

# PARTNERS in love but not in law

By Dick Polman  
Inquirer Staff Writer

**T**he pain in her chest terrified her. She thought she was having a heart attack. She wanted to be treated — not hassled by a hospital bureaucrat about her personal life.

On this evening in Camden County two years ago, Carol Mortimer had been driven to a local emergency room by Judy, her live-in lover. First Carol was asked to supply some crucial information. Age? Address? Medical insurance? All routine.

*Next of kin?*

Carol named Judy.

The staffer stopped typing. Carol insisted that Judy was her "spouse" of eight years.

"That's not a valid next of kin," said the staffer.

And legally, the staffer was right: No law in America sanctions spouses of the same sex. But to Carol, that didn't matter. She and Judy, both 31, wore wedding rings, ran a house together, had drawn up wills together, paid the lawyers together, owned property together. They'd even drafted legal papers giving Judy hospital visitation rights in an emergency.

Carol finally got what she wanted — after threatening to call in the higher-ups. Judy, who had been detained in the waiting room, was brought to her side; the pain turned out to be a false alarm, and the crisis was over.

But that night in the hospital was a stark reminder that although Carol and Judy define themselves as a family, society does not. Which is why they can't file joint federal tax returns, or collect survivor benefits from Social Security, or share a health

insurance plan.

"It annoys me," says Judy, using only her first name to protect her job as a computer programmer in Philadelphia, "that after being together for years, we still don't get the same benefits as somebody who got married five minutes ago."

But a new breeze is blowing from the shores of the Pacific, where so many movements take off. At this moment, if Carol and Judy lived in San Francisco, Berkeley, Los Angeles, Santa Cruz or West Hollywood, Calif., they would be known as "domestic partners." They would be defined, in a pending San Francisco law, as having "an intimate and

committed relationship of mutual caring." They'd have fewer hassles with hospitals. If they were on the public payroll, they'd get paid family bereavement leave — a key issue since the onset of the AIDS epidemic.

Domestic partners — a concept that affects, at the very least, two million gay and straight couples in the United States — is now a topic of study in Philadelphia. In a report to Mayor Goode later this year, a government advisory panel, the Commission on Sexual Minorities, is expected to recommend that partners be recognized in benefits packages for city workers.

A law now on the books in Madison, Wis., extends sick and bereavement leave to city workers with partners. The domestic-partner concept is under scrutiny in Seattle and in Washington, D.C., and just received a breakthrough endorsement from the highest court in the state of New York.

For conservatives, it's their worst nightmare, a concept that explodes the traditional definition of family and extends a measure of legitimacy. (See PARTNERS on 7-J)

*There are at least two million gay and straight couples in the U.S. who live together without legal ties. In the past, these "domestic partners" got no recognition, no benefits. But the tide is beginning to turn.*

# Are the times beginning to change for 'domestic partners'?

cy — and economic aid — to those who live together without a marriage license. As the New York Court of Appeals ruled on July 6, "genetic history" is just one way to define a family; an "equally valid" view includes "two adult lifetime partners whose relationship is long-term and characterized by an emotional and financial commitment."

Proponents call it the "family diversity movement," an attempt to make family law reflect the real world. "This movement is not about changing society, because society has already changed," says Matt Coles, a San Francisco lawyer who was present at the creation of the movement, drafting the first domestic-partner laws. "Large numbers of people already live in nontraditional households. History always teaches us that, sooner or later, government has to acknowledge where people are taking society."

For gays, the domestic-partners concept is "the first acknowledgment of our legitimacy as family members," says a teacher in Lakewood, N.J., who has lived with another woman for seven years. "It's the first step, the same way the civil rights laws were for blacks. But the first step is always the hardest for the public to swallow."

"The family is the cornerstone of civilization," counters Gary Bauer, who served as President Reagan's domestic policy adviser and point man on traditional values. "The family, as it has been widely understood until now, is defined as people related by blood, marriage or adoption. The law shouldn't just mirror trends. It ought to look at those trends and decide which ones it wants to encourage — or discourage."

"You have to deal with the reality of this society," says Carol Mortimer, a technical writer for Cigna Corp. in Voorhees. "The reality is that most people do not live like Ozzie and Harriet anymore."

Reality, according to Sar Levitan, director of the George Washington University Center for Social Policy Studies, is the knowledge that the traditional family of working man, homemaker and children accounted for only 10 percent of all households in 1987. Moreover, federal census figures show that the number of cohabitants (all couples, gay or straight, who are not legally married) quadrupled between 1970 and 1986 — to a population of 2.2 million households, or 4.1 percent. Many family experts think the census figure is far too low; one team of social scientists studied only the gay male population, and came up with 2.5 million couples.

