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Supplement One



Securing privacy
through law
and education

COMMISSION ON
**PERSONAL
PRIVACY**

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Supplement One:

This supplement document contains topical reports and surveys that pertain to sexual orientation discrimination or alternate family relationships. Authors and titles of these materials are listed below:

- Title: Recognizing Sexual Orientation and Gay People Within Secondary Curriculum: What Role for Schools?
Author: Dickson J. Hingson, Ph.D.
- Title: Report of the Committee on Family Relationships
Author: Ellen McCord
- Title: California Tax Laws and Alternate Families
Author: Pat Wakayama
- Title: "Family" and "Household" Use Survey: How Government Agencies Use These Terms in Operating Their Programs
Author: Conducted by the Institute for Local Self Government and Menkin-Lucero & Associates for the State Personnel Board
- Title: Discrimination Against Lesbians and Gay Men in Private Employment
Author: Donna J. Hitchens and Linda Barr, Lesbian Rights Project
- Title: Child Custody Disputes and the Homosexual Parent
Author: Commissioner Roberta Bennett
- Title: Sexual Harassment in State Employment
Author: Pat Wakayama
- Title: Sexual Harassment Survey of State Government Employers
Author: Conducted by the Institute for Local Self Government and Menkin-Lucero & Associates for the State Personnel Board



DISCLAIMER

The views stated in the topical reports contained in the Supplements published by the Commission on Personal Privacy are the views of the authors of those reports and do not necessarily reflect the views of the Commission as a whole.

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The Commission is grateful for the research done by the authors of the topical reports contained in the Supplements. The Commission found these reports helpful in its deliberations and in many cases adopted the recommendations suggested in these reports, either in whole or in part.

Recognizing Sexual Orientation and Gay People
Within the Secondary Curriculum:
What Role for Schools?

Dickson J. Hingson, Ph.D.

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SUMMARY OF FINDINGS

1. Homophobic attitudes and stereotyping have persisted in parental child rearing, in school peer groups, among school personnel.
2. These attitudes and practices, passed down the generations, can stifle youth's Decisional and Associational Privacy. They often mar self-esteem among gay youth in particular. This strikes at American democratic values, especially at equal opportunity to realize one's own capacity for personal autonomy.
3. Most public schools are not preparing students for reality by choosing to ignore their role in providing nonjudgmental, factual information about human sexuality, including homosexuality. Intimidation ("deep paternalism") from vociferous, sectarian minorities is the main reason; uncommitted administrative and board leadership in the school systems serve to reinforce this failure.
4. The courts, for various reasons, are reluctant to address some of these issues or to clearly recognize decisional privacy claims. This leaves the responsibility to school boards and administrators.
5. A few school districts, such as Santa Barbara, have begun community-backed "education for reality" programs within the curriculum, dealing specifically with the question of sexual orientation.
6. These districts have field tested a singularly effective technique for exposing the myths and stereotypes regarding sexual orientation. It is to invite sensitive and experienced homosexual persons to participate in question-and-answer classroom dialogues. Several other field-tested classroom techniques for addressing this subject are available. All these techniques facilitate the exploration of discriminatory practices and their social consequences.
7. Effective teacher implementation of such education is still rather compromised by political, leadership, and fiscal problems even where a supportive policy framework has been evolved at the district level, as in Santa Barbara.

These problems, analyzed in the report, are:

- a. Policy vacuums and omissions, as well as the intimidating Schmitz Act (Education Code Section 51550).
- b. Inadequate policy orientation; also, oft-undependable personal commitments regarding active nondiscrimination and curricular enrichment policies.

- c. Inadequate stated sanctions against overt discrimination.
- d. Erratic problem-solving approaches and uses of power; inter-personal communication problems; bureaucracy.
- e. Fear of potential controversy; intimidation by actual controversy. Abdication of leadership responsibilities.
- f. Insufficient funding for human relations administrative personnel.

SUMMARY OF RECOMMENDATIONS

Recommendations to Local Communities and School Districts

1. Creatively strengthen individual commitments to improve human understanding and to teach human dignity. (Ways to do this are presented in main text below, page 52.)
2. Employ people with specific leadership potential in addressing human relations issues.
3. Develop and implement specific nondiscrimination policy.
 - a. Each district board should add sexual orientation to the non-discrimination clauses of its affirmative action/equal opportunity or human relations policy.
 - b. Each district board should ensure that such policies work, through (1) effective orientation and dissemination, and (2) systematic monitoring for implementation.
4. Develop and implement appropriate curriculum:
 - a. Each district board should use its local option to mandate comprehensive human relations/sex education instruction within the health curriculum framework.
 - b. Teachers in relevant curricula should, as part of their material on homosexuality, bear in mind the value of presenting skilled, experienced gay/lesbian speakers in classroom dialogue.
 - c. Information and recognition concerning homosexuality should also be integrated naturally into course work in various disciplines, at various grade levels; it should be also incorporated under broader topic headings ("friendship", "dating" and "family relationships") within the family life/sex education curriculum itself.

- d. Teachers in relevant curricula need to be objective in presenting speakers and other instructional material.
 - e. District boards should establish a standing, advisory "Students' Right to Learn Committee" to assist the superintendent in the adjudication of community controversies over using special classroom learning resources, and to help ensure teachers' freedom to teach.
 - f. Superintendents and education schools should emphasize policy development, staff-development workshops and continuing education classes on "Dealing with Controversy" for personnel in sensitive areas.
 - g. District boards and superintendents should require more time for staff development and policy orientation on part of personnel but with reasonable incentives (compensation).
5. District boards and superintendents, in liaison with the community, should work to secure long-term funding support for family life and sex education (includes staff development).

Recommendations to California State Legislature and to California Department of Education

- 1. a. The Legislature should pass legislation adding sexual orientation to the nondiscrimination clauses of the California Fair Employment Practices Act, including public education.
- b. The State Board of Education should urge that a corresponding nondiscrimination policy be adopted in all school districts in the State.
- 2. The Legislature should repeal the Schmitz Act (Education Code Section 51550*). The Schmitz Act treats sex education differently from any other aspect of the curriculum. Its threat to revoke teaching licenses of violators greatly intimidates teaching in this area.
- 3. Mandate "Family Life/Parenting/Sex Education/Human Relations" as a course for all public junior and senior high students. (Suggested time: one semester-equivalent every two years in secondary school years.)

*Full text in Appendix, Exhibit "E", see also main body of text for fuller discussion.

4. The California Department of Education, starting at the level of Superintendent of Public Instruction, should exert much more committed, consistent leadership on behalf of Family Life and Sex Education throughout the State school system.
5. The California Department of Education should therefore establish a permanent Department of Family Life and Sex Education with a program manager and a staff of two to five persons and with an annual budget (initially) of at least \$250,000.
6. The Legislature should lower the age of consent for sexual relations.

Reasons for aligning the age more closely with puberty are numerous and obvious; most of them are beyond the scope of this particular report. But the presently unrealistic age of 18 is regularly used by opponents of sex education, who assert that such education in the school is promotion of illicit activities and a contribution to the delinquency of minors. Together with the Schmitz Act, the effect on education, learning, and expression is intimidating - an unwarranted invasion of decisional and associational privacy of youth.

INTRODUCTION

California youth in the 1980's experience privacy invasions straight out of the 1890's and long before. They must put up with ingrained American taboos against sexuality, taboos especially hard on homosexual and bisexual youth. In spite of the recent decade of change, negative stereotyping is still with us. Censorship, guilt, and ignorance are still at work. In testimony before the Commission on Personal Privacy, speaker after speaker referred to the social costs of such outdated pressures upon young people. These pressures can destroy any sense of *decisional and associational privacy**.¹ These youth are trying to

*"*Decisional and associational privacy* pertain to one's intimate, political, social, and other personal relationships, and protect one's personality and decisions regarding manifestations of personality. Basically, what we are referring to here is 'freedom of choice' in matters which our society considers fundamental to liberty. The right of privacy protects the interest of each individual in independently making certain kinds of important decisions. The United States Supreme Court has characterized these protected decisions as involving matters such as 'marriage, procreation, contraception, family relationships, and child rearing and education'."¹

figure out questions of identity, personal autonomy, and interpersonal friendship, but their sense of self-esteem is often marred from without; their freedom to intimate association limited cruelly. Self-alienation and loneliness are prevalent outcomes. Nongay youth, too, are deprived by the lack of information, by these same pressures against intimacy and affection.

Social costs from this are visible in (1) a serious problem of sexual minority youth who finally run away from unsupportive homes and communities into large California cities and (2) school dropouts.² (A reason reported by at least half of dropouts was "social isolation" - feelings by the youngsters that they are somehow different and out of step with their peers.³ Some of them told the interviewers their dropping out was related to being gay or lesbian, that they felt like "the only one" or had felt there must be "something wrong with me". "Unfortunately", the researchers told the State Board of Education, "there seems to be a high correlation between the kinds of abuse and isolation that a young gay or lesbian faces in high school, and the social isolation pressures reported by dropouts in general."⁴) (3) Recently, there have been numerous instances of documented anti-gay violence in California cities, much of it youth instigated.

However, these are only surface manifestations: the tip of the "homophobia iceberg". Basic personal privacy issues, affecting the healthful well-being and productivity of much of the State's citizenry, are profoundly at stake. In this report, I shall examine these underlying issues with focus on the adolescents in the public school system and the curriculum it offers. One effective curriculum remedy will be examined in detail and used as a basis for recommendations.

In childhood, social bonding and the formation of intimate associations become very important. Many personal identity issues emerge in these formulative relationships. A lot of this is tied to one's own growing body: for example, gender (and the various roles based on gender), the emerging sexual drive and sexual orientation*, and body concept. The adolescent clearly confronts all this in romantic/erotic feelings which are at once troubling, compelling, yet beautiful.

Youth are plunging into adult reality - human existence as self-aware, physical, highly social and sexual beings. The school environment heightens this transformation because it exposes one to many others in a wide variety of settings. The stage is thus set; the necessity for learning about relationships, about "soul", about body, as well as about subject matter, is clear.

*Determined in early childhood or before birth in most instances.⁵

Amidst this we have the additional undeniable fact that a significant minority of these youths are experiencing same-sex attractions, "crushes", and otherwise intense affiliations. Some of them are deeply felt, unspoken yearnings, others are acted out.

But the school male peer environment, especially, is insecure and hostile to that kind of intimate association. Rather, it makes insistent demands for heterosexual conformism and conquest; it puffs itself up with "queer jokes", name calling, and crude locker room gossip replete with anti-gay stereotyping. Often, male gym instructors make blatant insinuations about poor performance.⁴ Nothing gay seems remotely legitimate, especially at school functions like dances and proms. These are facts of school life.

