membership organizations in Southern California with over 133,000 members (51,000 households). Since December 1988, the membership has grown by 34% or 13,000 households. Membership benefits are designed to encourage increased financial support. Annual membership and donor club levels and their admissions benefits are as follows:

ANNUAL MEMBERSHIP LEVELS	YEARLY DUES
STUDENT (Admits one)	$ 10
REGULAR (Admits two adults)	$ 25
FAMILY (Admits two adults and their children)	$ 35
CONTRIBUTING (Family admission benefits plus four one time use guest passes)	$ 75

DONOR CLUB LEVELS

ANIMAL ADVOCATE (GLAZA Gold Card with family admissions benefits plus four additional guests)	$ 125
CURATORS' GUILD (Same admission benefits as Animal Advocates)	$ 250

DIRECTOR'S GUILD (Same admission benefits as Animal Advocates)	$ 500
THE WILD BEAST SOCIETY (Same admission benefits as Animal Advocates)	$1,000

MEMBERSHIP DISTRIBUTION

STUDENT	1%
REGULAR	33%
FAMILY	58%
OTHER	8%

PEOPLE IN A MEMBER HOUSEHOLD

An average of 2.6 people per household.

RESPONSE TO THE TASK FORCE ON THE POLICY OF ISSUING REGULAR ZOO ASSOCIATION MEMBERSHIPS WITHOUT REGARD TO MARITAL STATUS.

During the 1980's, the Association began revisions to the membership program with the addition of new levels such as Animal Advocates, Curators' Guild, Director's Guild, and The Wild Beast Society. In addition, the Association began revising membership benefit policies that allow us to expand and reach more prospective members and to be competitive with other museums and zoos.

The regular membership was introduced in 1980. Prior to this time the level was called "Active". A review of Association publications indicates that the "active" membership was issued to a member and "spouse". Our policy now provides for the admission of any two adults at this membership level. Our computer software also gives us the flexibility to list two different names on the membership record and card. The change has provided us with a more realistic and fairer membership policy.

It is our intent to maintain our double digit growth rate into the 1990's. We want to involve more Southern California households in the zoo's mission of conservation and education. Our current membership structure is now well positioned to help us accomplish that goal. This increased base of members will provide the needed support through their membership dues, special gifts, and general participation to help the Los Angeles Zoo increase its position as one of the top zoological gardens in the world.

Submitted by: Richard M. Nordin
Director of Development

November 28, 1989

To: Members of the Consumer Task Force on Marital Status Discrimination

Mr. Chairman and Members:

On or about June, 1989, my sister and her fiance attempted to finance the purchase of a 1986 Jeep Cherokee through the Los Angeles Federal Credit Union. Due to the fact that my sister resides in San Diego, my mother presented the application for the loan. At that time, my mother was informed that since my sister and her fiance were not married, they could not consider his income for the loan application, and literally crossed out his debt and income information on the application. However, the Credit Union did consider the mortgage payment listed jointly as a debt against her. Adding the mortgage payment to the list of other debts currently held by my sister at the time of the application put my sister over the debt ratio limit established by the Credit Union. As such, she was denied approval of the loan.

My sister has been a member of this Credit Union for a number of years. After the purchase of their home in San Diego in October of 1988, she added her fiance to her checking and savings account and he subsequently closed his accounts held with another bank. At that time, it was understood by them that they were afforded all rights as a member of this institution, including the right to apply for loans.

It should be noted that on July 12, 1989, my sister and her fiance applied for and received approval for an auto loan at American Valley Bank in San Diego. There was no discussion with this institution as to their marital status being a determining factor for approval of the loan. In addition, they subsequently opened a joint account with American Valley Bank in order to receive an additional ¼ percent point discount.

In early October, 1989, I went to the L.A. Mall branch of the Credit Union to close out their account. Upon stating to the teller what I wanted to do, she first wanted to know if my sister "was sure" she wanted to close the account. I stated that yes, she was. The teller then asked me if my sister was aware that as a member, she was afforded the same services as any City employee, even though she was not a City employee herself. I explained to her what happened with the recent loan application, and the teller stated that there were certain federal regulations that the Credit Union had to adhere to and that the Credit Union <u>couldn't</u> consider Roy due to the fact that they were not married. When I told her that they had in fact received approval for the loan with another banking institution, she stated that that was strange because <u>all</u> banking institutions were governed by the same federal regulations.

My appearance before this Task Force is not to unfairly put blame on the Credit Union for their (what we believe to be) unfair practice. I personally have had no problems with my dealings with the Credit Union in the past. I only hope that this incident will be afforded an investigation and that the Credit Union will cease the requirement that only married couples may file for joint loans.

Thank you for your time and courteous attention.

STATEMENT TO THE
CONSUMER TASK FORCE ON
MARITAL STATUS DISCRIMINATION
NOVEMBER 28, 1989

Mr. Chairman and members of the Task Force, my name is Robert Wright and I am appearing at the Chairman's request on behalf of the Automobile Club of Southern California and its affiliated Interinsurance Exchange. I have been asked to address two issues: (1) the Interinsurance Exchange's policy regarding multiple car discounts for unmarried persons; (2) the Automobile Club's policy concerning member and associate membership dues.

Multiple Car Insurance Discount

Prior to 1984, the Exchange's multiple car discount on automobile liability policies was available to families based upon more favorable loss experience for families as a group as compared to all other insureds. In 1984, we were contacted on behalf of two of our unmarried insured members with a demand that the discount be extended to unmarried persons. This demand prompted us to review the basis for the discount.

We found that, at that time, the principal legal control over any differential in insurance rates was the statutory provision that rates may not be "unfairly discriminatory." With regard to insurance rating, this means that rate differentials must be actuarially justified. We knew that married couples with more

than one vehicle had a better loss ratio per vehicle than single insureds with one vehicle. We identified, as the probable reasons for this, the circumstances that married couples live at the same residence and have a common ownership in the vehicles.

After analyzing the situation, we reached the conclusion that we might obtain the same loss experience results if we extended the multiple car discount to other households where these same circumstances existed. Consequently, we expanded our multiple car discount policy to include any household in which the residents have a common ownership in the insured vehicles, live at the same address, and garage the vehicles at that address. We are tracking the loss experience of persons in this group to determine whether the discount is justified.

Membership Policy

The Auto Club's current membership policy is set forth in the Club bylaws. There are two categories of adult membership - member and spouse associate. To be eligible for spouse associate membership status and the spouse associate member dues rate, a person must be the spouse of a member residing in the same household. Currently, member dues are $35 annually, and spouse associate dues are $13.

Before 1970, dues were not collected on cards issued to spouse associates. However, an analysis indicated very substantial

usage of emergency road services by nonmember spouses of the "master members" as they were called at that time. To eliminate this unfairness, dues were assessed for the issuance of spouse associate cards, based upon the emergency road services used by these members as a group.

In 1987, a group of members including Mr. Coleman requested a revision of the Club's bylaws to eliminate the spouse associate membership and substitute a "household associate" membership to stop what these members viewed as a discriminatory practice. In response to the request, we undertook a comprehensive review of our membership classifications and dues structure. At the outset, it was contemplated that the work of the committee would be completed within a few months. However, the complexities of the issue presented, and the need to be as thoughtful and thorough as possible in reviewing and evaluating available data resulted in extending the time frame for completion of the study.

The committee conducted a thorough review of our most heavily used and most costly service to various combinations of members and associates resident in the same household. For example, large samples of two-member households of various configurations (such as same surname, different surname, etc.) were reviewed and the average costs of emergency road service usage compared to those of member/spouse associate households. That review clearly established that the costs of member services associated with

member/spouse households as a group are significantly lower than for any other combination.

Additionally, the committee reviewed other relevant factors such as feasibility of administration, the potential for invasion of the privacy of our members, and legal requirements. The committee also spent much time and effort examining a variety of hypothetical alternative classification systems and the impact such systems might have upon the Club and its members.

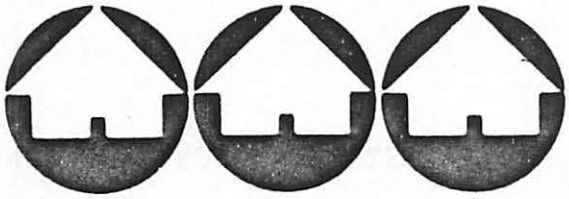
It appears from our review that the dues rate currently charged for spouse associates is justified by the cost to the membership as a whole of providing services to this group. While we understand the desire of other groups to have available to them what has been commonly viewed as a discount, we believe that the existing method of allocating the cost of membership services according to usage is fair. The Automobile Club is organized on a not-for-profit basis. The dues we charge our members must be adequate to cover the services rendered to our members. If public policy considerations were such as to lead to a law prohibiting a differential in dues between spouse associates and others, the Club's only financially responsible course of action would be the elimination of the spouse associate discount, not the extension of the discount to non-spouse household members. We believe this would be unfairly discriminatory as to the more

than two million Automobile Club members and associates who now justifiedly enjoy the spouse associate rate.

Thank you Mr. Chairman and members. I would be pleased to respond to any questions or comments.

RMW:ilo

(213) 475-9671



SUPPORT OPEN HOUSING

Westside Fair Housing Council
10835 Santa Monica Blvd., #203, Los Angeles, CA 90025 -4695

DECEMBER 18, 1989

REMARKS BY STEPHANIE KNAPIK TO THE L.A. CITY

CONSUMER TASK FORCE ON MARITAL STATUS DISCRIMINATION

TESTIMONY

L.A. CITY CONSUMER TASK FORCE ON MARITAL STATUS DISCRIMINATION

DECEMBER 18, 1989

Good morning, I'm Stephanie Knapik, Executive Director of the Westside Fair Housing Council. Thank you for inviting me to speak to you today. I would like to briefly tell you what a fair housing council is, how it operates, & the number of complaints regarding marital status & sexual preference.

WFHC was established in 1968 by a coalition of local human relations Councils -- all dedicated to actively support & promote equal opportunity in housing.

In July 1976, WFHC began receiving support from the City of Los Angeles through its Community Development Block Grant Program. There are 4 Fair Housing Councils serving the different geographical areas of the City -- 2 of which have representatives appointed as members of this Task Force -- the 4 Councils are the Fair Housing Council of the San Fernando Valley, the Metro Harbor Fair Housing Council, the Hollywood Mid. L.A. Council & of course Westside. Our umbrella organization is the Fair Housing Congress of So. Calif. which administers the councils' contract with the City. The Councils investigate complaints of housing discrimination based on race, religion, sex, national origin, age, children, physical handicap, students, arbitrary discrimination, marital status, & sexual preference.

The numbers of complaints of marital status & sexual orientation which I am presenting to you this morning are based on quarterly reports provided to the City of Los Angeles by the 4 Fair Housing Councils -- & the time period is based on the last 3 fiscal years beginning in July 1986 & ending in June 1989.

I'd like to first address the complaints based on marital status: In FY '86-'87 the number of complaints reported by the 4 Councils was 26, in '87-'88 there were 21 complaints, & 15 complaints for 1988-'89. So the total for the 3 years is 62 complaints.

The complaints made to the Councils based on sexual orientation for FY '86-'87 were 8, & for '87-'88 its 8 again, & 3 complaints for 1988-'89. The total for the 3 years for sexual orientation is 19 complaints.

As you can see, the numbers have decreased over the 3 years.

I've been asked to explain how a Fair Housing Council's complaint process works. A complaint is initiated when a client who believes he or she has been denied housing on a discriminatory basis calls a fair housing council. The client speaks with a housing counselor who enters the details of the complaint on a complaint intake form. The counselor informs the client of the complaint test procedure & that the client will be contacted after the investigation or test is made in order to determine if

further action may be taken based on the findings & statements of the investigators or "Testers". Fair housing testing is a way of measuring differences in the quality, content, & quantity of information & service given to homeseekers by rental property agents as part of their normal business practice.

As an example, if an unmarried couple (a man & a woman) complained to our Council that the terms & conditions of renting a certain apartment unit are different for them as compared to a married couple -- then our council would send 2 testers to that apartment building posing as an unmarried couple looking to rent that unit. Then, a few minutes later 2 testers posing as a married couple would inquire about the same unit.

The 2 sets of testers would appear as similar as possible in all characteristics as the complainants -- same race, age group, financial background etc. -- except marital status -- one couple married, the other not married.