## "Locked out of marriage"

"It would be irrational to ignore the reality of so many legitimate family forms," argues lawyer Thomas Coleman, a family-issues consultant to lawmakers in Los Angeles. He says that most cohabitants are heterosexual. Yet he notes that the nationwide push for domestic-partner benefits is coming from the gay-rights movement: "For them, there's no other way to go. They're locked out of marriage, yet the name of the game is still family."

In Philadelphia, for example, one gay woman from Hunting Park, whose companion works for the school district, has discovered the economic pitfalls inherent in her relationship. Ann Brenda, 36, who works part time for a Center City law firm and has no health insurance benefits, wants coverage under her housemate's union plan. But that plan, like all others negotiated with the city, doesn't extend coverage to unmarried partners. And Brenda can't afford the annual premiums for private coverage, estimated to be in excess of \$1,000.

Meanwhile, her 45-year-old companion, who would love to quit work and pursue a writing career at home, can't afford to do that. "We don't have that option," says Brenda, "because even if I got a full-time job with medical benefits, I wouldn't be able to cover her either. Yet we consider ourselves 'married.' We just celebrated our fifth anniversary. We want what most people want."

## Changes by locale

What partner proponents have actually achieved legislatively has been modest, since in most cases only public workers have been affected. But the list of locales is expanding:

- Four years ago, Berkeley approved a policy extending to city workers' partners all benefits available to spouses, including health insurance. Couples must file affidavits with the city, swearing that they "reside together and share the common necessities of life." Thus far, 85 percent of the signees have been heterosexual. Since 1985, an affidavit process also has been used in West Hollywood.

- Last autumn in Los Angeles, the city council approved the extension of sick and bereavement leave to city workers with partners, a policy that still must be negotiated with the unions. Meanwhile, a task force will examine the cost of extending health benefits.

- The San Francisco ordinance, approved in May after a seven-year battle, invites any cohabitants to register with the city. Municipal workers with

partners would receive sick and bereavement leave. As in L.A., a task force will look at health benefits. The ordinance was to have taken effect two weeks ago, but a group of conservative clergymen and rabbis collected enough signatures to put the measure on the November ballot. Until the referendum, the law is in limbo.

- This summer, Seattle lawmakers are expected to pass a law extending sick and bereavement leave, while recognizing "that families and other long-term committed relationships foster economic stability and emotional and psychological bonds."

- In Philadelphia, the Human Rela-

tions Commission is investigating a complaint, filed three years ago, by a gay city employee who had tried unsuccessfully to extend insurance benefits to his longtime companion. Sources close to the case say that the panel is trying to negotiate a settlement with the employee's union — and that the outcome could be pivotal to the domestic-partners debate here.

- In New York City, Mayor Ed Koch is readying an executive order, "for the sake of fairness and equity," that will extend paid bereavement leave to unmarried municipal workers with partners.

But it was the New York court ruling on July 6 that startled partisans on both sides. The issue was whether a gay man could be evicted from a rent-controlled Manhattan apartment where he had lived for 11 years until the death of his housemate, whose name was on the lease. The state Court of Appeals said no, arguing in a 4-2 decision that the city's rent-control law prohibited the eviction of any members of the deceased tenant's "family."

Judge Vito Titone wrote that Miguel Braschi and the late Leslie Blanchard were a family, based on "the exclusivity and longevity of the relationship, the level of emotional and financial commitment, the manner in which [they] conducted their daily lives and held themselves out to society, and the reliance placed upon one another for daily family services."

## The dissenters

But the two dissenting judges defended "traditional, legally recognized relationships," which gave landlords "an objective basis" for making eviction decisions. The dissenters feared that Titone's guidelines would be abused by cohabiting tenants who weren't nearly as familial in private as they claimed to be in public.

In Los Angeles, Thomas Coleman is naturally thrilled with the ruling: "Many times in law, the word *family* isn't even defined. But that's what this case is all about. This precedent isn't binding outside New York, and it only deals with [apartment tenants], but its principles will be cited in cases across the country."

"To have a court define *family* along 'reality lines' is very disturbing," says Paul Hetrick, vice president of Focus on the Family, a prominent religious radio ministry. "The court is saying, 'Here's what's happening out there, let's put a blessing on it.' That's roughly equivalent to saying, 'Let's legalize drugs, because drug use has become a pattern.' Whereas drug use is improper behavior that shouldn't occur."

In San Francisco, meanwhile, backers of the domestic-partners ordinance will quote the New York decision in their campaign literature during the fall referendum battle.

In the beginning, there was Larry Brinkin. He was testing the domestic-partner concept before it even had a name. He spent six years fighting about three days' pay, and in the end he lost.

In 1981, while Brinkin was working in California for the Southern Pacific Transportation Co., his companion of 11 years died. Brinkin took time off, but later was told by his employer that he wasn't entitled to the paid bereavement leave. "A guy who worked near me had just taken his three days to attend a funeral in Kansas for a stepmother he'd never met," Brinkin says now. "Yet after 11 years with Richard, I couldn't get leave."