A gay Stanford University student said it this way in a 1975 letter⁶ to a Palo Alto school board member:

"The gay student is aware of his attraction for members of his own sex, yet he knows he is unlike the stereotypes of those believed to feel as he does. He knows that to have feelings of affection for, and indeed sexual interest in, members of his own sex is [seen as] sick, sinful, and/or crazy. It is no wonder then, that he is confused and frightened and that his own self-image sometimes suffers a severe devaluation. He too has been taught to hate and fear the homosexual, and this is not changed even when it becomes himself that he hates."

He went on to suggest what might happen in schools where acknowledged gay teachers were accepted, where gayness could be rationally discussed:

"I think it important that barriers not be erected that prevent such a student from rebuilding the self that an oppressive and ignorant society has so systematically destroyed. To be able to see others of his sexual orientation who are capable and successful members of his community aids this process of securing a sense of self-acceptance and self-worth.

"But think also of the heterosexual student. Surely you do not believe that, if when you were a high school student, you had known successful and capable homosexual teachers, that you would have magically lost your attraction for girls. However, you might very well have begun to question the stereotypes you had. And, more importantly, you might have objected when fellow students labeled another in your school and called him 'faggot' or 'queer'."

The curriculum tends to be moralistic or aloof and silent on the realities of sexual attraction, especially when homosexual. But we have come to realize that human relations and psychology have academic value no less than, say, biology or mathematics or government. All these have vital meaning in human life; all should be subjects for academic enlightenment.

Even more than this, fundamental democratic values are at stake; schools have long been legitimately concerned with a "socialization for democracy" function, i.e., "the inculcation of values deemed essential for a cohesive, harmonious, law-abiding society".⁷ These values include respect for individuals, for individual differences. They include concern about prejudice.

A newly published teacher's source book about homosexuality and the curriculum draws the connection: "Today we recognize the value of strengthening self-esteem in young adults, no matter what their race, class, disability, etc. So too we wish to strengthen self-esteem with regard to sexuality. Social activists who have fought against discrimination in other areas are now demanding that we live up to our democratic values and grant lesbians and gay men their equal civil rights and respect."⁸

One is tempted to immediately push on into consideration of educational remedies. First, however, let us further understand personal privacy as an emerging concept in human rights theory and in American constitutional law, paying particular attention to the present plight of gay adolescents in our State school systems.

RELATION TO PERSONAL PRIVACY

Legal scholars^{9, 10} have recently pointed out that the right to intimate association (including ultimately "the right to love", with abundant personal autonomy in such matters) is implicit in the First Amendment of the United States Constitution. This is because to be human includes the need to express love and to receive expressions of love. Karst¹¹ describes this need as core to the "formation and shaping of an individual's sense of his/her own identity"; Richards¹² as core to defining basic "meaning in life". There is every evidence that adolescents have these needs just as strongly, just as compellingly, as do adults.¹³

Yet, our society doesn't accord adolescents equal respect in exercising or developing their capacities to express these needs autonomously. If adolescents under 18 engage in sexual activities in California, in most cases they are engaging in "criminal" activities proscribed by statute. Even sex education - which could facilitate "education for independence"

regarding mature, intimate associations - is either blocked or clearly limited, whether by law or by school boards and administrators. As psychologist David Hall testified before the Commission, the 1969 "Schmitz Act" is still impairing effective sex education and "it literally intimidates people so that they are afraid to deal with it".¹⁴ Former Department of Education sex education consultant Susan Cronenwett, in her Commission testimony, graphically described how, in 1981(!), vociferous minorities continued to effect blockage of curriculum development about sexuality in California. She further noted the absence of strong Department of Education leadership in such matters. Finally, she detailed social costs, economic costs from overly restricted/limited sex education. Indeed, she told the Commission that sex education in the schools is "hardly happening" in spite of an authorized State Board of Education framework. "If there is any sex education going on, it is limited and every teacher out there is hanging by a limb when they're doing it. They're doing it because of their own personal convictions with very little school board support, if any, and very little administrative support."¹⁵

Such legal and political blockage invades decisional privacy of adolescents, i.e., their right to information and dominion over their bodies. It interferes with their right to emerge from public education as free and rational persons with "perspective on where they have come from and where they may rationally choose to go".¹⁶ How can one make responsible decisions if truth is distorted, withheld or only partially yielded?*

As pointed out by U. C. Berkeley Law Professor Steve Block, the key task before the California Commission on Personal Privacy is to examine not only rights, but the kind of governmental interest advanced as justification for intruding upon those human rights and liberties. Ultimately, he suggests, this governmental interest often reduces to matters of morality or paternalism - an "effort to impose a code of morality on all citizens and sit in loco parentis on individual decisions".¹⁷ Nowhere is the in loco parentis concept more apparent or troublesome than in the public schools, and especially where sexual development/ expression issues are concerned.

It therefore becomes useful to look at two models of paternalism - "deep paternalism" versus "liberal paternalism" - as contrasted by Richards. "Deep paternalism" is that "model of authority relationships which says that the very few individuals capable of rationale self-rule are entitled to dominate, totally and intrusively, that mass of human beings

*The California situation is in astonishing contrast to that in Sweden. "There, if parents of a high school student...wish for their child not to receive sex education, they have to appear before the Board of Education to plead their case."¹⁸

who are wholly incapable of such rational self-control and planning". It is founded, he says, on "disrespect for the capacity of individuals to plan their own lives".¹⁹

The alternative, Lockean model of "liberal paternalism", Richards argues, is behind our First and Fourteenth Amendments and should be the governing principle in education:

"Equal opportunity requires (the educational system) to provide children and young adults with an equal opportunity to develop their sensitivities and capabilities, particularly their rational concept of their own good, so that they may develop and realize a coherent life plan."²⁰

The concept applies to parents, too; it "requires that the parent prepare the child for the child's eventual separation from the parent, the child's emergence as a free and rational person". Liberal paternalism enthusiastically recognizes the parents' right for expression and self-realization through childrearing IF, and only if, "their actions are consistent with a proper concern and respect for the developmental rights of the child."²¹ In brief, it comes to this:

"There are two gifts
We can give to our children;
One is roots,
The other is wings."²²

Richards describes how the courts in Meyer and Pierce and in Tinker have afforded constitutional protection against parental/administrative attempts to limit the "range of subjects and viewpoints to which students may be exposed"*, or administrative attempts "to insulate the school environment from political controversy in the absence of evidence that controversy would cause disruption".²³ Various other court decisions, too, have recognized the child's right to be free from interference with thought; indeed, they have held that failure to expose the child to "different and opposing" ideas can "shackle" a child's (or youth's) mind.²⁴ However, as pointed out by the recent University of Michigan study project, privacy law is still not fully evolved.²⁵ Further, the courts do not always have expertise in education and have practical difficulties in formulating remedies to these mind-invading (really,

*Somewhat undermined by court decision regarding Amish school children in Wisconsin vs. Yoder.²³; but strengthened again by 1982 decision²⁷ allowing lawsuit against a school board's attempt to remove books from a school library.

privacy-invading) shackles**. In many instances, this is likely to prevent courts from recognizing a claim, "leaving intact the school board's pervasive control of the curriculum".²⁶ Constitutional privacy issues continually risk being sacrificed at the altar of majoritarian politics.

QUESTIONS TO BE ADDRESSED

This study addresses the following questions:

1. What is the prevalence, intensity, and consequence of homophobic attitudes among adolescents? Among teachers and parents?
2. Are there significant male versus female differences in attitudes toward same-sex intimacy?
3. How effective are invited gay/lesbian speaker panels in classroom settings toward awareness? Toward changing anti-gay social pressures, attitudes, etc.?
4. What other educational techniques/methods have been demonstrated to be of use or potential use in creating more awareness, openness, etc., regarding homosexuality?
5. What is current local school district policy supporting associational privacy/decisional privacy among adolescents regarding sexual orientation? (The Santa Barbara, California school district will be examined as primary case example.)
6. What has been the origin and political evolution of these policies?
7. What is current district practice regarding sexual orientation (with emphasis on the curriculum and, in particular, utilization of invited speaker panels)?
8. What factors account for any divergences between policies and practices?
9. What recommendations can be derived from the answers to the above questions?

**The U.S. Supreme Court's failure to formulate specific First Amendment remedies regarding school libraries in the Island Trees case²⁷ is a striking example.

ATTITUDES: PARENTS AND STUDENTS

We now present a broader overview of the current state of student attitudes about homosexuality and those of their parents (they tend to be similar); further, we shall note striking gender differences between mothers compared to fathers, and between daughters compared to sons, in the way they view same-sex interactions.

There is no thorough California research available on parental attitudes/ behaviors, so it may be instructive to cite results from a 1975-78 Cleveland, Ohio study on the role of 1,400 mothers and fathers in the sexual learning of their children.²⁸ A nationwide Gallup poll taken at the same time found respondents closely divided on whether homosexual acts should be legal or not.²⁹ It's not surprising, then, that the Cleveland parents had a wide spectrum of views. Some, especially the younger and colleged-educated, wanted their children to have more tolerance toward homosexuality. But only a very small percentage had discussed heterosexuality or homosexuality with their children and most found homosexuality a "disturbing reality" - one they hoped would not reach their families. The researcher, Elizabeth J. Roberts, concluded:

"In the majority of homes...homosexuality is hidden under a veil of silence and fear, and many parents watch their children's behavior for any signs of it; obviously they hope to 'nip it in the bud' or otherwise 'steer their youngsters away from it'."

She also noted "too much touching, especially among boys, appears to cause discomfort for a number of parents".³⁰

The researcher also found that, across all educational and age levels, parents of daughters are more accepting of homosexuality than were parents of sons. Sixty percent of the parents surveyed reported that their daughters usually hugged girlfriends, but that their sons never hugged male friends. Of the parents themselves, 70% of fathers reported that they themselves rarely or never hug their male friends while six out of ten mothers reported that they hug their female friends very often.

The researchers expressed concern about the impact of these parental behaviors on sons' versus daughters' associational behavior, noting that "there are indications that parental anxiety regarding their sons' sexuality may be responsible for the discouragement of their sons' establishment of close, intimate friendships with one or two boys. Such intimate dyadic friendships between boys may trigger fears in parents of 'unmanly behavior' or the potential of homosexuality. Since throughout childhood same-sex peers are the main reference group for both boys and girls, boys' displays of emotion may be consistently thwarted."