Immediately after leaving the location of the test, each tester fills out a Test Report Form & returns it to the fair housing council. The housing counselor then determines whether the evidence indicates that discrimination has taken place.

Some marital status test results have shown the following: In one case, a manager told a tester that the landlord instructed him to rent to married couples only; in another case an unmarried

couple was told they could rent the apartment as soon as they got married; & the most common example of different treatment occurs when owners require each single person to earn an income of 3 times the amount of the monthly rent in order to financially qualify for the unit. Yet if a married couple applied -- only one spouse needed to show that he or she earned 3 times the amount of rent.

In our investigations, assuming there is evidence of discrimination, the housing counselor calls the complainant & explains the available alternatives. If the complainant no longer wants to secure the housing, the case might be referred to the Calif. Dept. of Fair Employment & Housing, a private attorney for possible legal action, or even Small Claims Court. If the complainants decide they want the housing in question, conciliation is attempted by the fair housing Council staff. During a conciliation for marital status discrimination, the housing counselor meets with the manager &/or owner of the apartment building. The manager is handed a brief written account of the allegation, the results of the Council's investigation, and a copy of the laws pertaining to discrimination. Many cases involving marital status are successfully conciliated & the complainants moved into the housing. In my experiences with these types of conciliations I've found the owner or manager to claim to have no idea that the law prohibited such behavior, or the owners say that they disagree with the law but will abide by it now.

With the small number of allegations regarding sexual preference discrimination, many of our investigations have found no evidence of discrimination, or the complainants have dropped their complaint, & some cases have been referred to DFEH.

I believe that the number of complaints received by the fair housing councils is only the tip of the iceberg. We need continual education of the public - many people have no idea that fair housing laws protect them against these types of discrimination.

Also, I would suggest that a marital status &/or sexual preference fair housing audit be performed by the City's fair housing councils. Our contract with the city asks us each year to perform audit testing for housing discrimination in order to monitor the rental practices of the real estate community on any given day (this is different than testing for an actual homeseekers's complaint of a certain property). In the past the audits have addressed race & child discrimination but not specifically marital status or sexual preference. An audit would determine a clearer picture of the extent of housing discrimination based on marital status & sexual preference.

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HOUSING DISCRIMINATION

Presented by Wanda J. Kirby,
District Administrator
Monday, December 18, 1989
Family Diversity Task Force

I. INTRODUCTION

A. The objective of this brief presentation is to provide insight into the role of the Department of Fair Employment and Housing as it relates to housing discrimination.

B. The Department processes housing complaints alleging discrimination based on Race, Color, Creed, National Origin or Ancestry, Sex, Marital Status, Age, Physical Handicap and Sexual Orientation. Other forms of arbitrary discrimination are considered on a case-by-case basis.

C. Complaints can be filed by organizations, by individuals and by the Director of the Department. They must be filed within one year of the alleged discriminatory act.

II. STATISTICAL FRAMEWORK FOR DISCUSSION

A. During the past fiscal year, 848 housing discrimination complaints were filed with the Department. Complaints are accepted under the FEHA, but they can also be filed under the Unruh Civil Rights Act.

1. Complaints will be accepted under Unruh if alleging arbitrary discrimination based on a class distinction not already a protected group enumerated under the FEHA. EXAMPLES: children, sexual orientation.

2. Housing cases represent approximately 10% of the Department's total caseload.

3. Many discrimination complaints are handled by fair housing groups and/or the private bar. The statistics do not reflect that extent of housing discrimination.

B. The majority of the housing cases filed, are based on race: 39%. Discrimination against families with children present the next largest category: 35%.

1. Only 83 marital status discrimination complaints were filed in the entire state during the past fiscal year.

2. Marital status discrimination complaints may be

combined with one or more other bases, i.e., sex, physical handicap (or perceived physical handicap)

C. The majority of the housing cases closed last fiscal year were voluntarily resolved: 54%. Thirty-five percent were dismissed because of insufficient evidence to prove a violation.

D. During the last fiscal year more than $325,500 was obtained for charging parties who filed housing discrimination complaints.

III. OVERVIEW OF COMPLAINT PROCESS

A. Intake

1. Every charging party is interviewed and is expected to provide sufficient information to link the action complained of to possible discrimination.

2. The department's screening process is very liberal. Seventy-five percent of the housing charges received during FY88/89 were accepted as formal complaints.

3. Controls are in place to ensure appropriate judgment has been exercised. Every rejected charge is reviewed by the consultant's supervisor.

4. Pre-complaint questionnaires with the reasons for rejection are maintained in active files as documentation of the charging parties' efforts to exhaust their administrative remedies. In this way, their right to file a private lawsuit under the FEHA is protected.

B. Filing

1. A formal complaint is drafted by the interviewing consultant on DFEH's standard form. It is signed and served in person or by certified mail along with a request for information.

2. The charge is also filed with the U.S. Department of Housing and Urban Development where there is concurrent jurisdiction. Although federal law does not prohibit marital status discrimination, HUD will handle gender discrimination charges.

3. Shortly after the complaint is served, the respondent will be contacted to explore the possibility of voluntary resolution.

C. Investigation

1. Investigations and the evaluation of evidence are based on legal standards established by the

Fair Employment & Housing Commission through its regulations and precedential decisions.

2. DFEH has designed a case analysis format to ensure cases are handled in a consistent manner, irrespective of the office or assigned consultant.

3. Interrogatories and subpoenas are issued as needed. Enforcement of discovery can toll the one year statute of limitations for issuing an accusation.

D. Conciliation

1. A formal conciliation conference is scheduled when the Department has determined a violation of the statute has occurred. Offers and counter offers during conciliation are confidential.

2. The District Administrators of each of the Department's eleven offices has the authority to conduct formal conciliation. The department determines whether or not a settlement offer is equitable.

E. Public Hearing

1. If conciliation fails, the case is referred to the legal staff for issuance of an accusation.

2. The matter is then brought before the Fair Employment and Housing Commission at a public hearing. In most instances, the Commission is not present; an administrative law judge presides and prepares a proposed decision which the Commission may or may not accept.

3. What is important about the public hearing process is not the number of cases, but the issues on which the Commission has the opportunity to rule and to set precedent.

4. Through the public hearing process the Commission has awarded damages to a fair housing group in a testing case, has found restrictive occupancy standards to be illegal, and has rejected religious creed as a defense to discriminating against unmarried person cohabitating.

IV. DEPARTMENT'S SETTLEMENT POSTURE

A. The Department emphasizes settlement throughout its process because voluntary resolution is in the best interests of all parties. As a public agency, DFEH represents the State of California; the Department is an advocate for the law, not an advocate for the complainant. DFEH is an objective, neutral fact-finder. At the same time, DFEH will serve as a facilitator to resolve disputes before they escalate.

B. The Department seeks affirmative relief when resolving cases in order to effectuate systemic change. These kinds of settlements typically include changes in policy, training for managers, record keeping, special efforts to attract to the housing accommodations those groups previously excluded.

C. Remedies for individuals typically included making the housing available, reimbursement of out of pocket costs, compensatory and punitive damages.

D. The remedy sought will depend on the strengths of the case.

1. "Full remedy" and affirmative relief are more easily obtained in cases where the housing provider has an expressed illegal policy such as refusal to rent to unmarried heterosexual couples, or one bedroom apartments to persons of the same sex, or refusal to consider the combined income of unmarried persons in qualifying applicants for housing.

2. More typically, the illegal practices are subtle. Non-discriminatory explanations are given for the harm complained of. In order to prevail, the department must find that the preponderance of evidence supports the merits of the claim.

E. The advantages to the complainant of voluntary resolution include:

1. Most cases not settled are dismissed as subtle discrimination can be difficult to prove. A dismissed case is a lost case; the practice continues; the housing provided is vindicated; the situation does not improve.

2. Even if a violation is found and the case goes to public hearing, there is no guarantee the Commission will find in the complainant's favor.

3. A favorable commission decision does not bring immediate relief. The hearing process itself can take several months and even further delay is caused when the Commission's decision is appealed to the courts.

F. If a remedy offerred is, in in the view of the Department, equitable, the case will not go forward even though the complainant may reject the settlement. This is consistent with the Department's role as representing the state rather than serving as an advocate for the complainant.

V. CONCLUSION

A. Housing advocates will be frustrated in trying to work with DFEH if they don't understand the Department's neutral role.

B. Where there is a difference of an opinion on a particular case, management is available to discuss the matter with the parties.

C. Although the Department has an excellent record processing the discrimination complaints brought to it, individual complaints are not necessarily the most effective vehicle for broad impact change.

BRIEF OVERVIEW OF COMPLAINT PROCESSING - HOUSING DISCRIMINATION

A. Intake

1. Every charging party is interviewed and is expected to provide sufficient information to link the action complained of to possible discrimination. Approximately 45% of the employment charges received are rejected as a result of this screening process. Because of the nature of housing complaints, a much higher percentage are accepted into the DFEH formal complaint system.

2. Controls are in place to ensure appropriate judgment has been exercised. Every rejected charge is reviewed by the consultant's supervisor. Paperwork is retained in inactive files as documentation of the charging party's efforts to exhaust their administrative remedies. In this way, their right to file a private lawsuit is protected, even if DFEH does not process the complaint.

B. Filing

1. A formal complaint is drafted by the interviewing consultant on DFEH's standard form. It is signed, then served in person or by certified mail along with a request for information.

2. The charge is also filed with the United States Department of Housing and Urban Development (HUD) where there is concurrent jurisdiction. As a certified equivalency agency, DFEH's findings are usually accepted by HUD.

3. After filing, the respondent is given the opportunity to voluntarily resolve the complaint. A no-fault settlement can be negotiated at any time during the complaint process.

4. Complaints can be filed by the Director of the Department, community fair housing groups, and "testors" in addition to bona fide homeseekers.

C. Investigation

1. Investigation and the evaluation of evidence are based on the legal standards established by the Commission through its regulations and precedential decisions.

2. DFEH has designed a case analysis manual to ensure every investigation is handled in a consistent manner, irrespective of the office or assigned consultant.

3. The Department can seek a Temporary Restraining Order where the complainant wants the housing as part of the remedy. The Department can also engage in formal discovery, i.e., issuance of subpoenas and interrogatories.

4. The case is dismissed if the investigation does not produce sufficient evidence to prove a violation of the statute.

D. Conciliation

1. Formal conciliation conferences are scheduled once the Department completes an investigation and determines the statute has been violated.

2. The remedies sought typically include compensatory damages, punitive damages, housing unit offered to the complainant, and affirmative relief such as training for managers, record retention, and posting of notices.

3. The District Administrator of each of DFEH's twelve offices has the authority to conduct formal conciliation and to recommend public hearing if conciliation fails.