### Taking case to court

Brinkin decided to fight, and after his union refused to help, he took the company to court. In 1987, the state Court of Appeals ruled against him, arguing that a private firm couldn't be expected to decide whether an unmarried worker's liaison possessed the "dignity and intimacy" commonly associated with "the marriage relationship." Brinkin decided not to appeal, fearing a rough reception from the conservative state Supreme Court.

Minnesota teacher Karen Thompson also learned the hard way that such relationships are illegitimate in the eyes of society. In 1983, her lover of four years, Sharon Kowalski, was critically injured by a drunken driver. When Donald Kowalski, the victim's father, learned about the relationship, he used his power as legal guardian to deny Thompson all access to the severely disabled woman.

Last year he said, "On the farm and in the Army, we called them queers and fruits."

Thompson didn't see Sharon Kowalski for 3½ years, until Feb. 3 of this year, following a court victory. Today Thompson says the whole fight

could have been avoided if she and Kowalski had drawn up power-of-attorney documents, guaranteeing that if one partner became incapacitated, the other would have the right to make all legal, medical and financial decisions.

"But we didn't think about doing that because we were so closeted," Thompson says now. "That denial left us vulnerable as a couple. A [nontraditional] family member is irresponsible if she doesn't protect the person she loves."

Cases like these hit home with people such as Carol Mortimer and her lover, Judy. The two Camden County women have generated a lot of paperwork so that nobody can pull them apart.

In the last three years, mindful of the Thompson-Kowalski battle, they've spent \$1,000 in legal fees on power-of-attorney documents. They even made miniature copies to carry in their purses. But all this "legal junk," as Judy calls it, hasn't helped much when dealing with insurance companies.

Earlier this year, they tried to buy a joint car insurance policy, since they co-own two cars. They were turned down by every company surveyed by

their agent, except for one insurer — which ranked 61st out of 61 companies rated by Consumer Reports. The other companies weren't being homophobic; they just refused to write joint policies for any unmarried couples. Yet Carol and Judy say they'd be married if given the choice.

What also galls them is the knowledge that, in the workplace generally, employee benefits packages now make up about 40 percent of a worker's total compensation. But since extension of those benefits is typically limited to spouses, they say that, in effect, they're being paid less for the same work done by heterosexuals, who are allowed to marry.

Gary Bauer, the former Reagan aide who now runs the conservative Family Research Council in Washington, says he "recognizes" the inequities of the typical employee benefit package. "They have my sympathy," he says. "But we believe that the worker sitting next to them, the married person with kids, is doing something for the society that warrants those benefits. If fewer and fewer people get married and have children, that would be a negative. We need to endorse and support the mainstream choice."

The concern, says Bauer, is that the domestic-partner concept will undermine and erode traditional families — making it appear, as Paul Hetrick puts it, that the gay family is "just another 'option' for kids, like vanilla, chocolate or strawberry in the ice cream store. It's like there's nobody to say what's right or wrong."

But, says Judy, "Love and commitment is what makes a family. Homosexuality has been around forever — 10 percent of the people, if you believe Kinsey. Even if you start provid-

ing [more benefits to gay people], it's not going to stop men and women from falling in love, getting married and having children. Marriage is a time-honored institution. If the only thing keeping it together is discrimination against other types of family, then there isn't much to be said for heterosexual marriage. And I think there's a lot to be said for it."

After the New York court ruled that a gay couple could be considered a family, a joke made the rounds inside Hetrick's ministry: "Did you hear that Hollywood plans to make a movie out

of this? They're going to call it *Two Men and a Maybe*."

But spokesmen for traditional values are dead serious about clamping a lid on the domestic-partner movement. "Groups like mine are now talking about when we'll go into court and take legal action" against such laws, says Bauer. "We also feel good about the U.S. Supreme Court. And we feel that the overwhelming majority of people will oppose this movement."

In fact, a national poll conducted last month for the San Francisco Examiner concluded that 57 percent of those surveyed disapproved of two same-sex citizens living together as a married couple.

Thomas Coleman doesn't dispute that finding but says, "This is an evolutionary process. First the localities will experiment with it. Then

businesses will ask states for uniform domestic-partner codes. Then there will be suggestions for national remedies. We're 20 or 30 years away. Why should this movement be different from any other in this country?"

Larry Brinkin, who now works for the City of San Francisco, acknowledges the limitations of that city's law. He knows it won't require private employers and insurance companies to change their policies. He knows that most cities are worried about the cost of extending health insurance coverage to the partners of city workers, although "when you're talking about discrimination, sometimes it costs a little money to right the wrongs."

Brinkin, who has been living with someone new for the last six years, says, "Right now, I'm looking out my window, across to City Hall. To have

the city recognize my relationship would be incredible to me, even if it is a piece of paper. It would feel good."