"It is known that girls in their play groups (and later women in their friendships) are allowed considerable latitude in displays of emotion and affection. Girls may touch, hug, and kiss each other without arousing parental anxieties. Boys (and men), however, are not allowed the same freedom to display affection among their peers. In fact, their association with a large group of friends may be seen as a safeguard against the development of such affection."³¹

The consequences for emotional learning among youth need hardly be further stated. Homophobia, passed down the generations, is now believed to have deleterious consequences for general mental and physical health. The reason is that homophobia blocks close friendship (especially male friendships but also between females) in profound and needless ways. The devaluation of friendship can produce socially isolated, driven individuals - unsupported and alone. Sickness may be a by-product.³² Worse yet, homophobic assaults against individuals have led to many violent injuries and deaths.

The "American Freshman" surveys for 1976-81 showed entering college students, like the general public, steeped in homophobia. Nearly 60% of the male freshmen and 40% of the entering females supported criminalization of homosexuality.³³ Recent survey tabulations from several hundred high school students in Santa Barbara, California also confirm how especially male-intense is adolescent homophobia.

EXISTING REMEDIES

The case for increased attention to combatting pervasive anti-gay prejudice and ignorance through youth education could not be more compellingly stated than by Dr. Bill Paul of San Francisco State University:

"Knowledge is an ultimate enemy of prejudice.* The officially enforced scarcity of information about Gay people and homosexual behavior appears at least partially responsible for the tendency among many Americans to rely on vague beliefs and gut-level feelings on important human rights issues involving Gay people."

Dr. Paul points out that the available educative remedies are not all dry and factual.

*After Ralph Waldo Emerson.

"There are evocative forms of affective education. Hence, the educational task requires that we not only respond to the issues with factual information, but that we undertake education strategies of demystification which utilize imagery and empathic appeals... *Our focus should be on reduction of social distance by approaches which humanize the issues - from homosexuality as it, to Gay men and Lesbians as people.*"³⁴

What, practically speaking, are particularly effective strategies for demystification of Gay people? One should start with the obvious. Begin with reality. Begin with people-to-people education and dialogue! Several California school districts, particularly in the Bay Area and in Santa Barbara, have courageously pioneered classroom appearances by inviting in gay/lesbian resource persons from the community in their unit on sexual orientation. *Effective human relations learning requires first-hand mutual recognition, sharing, and questioning between different groups or classes of human beings.*

It's tough for the regularly employed teaching staffs to do this on their own. Most teachers are not gay or bisexual, thus don't have direct destereotyping potential through their own personhood. They furthermore have not gone through certain somewhat unique processes of introspection and personal experience that can be communicated by gay people. Closeted gay and bisexual teachers are numerous in California, as everywhere, but there's a lot of pressure against communicating this dimension of themselves. Fear of involvement in a highly personal community controversy, fear of loss of control in the classroom, fear of damaged or lost career opportunities, all these keep most homosexual teachers tightly in the closet. This is true even for very liberal school districts, in spite of the defeat of the Briggs Initiative in 1978. The "role model" concept, whose value has lately been recognized for Black and other ethnic minorities, is still not operationally secure for Gay teachers.*

This report will explore another effective remedy for ignorance - the participation of experienced, sensitive gay speakers in question-and-answer dialogues within the classroom setting.

There are a large number of other effective classroom techniques which don't require speakers. Many of them are described, with detailed lesson plans, in the excellent book, "DeMystifying Homosexuality: A Teacher's Source Book on Lesbians and Gay Men" (Human Rights Foundation,

*For a personal account of this, see "Exhibit A", written by a teacher for a Los Angeles-based lesbian newsletter in 1982.³⁵

1983, to be published by Irvington Press, New York, New York). However, we shall here concentrate on the use of gay/lesbian speakers. This is a singularly effective method for destereotyping and humanizing this subject in the public school. Precisely because of that fact, it sensitively tests the ability of a public school community to allow "liberal paternalism" dominance over privacy-invading "deep paternalism" as its guiding educational philosophy.

As a case study for analysis, the author draws upon his decade-long experience pioneering gay panels in high school family living classes, together with his simultaneous evolution of nondiscrimination policy regarding sexual orientation, within the Santa Barbara High School District.

The Santa Barbara district is particularly appropriate for such an analysis. This moderate-sized, diverse community has "small-town" aspects mixed with educated cosmopolitanism which makes its example relevant to many communities in our State. The educational effort made here between 1972 and 1982 illustrates the potential power of such a humanistic "demystifying" strategy in its successful application. It also reveals the tenaciously lingering resistance to it. The result has been a highly illuminating tension. Practical dilemmas in social policy and public school educational administration are apparently inevitable and must be solved before this issue is to be "worked through".

CASE STUDY OF GAY SPEAKERS' PROGRAM IN SANTA BARBARA

In 1972-73, a number of aware high school teachers in the Santa Barbara schools began inviting gay men and lesbians as classroom speakers to make a personal effort toward clearing away destructive stereotypes and myths. Such panels permitted direct exposure to perspectives from open and positive human personhood, indeed to persons themselves. The success of this program has been remarkable. Since then, the UCSB Gay Speakers Bureau has provided well over a hundred classroom presentations in the high schools and hundreds more to college, university, and agency classes in the community.

These panels or speakers were actually invited into the schools before the topic of "sexual orientation" (or homosexuality) became officially part of a Board-ratified curriculum. They also preceded, by several years, the adoption of a district nondiscrimination policy specifying sexual orientation as a protected human characteristic.

The gay speakers were first invited as part of a class in family living, under guidelines of the Outside Speaker Policy of the Santa Barbara School and High School Districts.* This policy commits the schools to "consider it their responsibility to bring to their students a wide variety of outside speakers whenever the skills or knowledges of such speakers can contribute to the fields in which they speak". The same policy also makes it clear that the "possibility (of controversy) must not be allowed to stand in the way of freedom of inquiry and the best possible program of instruction", that "to provide an adequate, viable, and well-rounded education for all, schools must expose students not only to many points of view and shades of opinion, but also to many sides of life and many kinds of people".

Presentations were generally made by two to five speakers, including both males and females, visiting with a class for one or two periods. The panelists would self-disclose their gay identity and speak frankly for a short while from personal experience. They also imparted factual information and historical perspective. They talked about their everyday lives, about stereotypes; they paid particular attention to the matter of "coming out", of coming to terms with a minority sexual orientation in American society. Advocacy was never expressed, beyond supporting the freedom to be oneself. Question-and-answer dialogue was of central importance. Students wanted to know how the visitors felt about sex roles, about their relationship with their parents, about their desires for children, and so on. Interest among students was invariably high; many wanted to come back for a subsequent class. Some students selected the family living elective because they knew a gay unit with speakers was included.

The experience has special educational aspects well worth mentioning:

1. Although the students may be aware of gay men and lesbians, and may have gay persons in their family, few have had the opportunity to talk with gay people in a structured environment.

The simple process of maturely recognizing gay people in a structured setting (and, conversely for the panelists, the process of actually being so recognized by a nongay audience) is in itself an educational exercise, an effective experience in "learning by doing".

*Full text of Policy is in Appendix, Exhibit "B".

2. Closeted gay students get to watch, invisibly, how their peers respond. All the students learn that homophobia is far from uniform - that, in fact, many peers and teachers are quite open to homosexuality and/or to the speakers as capable human beings. For gay students, that can be an esteem-building, strength-giving revelation.
3. Larger panels of three to five communicate striking diversity. Many teachers feel that this is very important so they are willing to sacrifice some depth.

There are several precautions if the experience is to be successful from an educational point of view. Both the class and the speakers need to be adequately prepared in advance as to what is expected. Enlightening detail about this is found in "A Teacher's Sourcebook: DeMystifying Homosexuality" (Human Rights Foundation).⁸

The experience of hearing, seeing, and recognizing gay panels resulted in very favorable evaluations from students and teachers. At San Marcos High, for example, homosexual panels repeatedly received the highest ratings on a list of the dozen or so invited outside presentations in the student course-end evaluations.

When asked to justify these assertions of value, representative comments were like the following:

1. "The (homosexuals) came into this class, everyone different, and very much prejudice against them. They had the hardest presentation to make and they did the best job doing it and I think everyone took it really well." (Female, San Marcos High School, 1974)
2. "I can honestly say that the homosexual presentation was the best presentation. They really surprised me. I got to see that they are as normal as I am. There is nothing wrong with what they are doing. They have no reason to hide it and they don't. Because they talked so freely and comfortably, I thought it was very effective." (Female, San Marcos High School, 1974)
3. "The homosexuals, because people really doesn't know how those types tick, and the presentation gave me a better understanding of what they're like, how they look, and their feelings." (Male, San Marcos High School, 1974)
4. "And let me tell you - I was one of the people who rated the homosexuals so high, and the reason why I rated them as good speakers is that I learned they weren't the lepers of society

that some people would like you to believe...In no case did any of these speakers try to subvert or pander. They just presented their side of the point in an educational manner, in an informative way." (Male, school board public hearing testimony, Santa Barbara Junior High School, November 21, 1974)

5. "In my family life class today there was a panel of homosexuals. The gay people talked about what it was like to be gay. How it had effected their lives. How the stereotype of a homosexual was blown out of proportion...the gay people weren't what I thought they would be like. They sure opened my eyes." (Male, Dos Pueblos High School, 1982)

Some students have more ambivalent reactions which illustrate both educational benefit and the strength of personal conviction:

"I learned that they are people, too, but I don't agree with them at all." (Male, Dos Pueblos High School, 1981)

And some react, at least on paper:

"...I think they have no good reasons for being homo. It is sick." (Male, San Marcos High School, 1974)

We do not have controlled experimental data on the degree of positive attitude change (toward increasing tolerance, acceptance, neutrality, understanding, etc.). Uncontrolled pretesting and posttesting from 1976 at Dos Pueblos High School suggests a significant opinion shift of perhaps 25 points toward such viewpoints by semester's end. Considering that student opinion had been evenly split at semester's outset, a 25-point shift would seem very tangible. This would need confirmation, however, by controlled research.

On handout questionnaires, seventy to eighty percent of students who heard panels at San Marcos High School and Dos Pueblos High School in 1975-77 expressed support for such panels being part of the regular curriculum.