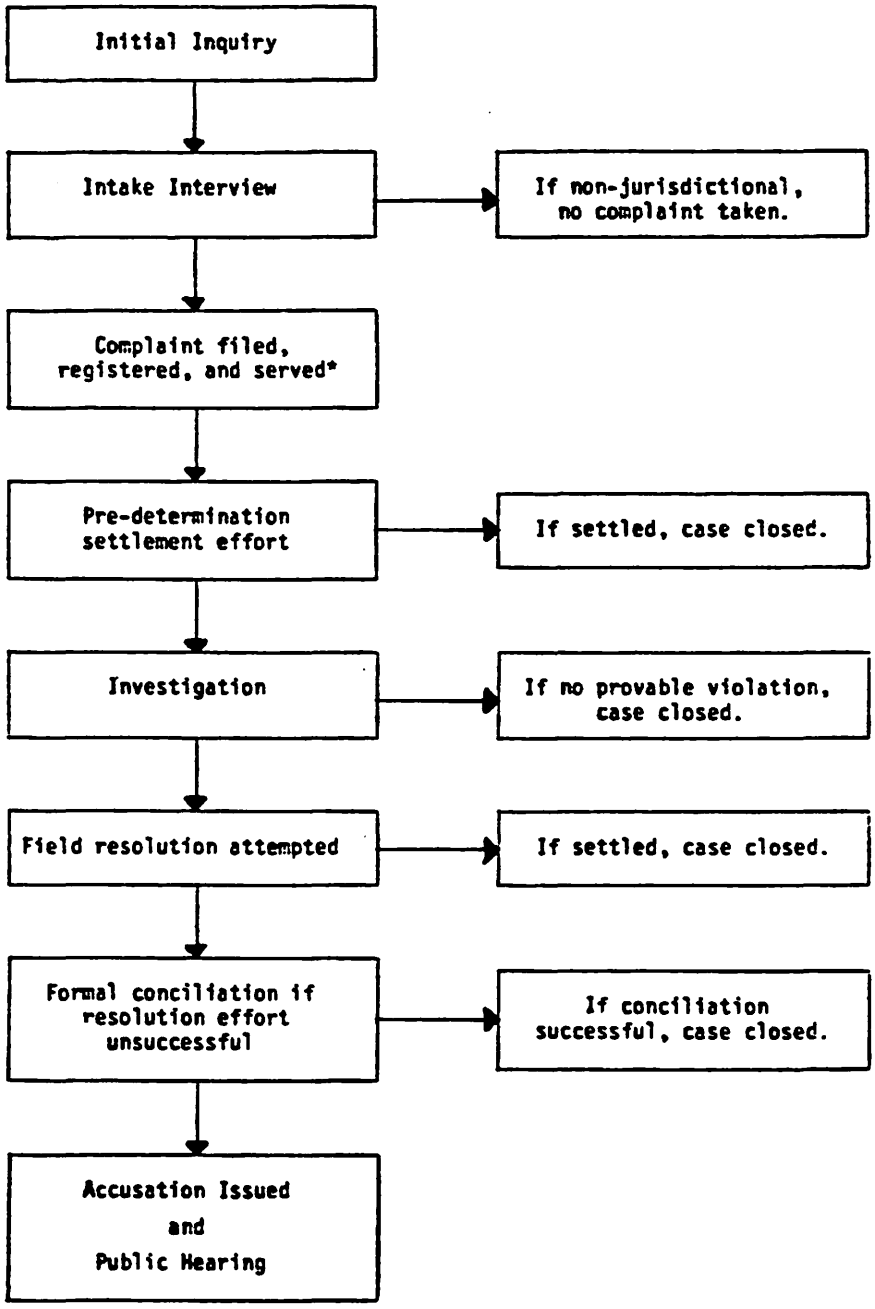
E. Public Hearing

The Fair Employment and Housing Commission hears cases that are not resolved by the Department. Its orders are enforceable by and appealable to the Superior Court

See Reverse Side for Further Information

STATE OF CALIFORNIA
DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

CASE PROCESSING FLOW CHART



*Where there is concurrent jurisdiction with a federal agency, the complaint is dual filed and referred. The complaint will be investigated by DFEH.

(See Reverse Side for Further Information)

SUMMARY OF HOUSING CASES FILED/CLOSED UNDER FEHA/UNRUH ACT (A)

JULY 1, 1988 - JUNE 30, 1989

	FILED	CLOSED
FEHA	848	831
UNRUH (Service/Accommodation)	-0-	15
TOTAL	848	846

(A) Unlike the years prior to 1986-87, we have filed all Housing cases under the Fair Employment and Housing Act.

HOUSING CASES FILED: OFFICE WHERE FILED

JULY 1, 1988 - JUNE 30, 1989

OFFICE	NUMBER FILED	%
San Francisco	52	6.1
Los Angeles	230	27.1
Fresno	89	10.5
San Diego	79	9.3
Sacramento	55	6.5
San Jose	52	6.1
Bakersfield	20	2.4
San Bernardino	109	12.9
Santa Ana	69	8.1
Ventura	54	6.4
Oakland	39	4.6
STATEWIDE TOTAL	848	100.0

DFEH-ENF-81 (8/89)
DEPARTMENT OF FAIR EMPLOYMENT & HOUSING
STATE OF CALIFORNIA

HOUSING CASES FILED: ALLEGED BASIS OF DISCRIMINATION

JULY 1, 1988 - JUNE 30, 1989

BASIS	COUNT	% OF TOTAL CASES (B)	% OF TOTAL BASES
TOTAL (A)	1,100		100.0
1. Race/Color	331	39.0	30.1
- Black	239	27.8	21.7
- Asian	14	1.7	1.3
- Caucasian	53	6.3	4.8
- Multiple Complainants	25	2.9	2.3
2. Origin/Ancestry	94	11.1	8.5
- Mexican-American	27	3.2	2.5
- Other Hispanic	41	4.8	3.7
- Mexican National	9	1.1	.8
- Native American	4	.5	.4
- Filipino	2	.2	.2
- Other Origin/Ancestry	8	.9	.7
- Multiple Complainants	3	.4	.2
3. Religion	12	1.4	1.1
4. Physical Handicap	61	7.2	5.5
5. Sex	96	11.3	8.7
- General	46	5.4	4.2
- Harassment	31	3.7	2.8
- Pregnancy	5	.6	.5
- Orientation	14	1.7	1.3
6. Marital Status	83	9.8	7.5
7. Age	22	2.6	2.0
8. Medical Condition	1	.1	.1
9. Retaliation	23	2.7	2.1
10. Association	63	7.4	5.7
11. Children	298	35.1	27.1
12. Other	26	1.9	1.5
TOTAL OF CASES FILED	848		

(A) Complaints with more than one basis have been counted under each basis reported.

(B) Percentages will not total to 100.0% since multiple bases may be reported per case.

HOUSING CASES FILED: TYPE OF RESPONDENT

JULY 1, 1988 - JUNE 30, 1989

TYPE OF RESPONDENT	NUMBER FILED	%
Apartment/Home-Owner/Manager	727	85.7
New Tract Developer	15	1.8
Trailer Park Owner	42	5.0
Mortgage Company	7	.8
Real Estate Broker	37	4.4
Individual Home-Owner	14	1.7
Public Housing Authority	6	.9
TOTAL	848	100.0

HOUSING CASES FILED: TYPE OF ACCOMMODATION

JULY 1, 1988 - JUNE 30, 1989

TYPE OF ACCOMMODATION	NUMBER FILED	%
Home	119	14.0
Apartment	631	74.4
Trailer Space/Mobile Home	47	5.5
Condominium	46	5.4
Public Housing	5	.6
TOTAL	848	100.0

HOUSING CASES FILED: ALLEGED DISCRIMINATORY ACT

JULY 1, 1988 - JUNE 30, 1989

ACT	COUNT	% OF TOTAL COMPLAINTS(B)	% OF TOTAL ALLEGED ACTS
Refusal to Show	38	4.5	3.8
Refusal to Rent	333	39.3	33.2
Refusal to Sell	33	3.9	3.3
Refusal to Grant Equal Terms	68	8.0	6.8
Eviction	298	35.1	29.7
Rent Increase	28	3.3	2.8
Loan Withheld	6	.7	.6
Harassment	129	15.2	12.8
Unequal Access to Facilities	38	4.5	3.8
Occupancy Standards	29	3.4	2.9
Surcharge	4	.5	.4
TOTAL (A)	848		100.0

(A) Where more than one discriminatory act was alleged, the complaint was counted under each act reported.

(B) Percentages will not total to 100% since multiple alleged acts may occur per case.

HOUSING CASES CLOSED: TYPE OF DISPOSITION

JULY 1, 1988 - JUNE 30, 1989

TYPE OF DISPOSITION	NUMBER CLOSED	%
Settlement	457	54.0
Insufficient Evidence	292	34.5
Closed Through Public Hearing	5	.6
Administrative Closures	92	10.9
TOTAL	846	100.0

ADMINISTRATIVE CLOSURE

Cases are closed administratively when the Department is unable to proceed with case processing due to legal or technical circumstances. Some examples include: (1) the complainant elected court action; (2) the issue is not jurisdictional; and (3) the complainant failed to cooperate.

TESTIMONY FOR L.A. CITY ATTORNEY'S MARITAL STATUS DISCRIMINATION TASK FORCE

by G. Jay Westbrook, M.S. (213) 876-7445

Presented 18 December 1989

My name is G. Jay Westbrook
I am a Center Fellow at the UCLA/USC Long Term Care Gerontology Center,
a member of the L.A. City/County Area Agencies on Aging Long Term Care Task Force,
as well as a member of this Marital Status Discrimination Task Force,
Media Coordinator for American Society on Aging,
an instructor at UCLA Extension,
an author and private consultant.

This testimony will summarize the results of my investigation into possible Marital Status Discrimination against older adults by Board & Care homes in Los Angeles. I will also identify those actions which could be taken by public and private agencies to better protect the rights and serve the needs of unmarried clients, including older adults who are gay or lesbian.

In a nutshell, my investigation found that there is no overt discrimination based on Marital Status within the Board & Care industry here in Southern California. [pause]

Now, on the chance that this is too brief a summary, let me go on to say that while there is no overt discrimination based on Marital Status within the Board & Care industry here in Southern California, there are some clear and present problems.

In my research, I first contacted a number of small Board & Care facilities. Typically, these facilities are single-family residences which house between four and eight elderly clients, housed two to a room. Most of these facilities are coed when they start out. However, Title 22 states that individuals of different genders

can only share a room when both parties consent to said sharing, and are legally competent to make such a decision. Since, in many cases, older men die before their spouses, and in such cases the surviving widow would not choose to share her room with a male, the room becomes a "female room" upon the death of a male. This occurrence, when repeated, leads to a situation in which many initially coed facilities end up being solely female. Thus, there exists a shortage of coed rooms for couples, married or not, in small Board & Care facilities.

I next contacted a number of larger facilities providing Residential and/or Board & Care services, and report selected, but typical, findings herewith:

I spoke with Mr. Jeffery Sherman, Administrator of the Victory Blvd. Jewish Homes for the Aging in Reseda. He indicated that there was no discrimination in his facility based on Marital Status. We identified unmarried heterosexual, gay & lesbian couples, in our conversation, as being free from Marital Status Discrimination. However, the Administrator was unaware as to whether or not there was any written policy addressing Marital Status Discrimination, and was unaware of what such policy might say if it did exist.

I spoke with Mr. William Haug, Administrator of the Motion Picture Country Home & Hospital. He indicated that there was no discrimination in his facility based on Marital Status. We identified unmarried heterosexual, gay & lesbian couples, in our conversation, as being free from Marital Status Discrimination. However, the Administrator was unaware as to whether or not there was any written policy addressing Marital Status Discrimination, and was unaware of what such policy might say if it did exist.

I spoke with Mr. Bill Mathias of Beverly Enterprises. He indicated that there was no discrimination in his facilities based on Marital Status. We identified unmarried heterosexual, gay & lesbian couples, in our conversation, as being free from Marital Status discrimination. However, he was unaware as to whether or not there was any written policy addressing Marital Status Discrimination, and was unaware of what such policy might say if it did exist.

I spoke with a number of other facility administrators, and as with the above individuals, found what I perceived as openness, honesty, interest and cooperation.

I also spoke with Tonya McElhaney of the Community Relations Division of Leisure World, Laguna Hills. She indicated that there was no discrimination in her facility based on Marital Status, and indicated the presence of openly gay couples as residents. She indicated that there was no written policy addressing Marital Status Discrimination, and indicated an unwillingness to create one. Her reason for the unwillingness revolved around the cost of such action (changing bylaws or CCRs) because such action requires voted approval by a majority of residents. Her concerns were genuine and understandable.

I spoke with Mrs. Rudell, a gatekeeper at a large Board & Care provider, Sign of the Dove; I was unable to get beyond her to anyone of higher authority. She indicated that their facilities did not discriminate of the basis of Marital Status. When I questioned her about gay and lesbian couples, her response was "gays and lesbians?, don't you realize that these people are over 65 years of age?." I explained to her that a lifetime's sexual orientation did not normally change upon reaching 65 years of age. She became defensive, assured me that they did not discriminate, and ended the conversation.

Clearly, all of the above indicates that there is a lack of attention to the issue of Marital Status Discrimination by those who write facility policies & procedures, and a benign ignorance among facility administrators of the issue in general, and specifically, the importance of addressing the issue on a policy & procedure level.

To remedy the problem, public agencies such as the State of California, Dept. of Social Services, Community Care Licensing Division might be enlisted to help educate the facilities they license, to supply sample copies of policies & procedures addressing Marital Status Discrimination to those facilities, and to supply sample wording addressing Marital Status Discrimination for inclusion on admission agreements. They might also monitor the facilities they license for compliance with anti-

discrimination legislation, and work with the City Attorney's Office in situations where such compliance is lacking. Although this last suggestion may not seem necessary given my opening comments about the lack of overt discrimination in the Board & Care industry, vigilance can only help ensure continued non-discrimination.

Private agencies, such as American Society on Aging and the L.A. City/County Area Agencies on Aging Long Term Care Task Force, among others, could also be enlisted to help raise awareness, educate those in the Board & Care industry, and, again, to develop and provide sample copies of policies & procedures addressing Marital Status Discrimination. It might also be possible for the City Attorney's Office to liaison with University of Southern California's Leonard Davis School of Gerontology, housed within the Andrus Gerontology Center, re: the development of an intern slot at the City Attorney's Office for a graduate level (master or doctorate) gerontology student with a policy background to assist with Marital Status Discrimination research, monitoring efforts, and remedies.

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Barbara Faye Waxman
1156 S. Clark Dr., #306
Los Angeles, CA 90035
(213) 275-5832

TESTIMONY

My name is Barbara Faye Waxman. I am a graduate student at UCLA's School of Urban Planning and a consultant regarding the sexual and reproductive rights of disabled people. I've come here to speak to your Task Force about the problems which single, disabled women and men have in the realm of privacy, especially with respect to government entitlement programs.

Single, disabled people do not necessarily lead a lonely existence. We are members of a unifying community concerned with one another's rights to live where, how, and with whom we choose. However, disabled people are faced with, in endless ways, institutionalized obstacles which impede us from making free [illegible] lifestyles.

It is true that some disabled women and men choose to be single.

It is true that many disabled adults have been robbed of opportunities to explore the relational alternatives to singlehood and as well as their sexual potentials, by a majority culture which shows contempt for disabled people by holding significant superficial and able-disabled standards of attractiveness and sexual functioning.

And it is also true that in the construction of entitlement programs, specifically the Social Security Administration's Title XX In-Home Support Services programs, the government decided that disabled people would never marry, and consequently enforces singlehood and clandestine relationships.

In-Home Support Services, is a program which enables disabled people of all ages to reside in the community, living in their own homes, through employing personal service attendants to assist with activities of daily living. IHSS has the authority to search a recipient's home in a variety of ways. Its social workers who receive no training about the disability lifestyle, can ask about relationships if you live in a household with someone of the opposite sex. They are looking to see whether the recipient has an "able and available spouse" who has the physical capacity to perform the needed tasks for the disabled person, and who is living with that person as well.

[illegible] if you are "holding out" to the community as husband and wife. Holding out can mean a legal marriage, or living together in a relationship in which you share food, credit

cards, bank accounts and vehicles.

If the recipient denies holding out, IHSS can continue to investigate. They may go to neighbors, the bank, or check one's mailbox to see if the couple uses the same last name. They can enter your bedroom to check the type and size of bed you have.

The intimidation can continue, with snied remarks, especially when a disabled woman hires a male attendant. This arrangement is more suspect than when a male employs a female. A friend actually changed her male attendant's name to a woman's on her paperwork to avoid the continuous intimidation.

IHSS does not usually harrass gay couples because they cannot "holdout" as husband and wife. In this instance, it is much better for disabled people to be gay and lesbian.

The IHSS system is designed to measure with a stopwatch the time it takes to do various activities of daily living. Forinstance, the application asks how many times you go to the toilet. It asks women how many days they menstrate. And then asks how much extra time it takes to use Kotex.

A sorfent stronger is asking these questions to people who are often unassertive and inarticulate about their daily lives. Consequently, they may lose hours of services.

Social workers are also authorized to observe the recipient's living situation to determine whether you are being neglected or otherwise abused by your employee. Upon their opinion, they can make a report to adult protective services which will then have the disabled person incarcerated in a board and care facility or nursing home. These people have the power to determine whether you have the right to live in your own home, without your consent.

Disabled recipients of Supplemental Security Income, SSA's means-tested program for poor disabled persons are subject to the same privacy invasions. The government's central interest is to ascertain the recipient's marital status and whether there is another adult who can support that recipient. If the disabled adult is married, SSA reduces the amount of cash payment to the individual. This is known as "deeming."

In effect deeming is a penalty for marrying. So some people stay single, and others hide their relationships. Though the system is saying a recipient can marry, it also demands that the individual bankrupt themself. No other group must reduce themselves to poverty in order to marry.

Being disabled in this society requires one to expect constant intrusions by others. And privacy is an illusion that disabled people do not have the luxury of indulging ourselves in.

RECOMMENDATIONS

1. Do away with the concept of deeming.
2. Review of regulations regarding adult protective services and their power to incarcerate.
3. Change the entire assessment procedure for IHSS recipients.
4. Advocate for National Health Care and National Attendant Services.

REMARKS TO THE CONSUMER TASK FORCE ON MARITAL STATUS DISCRIMINATION -- OFFICE OF THE CITY ATTORNEY 12/18/89

Good afternoon, ladies and gentlemen. My name is Nancy Matthews, I live in Woodland Hills, and I am a member of Mid Valley Athletic Club in Reseda, which is why I am here.

Mid Valley Athletic Club has a very profitable,but very discriminatory, membership fee policy. A single person pays $55.00 a month for health club privileges, while a married couple pays $65.00 a month, or $32.50 per person, for the same privileges. This policy is blatantly discriminatory against the single member.

I have called this matter to the attention of Harold Wright, General Manager of Mid Valley, who has chosen to ignore the situation. I'd like to read to you a letter I wrote to Mr. Wright on December 1, 1989. (Attachment 1)

I have received no reply from Mr. Wright.

One comment I'd like to add, which I didn't include in my letter to Mr. Wright, is that I know he has bent the policy and granted non-married couples the married couple membership rate. I have two non-married but living together friends who demanded that they receive the married membership rate.

They told me that when Mr. Wright initially refused them for joint membership, the man (who is an affluent and prominent dentist) insisted that the club take them as a couple and give them the discount. Mr. Wright merely asked them to sign an agreement stipulating which one would keep the membership if they split up. They signed and they got the discount. Obviously the policy isn't uniformly applied. And obviously Mr. Wright neglected to offer me the option to assign the policy to one of us if we split up. What he did offer, though, was the opportunity to name unmarried people who were registered as couples, and he would cancel their joint memberships and require them to pay the higher, single rate. I declined. I hadn't come to his office to have a benefit taken away from someone else. I wanted the policy changed to reflect an equal rate for everyone.

Because of my two unsuccessful meetings with Mr. Wright, my partner and I have separate, single, expensive memberships. Each month while our married friends write one check for $65.00, my partner and I write separate checks for $55.00 each -- a total of $110.00 a month for our "joint membership."

I must confess, we decided that we just couldn't win on this one, so we started to create a fake marriage certificate on the computer and pass ourselves off as married. About half way through the project, we decided that we didn't want to do it this way. Whether we beat the

system or not, the system is still wrong and we'd rather change it for us and for everyone else being discriminated against.

So that's why I'm here.

Nancy Matthews

Nancy R. Matthews
4520 Saltillo Street
Woodland Hills, California 91364

December 13, 1989

Mr. Harold Wright
Mid Valley Athletic Club
18420 Hart St.
Reseda, CA 91335

Dear Harold:

As I indicated in my letter on December 1, I am cooperating with a Consumer Task Force on Marital Status Discrimination convened by City Attorney James K. Hahn. I have also asked the City Attorney's office to investigate Mid Valley's membership fee policy, which I believe discriminates against single members.

I hope that my activity will encourage you to take a serious look at your membership fees and alter them so that all members are charged equally.

Nancy Matthews

Consumer Task Force on Marital Status Discrimination

Office of the City Attorney

Los Angeles, California

JAMES K. HAHN
CITY ATTORNEY

EXECUTIVE OFFICE
1800 CITY HALL EAST
LOS ANGELES 90012
(213) 485-5408

CRIMINAL BRANCH
(213) 485-5470

CIVIL BRANCH
(213) 485-6370

TELECOPIER
(213) 680-3634

December 6, 1989

Nancy Matthews
4520 Saltillo St.
Woodland Hills, CA 91364

Re: Public Hearing

Dear Ms. Matthews:

Los Angeles City Attorney James Hahn has convened a Consumer Task Force on Marital Status Discrimination. Materials about the purpose, membership, and focus of the Task Force are enclosed for your information.

The Task Force is conducting a public hearing on Monday, December 18, 1989, from 9:00 a.m. to 1:30 p.m. The hearing will be held in the City Council Chambers on the third floor of City Hall.

The Task Force requests that you appear as a witness at the hearing. We would like you to discuss the issue of health clubs and discriminatory discounts. We would especially like to hear about your personal experience in this regard.

Each witness will be given about 7 minutes to make a verbal presentation. Task Force members will then be given about 7 minutes to ask questions, make comments, or engage in constructive dialogue with the witness. We encourage witnesses to submit a short written summary of their testimony.

You have been scheduled to testify at 12:30 p.m. To arrange for parking, please call Connie Wiencek in the City Attorney's Office at (213) 485-4461. Thank you for your cooperation.

Very truly yours,

THOMAS F. COLEMAN
Chairperson

4520 Saltillo Street
Woodland Hills, CA 91364
December 11, 1989

Thomas F. Coleman, Attorney
P.O. Box 65756
Los Angeles, CA 90065

Dear Mr. Coleman:

I would be delighted to appear as a witness on December 18, 1989, at the public hearing conducted by the Consumer Task Force on Marital Status Discrimination.

As you can see from the attached letter to Harold Wright, General Manager of Mid Valley Athletic Club, membership fees at my health club are disproportionately higher for a single person than for a married person as part of a couple. Specifically, a single person pays $55.00 a month, while a married person pays $32.50 (based on a married couple's discounted fee of $65.00 a month).

Over the last four years, I have made two appointments with Mr. Wright to discuss converting my single membership to joint membership, which would include my domestic partner.

When I first approached Mr. Wright almost four years ago and requested joint membership, he refused my request saying that it was not the club's policy to offer an unmarried couple the same joint membership discount that a married couple would receive.

Last May, I approached him again with the same request and he refused again. This time he had a more elaborate explanation. He stated that it is the club's policy to grant a discount to married couples because they have combined living expenses and it gives them a break. I explained that my domestic partner and I have been combining living expenses for almost four years and we could also use the break. He said the break didn't apply to us because we weren't married.

I told Mr. Wright that I know people who are not married but were given the discounted membership rate because they insisted on receiving it. Mr. Wright said that he personally wasn't aware of any such situation, but he would correct it if I would tell him who they were. Since they are friends of mine, I declined. I hadn't come to his office to have a benefit taken away from someone else.

He also defended the club's joint membership discount policy by saying that the membership was a piece of community property which would be assigned to one partner or the other in the case of a divorce. He said that the club had no mechanism to assign the membership to one person or the other in case the unmarried couple split up.

I didn't realize how badly I'd been taken until a couple of months later. My unmarried friends told me that when Mr. Wright initially refused them for joint membership, the man (who is an affluent and prominent dentist) insisted that the club take them as a couple and give them the discount. Mr. Wright merely asked them to sign an agreement stipulating which one would keep the membership if they split up. They signed and they got the discount. Obviously the policy isn't uniformly applied. And obviously Mr. Wright neglected to offer me the option of signing an agreement to assign the policy to one of us if we split up.

Because of my two unsuccessful meetings with Mr. Wright, my partner and I have separate, single, expensive memberships. Each month while our married friends (and even some of our unmarried friends) write one check for $65.00, my partner and I write separate checks for $55.00 each -- a total of $110.00 for our "joint membership."

I am very grateful that a task force has been formed to study this type of discrimination and I look forward to working with you.

Best regards,

Nancy Matthews

Nancy Matthews
Home (818) 883-4453
Work (213) 852-7249

December 1, 1989

Mr. Harold Wright
General Manager
Mid Valley Athletic Club
18420 Hart Street
Reseda, CA 91335

Dear Harold:

In case you haven't seen the attached article in the Los Angeles Times, 10/31/89, I'm passing it along to you.

If you remember, I approached you almost four years ago asking to have my single membership transferred to a joint membership to include my "significant other." You refused, stating that it was not club policy to allow unmarried couples the same joint membership discounts as you offered married couples.