But what about parents and other citizens? Varying opinions were expressed by members of the general Santa Barbara community concerning gay speakers and classroom discussions of homosexuality in the high schools. Though no polling was done, in 1974-75 the Goleta Valley Today, a

moderately conservative suburban newspaper, published 12 citizen photographs and quotes based on random street interviews.³⁶ Nine citizens favored such presentations; three opposed. A sampling of the supportive comments follows:

1. "Yeah, that's their way. You can't live in the world and not know how others live." (Female, 16)
2. "I think they should (be allowed to speak) because people should know what they are. To some persons, especially older people, they're something really frightening." (Male, 67)
3. "Yes, I do (support speakers). I went to a meeting once where there were ten homosexuals discussing it openly and it gave me a better feeling about it. If it was discussed more openly, it would help people understand it better." (Married female, 20's)
4. "Definitely. It's the only way students can get a really good view on the homosexual's opinions on his lifestyle and to be exposed to his viewpoint." (Male, 24)
5. "It should be discussed in high schools, not the elementary levels. They should know about it - what it means and what it is - and openly, not secretly." (Male, 40's)

There were negative viewpoints:

1. "No. I think it's improper and unfair to have that in the schools because I can't come to the school and teach my personal religious convictions which maintain that homosexuality is wrong." (Male, 37)
2. "I'd rather they didn't. As far as I can see, they need help." (Female, 45)
3. "I'm against the whole darn thing, even putting it on a ballot to vote on. I think it's a bunch of hoey." (Male, 60's)

Some people with negative viewpoints coalesced in 1974, forming an anti-sex education group calling itself "Concerned Parents". What happened when they took the offensive against the school board is reported under POLITICAL EVOLUTION.

POLICY CONSIDERATIONS

Various district policies (or their lack) worked toward somewhat opposite ends as far as students' decisional privacy is concerned.

On the one hand, various Santa Barbara policies enhanced decisional privacy. These were:

1. The Outside Speakers' Policy* clauses encouraging and supporting usage of community resource persons where relevant to an enriched curriculum.
2. Philosophical policy statements from various sources, committing the school system to humanistic education, respect for the individual and individual differences, social diversity, etc.
3. Curriculum and teacher characteristic guidelines for the "minimal standard" health education curriculum (approved by the school board in 1975 and 1980). For the first time, these mandated specific units on sex roles, sexual orientation, sexuality, friendships, dating, life styles, marriage, etc. They further encouraged teachers to use a variety of community resources in planning and carrying out this curriculum.
4. The Affirmative Action/Equal Opportunity Policy** (approved by the board in 1977 and revised/expanded in 1980). Sexual orientation, among various other specified human characteristics, is to be protected from discriminatory practices and overt discriminatory verbal expressions like student name-calling. This protection was expanded to cover not only employment but also "all other aspects of district operations". The protection explicitly applies to students as well as employees.***

*Full text in Exhibit "B".

**The school board policy statements adding sexual orientation were spurred by local gay, feminist, and humanist movements. Analogous actions, taken about the same time by school boards in San Francisco and Palo Alto, set precedents which made it easier for the Santa Barbara milestones to occur. Still, just as in these two other communities, the work was time consuming, courage demanding, often tedious for local activists, educators, and civil libertarians.

***Full text of policy in Exhibit "C".

On the other hand, several policy clauses subtracted from students' decisional privacy. These gave avenues of relief to those wishing curricular censorship. The Outside Speakers' Policy, for example, gives the principal of each school broad latitude in ultimately determining whether speakers may actually be used. The principal may (and on occasion did) override the teacher or place restrictions on access to speakers judged controversial or "not to fit legal, moral, and ethical requirements". One superintendent overturned one of these denials and reinstated the speakers (1974); another refused to interfere when the same principal subsequently placed unprecedented restrictions on student access to invited gay speakers (1981).

On paper, but never actually used, is a formal citizens' avenue of objection to use of outside speakers. If ever used, this administrative regulation would give the superintendent the pivotal power of determination with the school board as final authority.

A rather vague clause, ingeniously - and questionably - allowed by the present superintendent to specially restrict access to gay speakers (1981), came from another policy entitled "Controversial Issues in the Schools". The specific language: "Educators at all levels of responsibility are obligated to be vigilant constantly against attempts to use the schools *for special interests.*" (author's italics)

POLITICAL EVOLUTION

Use of the immediately foregoing clause highlights the fact that education about, and from, homosexual persons in a divided and democratic society can be, unfortunately, a politically charged issue. It is therefore of interest that in the late summer of 1977, with Anita Bryant and John Briggs national celebrities, the Santa Barbara school board unanimously amended its nondiscrimination/affirmative action policy to include sexual orientation.

The board's thorough education on the issue was partly catalyzed by the outbreak of a major mid-70's community controversy. By then there was growing use of gay speakers and other nongay speakers in sex education/family living classes. The classes themselves had become quite comprehensive in scope. Although such classes were available at each high school, gay resource persons were equally available to each from the community, and the same policies were applicable everywhere, there was widely divergent usage of gay panels.

One school, Dos Pueblos High School, was drawing upon the panels frequently. Another high school, Santa Barbara High School, was declining to invite such appearances at all. Administrators at the third school, San Marcos High School, were following an erratic course - first allowing the panels in some classes but not in others equally relevant, then (futilely) attempting to deny them altogether, finally restricting them to voluntary-only, evening-only presentations. Interested students had to come back to the school at night and bring with them a specially signed, unique parental permission slip applying only to these speakers. (This reduced attendance by up to half.)

It was family living classes at the "school in the middle", San Marcos High School, which became the spark for the big 1974 controversy. Instigated by fundamentalists and conservatives, their grievance centered particularly on classroom presentations and discussion of abortion, premarital sex, homosexuality, and masturbation. They threatened to sue the school board for "contributing to the delinquency of minors."*

Three major public hearings were demanded by "Concerned Parents" and held before the superintendent and board. The final evening hearing lasted four hours and was attended by 1,000 persons (an enormous crowd for Santa Barbara!). Liberal sentiment for sex education and gay awareness education by that time had coalesced and become surprisingly predominant. To cheers and applause, the Board finally on 4-1 votes upheld the sex education classes and reaffirmed the Outside Speakers Policy.

The lone dissenting vote was cast by Gary Ricks, a bishop in the local Mormon Church. Speaking for the "deep paternalistic" principle, Mr. Ricks said:

"Now, one of the justifications of the course has been said to be, we present pros and cons of various issues, whether it be premarital sex, or other aspects of sexuality. And that, to my mind, is the dangerous area.

"When we read the Education Code under which we're supposed to govern this District it says the teacher is supposed to teach morality. Now the question, 'What is morality?', that itself is a very difficult question. It has been said that no position is taken in this course with respect to the issues that have been

*The same rationale for a lawsuit appears in a pending case (Women's Committee for Responsible Government, et al., vs. Barbara Aved, et al.) in Sacramento County Superior Court regarding Family Life/Sex Education instruction in the Santa Cruz, California public schools.

discussed. And I raise the query, is that correct, NOT to take a position, when the Education Code says the teachers shall emphasize morality and shall teach moral principles?"³⁷

Representing a "liberal paternalistic" (better called "maternalistic" maybe!) point of view, Dr. Evelyn Hooker of UCLA Medical Center spoke to the sexual orientation issue. Hooker, a clinical psychologist with landmark research experience on the topic, had chaired the Task Force on Homosexuality organized in the late 1960's by the National Institutes of Mental Health. In concluding her remarks, she told the Board:

"The power of secrecy is so great in the nation to this very night, that if the power of secrecy is to be destroyed, then the family living classes must go on. If that secrecy is broken, and gay women and gay men can talk openly, honestly, and frankly about their lives, their sufferings and anguishes, as well as their joys, the stigma will no longer exist, neither for themselves nor for the straight young men and women. Neither will be afraid and can walk in the dignity of which all men and women are entitled by the Bill of Rights of the American Constitution.

"Now, more than ever before in the history of civilization, the family as the sustaining source of life itself and of human values, is in danger. If the family is to survive, trust, open knowledge, love, intimacy between mothers and fathers, daughters and sons, whether gay or straight, must at all costs prevail. If family life courses perish, the family itself as an enduring unit perishes..."³⁸

FACTORS AFFECTING POLICY ADHERENCE

Eight years after that momentous evening, it becomes instructive to examine the Santa Barbara school district's present health education programming, here paying particular attention to gaps that may have arisen between liberal policies and actual practice regarding gay speakers.

The "state of the art" in 1982 presently seems to be much as it was in 1974. The conservative "Concerned Parents" group which initiated the 1974 furor over sex education failed to win any seats on the board (though they tried). A moderately liberal school board remains; the conservative Mormon bishop is on a different educational board. With one exception, the same school site administrators and family living teaching staff are still at their jobs. An apparently more conservative superintendent is in place.

Family life classes are still offered as electives in all district high schools; all have the board-mandated sexual orientation unit included. Dos Pueblos High School draws upon gay speakers as regularly as ever; Santa Barbara High School, resolutely as ever, continues to ignore their availability. San Marcos High School has continued with night, voluntary-only presentations with special parental permission slips. The junior highs are supposed to offer information on this topic, too. None has ever invited speakers.

Several factors seem to be impeding full application of liberal board policies. These factors include:

1. Policy vacuums and omissions.
2. Incomplete policy orientation; also, highly variable personal commitment to policy and, in some cases, disagreement with it.
3. Inadequate sanctions against discrimination.
4. Erratic problem-solving approaches and uses of power; communication problems; bureaucracy.
5. Fear of controversy; intimidation by controversy. Abdication of leadership responsibilities.
6. Inadequate fiscal and human resources for maximal implementation of policy.

Let us examine each of these in more detail.

1. Policy Vacuums and Omissions

The scope of the district's policies regarding sexual orientation and curricular enrichment is commendably broader than most districts in our State. However, two particular omissions deserve note.

- a. It still is not resolved whether nondiscrimination protections, applicable to students and employees and "all district operations", also apply to community resource persons able to contribute to the educational experience. (For example, where a wide variety of heterosexual resource persons are invited to speak in regular family living classes, may available and capable gay speakers be excluded or student access to them selectively and repeatedly restricted?)

- b. There is no policy provision for an advisory Students' Right-to-Learn Committee, as has existed, for example, in the Minneapolis public schools for the past ten years.

According to documents provided by the Minneapolis schools, the Students' Right-to-Learn Committee "exists to consider the rights of parents and other community people, and to adjudicate these rights when they are in conflict with the rights of students to inquire and to have access to information, ideas, and opinions and when they are in conflict with the academic freedom of teachers". The main value of such a committee has been its supportive, recommending powers. It provides strong backing for the superintendent in dealing with all sorts of citizen attempts to restrict curricular enrichment fostered by special learning materials (books, films, tapes, etc.).*

A current court challenge to the Minneapolis schools³⁹ questions whether bans on selected community resource persons (such as gay speakers) shouldn't be also considered "learning material" issues falling within the committee's purview. Clearly, that would seem to be a reasonable, valuable extension of such a committee's function. The Minneapolis school superintendent has refused to go along with such an interpretation.