Last May I approached you again with the same request, and you again refused. This time you said that it was club policy to grant the discount to married people because they have combined living expenses and it gives them a break. When I told you that my significant other and I had been combining living expenses for almost four years, you said that it didn't apply to us. I told you that this was discriminatory.

It seems that City Attorney James K. Hahn and Thomas F. Coleman, attorney and adjunct professor at the USC Law Center agree with me. I will be cooperating with this task force to study discrimination against single people and unmarried couples and will share with them my experience at Mid Valley.

Harold, I have been a member of the health club for about eight years. Single membership dues were $45.00 a month when I joined; they're now $55.00 a month. Joint membership was $55.00 a month eight years ago and is $65.00 a month now. So let's say that the average single membership dues are $50.00 a month for the last eight years and the average joint membership dues are $60.00. That means that I, as a single person, have paid approximately $5280.00 in membership dues over the last eight years, while my married counterparts paid $2880.00 for the same membership privileges.

As a single person, I take up one-half as much room in the aerobics class, use one-half as many of the exercise machines, dirty one-half as many towels, consume one-half as much shampoo and soap, occupy one-half as many parking spaces, utilize one-half as much valet parking, and flush one-half as many toilets as a two-person married couple. I am rewarded for my thrift by paying twice as much.

You have successfully ignored my last two allegations of discrimination. Now, fortunately, others more influential than I will take it from here.

Sincerely,

Nancy R. Matthews

Nancy R. Matthews

cc: James K. Hahn
City Attorney

Thomas F. Coleman, Attorney
Adjunct Professor, USC Law Center

Nancy R. Matthews
4520 Saltillo Street
Woodland Hills, CA 91364
818/ 883-4453

THOMAS F. COLEMAN
ATTORNEY AND COUNSELOR AT LAW

CENTER FOR PERSONAL RIGHTS ADVOCACY
POST OFFICE BOX 65756 • LOS ANGELES, CA 90065 • (213) 258-8955

TO: CONSUMER TASK FORCE ON MARITAL STATUS DISCRIMINATION

RE: THE CASE OF JUAN NAVARRETTE

DATE: JANUARY 29, 1990

Juan Navarrette is testifying before the Consumer Task Force today. Mr. Navarrette will explain how he has been involuntarily separated from his lifemate.

Later this week, I will appear in the Long Beach Superior Court with Mr. Navarrette, as his attorney, to seek an order permitting him to visit his lifemate who is currently residing in a nuring home.

I have conducted a thorough investigation of the case and present the following summary to the Task Force for its consideration.

Facts of the Case

The Relationship of Leroy and Juan. This case involves Leroy Tranten (now 53 years old) and Juan Navarrette (now 32 years old). About 8 years ago, Juan moved into Leroy's modest home which is located in Long Beach. The home has remained in Leroy's name. The two men have lived together ever since and planned to be domestic partners for the rest of their lives. Juan works in the shipping department of UPS and therefore lives on a relatively low income.

The Accident. On March 3, 1989, Leroy fell from a ladder near the roof of his home, landed on his head, and suffered brain damage. He has been hospitalized ever since.

Juan's Visitation. Juan visited Leroy in the hospital every day, sometimes twice a day, from March 4 to December 15. He was able to engage in limited communication with Leroy, sometimes verbally, but mostly by writing notes back and forth. During these months, Juan provided Leroy with love, support, and encouragement. Juan's visitation privileges were abruptly cut off on December 15, when Leroy's brother had Leroy moved to another hospital and would not disclose the location to Juan.

Leroy's Brother. Leroy's parents are deceased. His only known relative is his brother (Ralph) who lives in Maine. Ralph apparently does not approve of Leroy's lifestyle and relationship with Juan.

Conservatorship Proceedings. In June, 1989, Ralph instituted conservatorship proceedings in the Long Beach Superior Court, seeking to have Leroy declared incompetent and to have himself declared the conservator (guardian) of the person and estate of Leroy.

A hearing was held in July. Notice of the proceedings was not given to Juan (the domestic partner). However, Juan found out about the hearing and appeared in court to object to the conservatorship and to the appointment of the brother. Juan did not have an attorney. The judge appointed Ralph (the brother) to be conservator. This gives the brother the legal authority over Leroy's medical treatment, residence, visitors, and financial matters.

Attempted Eviction. Ralph is trying to evict Juan from Juan's home of the past eight years. Forcible eviction (changing the locks) was attempted but the police intervened on Juan's behalf. A lawsuit was then filed, in which Juan was characterized as a "guest" who no longer had a right to live in the house. Apparently, Ralph wants to evict Juan so that Ralph can sell the house.

Visitation Prohibited. Leroy has been placed in a nursing home in Canoga Park. The nursing home has been given instructions by Ralph not to let Juan visit or communicate with Leroy. Leroy has had virtually no visitation from anyone for weeks. Leroy's condition is getting much worse. Leroy does not know why Juan is not visiting him. No doubt, the lack of visitation and love is contributing to Leroy's rapid decline.

Recommendations

This case demonstrates the need for unmarried individuals and unmarried couples to take preventive measures to avoid problems in the event of a serious injury, illness, or death. An aggressive educational campaign is necessary to educate members of the public who are not married about the need to prepare, well in advance of a crisis, appropriate legal documents, including a durable power of attorney for health care, a nomination of conservator, and a will containing specific authorization regarding who shall control the disposition of the decedent's remains.

This case also shows how the legal system does not adequately protect the implied expectations of lifemates when one partner becomes incapacitated and when the couple have not prepared legal documents to protect their rights. The legal system could be improved in several ways:

(1) the law should be amended to require notice to adult household members when a petition for conservatorship is filed;

(2) when a household member appears at a conservatorship proceeding and objects, the judge should be required to appoint an attorney for the patient and to advise the household member of his or her right to be represented by an attorney;

(3) judges and attorneys who handle conservatorship cases should be educated on developments in the law regarding the rights of domestic partners;

(4) court rules and policy memoranda should be updated to clarify the procedural and substantive rights of all parties when there is a legal clash between a patient's blood relative and the patient's domestic partner in the context of a conservatorship proceeding.

Testimony To The Consumer Task Force
On Marital Status Discrimination

January 29, 1990

William Bartlett, Asst. Prog. Mgr., Case Mgmt.
AIDS Project Los Angeles

I would like to thank the Task Force for this opportunity to give testimony about a problem with a longstanding history in the Lesbian and Gay Community. Now, as a matter of course, Marital Status Discrimination (MSD) can impact anyone affected by AIDS who is in a relationship which is legally unrecognized. Along with the myriad of political, religious, legal, medical and psychosocial issues which face people with AIDS, MSD becomes one more obstacle in the battle to remain in good health.

Before going into specific instances, it is important to gain a general understanding of the relationship between MSD and AIDS. Although the demographics of the epidemic are constantly changing, the majority of PWAs is still gay men. I should pause here to indicate that MSD can also pose serious problems for unmarried heterosexual couples affected by AIDS, however, there is a distinct difference. For heterosexuals, marital status is a matter of choice. Although for a variety of reasons it may not be preferable, marriage, for the most part, is always an option. For a gay or lesbian couple, marital status is not a matter of choice but a matter of restriction. In the United States it is illegal for two people of the same sex to marry. Ironically, in the context of todays testimony, many PWAs bare the burden of discrimination for not partaking in an institution from which by law they are excluded.

AIDS, by its very nature, renders a large population of people prime targets for MSD. In addition to being partners in relationships which are legally unrecognized, the presence of a chronic life-threatening disease in one or both of these partners adds further opportunity for discrimination. Added to the never ending array of opportunistic infections which can incapacitate a PWA, AIDS Dementia Complex can cause a serious form of mental impairment similar in symptoms to Alzheimers Disease. AIDS dementia can often lead to a state of mental incompetancy leaving those affected unable to make important decisions for themselves in matters of finance, healthcare and the normal tasks of everyday living.

With the above facts in mind, I would like to describe some specific situations of MSD which have come to the attention of the Case Management staff of AIDS Project Los Angeles while performing their duties as advocates for People with AIDS.

In most parts of L.A. County, unless both names appear on a lease, the surviving partner of an unmarried couple has no rights to remain in an apartment after the death of the other partner. John Doe shared a one bedroom apartment for five years prior to his lover's death due to AIDS. Upon his lover's death, John was told by the landlord that he would either have to pay a new rent adjusted to the current market value of the apartment, or leave. He was told that the former rent cost was affixed to the lease of the deceased lover and would not apply to him. Due to the overwhelming financial burden placed on the couple during the lover's illness, John was priced out of his home of five years and was forced to move.

Bill and John have been a couple for ten years. During that ten year period, John's family was strongly opposed to their relationship and claimed that Bill had an unhealthy influence on their son. While Bill was recently out of the country on a business trip, John had to be hospitalized due to severe AIDS related symptoms. Upon discharge, John was released to the care of his family who quickly obtained a restraining order preventing Bill from entering their house. Upon his return from abroad, Bill was served the order, learned of John's declining health and was told that the family had hired legal counsel to scrutinize the couple's financial holdings so that they would have control of what they felt "rightfully" belonged to their son. John's mental and physical incompetence prohibits him from advocating for himself.

Hector and Juan, a gay Latino couple both diagnosed with AIDS, had made plans in advance as to how they wished to be cremated should either of them pass away. Unfortunately, when Hector passed away the body was released to his family, strict Catholics opposed not only to their son's homosexuality but also cremation. Despite the couple's prearrangements and Juan's objections Hector's remains were buried.

Paul and Robert had been a couple for three years. Although not wealthy, Robert had managed to buy a house and acquire a small stock portfolio prior to his relationship with Paul. Paul was diagnosed with AIDS RElated complex eighteen months ago. Robert had tested negative for the AIDS virus and never felt the necessity of drawing up a will. Three months ago Robert was killed in a freak accident. Upon hearing of his death, Robert's family began legal action to obtain Robert's estate as his next of kin. Under current law, Paul has no claim to the estate he shared with Robert for three years.

These are but a few of the many similar incidents of discrimination faced by those whose relationship does not fit the current legal definition of marriage and are impacted by a health crisis.

The genesis of AIDS, like all plagues and natural disasters, was beyond the scope of human control. Ignorance, fear, hate, bigotry and discrimination are phenomena which arise not from the capricious whims of nature, but from the landscape of the human spirit. Thus, while science endeavors to halt the progress of this deadly virus, it is up to the rest of us to use education and legislation to battle the negative human responses it has spawned. It is my hope the the proceedings here today will bring us one step closer to that goal.

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LEGAL PROTECTIONS FOR UNMARRIED COUPLES

BY

JANICE STONE

Unfortunately, many unmarried cohabitors learn the hard way that the law gives them no rights with regard to each other in matters related to health care, death, and disposition of assets. It is not unusual to see persons who have lived together for years, even decades, denied the right to make decisions for each other during illness and at the time of death.

The law sets forth preferences about who should make personal and financial decisions on behalf of another who is unable to do so for himself or herself, and who should receive assets upon the death of the owner. Preferences of this nature are given to a legal spouse, or if there is no spouse, in many circumstances to close relatives.

These preferences can be overcome, but <u>only</u> with written documents. In other words, unmarried cohabitors can make health care and financial decisions on each other's behalf, and receive each other's property on death, but only if they have executed proper documents stating their intentions.

There are four documents that are essential for unmarried cohabitors to have in order to create their rights in these areas. These are: 1) Durable Power Of Attorney For Health Care; 2) Durable Power Of Attorney For Asset Management; 3) Nomination of Conservator; and 4) Will.

A Durable Power Of Attorney For Health Care is a written document in which one authorizes another to make decisions related to life and death on his or her behalf. These decisions can include consent and refusal to consent to medical care and procedures, selection of health care facilities and practitioners, making of anatomical gifts, withdrawal of life support, and decisions related to disposition of remains at the time of death.

It is my own practice when drafting durable powers of attorney to also specify intentions related to specific actions which are often of great concern when a loved one is ill or dying, such as who should be able to visit in hospital intensive care units.

The California Civil Code sets out in some detail the rules related to durable powers of attorney for health care, including: what types of decisions can be authorized; technical requirements for creating, executing, witnessing, and revoking these documents; and circumstances under which powers of attorney can be used. To feel secure about having these powers, unmarried

cohabitors must be certain that they have been well advised and that the document they have signed is clear and is drafted in accordance with the requirements set forth in the Civil Code.

Durable powers of attorney for health care can also authorize another to make or carry out decisions related to disposition of remains at death. The California Health And Safety Code provides that, in the absence of written directions to the contrary, the right to control the disposition of the remains of a deceased person vests in the legally married spouse, or if there is none, in the closest relatives of the decedent. Only by providing written directions, such as in a durable power of attorney for health care, can unmarried cohabitors make decisions or carry out the decedent's intentions about burial, cremation, and other death-related decisions.

In the event of short-term or long-term disablity during life, unmarried cohabitors can manage each other's <u>financial</u> affairs only if they also have another type of Power of Attorney --- a Durable Power Of Attorney For Asset Management. Two people may have lived together for fifty years, but if one of them becomes unable to manage his or her resources and income, the other has absolutely no right to do so absent directions in a properly drafted Durable Power Of Attorney For Asset Management, executed prior to any mental disability or incapacity.

It must be noted that Powers of Attorney have an inherent limitation: They are effective ONLY if a third party is willing to accept the agent's authority to act. For example, often third parties refuse to accept a Durable Power of Attorney For Asset Management. Banks and brokerage firms in particular often accept a Durable Power Of Attorney for Asset Management only on the organization's own forms, which sometimes are drafted in a manner that are not effective after incapacity.

As to Durable Powers of Attorney for Health Care, as a practical matter, health care providers are often concerned about the risks of following an agent's instructions regarding an incapacitated patient --- particularly if the agent is not a spouse or close relative. Because of this limitation, even properly executed Powers of Attorney may not fully protect the rights of unmarried cohabitors. It seems to me that further legislation is needed that will require that these documents be honored by third parties.

If Powers of Attorney are not honored, or if they have never been executed, the only recourse is establishment of a conservatorship. A conservatorship is a court-created relationship in which one person is appointed to manage the health care and/or financial affairs of another. As a matter of law, in determining who should be appointed priority is given to a spouse and to other

relatives before [redacted] "any other person", such as a cohabitor, unless there is a written nomination of the non-relative, executed prior to incapacity.

Written documents, such as Wills and/or Trusts, are also required in most instances for unmarried cohabitors to transfer their assets to each other after death. The California Probate Code establishes the order in which assets are distributed to legal spouses and blood relatives, in the absence of a Will or other proper testamentary document.

There are very limited ways in which unmarried cohabitors can hold title to assets together during their lifetime which result in the entire asset passing to the other at death. Unless title is held in one of these limited and specific ways, an unmarried cohabitor must have a proper Will in order to leave his or her assets to his or her partner.

So, while unmarried cohabitors are entitled under the law to specify their preference that each other make the decisions and have the authorities I have been discussing, they must, in a sense, <u>create</u> their rights. In most instances, these rights are <u>given</u> to legally married spouses.

STATE OF CALIFORNIA GEORGE DEUKMEJIAN, Governor

DEPARTMENT OF INSURANCE
3450 WILSHIRE BOULEVARD
LOS ANGELES, CA 90010

Consumer Task Force on Marital Status Discrimination

INSURANCE

January 29, 1990

Presented by Joan Howard

Supervising Officer

The Department of Insurance appreciates the invitiation we received allowing us to participate in this task force on discrimination.

The Department of Insurance is a regulatory agency empowered to regulate the business of insurance in the State of California.

The Department consists of nine divisions, they are listed below with a brief explanation of their area of responsibility.

The ACTUARIAL DIVISION is responsible for furnishing actuarial advise in the examination of insurance companies, reviewing actuarial aspects of the insurance statutes and supporting regulations to determine need for revision, preparing annually the certificates of valuation of policy reserves held by life insurance companies domiciled in this state. They have, as of 7/1/89, a staff of 14.

The ADMINISTRATION DIVISION is responsible for administrative services, general management of the department's offices, information technology, business services, personnel, labor relations, budgeting, training, affirmative action, accounting, security deposits management, and premium tax collection. They have as of 7/1/89 a staff of 104.

The CONSERVATION AND LIQUIDATION DIVISION is responsible for operating companies subject to court authorization and appointment as conservator or liquidator in the event of the insolvency of companies. As of 7/1/89 they had a staff of 6.

The ENFORCEMENT DIVISION is responsible for protecting the public from economic loss and distress caused by fraud, misrepresentation, dishonesty, and incompetence by removing unqualified licensed persons or companies from the business of insurance, and by investigating suspected fraudulent claims. As of 7/1/89 they had a staff of 102.

The FIELD EXAMINATION DIVISION is responsible for conducting regular field audits of insurers admitted to California or seeking admission, conducting field audits of underwritten title companies, developing audit techniques and procedures to discover all pertinent facts relating to the condition and insurers or; their violation of the California Insurance Code, analyzing and maintaining surveillance of surplus lines insurers, and determining Worker's Compensation deposit requirements. As of 7/1/89 they had a staff of 63.

The FINANCIAL ANALYSIS DIVISION is responsible for analyzing and maintaining surveillance of admitted companies, financial analysis of insurer matters requiring authority, permit, consent or approval; processing holding company filing, administering and auditing premium and surplus lines taxes; and analyzing reinsurance contracts and reinsurers. As of 7/1/89 they had a staff of 42.

The LEGAL DIVISION is responsible for the enforcement of compliance with the California Insurance Code by all admitted insurers, represent the Department in rule-making administrative hearings, process applications by insurers for authority and permits, administer policy form approval requirements, underwritten title company permits and license applications, and render legal advise to other divisions. As of 7/1/89 they had a staff of 68.

The RATE REGULATION DIVISION is responsible for the overall administration and enforcement of insurance laws pertinent to fair treatment of policy holders regarding the establishment or changes in insurance rates, including the preapproval of increases requested in various auto, fire, and liability rates. As of 7/1/89 they had a staff of 185.

The CONSUMER SERVICES DIVISION is responsible for insuring the fair and equitable treatment of policy-holders and representing the consumer in an advocacy role within the department; reviewing and investigating all complaints from the consumer and members of the industry; and conducting market conduct examinations to determine if all contracts are being carried out in good faith by the insurers.

An example of the Department's expanded role in consumer matters is reflected in the number of requests for assistance and telephone inquiries received by the Consumers Services Division.
In 1985 a total of 100,444 telephone inquiries responded to. The Department of Insurance added a toll free Hotline, the number is (800) 233-9045, to assist California consumer in 1986. In 1989 the total number of telephone inquiries had increased to 299,153.

In order to meet this increased demand for services the Consumer Services Division has increased from a staff of 54 in 1985 to a staffing of 114 as of 7/1/89. The current staff is 141..

Requests for assistance received from consumers by the Department of Insurance are varied and although some may have indicated they feel discrimination is a part of the issue, our records in the past have not been set up to reflect more than one issue. The primary issue may be cancellation, refusal to insure, rate increase or rate charged etc. We have implemented changes to our computer information and we are recording alleged discrimination on files that indicate this as a primary or secondary issue.

There is the need for continued consideration and investigation into allegations of all types or discrimination. Insurers use certain criteria in the acceptance of applications, rating of coverages as well as cancellation of coverages. When a request for assistance is received by the Department that indicates a company may have set improper guidelines, etc. we require the company to provide the documentation needed so we can decide whether their guidelines are proper or not. If we feel they are improper, we require them to be changed.

Insurance Code 790.03 provides remedies for the Insurance Commissioner to act against unfair practices including unfairly discriminatory practices.

With the passage of Proposition 103 the Commissioner has ruled that insurers can no longer use marital status in the rate structure for automobile coverage. Although this is only one line of coverage and represents only a small step, it is in the right direction. I must note however, there are two insurance companies that have filed a lawsuit protesting this ruling.

When insurers are in violation of the Insurance Code and refuse to correct their practices, the Legal Division is provided with the information and proceeds with whatever legal steps are necessary. The Legal Division has advised that they currently have no record of marital status discrimination complaints in their files.

The Consumer Services Division will monitor allegations of discrimination and if justified refer these matters to our Legal Division for further action.

Files that indicate a violation of the Unruh Civil Rights Act would be first referred to our Legal Division and then on to the Attorney General's Office if appropriate.

The Department routinely refers cases that are not under our jurisdiction to the proper agency; however, files that are handled by the Department of Insurance are deemed confidential and are not referred unless it is to another state agency with jurisdiction.

We are setting forth procedural guidelines to advise consumers in the Los Angeles area that if a case involving discrimination cannot be resolved to their satisfaction with the Department of Insurance they can and should contact the Los Angeles City Attorney's Office.

Our current procedure for handling requests requires the consumer to submit the request in writing, however if when they contact our office via our toll free Hotline the officer feels it may be resolved with a phone call or two, they attempt to resolve it in that manner to expedite the process.

Written requests for assistance are delivered to the appropriate bureau for handling and notice is mailed to the consumer letting them know who is handling their case. Letters are sent to the insurers requiring an initial written response to the insured and the Department within 20 working days. Responses are reviewed and a determination is made to see if the Insurance Code and insurance practices have been followed. If not, we go back to the insurer requiring correction.

With data compiled through our files we make a determination when and if to send members of our Market Conduct Bureau to check into claims handling and underwriting practices of companies.

We feel public awareness of the Department of Insurance has increased tremendously in the past few years as evidenced by the increased number of calls, etc.; however there are still a great number of people in the State that are not aware of our existence or of our desire to help consumers.

We have a Speakers Bureau and participate in as many consumer functions as possible to educate and help consumers. We feel this task force in one of the most important ones we have been involved in and look forward to resolving these issues.

STATE OF CALIFORNIA GEORGE DEUKMEJIAN,

ARTMENT OF INSURANCE
ILSHIRE BOULEVARD
GELES, CA 90010

February 6, 1990

HOMAS COLEMAN
hairperson
onsumer Task Force on Marital Status Discrimination
.O. BOX 65756
os Angeles, CA 90065

ear Mr. Coleman:

his is in response to questions asked at the Task Force Meeting anuary 29, 1990.

onfirming our recent telephone conversation, I informed you that he Department has been working on a computerized program that will nable the Department to provide consumers with information on the umber of complaints filed against any insurer in a comparative ormat. This program is expected to be available to the public by he end of 1990. This information will be available through the epartment's toll free Hotline and the information can be provided n written form if requested. The information will list the number f complaints and will compare it with companies within the same remium base.

he second request was for the Department of Insurance's legal osition concerning the release of consumer files to the City ttorney's Office, whether this denial is by statute or Department olicy.

have attached a copy of the Department of Insurance Guidelines For lassification of Files and Accessibility of Records that provides a etailed explanation of our position.

STATE OF CALIFORNIA

DEPARTMENT OF INSURANCE
3450 WILSHIRE BOULEVARD
LOS ANGELES, CA 90010

: Legal Division has informed me that their position concerning
: Unruh Act is this law applies to individuals and their rights
l does not apply to the Department's consumer files.

recommend that if the City Attorney is interested in cases fil
:h the Department of Insurance concerning marital status
scrimination; the City Attorney's office send a request to the
partment for the information. The Department will at that poin
:ain a printout of the cases, and send a letter to the insureds
vising them of the City Attorney's interest in these types of
ses and request a written release allowing us to provide the
formation.

ave also enclosed a copy of the lawsuit filed by State Farm.
state suit has not been received in my office as of this writi
is supposed to be sent by messenger and if received will also be
losed.

you have any questions, please call me.

Sincerely,

JOAN HOWARD
Supervising Officer
(213) 736-3874

achment: Guidelines For Classification of Files and Accessibility of Records

osure: State Farm Lawsuit

My name is G. Jay Westbrook

I am a Center Fellow at the UCLA/USC Long Term Care Gerontology Center, a member of the L.A. City/County Area Agencies on Aging Long Term Care Task Force, as well as a member of this Marital Status Discrimination Task Force, Media Coordinator for American Society on Aging, an instructor at UCLA Extension, an author and private consultant.

This testimony will summarize the results of my investigation into possible Marital Status Discrimination against older adults by Skilled Nursing Facilities in Los Angeles in general, and more specifically by Medi-Cal's Long-Term Care Division. I will also identify those actions which could be taken by public and private agencies to better protect the rights and serve the needs of unmarried clients, including older adults who are gay or lesbian.