2. Incomplete Orientation and/or Personal Commitment to Policy

Good policy implementation depends upon an effective, thorough, and imaginative orientation of employees at all levels. A common problem, hardly unique to the Santa Barbara school district, is that this commonly does not receive much priority. Effective policy orientation in the nondiscrimination area particularly requires those same "evocative forms of affective education", the same "strategies of demystification which utilize imagery and empathetic appeals" cited above. (But even the more traditional "dry and factual" policy dissemination has been thwarted.)

*See Exhibit "D" for detail.

Sexual orientation is a particularly new policy consideration. Commitment toward sensitizing employees to this area is tough to obtain from management level people unless they have prior personal exposure, sensitivity, and commitment to discrimination issues and realize the oppression of gay people. Some administrative personnel warmly demonstrate such capacities; others decidedly do not. (For example, in Santa Barbara the present superintendent, expressing "personal ambivalence" about having gay teachers, tried to remove sexual orientation in this proposed revision of the affirmative action/nondiscrimination policy in 1980. The policy was revised and sexual orientation stayed in.)

For the past two years, the author served for the past two years on the district's Affirmative Action Committee which is charged with monitoring the nondiscrimination/affirmative action policy. In 1981, employees were found to be generally unaware of the broadened nondiscrimination policy clauses (passed one and four years earlier), particularly as they pertained to sexual orientation. Attempts by the whole Committee to get the district to disseminate its policies through thorough written distribution were met with considerable passive resistance and nonaction. Management-led active orientation of line level teaching staff to such matters appeared nearly nonexistent, so much so that the Committee declared one of its 1982 priorities to be a "review of orientation procedures and practices".

3. Sanctions Against Discrimination

No sanctions are specified for violators. This would seem to further impair the effectiveness of the policies.

4. Problem-Solving Approaches, Use of Power, Interpersonal Communication; Bureaucracy

Common problems observed within bureaucratic organizations are:

- a. Autocratic behavior ("I don't have to tell you why.").
- b. Noncollaborative problem solving; miscommunication and noncommunication.
- c. Avoidance-of-conflict behavior ("Let's not rock the boat.").
- d. Acquiescence to injustice when upwardly-mobile self-interests are threatened.

All these typically come into play in a bureaucracy when controversy threatens; certainly Santa Barbara has been no exception. As Robert Presthus commented in "The Organizational Society": "If status is to be satisfying, there must be hierarchy and someone to validate it. The bureaucratic situation provides both. Thus it seems to attract those who need certainty and authority." (That sounds remarkably like "deep paternalism".)⁴⁰

5. Fear of Controversy; Intimidation by Controversy

On controversy, Presthus describes it well:

"The aversion to conflict in big organizations rests in part upon the perspective of its leaders who see the organization as a disciplined, cohesive system for achieving a common goal. They regard it as a rational instrument which binds together the interests of its members in a kind of all-for-one, one-for-all ethic.

"The decision makers are engaged in maintaining, and, if possible, in strengthening the organizational structures through and in which they exercise power and influence. Whatever conflicts occur within these structures will appear to them to be dysfunctional."⁴¹

Finally, he quotes Admiral Rickover:

"All generations tend to perpetrate themselves and to keep things in a status quo. You cannot do new things, you cannot do exceptional or unusual things by usual methods, but the tendency of the organization is to keep everything at a beautiful even level where no problems rise above the surface. So when a man comes up with a new idea, and if it is a difficult new idea which necessarily requires the use of new methods, he is ipso facto opposed by the existing organization."⁴²

The possibility of controversy was fearfully cited to the author, in the 1980's just as in the 1970's, by certain (not all) Santa Barbara school personnel, even a Board member, as their key justification for compromising or denying the "use of new methods", specifically guest speakers.

Some representative quotes:

1. "I already have 12 wars going, I don't need a 13th." (high school principal, 1981)
2. "All it takes is one spark - one spark! - to set off a conflagration with the Moral Majority." (high school teacher, 1982)
3. "It could cost us the whole (sex education) program." (assistant superintendent, 1981)

One would never know from the foregoing that the District has long had supportive language in its Outside Speakers' Policy concerning both "controversy" and "kinds of people" (cited above, see pages 25-26). It seemed somehow irrelevant to these personnel that the Policy had been formally reaffirmed in 1974 in front of a huge community audience largely supportive of the speakers or that the Briggs Initiative had lost by more than 2 to 1 in that school district in 1978.

6. Fiscal Resources; Human Resources

As events proceed, it becomes clear that beyond leadership, it also takes money, strategically spent, to ensure that active nondiscrimination occurs. Unread rhetoric in dusty policy books is not the goal. Educational efforts on the part of the gay community, or monitoring efforts by the school district in pursuit of active nondiscrimination, or greater curricular depth in areas which would enhance students' realization of personal worth and autonomy - any of these require material resources. All require committed human resources, too, both volunteer and paid. Commitment itself is often dependent upon money considerations which can be used to reinforce or undermine the commitment.

As one illustrative example, let us consider a hypothetical, long-haul human relations educational effort. A team of four sensitive and articulate community resource persons, regardless of particular topic, should be paid for their presentation. Effective presentations are work, just like classroom teaching is! If even 100 effective presentations are made, that is worth thousands of dollars in terms of speaker's effort and time. It is worth another several thousand dollars annually to ensure selection, training, coordination, and publicizing to appropriate personnel. (Indeed, in 1981 a Santa Barbara-based foundation, the Fund for Santa Barbara, recognized this and donated \$2,000 to the U. C. Santa Barbara

Gay Speakers' Bureau in a precedent-setting action.) The funding dilemma is familiar to many nongay, private sector educational agencies which have programs to assist the schools in their work. The private sector can and should be contributing more financial and human resources to stabilize these human relations educational programs.

Another example, is the district's Affirmative Action/Equal Opportunity Committee which in 1981 recommended that the district beef up its policy implementation with a half-time classified affirmative action/equal opportunity administrative assistant. The president of the 1981 school board, an Hispanic, supported this recommendation, saying that he considered such human relations effort "as important as heat, light, and roofing". The Board did not come up with any money and instead deleted an existing position of "Human Relations Director".

Better training and retraining for certificated personnel, staff development and sensitization of administrators all require organization of human and monetary resources. However, the declining budget base of the public schools is admittedly working against this. The result is a poor emotional climate for addressing tough "conscience" and "consciousness" issues, particularly those pertaining to prejudice.

CONCLUSION

We've examined some disturbing "facts of school life" often swept under the rug. We find that these make the sexual minority's sense of personal privacy insecure, especially that of decisional and associational privacy. For the ten percent of high school students that are gay or lesbian, what is called "school life" can feel like dying inside because of heterosexist demands. A typically silent or moralizing curriculum perpetrates serious social problems involving sexuality and personal privacy. California, with its large gay urban concentrations, needs to understand and address realities in our schools.

It is irresponsible for the schools to continue ignoring these realities. Schools should move beyond simply reflecting current (often divided and confused) public attitudes. Indeed, they should provide educational leadership on contemporary sexual issues.

Some will ask, "But why should they?" Elizabeth Roberts has answered well:

"Our society assumes responsibility for the development of human potential through its concern for a physically healthy populace, an educated citizenry, and the work opportunities and civil rights of all people. If we believe that people who find satisfaction and self-worth in their sexuality are more capable than the sexually confused of dealing with life, and if we believe that sexual responsibility requires self-awareness and informed decision making, then as a nation we must accept responsibility for the process and content of sexual learning."⁴³

Most of the public school system has fallen "flat on its face" regarding complex sexual issues.⁴⁴ However, the commendable Santa Barbara school example has, in part, really worked. It also has been duplicated and greatly supplemented by the work of the Human Rights Foundation in its "DeMystifying Homosexuality" project with Bay Area schools. Santa Cruz, San Diego, Los Angeles and other coastal California locations have also been learning that it is within the capability of the State's community school systems - indeed it is one of their legitimate public responsibilities - to better educate students to human realities of gender, sexuality, sexual orientation and stereotyping. They've learned also that community schools can socialize students toward consideration for other people, toward taking responsibility for the consequences of an action in dealing with personal relationships. The result: students are stronger in their sense of decisional and associational privacy, stronger in mental health, stronger in productivity.

The classroom, therefore, is a potentially powerful and positive human relations learning forum. Exclusion of sexual issues perpetuates tensions, discrimination, and other invasions of personal privacy, for, as Kirkendall points out that "various aspects of sexuality are always taught in some way or another".⁴⁵ In the classroom, then, the question-and-answer dialogue between gay/lesbian community resource persons and students can be a particularly effective learning experience. Such an approach regards a person's sexual orientation "to be both respected and accepted. It permits exploration and discarding of discriminatory practices, along with various myths and stereotypes that have made the lives of homosexuals difficult."⁴⁵

Consideration of this sensitive subject needs also to be integrated naturally into course work in various disciplines, at various grade levels; also, it needs integration under the broader topic headings in family life/sex education itself (such as "friendship", "dating", etc.). Homosexuality is not an isolated state but rather an inseparable dimension of human reality.

There is no evidence that recognition of gay people - in policy, in teaching, or in the curriculum - will alter any student's sexual orientation. That is well set long before high school or junior high.⁵ Nor will it result in any impropriety. Unreasoned and unfounded fears have caused many, from persons to school districts, to ignore reality. (Though that may be an unfair characterization for some districts, it unfortunately applies to some individual teachers, to some administrators, in almost every district.)

Finally, one may anticipate inevitable degrees of anxiety as the schools at last address this issue. As they do so, let us then remember:

"...that the idea of rights respects and fosters the capacity of people to take personal responsibility for their lives; it does not ensure that they will always exercise these rights wisely or well. Indeed, the willingness to allow people to experiment, make their own mistakes, and learn from bearing the consequences is part of the education in self-awareness that rights cultivate.

"...since these rights fall into the morally ambiguous area of adolescence, adults have a special responsibility for affording the kind of education that will enable children to exercise these rights wisely. It is cruel folly to extend the right to privacy to children and not, concomitantly, to ensure the kind of sexual education that will enable them to use these rights responsibly. If parents will not perform this role reasonably, the task must fall on educators in the schools."⁴⁶

RECOMMENDATIONS: LOCAL COMMUNITIES AND DISTRICTS

1. Creatively strengthen individual commitments to improve human understanding and to teach human dignity.

Even without policy or curriculum direction covering sexual orientation, individual teachers, administrators, and legislators can reexamine and come to terms with their feelings. They can independently learn firsthand about sexual and other minorities, work on personal fears and stereotypes. There are many ways to do this in today's open society, especially for those with wide eyes and open hearts. Reading, talking, counseling, going to forums, going to a gay community event - all are forms of reaching out. Self-initiative rewards itself with personal growth, self-understanding, friendship. New assurance can contribute, finally, to leadership abilities.