It is important for me to say that this testimony will NOT address the issue of medical decision-making by unmarried domestic partners, nor the issue of inclusion of domestic partners in guardianship and/or conservatorship proceedings. It is not that these issues are unworthy of attention, but rather that they are being addressed by other members of this Task Force.

In a nutshell, my investigation found that there is no overt discrimination based on Marital Status within Skilled Nursing Facilities here in Southern California. The reasons for this are two-fold. First, Skilled Nursing Facilities have striven to evolve beyond their traditional image, and today face and meet the challenge of providing humanistic care to very sick individuals in an extremely heavily and rigidly regulated industry. Second, the nature of the patient mix in Skilled Nursing Facilities has changed. In years gone by, most patients were completely lucid, i.e., possessed cognitive integrity, and were not acutely ill. For many such patients, the term "resident" was more apropos than the term "patient." However, the closing of many mental health facilities, the fact that people are living longer and longer, high-tech medicine, and the development of DRGs (diagnostically-related groups) have created a situation in which elderly persons are being released from acute care hospitals "quicker and sicker," and nursing homes (Skilled Nursing Facilities) are finding their patient mix composed largely of the acutely ill and/or those lacking cognitive integrity, i.e., the severely confused & mentally-challenged. The nature of Skilled Nursing Facility problems has changed and evolved in a manner similar to the patient mix; life prolongation, segregation vs integration of Alzheimer's patients, and artificial feeding are the problems focused on today, rather than whether love should be allowed to be expressed among unmarried residents. On the one hand, these are not issues which can be easily addressed by this Task Force. Nor are they issues which fall within the domain of this Task Force.

On the other hand, problems existing within Medi-Cal's Long Term Care Division fall clearly within the domain of this Task Force, and can be addressed by same. In the "Forms Portion" of the Medi-Cal Application (see attached) the word "spouse is used consistently. However, a Medi-Cal Intake Deputy has told me that "we really just take people at their word and don't check to see if they are really married when they state that they are, so we probably wouldn't know if they lied to us about it." In the "Information" section of the Medi-Cal Application, the words "couple" and "spouse" (see yellow "Post-Its") are used so as to blur the distinction between married and unmarried couples, and thus confuse the applicant. This can have tremendous consequences, especially if the applicant will be or is living in a long-term care facility.

If an applicant is the unmarried domestic partner of someone, and files as part of a "couple," they would think they could have up to $3,000 in assets (not including house and car) and still qualify for Medi-Cal. In reality, and legally, the applicant could retain only $2,000 dollars in assets (the amount allowed for a single person vs a married couple). The applicant would be notified of this, and if they disposed of the excess $1,000 in a way deemed inappropriate by Medi-Cal (e.g., givng it to an adult child or unmarried domestic partner) they would then be held ineligible for Medi-Cal for a number of months calculated according to the formula:

$$\text{number of months ineligible} \overline{\text{maintenance fee} \,\big|\, \text{amount illegally distributed}}$$

where the "maintenance fee" is that amount of the applicant's monthly income above and beyond the applicant's "Share of Cost," i.e., the amount of money which the applicant requires to meet their non-Medi-Cal expenses. In the community, this figure might typically go as high as $825 per month to pay for things such as rent and food. In such a case, according to the above formula, there would be a period of ineligibility of less than two months. However, in a long-term care facility, this figure is typically only $35 per month. In such a case, according to the above formula, there would be a period of ineligibility of 29 months. This means that the applicant would have to pay all nursing home costs (typically $1700 - $2300 per month) out-of-pocket for 29 months, before being able to reapply for Medi-Cal.

Clearly, with the stakes so high, this Task Force should petition the Medi-Cal Long Term Care Division to take two actions: 1) to make uniform their verbiage in the "Information" packet such that the above-referenced confusion over the implications of the terms "couple" and "spouse" is eliminated, and, most importantly, 2) to grant spousal treatment to unmarried domestic partners, be they gay, lesbian, or heterosexual, in keeping with their already stated policy of nondiscrimination on the basis of marital status (see yellow Post-Its in "Information" packet).

January 29, 1990
Remarks before Task Force on Marital Discrimination
Christopher Sands

My lover of eleven years, Robert Sullivan, died of AIDS on June 25, 1988. At the time of his death he was a writer and I was a producer of network television movies. Both VARIETY and the HOLLYWOOD REPORTER were provided with Robert's obituary, briefly listing his credits and the fact of my survivorship.

On June 29th, his obituary appeared intact save for any mention of his survivors. And in an ironic twist, on the page opposite Robert's obituary, was a full-page ad extolling the last film I had produced, the text of which I had approved several weeks earlier when I signed the company check to pay for it's appearance.

I was furious and immediately penned an ad which I submitted along with $890 to the ad rep with whom I dealt. The ad was a simple protest against this cruel elimination of my name from my lover's obituary. It was to run the following day. The ad rep remarked that she found it beautiful when she read it.

Upon returning home that day, after dealing with, among other things, the details of cremation at the funeral home, I found a flurry of telephone messages from various people at VARIETY ranging from the ad rep on up to the Associate Publisher, Michael Silverman. Since I had dealt with the rep, I returned her call and was asked to consider having the ad copy run as a letter to the Editor, for free. I rejected this offer, preferring instead the larger format and more prominent placement of my already paid for and reserved 1/2 page space.

The next day, the ad was nowhere to be found. Mourning again had to take a back seat to standing up for myself as I struggled with my grief and the shock felt by our families. Indeed, perhaps the most important reason for the accurate listing of survivors is to inform our friends and acquaintances who may otherwise be ignorant of our loss. They then can reach out to us in our pain which is of enormous help in coping and

ultimately recovering. Daily Variety refused to provide those of us losing same-sex mates with this ordinary compassionate service.

I went to Daily Variety spontaneously and met with Tom Pryor, the editor, and Mr. Silverman, the Associate Publisher. They explained their policy was firm, noting editorially only what they referred to as legally recognized survivors. They suggested a logistical nightmare would ensue from a more embracing policy. That the New York Times, The Hollywood Reporter and the Los Angeles Times listed survivors as requested did not impress them. In their paper, variety was to be found only in the title.

Mr. Pryor even inquired, incredulously, whether I genuinely considered myself the spouse of another man. The previous week I had cradled in my arms someone I had loved since the age of nineteen and authorized the removal of life-support from his dying body. I must tell you I found Mr. Pryor's question repugnant.

Mr. Silverman summarized the paper's position as longstanding and somehow thereby exempt from re-examination and re-consideration. A young man whose career presumably owed something to the presence of his father's and grandfather's names on the paper's masthead since it's founding was obviously not interested in challenging tradition. The mere existence of the policy was its justification.

But, he said, he would run my ad, which he did on the obit page that Friday after cashing my check.

I forwarded the 100 odd letters of support I received thereafter to Mr. Silverman and to the Cahners Publishing concern which now owned the paper. I left repeated telephone messages inquiring about the status of the policy. I never received a letter or call in response.

On the year anniversary, I again ran an ad, only in the LA Weekly with its readership of almost half a million. I met with members of the Gay and Lesbian Alliance Against Defamation and they listed the salient facts on their hotline in conjunction with the ad's appearance.

More letters streamed in, copies of the ad were repeatedly faxed to Daily Variety, their switchboard was deluged, subscription cancellations were received. There was a furor at the paper.

I received a frantic telephone call from Mr. Silverman. He thought the issue had been resolved through his printing of the original ad a year earlier. He resented my using his name in my second ad, alleging that it had caused him pain, and he objected to my repeating his remark to the Los Angeles Times that his policy would be the same had Mr. Sullivan been living with a "Martian or a cat".

I suggested the remark and the state of mind behind it were offensive, that the policy it was intended to defend caused real pain to many people, and that the matter was unresolved until he took responsibility for the policy and changed it. It was not a cordial conversation.

The ads and my campaign received more national press and attention. I gave many interviews which increased people's awareness of the issue and mail continued to be received by Variety. Finally, On November 9th, 1989 an obituary appeared in Daily Variety for Andrew Scott who was survived, according to the paper, by his parents, a brother and his longtime companion Miguel Elias. Without note, or apology, the paper had finally relented and Mr. Elias received the respect and acknowledgement to which he was entitled.

The refusal of society to grant gay men and lesbians our civil rights, the refusal to allow us to legalize our relationships of committed, conjugal love, the refusal to accord us dignity and respect to live freely as we were born -- these bigotries have painful costs to us individually and to society as a whole. The inclusive American icon of family has been misappropriated by those who would expel and exclude us as somehow leading lives conceived in a vacuum and lacking the human bonds, relationships and goals of the dominant sexual preference. This rejection and its spurious use of family create horrifying obstacles to mental and physical health we manage for the most part to overcome daily.

But we need look no farther for its cost than the some 70,000 dead from AIDS in this country over the past ten years. Underlying this holocaust is hatred, posing as neglect. In the 4 months after 29 white and presumably straight American Legionnaires died, the government spent $500 million to fight that epidemic. 4 months, 29 dead, $500 million. It took our society eight years and 40,000 primarily gay men's deaths before the same spending level was reached.

It is in the accumulation of seemingly insignificant policies like that of Daily Variety that such hatred builds to such devastating effect. That's why I took them on and why I am grateful to you for your interest in these examples of the appalling discrimination we endure daily.

OBITUARIES

Sophia Pierson

A funeral service will be held at noon today at St. Paul's Lutheran Church in Norwalk for Sophia Pierson, 84, mother of Pacific Theaters field supervisor Linnea Pierson, who died July 4 in Norwalk after a brief illness.

Eddie McCaffrey

NEW YORK — Edward J. (Eddie) McCaffrey, 79, former circulation director of *Variety*, died July 7, in Rutland, Vt. of lung cancer.

McCaffrey started at *Variety* as an office boy. He worked his way through a number of different jobs at the paper and was *Variety's* circulation director for more than 30 years. He retired in 1974.

Writing in the 50th Anniversary edition of *Variety* in 1956, then-editor Abel Green recalled the relationship between founder Sime Silverman and his family and some of the staffers:

"Sime would do the darndest things for an office boy he thought looked peaked, upsetting Hattie and Sid (Sime's wife and son) at their Thousand Islands Summer place. The office boy would suddenly find himself transplanted into a new world via a note from Sime. As Sid put it, "A kid would pop in at the Islands with the statement, 'Mr. Silverman sent me up. There would be a note from the Old Boy: 'Dear Sid: This is Eddie McCaffrey who needs a rest, so take care of him for a couple weeks.'

"That was the Old Boy's way of making sure the kid got a vacation. Two weeks later the kid was just as apt to be fired for something the Old Boy did not like."

Survived by his wife, a son, two daughters, seven grandchildren and two great-grandchildren.

William Slobodian

NEW YORK — William Slobodian, 40, coproducer or production associate on many of Chuck Vincent's films, died July 1 in New York of AIDS.

Raised in Rome, N.Y., Slobodian served four years in the Navy, and beginning in 1978 was coproducer at Vincent's Platinum Pictures. He served in various production capacities on some 30 features, including "Preppies," "R.S.V.P.," "Sex Appeal," "Slammer Girls," "Hot T-Shirts" and "Wimps." He was exec producer of Vincent's adult film crossover hit "Roommates" in 1981.

Survived by his parents and a sister.

Frances Crooks

Frances Crooks, 82, longtime editorial staffer for the Academy Players Directory, died July 2 of cancer at Valley Hospital Medical Center in Van Nuys.

Crooks worked on the Academy Players Directory from 1944 through the early 1960s. Thereafter, she worked in hair, makeup and public relations for Max Factor.

Long active in Variety Clubs International Tent 25, she is survived by two nieces.

Lou Tracey

Lou Tracey, 34, longtime assistant to Burt Bacharach and Carole Bayer Sager, died July 6 in Los Angeles after a long struggle with cancer.

A native of London, Tracey worked in all aspects of the couple's careers, and was notably involved with the Bacharachs on behalf of such charitable organizations as the American Foundation for AIDS Research, the Neil Bogart Memorial Laboratories and the Starlight Foundation.

She is survived by her mother, three brothers and a sister.

In lieu of flowers, donations are suggested to the Wellness Community-Westside in Santa Monica.

John E. Johnson

John E. Johnson, 80, film technician who worked at Universal for nearly 20 years, died July 3 at St. Joseph Medical Center in Burbank.

Johnson began his career at Republic, then worked at Revue until the company was absorbed by Universal. He retired in 1973.