A tremendously valuable aid (to this recommendation and to recommendation 4. below) is the new teacher's source book cited earlier: "DeMystifying Homosexuality".⁸ It should be read by each teacher and administrator. Teachers' associations should purchase sufficient copies and make them available to every school.

2. Employ People With Specific Human Relations Leadership Potential

Leadership of the highest order, in touch with basic human realities, is needed to integrate sexual concerns into a good family life curriculum. Sensitivity toward sexuality and sexual minorities should be a conscious element in screening candidates for superintendent of schools on down.

3. Develop and Implement Specific Nondiscrimination Policy

- a. Each district board should use its governing power to include sexual orientation within the nondiscrimination clauses of its affirmative action/equal opportunity or human relations policy (as has been done in San Francisco, Palo Alto, and Santa Barbara).

Initiative toward this can come from any citizen, any board member, any group.

- b. Each school board should ensure that their nondiscrimination policies work.

This means thorough orientation and dissemination; also, adequate procedures for redress of grievances and sanctions for violaters. Repetitiveness in these processes may be effective. Performance monitoring is essential. Most of all, policy orientation deserves imaginative, evocative, systematic effort. It's just like teaching in the curriculum. Sensitization workshops which utilize gay community members are desirable, as with other minority community members.

4. Curricular Development and Implementation

- a. Each school district board should use its local option to mandate comprehensive human relations/sex education instruction within the health curriculum framework.

This mandated curriculum would be affirmative in attitude toward various aspects of sexuality, including homosexuality. Effective use of community resources would be encouraged.

- b. Teachers in relevant curricula should bear in mind the value of presenting skilled, experienced gay speakers in classes, as part of their material on homosexuality.

"Although administrative and community approval is often difficult to obtain, allowing (such speakers) into the classroom is one of the best ways to shatter myths and stereotypes about homosexuality to lessen fear and prejudice, and to reduce the potential for homophobic violence."⁴⁷

- c. Information and recognition concerning homosexuality should also be integrated naturally into course work in various disciplines, at various grade levels; it should be also incorporated under broader topic headings ("friendship", "dating", and "family relationships") within the family life/sex education curriculum itself.

- d. Teachers in relevant curricula need to be objective in handling of homosexual speakers and other instructional material.

"Acknowledge that it is a controversial subject and present the morality that views it as sinful as well as the morality that accepts homosexual behavior. Students still have the choice to decide (which morality to apply), but at least they can base their information from a realistic viewpoint."⁴⁷

- e. A standing, advisory "Students' Right to Learn" Committee, as exists in Minneapolis, should be developed in each district to assist superintendents in the adjudication of community controversies over using special classroom learning resources*, and to help ensure teachers' freedom to teach.

(See Exhibit "D" for detail; however, there should be student representation on such a committee.)

- f. Organize staff-development workshops and continuing education classes on "Dealing with Controversy" for teachers and administrators in sensitive areas. Ensure that district policies encourage classroom presentation of controversial issues, in a prejudice-free, discrimination-free atmosphere.

*"Special classroom learning resources" includes guest speakers.

Workshops would include policy and legal considerations, as well as helpful procedural methods for collaborative problem solving. *Controversy should be more valued than feared. It is inevitable with good education - it is a sign that something significant and meaningful may be happening.* (Socrates, Charles Darwin, and Admiral Rickover would well understand!) Teachers and administrators need skills in better handling controversy, particularly with controversies centering on sexual/human relations issues. They also need help with related public relations and leadership skills.

- g. Develop community education programs that similarly enlighten mature adults about the place of sexuality and gender in their lives.

5. Secure Long-Term Funding Support for Family Life and Sex Education in Schools and in the Community

Monetary support needs to be coalesced from foundations, corporations, individuals, and tax revenues. School and agency budgets critically need supplementation in all areas. If this happens, the specific areas under discussion will benefit.

A large network of community education projects and speakers' bureaus now exists, dedicated to advancing human understanding. Some of them are very capable gay/lesbian speakers' bureaus. Almost every California county and major city has one. Their efforts are mostly volunteer with expenses out-of-pocket.

The value of gay/lesbian educational outreach has recently been recognized by grants from public funding sources (Los Angeles, New York City: 1978-81) and from private foundations (San Francisco, Santa Barbara: 1980-82). This funding needs supplementation. The efforts themselves need expansion, including assistance to the schools as previously described. Foundations, corporations, and individuals should help provide that funding. Why not give money toward homophobia prevention and cure, as we do so freely on organic disease. For both organic disease and homophobia are alike in one way: they can eat up lives, from the inside out.

The schools themselves need funding for in-house budgets to sustain and enrich human relations curricula generally. Public tax monies should largely go to the schools themselves and be used to ensure their effective contribution. For models, one can look to the Scandinavian countries.

The point has often been made that sex education pays for itself. It's not unlike preventive medicine and mental health promotion. If our society can increase sexual and relationship responsibility through education, we decrease steep public dollar losses due to abortions, teenage pregnancies, school dropouts and failure, teen suicides and runaways, broken homes, venereal disease epidemics, and homophobic violence. That's a lot of savings for a relatively small investment.

Harmonization (deprejudicing) of society and inner self is demonstrably possible, too. It pays for itself, too, through reduced alienation, increased personal effectiveness, better cooperativeness in the workplace.

RECOMMENDATIONS: CALIFORNIA STATE
LEGISLATURE AND DEPARTMENT OF EDUCATION

1. a. The Legislature should pass legislation adding sexual orientation to the nondiscrimination clauses of the Fair Employment Practices Act (see AB 1, Agnos, 1982 Legislative Session).
- b. The State Board of Education should urge corresponding policy be adopted and applied to all school districts in California.
2. The Legislature should repeal the Schmitz Act (Education Code Section 51550).

The Schmitz Act has provisions treating sex education differently from any other aspect of the curriculum.* Its particularly punitive clause threatening revocation of teaching licenses for violators causes "reverse thinking" psychology and greatly intimidates teaching in this area. This Act is a clear threat to decisional privacy for all students.¹⁴

3. The California Department of Education should mandate "Family Life/Parenting/Sex Education/Human Relations" as a required course for all public junior and senior high students (as presently in six other states and Washington, DC).

Suggested time: one semester-equivalent every two years in junior and senior high. As for broad content, I draw on Lester Kirkendall's description: "A human relations instructional core should include a concern for knowledge and attitudes toward racial (and gender) membership, death, emancipation of youth and parents from one another as each generation ages, drug use, delinquency and the rehabilitative process, building a moral climate (without Bible-thumping) and providing a foundation on which it can rest, and an affirmative approach to various aspects of sexuality, including homosexuality."⁴⁵ This would take the heat off local elected school boards.¹⁵

*The Schmitz Act, authored by Senator John Schmitz and passed by the Legislature in 1969, requires written notification to parents of any classes offered in which human reproductive organs and their functions and processes are described, illustrated, or discussed; it provides for parental review of materials; and establishes procedures for parents to exclude their children from such instruction. Full text is reproduced in the Appendix, Exhibit "E".

4. The California Department of Education, starting at the level of Superintendent of Public Instruction, should exert much more committed, consistent leadership on behalf of Family Life and Sex Education throughout the State school system.
5. The California Department of Education should therefore establish a permanent Division or Department of Family Life and Sex Education, with a Program Manager and a staff of two to five persons, and an annual budget initially set at at least \$250,000.

This Department would initially resume the preparation of a Teacher's Resource Book and Instructional Guide on Human Sexuality (begun in 1979, suspended in 1980) and otherwise assist local districts in their development of effective family life and sex education courses. Both the teacher's guide and the program should deal as explicitly and affirmatively with homosexuality as with heterosexuality.

To effect all recommendations, prior organizing by the Superintendent of Public Instruction with all the large district school administrators in the State is required. Liaison with appropriate legislators is equally vital. Adequate media outreach is essential. The Department of Education should be prepared to combat inevitable distortions with fuller dissemination of its activities, as circumstances warrant.

6. The Legislature should lower the age of consent for sexual relations.

Reasons for aligning the age more closely with puberty are obvious and numerous; most of them are beyond the scope of this particular report. But the presently unrealistic age of 18 is used by opponents of sex education, who regularly assert that such education in the school is promotion of illicit activities and a contribution to "the delinquency of minors". Together with the Schmitz Act, the effect on education, learning, and expression is intimidating - an unwarranted invasion of decisional and associational privacy of youth.

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Southern California
Women for Understanding



Bi-monthly Newsletter
Vol. VI, No. 2, April-May 1982

(213) 784-9160 or 784-5584
13719 Ventura Blvd., Suite D
Sherman Oaks, California 91423

Homophobic Terror

Early this fall semester, I had one of those experiences many homosexual teachers live in daily fear of. When I approached my classroom for first period, all my students were clustered around waiting for me to open the door. One of my girls met me and whispered, "Someone put something nasty on your door." Indeed. Taped all over the door were six pornographic pictures of women. Pictures, and *words*—something like, "We may be weird, but at least we're not queer."

Responding just as I would if a kid stuck a snake in my face, I unemotionally took the pictures and note off the door, wadded them up and tossed them out, and proceeded to give the students a lecture on the significance of the Egyptian Agrarian Reform of 1956.

I paid attention very closely to their feelings. It was class as usual for them. There were no snide remarks, no under-breath inuendos. Thank God. I do not know what I might have shown of myself to them, had they challenged me or even in an innocently accepting curiosity, asked me if I were gay. Although it was class as usual for them—nothing was "as usual" for me.

Who did it? Why? What did they know? Is it all over campus? What would I find on my door the next day? Or the next? Had I been seen going to a local bar? Have they a relative who's said, "Yeah! She IS"? Maybe a former student knows me now? Was anything ELSE about me posted on campus? How 'bout my car? Maybe someone spray-painted QUEER in big letters on my car. Why not? Someone had put those pictures on my door for my students to see.

This had happened on a Monday morning at 7:45 a.m. and I was confined in that room until the lunch hour. In that four hours, the entire city could know I'm a queer if "they" put anything else up about me anyplace else.

How would the students in my 2nd, 3rd, 4th periods behave? Did they know? What did they know? What if it was all over campus and my students came in and ridiculed me and called me names and . . . and . . . and . . .

I had given my heart and guts to teaching, to kids, for many years—it's a deeply satisfying job. I adored many of my students. I did not want to disintegrate as a human being in front of them. Nor did I want those that are jackals to tear me apart and cannibalize me for all to see.

Thank God it was "class as usual" for all my classes that day. There was nothing else posted anywhere on campus.

I was at school checking my door 45 minutes early for the next five weeks. I prayed I would not approach my door and see "Ms. So-and-So is a queer." I prayed my car would not be defaced.

Did any of my colleagues know? Surely, some of those first-period students would say something to someone. Maybe even to their parents; then the principal would become involved in investigating the pornographic pictures.

Who did it? Why? I was terrified. I felt alone—isolated and alienated at school. I stopped going to the bar. I didn't know what to wear to school. Then, I started having feelings I had never known before. I hated the sight of a lesbian. I despised any woman who presented herself other than stereotypically acceptable to a man. I started wanting to hire a virile, masculine-looking man to meet me at school for lunch. I wanted nothing to do with my lover.

A few weeks later, I went to a Valley bar, but I became nauseated when I saw all those lesbians; I had to leave. Slowly, these feelings have dissipated, but the self-hatred I felt for several weeks I will never forget. I found profound support from my lover, who helped me to know I was okay; from my therapist; and from my friends in SCWU.

Nothing else ever appeared at school. There were never any questions, any knowing looks, nothing. Nothing but a single nightmare moment. Now it's back to "class as usual."

I still have an unfinished feeling about it, however.

name withheld

ARTICLE 6 INSTRUCTION (Series 6000)

POLICY ON OUTSIDE SPEAKERS IN THE SCHOOLS

6162.5

Policy

Page 1 of 2

The Board of Education firmly supports and encourages schools to consider it their responsibility to bring to their students a wide variety of outside speakers whenever the skills or knowledge of such speakers can contribute to the instructional program.

Included in the Philosophical Basis for Planning of the Santa Barbara School Districts, adopted by the Board of Education on March 6, 1975, is this statement of belief:

"Education is a cooperative undertaking by the schools and the community, and a successful program can be developed only when there is an effective two-way system of understanding and communication between them."

Consistent with this belief, schools are obligated and encouraged, as opportunities arise, to make available to students the special talents, expertise, and points of view of outside speakers when relevant to the instructional program and when such speakers are competent in the fields in which they speak.

Teachers and principals occupy positions as executors of public trust. They are persons of broad professional training and personal integrity. They are knowledgeable in current affairs. They understand the needs of students and possess the quality of judgment required in selecting suitable and effective supplementary services.

Individual teachers and department chairpersons or other certificated staff members are normally the prime selectors of outside speakers for their classrooms and/or assigned student groups. They shall bear initial responsibility to see that such speakers comply with the stipulations of this policy and with relevant provisions of the Education Code. They shall consult with their principals when appropriate and shall keep the principals informed in planning for the use of outside speakers in the instructional program.

Principals, as chief administrative officers of their respective schools, shall bear ultimate responsibility for the utilization of outside speakers within their schools, and for determining that they meet all legal, moral and ethical requirements.

In selecting outside speakers, teachers and principals shall rely on their professional judgment, and shall not be required to obtain prior approval from the Superintendent or the Board of Education.

In considering the qualifications of outside speakers and the nature of their proposed presentations to students, teachers and principals bear in mind and be guided by the provisions of Education Code Section 12556.5 on mandatory instruction in Morals, Manners and Citizenship, and Sections 9001-9031 on Prohibited Instruction. Principals shall provide teachers with copies of these provisions; and outside speakers shall be considered as "teachers" in the interpretation thereof.

EXHIBIT "B" (cont.)

ARTICLE 6 INSTRUCTION (Series 6000)

POLICY ON OUTSIDE SPEAKERS IN THE SCHOOLS

6162.5
Policy
Page 2 of 2

Controversial Speakers

It is understood and expected that certain outside speakers may themselves be objects of public controversy, quite apart from the subject matter or issues to be presented by them to students.

In the selection of speakers who may be controversial, schools shall be guided by the statements above covering outside speakers in general. For their additional guidance, they shall consider the following as approved statements of belief and, therefore, of policy:

1. The public schools serve all the children of all the people. They cannot in every instance, however, satisfy all whom they serve. Criticism of and controversy over their efforts are therefore inevitable.

While schools are well-advised not to encourage controversy for the sake of controversy, they must not allow the possibility thereof to stand in the way of freedom of inquiry and the best possible program of instruction.

2. To provide an adequate, viable and well-rounded education for all, schools must expose students not only to many points of view and shades of opinion, but also to many sides of life and to many kinds of people.

Administrative Procedure

The Superintendent shall provide administratively for formal complaints against outside speakers, and shall provide administrative procedures for carrying this policy into effect.

References: Education Code 51931.5
Board Policy on Controversial Issues in the Schools, #6144
Board Policy on Political Activities of Staff Members, #4139/4228

SANTA BARBARA SCHOOL DISTRICT
SANTA BARBARA HIGH SCHOOL DISTRICT
Adopted by Board of Education 10/9/75, Amended 8/19/76

MAY 24 12 49 PM '76
SACRAMENTO
CALIFORNIA STATE

AFFIRMATIVE ACTION4010
Policy
Page 1 of 2

It is the policy of the Board of Education of the Santa Barbara School District and Santa Barbara High School District that there will be no discrimination in any area of recruitment, employment, retention, and promotion because of race, color, religion, sex, age, sexual orientation, marital status, otherwise qualified handicapped, or national origin, nor in any other way which is now or may hereafter be prohibited by State or Federal laws or regulations hereinafter referred to as "discrimination." Implementation of this policy requires both a policy of non-discrimination and a policy of affirmative action.

Non-discrimination: The Board of Education and each of its schools and departments will carefully and systematically examine all employment policies, regulations, and practices, including hiring, promoting and retaining employees, to insure that they are not discriminatory.

Affirmative Action: In addition to stressing non-discrimination in employment practices, the Board of Education supports a policy of affirmative action including the active recruitment, employment, and promotion of women and minority personnel, and a policy of providing a maximum opportunity for women and minorities to seek and achieve promotional positions.

Qualifications: Nothing in this policy should be construed, nor is any portion of this policy intended to imply, that any individual will be recommended for appointment who is not a very highly qualified candidate.

GOALS

To achieve a highly qualified staff composed of men and women at all levels of employment who have varied backgrounds which proportionately reflect the composition of the varied community in which we live.

To recruit, employ, retrain, and promote qualified individuals from groups who are identified as being under-represented.

APPLICATION

The affirmative action program applies district-wide to the total work force, to all job classifications, and to all responsibility levels. All district letter-head stationery, as present supplies are replaced, should indicate that the District is "an Equal Opportunity Employer." All bid forms shall include notification that the Board will comply with Executive Order 11246, that all persons, firms, or corporations supplying goods, material, equipment or services of any kind to the Santa Barbara School District and Santa Barbara High School District shall certify in writing on all bids for contracts that each, as a contractor with the Districts, shall comply with Executive Order 11246 and any successor thereto.

ROLES AND RESPONSIBILITIES

The superintendent shall periodically recommend to the Board specific Affirmative Action objectives to be achieved within a given time frame. The Board, at a regularly scheduled Board Meeting, will review and approve or modify as it deems necessary such affirmative action recommendations. The Director of Personnel is designated as

EXHIBIT "C" (cont.)

ARTICLE 4 PERSONNEL (CERTIFICATED & CLASSIFIED) (Series 4000)

AFFIRMATIVE ACTION

4010
Policy
Page 2 of 2

the Districts' Affirmative action officer with responsibility for coordinating activities required to meet the objectives recommended by the Superintendent and approved by the Board of Education. The Director of Personnel shall be responsible for monitoring the selection, employment and promotion of all District staff to determine that appropriate efforts are made to meet District goals and objectives. The Director of Human Relations will serve as primary consultant.

The Director of Personnel will develop cooperatively with principals and department heads plans for implementing those objectives which have been given final approval by the Board of Education.

Principal and Departmental Responsibility

Each principal and department head shall be responsible for making every reasonable effort toward implementation of the Districts' goals within the administrator's respective school or department. Each shall submit personnel objectives to the Director of Personnel yearly. The Superintendent and staff members will review all proposed objectives to determine if they are appropriate.

Principals and department heads reporting to the Superintendent or Assistant Superintendents shall work cooperatively with the Personnel Division in developing plans for implementing affirmative action objectives.

PROCEDURE

Development of Objectives

The Personnel Department shall analyze each year the utilization of minority groups and women in the Districts' work force which shall include a minimum of the following tables:

1. Ethnic and sex composition of classified, teacher, management, and total staff.
2. Ethnic and sex composition of major district organization units.
3. Ethnic and sex composition of major occupational groups.

Development of Recruiting Procedures by the Personnel Department

The Personnel Department will establish recruitment and selection procedures which facilitate achievement of affirmative action program objectives.

EVALUATION

The Superintendent shall submit an annual report to the Board which indicates the progress made in achieving the Districts' affirmative action goals.

The Superintendent's annual report shall include recommendations from an affirmative action committee. An affirmative action committee shall be appointed annually by the Board and shall be charged with reviewing the progress of the District towards the affirmative action goals and recommending any other ways the School District can contribute to a more integrated society.

AFFIRMATIVE ACTION4010
Admin. Reg.
Page 1 of 2

The purpose of this administrative regulation is to provide a formally approved, written directive to all management employees and all other employees who have the responsibility of carrying out the Board's Affirmative Action Policy. To achieve the goals of the Board's policy, all personnel employed by the School Districts must firmly and aggressively work to eliminate any form of discrimination based upon race, color, religion, sex, age, sexual orientation, marital status, otherwise qualified handicapped, or national origin, nor in any other way which is now or may hereafter be prohibited by State or Federal laws or regulations, hereinafter referred to as "discrimination." A commitment to eliminate any existing or observed form of such discrimination is the fundamental basis of this Affirmative Action Policy. Thus, all employees are charged with the responsibility of identifying and seeking to eliminate any form of discrimination whether in employment or any other aspect of the operation of the School Districts. The most frequent form of discrimination is the verbal expression of attitudes which demean or stigmatize others. All employees have the responsibility of taking steps to correct any individual, including a student, who contributes to the perpetuation of discriminatory attitudes by word or deed.

Non-discrimination: Each school and department should on a continuing basis carefully and systematically review all employment policies, regulations, and practices, including hiring, promoting and retaining employees, to insure that they do not discriminate in any way. Any employee or other interested party who feels that a policy or practice is operating in a discriminatory manner has the responsibility and obligation to identify and seek to change such practices or policies. Questions concerning the appropriateness of any policy or practice should be pursued with the appropriate administrator or the Director of Personnel.