A retired member of Film Technicians Local 683, he is survived by his wife, two sons and a daughter.

Audrea Musser

A funeral mass will be said at 6:30 p.m. July 12 at Mother of Good Council Church in Hollywood for Audrea Musser, 63, mother of longtime Pacific Theaters home office employes Gabrielle and Nicole Musser, who died July 4 at her home in Hollywood.

Survivors Policy

In response to occasional inquiries regarding *Daily Variety's* policy on survivors listed in obituaries the following reiteration of long-standing policy is offered: *Daily Variety* obituaries as a rule list as survivors only those individuals who are blood relatives, adopted children, or a legally recognized spouse of the deceased.

Chelle Carter

Chelle Carter, 35, actor who played "Princess Grace" in the Celtic Arts Center's current stage production "The Hostage," was killed instantly on July 1 when he was hit by a car as he was putting gas in his own automobile on the San Diego Freeway in West Los Angeles. The driver of the other vehicle has been charged with driving under the influence of alcohol.

A flight attendant and service manager on TWA for several years, he had only recently become an actor. A student at the Charles Conrad Workshop, he had appeared in several tv commercials and was making his stage debut with the Celtic Arts Center.

Simmons Joining KCPQ

Diane B. Simmons has been appointed marketing director at KCPQ-TV, Seattle. In her new position, Simmons will supervise retail sales development and special projects. Simmons hails from KSEA-FM, Seattle, where she served as an account executive.

On Saturday, June 25th I lost my love, lifemate, spouse, significant other — you may choose the term of your liking. His name was Robert Francis Sullivan and we shared our life and love together for eleven years.

On Wednesday, June 29th his obituary appeared in *Daily Variety* and, despite having been provided with the information of my survivorship, *Daily Variety* chose to ignore announcing survivors in only one of the five obits they printed that day. It was Robert's.

I found it especially ironic that opposite his obituary what they did run was a full-page ad extolling Dennis Weaver's excellent performance in BLUFFING IT, a picture I produced just prior to my Robert's illness. In fact, Robert's last work was a short public service film based on BLUFFING IT to be used in schools, factories, corporations and public meetings to help fight illiteracy. It was well received and made a useful contribution to the fight.

I write for the sake of those in grief who lack the extraordinary love and support I have been privileged enough to receive. At the time of their lives when they are gasping for air, the grieving gay spouse left behind should not have the ugly boot of bigoted homophobia, unintentionally or not, pressed down hard against their throats.

When I could hire a publicist to have my last burp at Spago's printed in the trades, the printing of Robert's survivors does not seem an unreasonable request.

Christopher Sands
962 N. La Cienega
Los Angeles, CA 90069

LOS ANGELES TIMES 7-17-88

CALENDAR

OUTTAKES

Soul Survivors

Should a gay man whose long-time lover has died of AIDS be listed among the survivors in a newspaper obituary? For that matter, what about long-time lovers of either sex—are they, too, survivors?

No, according to a policy statement from Daily Variety.

The stand was prompted by an angry half-page ad (cost: $890) taken out by grieving TV movie producer Christopher Sands after Daily Variety deleted his name and the designation "lover" from an obituary that he had submitted for Robert Francis Sullivan. Sands and Sullivan had lived together 11 years.

"The grieving gay spouse left behind should not have the ugly boot of bigoted homophobia, unintentionally or not, pressed down hard against their throats," Sands declared in his ad, which appeared in Daily Variety the same day that the paper printed its policy statement.

In explaining Daily Variety's position, associate publisher Mike Silverman told us, "We don't differentiate between sexes." It "applies in all cases, whether someone is living with a man, a woman, a Martian or a cat."

Silverman, who claimed that Variety was the first trade paper to list AIDS as a cause of death in obituaries, insisted, "This is not an AIDS policy. Believe me, we know what AIDS is doing to this community."

The Hollywood Reporter ran the obit intact, mentioning Sands, but later rejected a two-page version of Sands' ad (cost: $1,800), according to Lynne Segall, director of marketing, because Sands "wanted to use the Reporter as a voice to attack Variety." Managing Editor Therese Wells said the Reporter has no "hard and fast" rule about limiting survivors to blood relatives: "We will run lifetime companions (in obituary notices)."

(The Times' policy generally is to list survivors according to their wishes.)

Sands, who met with Silverman for 45 minutes on the issue, said, "I don't actually believe in my heart of hearts that Mike Silverman is a homophobe. I think he was embarrassed by the policy."

But, Sands added, "These kinds of societal policies . . . constitute homophobia."

—From Louis Chunovic

City of Los Angeles
Consumer Task Force on Family Diversity
Remarks made by Frank Haswell, Executive Vice President, Forest Lawn Memorial-Parks & Mortuaries, at 10:15 a.m., on January 29,1990.

I'd like to thank the Consumer Task Force for asking me to appear here today. Your inquiry came originally to our Legal Department and was forwarded to me. The reason I am here is to explain some legalities of Section 7100 of the Health & Safety Code. I believe the legal description to be quite clear. And it is based solely on Health & Safety Code 7100. The key question, therefore, is not just dealing with Section 7100, but in its interpretation by funeral industry members and how it is implemented.

Currently, I serve two masters. I am the chairperson of the Department of Consumer Affairs Cemetery Board and I am the Executive Vice President for Forest Lawn Memorial-Parks & Mortuaries. In these dual roles, I review both legal interpretations as well as practical decisions.

Today, I must preface my remarks by saying that I can only represent Forest Lawn Memorial-Parks & Mortuaries. I cannot speak as a representative of the Cemetery Board -- only as an individual member.

Mr. Coleman was kind enough to ask some specific questions, but first I need to review and discuss Section 7100.

Many say that sections of the Health & Safety Code are hard to understand, but I believe that 7100 is the exception. In fact, it is so clear that people don't like it. It leaves no room for creativity. It leaves little room for misunderstanding ...and only some room for improvement.

Section 7100 was enacted for two reasons: 1. To define who can control the disposition , and 2. To define who is liable for payment for funeral/mortuary services.

To quote Section 7100: "THE RIGHT TO CONTROL THE DISPOSITION OF THE REMAINS OF A DECEASED PERSON, UNLESS OTHER DIRECTION HAVE BEEN GIVEN BY THE DECEDENT, VESTS IN, AND THE DUTY OF INTERMENT AND THE LIABILITY FOR THE REASONABLE COST OF INTERMENT DEVOLVES AROUND THE FOLLOWING IN THE ORDER NAMED."

Its simplicity is its strength.

The primary point for this task force is that if a decedent leaves direction as to his/her disposition that governs, does it have to be in writing?????

The statute says in Paragraph 3 that: " A DECEDENT PRIOR TO HIS DEATH, MAY DIRECT THE PREPARATION FOR, THE TYPE OR PLACE OF INTERMENT OF HIS REMAINS EITHER BY ORAL OR WRITTEN INSTRUCTIONS.

Section 7100 lists the persons who , in the absence of directions by the deceased, have the duty of interment. These are:

"1. The surviving spouse
2. The surviving child or children of the decedent
3. The surviving parent or parents of the decedent.
4. The surviving person or persons respectively in the next degrees of kindred in the order named by the laws of California as entitled to the estate of the decendent."

Practices concerning cremation authorization must also be viewed in light of Section 7100. Specifically, we feel that if you want to have cremation, you will need the signatures from all the persons at the same level of kinship. That means if you have six children, we would need all of their signatures.

So the key question is what can be done to insure that the wishes of the decedent are carried out as requested?

I have a few suggestions which can help reach that goal:

1. I believe that pre-established written instructions are the best insurance that you can have.
2. Next, discuss these items openly with your partner. If this discussion does not include your relative as described in Section 7100, make certain that they are aware of your decision.
3. Remember that a valid will can be accepted and acted upon by any mortuary or cemetery as valid instructions by the decedent. This will supercede all other written or oral instructions.
4. In lieu of a will, use a durable power of attorney, but be sure that it is one for health care, as it is not valid for our use.

This is described in California Civil Code, Section 2500. The key section states: "SUBJECT TO ANY LIMITATIONS IN THIS DOCUMENT, MY AGENT HAS THE POWER AND AUTHORITY TO DO ALL THE FOLLOWING: A) AUTHORIZE AN AUTOPSY UNDER SECTION 7113 OF THE HEALTH & SAFETY CODE, B) MAKE A DISPOSITION OF A PART OF PARTS OF MY BODY UNDER THE UNIFORM ANATOMICAL GIFT ACT, C) DIRECT THE DISPOSITION OF MY REMAINS UNDER SECTION 7100 OF THE HEALTH & SAFETY CODE."

It goes on to say that it will be in existence for 7 years from the date signed. It is not limited by incapacity. It cannot be violated by other sections of 7100. It stands as law, and the mortuary or cemetery that uses it as authority will not be held liable for its actions.

My further suggestions are:

5. Make pre-arrangements. Make them in writing, noting preference for cemetery and mortuary, preferably both. At Forest Lawn, we have forms available for this specific purpose:
1. A "Family Record Organizer" (on which you fill in your directions on everything from type of casket preferred to musical selections for the service itself).
2. A pocket I.D. card to carry with you in your wallet which states you have property at Forest Lawn.

We are also available for pre-arrangement conferences.

When completed, the forms are kept in a records vault at Forest Lawn. This service is available without charge. We don't charge for assisting in the completion of these forms nor for the use of our storage facilities.

6. Lastly, I would recommend that you carry a card in your wallet indicating your desired choice of mortuary and interment -- be it Forest Lawn or another mortuary.

The question of unmarried partners has already been answered by my previous remarks. As long as these things are addressed and written down properly in advance, there can be no dispute.

But without these written instructions, the path is quite clear for any business...we must revert to the safety of Section 7100.

I have mentioned pre-arrangements. It might interest you to know that over 50% of the families and partners we serve have done this in advance. And doesn't it make sense to do so? Questions are averted, doubts are erased, and family units have the comfort and satisfaction of knowing they have done what has been requested. Whomever has the right under Section 7100, will know the answers to these questions which are often asked:

1. Selection of the mortuary, transfer of remains
2. Selection of church, minister, and type of ceremony
3. Burial versus cremation
4. News notices
5. Open versus closed casket
6. Selection of the burial site
7. Tablet or headstone selection

Thank you again for this opportunity to discuss this with you. May I answer any questions you might have?

SUMMARY OF CONWAY COLLIS' TESTIMONY BEFORE THE TASK FORCE ON MARITAL STATUS DISCRIMINATION, NOVEMBER 28, 1989

I founded and chair the Prop. 103 Intervention Team, among other things, to analyze the rationale behind the insurance industry's rating factors. The team is comprised of lawyers, statisticians, accountants and actuaries but sometimes this posse of experts is not necessary to recognize arbitrary industry rating practices.

At one point I sat down with the top rate-setter for a well-known insurance company and was told that the reasons he was using some criteria was simply because they "seemed" right to him. No statistics. No data. No history to base it on.

Marital status is as arbitrary and nonsensical of a rating factor as any, and as such is clearly discriminatory.

As Chair of the Intervention Team I have called, and will continue to call, for an end to discrimination on the basis of age, gender, sexual orientation or marital status.

What to do about it

We need an Insurance Commissioner who will issue a ruling which prohibits marital status discrimination. The Commissioner would then have the power to "suspend or revoke, in whole or in part, the certificate of authority of any insurer which fails to comply" (Insurance Code section 1861.14). Additionally, the Insurance Code (section 1859.1) empowers the Commissioner to levy a $50,000 fine against companies who are not in compliance. If the failure to comply is found to be willful then the fine increases to $250,000.

Finally, the Task Force on Family Diversity's 1988 report correctly recommends that complaints be forwarded from the Insurance Department to the Attorney General's office. This would allow the AG to take direct action or refer the matter to the appropriate district attorney, city attorney or to the Department of Fair Employment and Housing.

It is a disgrace that right now, these agencies have to solicit the Insurance Commissioner to see consumer

complaints. It's a total disgrace. The Insurance Commissioner should be out there vigorously seeking enforcement of the laws she was appointed to oversee.

I believe that a strong Commissioner can deliver the promise of 103, as well as additional insurance reforms, without any new laws. Prop. 103 provided the enforcement mechanisms necessary to implement the law, all we need now is a Commissioner who cares about implementing them.

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