Affirmative Action: The Affirmative Action Policy adopted by the Board in Policy 4010 is based upon the fact that there is under-representation of certain minority groups and women in certain categories. The Board of Education's Affirmative Action Policy requires the Superintendent to recommend realistic objectives based upon identification of under-representation in any category of employment in the Districts' work force. Once such specific objectives have been approved by the Board of Education, each member of management who has a responsibility for hiring must aggressively seek to achieve these employment objectives.

Recruitment: No recruitment period for employment shall be closed until it is clear that no further recruitment efforts are reasonably likely to produce a representative number of highly qualified women or minority candidates for that position.

Affirmative Action Objectives

The Superintendent will review the composition of the Districts' work force and recommend to the Board of Education staffing objectives which will move the Districts toward the affirmative action goals established in Policy 4010. Once an affirmative action staffing objective has been approved by the Board, each building principal or other department head who recommends appointment of personnel will annually submit personnel objectives to the Director of Personnel. The Superintendent and staff members will review the proposed objectives to determine if they are appropriate. These approved personnel objectives for each school and department will be included in the Superintendent's annual report to the Board along with a review of the progress each manager has made towards his/her objectives.

EXHIBIT "C" (cont.)

ARTICLE 4 PERSONNEL (CERTIFICATED & CLASSIFIED) (Series 4000)

AFFIRMATIVE ACTION

4010
Admin. Reg.
Page 2 of 2

Affirmative Action Committee

Annually, the Superintendent shall recommend the appointment of an affirmative action committee. The committee shall include representation from certificated and classified employees, management, parents, community groups interested in the Districts' affirmative action program, and members of the general public. The committee numbering shall also be balanced as to men and women and the various racial and ethnic groups represented in the community. The Director of Personnel shall assist with the organization and operation of this committee and shall attend all meetings of the committee as the Districts' affirmative action officer. The committee shall meet as frequently as necessary to carry out its charge which shall include but not be limited to:

1. A review of the Districts' progress toward its affirmative action goals and objectives, including the progress of each school and department;
2. A review of current affirmative action objectives, including any additions or modifications which appear appropriate, should be recommended;
3. A review of any other activities which are being conducted or should be conducted that would enhance the Districts' ability to develop and implement high-quality, comprehensive programs to promote inter-racial and inter-cultural understanding and appreciation.

The affirmative action committee shall report its findings to the Board as part of the superintendent's annual report to the Board. The committee may make any other interim reports to the Board it deems appropriate.

Recruitment and Appointment

The heart of the Districts' affirmative action program is an effective recruitment and selection process which produces recommendations for the appointment of highly qualified individuals whose appointment assists the Districts in reaching its affirmative action goals and objectives. To assist in the selection process wherever appropriate, selection committees should include minority representation. If in the judgment of the Director of Personnel or the Superintendent, a further recruitment effort by a principal or department head would be likely to produce an appointment which would assist that building or department in reaching its affirmative action objective, the principal or department head may be requested to continue the recruitment process and to reconsider additional applicants.

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 MAY 24 12 49 PM '82
 PERSONNEL DIVISION
 SACRAMENTO
 08/27/75

SANTA BARBARA SCHOOL DISTRICT
 SANTA BARBARA HIGH SCHOOL DISTRICT
 Approved by Superintendent 2/27/75

SPECIAL SCHOOL DISTRICT NO. 1

**MINNEAPOLIS PUBLIC SCHOOLS**

AN EQUAL OPPORTUNITY SCHOOL DISTRICT

807 NORTHEAST BROADWAY, MINNEAPOLIS, MINNESOTA 55413

March 15, 1982

Dr Dickson J. Hingson
1524 De La Vina #A
Santa Barbara, California 93101

Dear Dr. Hingson:

In response to your information request to our Superintendent, Dr. Richard R. Green, our Students' Right to Learn Committee exists to consider the rights of parents and other community people, and to adjudicate these rights when they are in conflict with the rights of students to inquire and to have access to information, ideas and opinions and when they are in conflict with the academic freedom of teachers.

This committee is composed of representatives of parents, teachers and administrators of the Minneapolis Public Schools. Specifically, the committee membership includes the Director of Educational Media Services, the Assistant Director of Educational Media Services, the Language Arts Consultant, the Social Studies Consultant, two Resource Teachers, representatives of the Equal Education Support Department, three Media Specialists (Elementary, Junior High and Senior High), three teachers (Elementary, Junior and Senior High), one principal and three parents. The basis for this committee is our Policy 6260A which speaks to academic freedom in the Minneapolis Public Schools and Regulation 6260A which outlines the procedures in making school contacts to be used by parents or interested citizens in questioning the suitability of learning materials.

If a parent or a community person or a member of the school district objects to the use of a certain book, film, filmstrip or such in the school, we request that this person first meet with the principal and the appropriate teacher or media specialist at the school level to discuss their concern. If resolution is not reached on the use of this material, the person who is questioning the material is requested to file a form for reconsideration of a work. This form is then sent to the Students' Right to Learn Committee to be considered at their next meeting; there are usually three meetings in a school year.

Materials selected for use in the Minneapolis Public Schools meet our Policy 6411 which speaks to the Minneapolis Public Schools being committed to provide quality education and equal educational opportunities for all students. The district is committed to the selection and use of multi-ethnic, multi-cultural, multi-racial, non-sexist learning materials that promote the students' positive self-image and depict a pluralistic society. To assist in implementation of this policy, we have a regulation 6411B, which is the selection of learning materials - general guidelines.

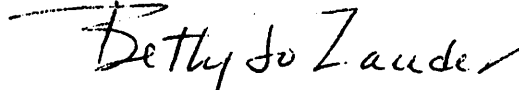
Dr. Dickson J. Hingson
Page Two
March 15, 1982

In further answer to questions in your letter, Phyllis Thornley, Acting Director, Educational Media Services is the chair of this committee. As well as chairing the committee, she writes the recommendations of this committee and drafts the response to the person who is requesting the reconsideration of a work. Copies are sent to the appropriate superintendent, as well as to the principals and to the media specialist at the building from which the complaint arose. We have documentation of the membership of this committee, and a summary of the recommendations that they have made since its inception in 1968.

For your information, I am enclosing with this letter copies of our Policy 6260 and Regulation 6260A, our Regulation 6411B which includes our Policy 6411, a sample of the form "Request For Reconsideration of Work," and the summary of the committee recommendations. I hope this will be useful information to you.

We believe this process is necessary to assure that our students do have opportunities to learn and to grow through the materials provided in their classroom as well as in their Media Centers. If I may help you any further, will you please write me.

Sincerely,



Betty Jo Zander
Associate Superintendent for
Educational Support Services

BJZ:bar
1174B

Enc.

cc: Richard Green
Phyllis Thornley

AUG 4 9 52 AM '82

STATE BOARD OF
EDUCATION
SACRAMENTO

The Schmitz Act

Education Code Section 51550, Sex Education
Courses

"No governing board of a public elementary or secondary school may require pupils to attend any class in which human reproductive organs and their functions and processes are described, illustrated, or discussed, whether such class be part of a course designated "sex education" or "family life education" or by some similar term, or part of any other course which pupils are required to attend.

"If classes are offered in public elementary and secondary schools in which human reproductive organs and their functions and processes are described, illustrated, or discussed, the parent or guardian of each pupil enrolled in such class shall first be notified in writing of the class. Sending the required notice through the regular United States mail, or any other method which such local school district commonly uses to communicate individually in writing to all parents, meets the notification requirements of this paragraph.

"Opportunity shall be provided to each parent or guardian to request in writing that his child not attend the class. Such requests shall be valid for the school year in which they are submitted but may be withdrawn by the parent or guardian at any time. No child may attend a class if a request that he not attend the class has been received by the school.

"Any written or audiovisual material to be used in a class in which human reproductive organs and their functions and processes are described, illustrated, or discussed shall be available for inspection by the parent or guardian at reasonable times and places prior to the holding of a course which includes such classes. The parent or guardian shall be notified in writing of his opportunity to inspect and review such materials.

EXHIBIT "E" (cont.)

"This section shall not apply to description or illustration of human reproductive organs which may appear in a textbook, adopted pursuant to law, on physiology, biology, zoology, general science, personal hygiene, or health.

"Nothing in this section shall be construed as encouraging the description, illustration, or discussion of human reproductive organs and their functions and processes in the public elementary and secondary schools.

"The certification document of any person charged with the responsibility of making any instructional material available for inspection under this section or who is charged with the responsibility of notifying a parent or guardian of any class conducted within the purview of this section, and who knowingly and willfully fails to make such instructional material available for inspection or to notify such parent or guardian, may be revoked or suspended because of such act. The certification document of any person who knowingly and willfully requires a pupil to attend a class within the purview of this section when a request that the pupil not attend has been received from the parent or guardian may be revoked or suspended because of such act."

Note: This does not apply to courses offered in community colleges and universities.

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As Alvin Toffler said in his recent book entitled The Third Wave:

"Behind all of this confusion and turmoil, a new third wave family system is coalescing based on a diversity of family forms and more varied individual roles. This demassification of the family opens many new personal options. Third wave civilization will not try and stuff everyone willy-nilly into a single family form. For this reason, the emerging family system could free each of us to find his or her own niche to select or create a family style attuned to individual needs. But before anyone can perform a celibatory dance, the agonies of transition must be dealt with. Caught in the crackup of the old with the new system not yet in place, millions find the high level of diversity bewildering rather than helpful. Instead of being liberated, they suffer from overchoice and are wounded, embittered, plunged into a sorrow and loneliness intensified by the very multiplicity of their choices and options. To make the new diversity work for us instead of against us, we will need changes on many levels at once from morality and taxes to employment practices.

"In the field of values we need to begin removing the unwarranted guilt that accompanies the breakup and reconstruction of families. Instead of exasperating unjustified guilt, the media, the church, the courts, and the political system should be working to lower the guilt level. The decision to live outside a nuclear family framework should be made easier not harder. Values change more slowly as a rule than social reality. Thus, we have not developed the ethic of tolerance for diversity that a demassified society will both require and engender. Raised under second wave conditions firmly taught that one kind of family is 'normal' and the others suspect if not deviant vast numbers remain intolerant of the new variety family styles. Until that changes, the pain of transition will remain unnecessarily high. In economic and social life, individuals cannot enjoy the benefits of widened family options so long as laws, tax codes, welfare practices, school arrangements, housing codes, and even architectural forms all remain implicitly based toward second wave families."^{2/}

The diversity of families in today's society indeed has been noticed. Yet our laws and protections may be lagging behind clearly recognizable changes in the perspectives of major institutions toward emerging family forms.

^{2/}Toffler, Alvin, The Third Wave.

REPORT OF THE COMMITTEE ON FAMILY RELATIONSHIPS

I. INTRODUCTION

The Commission on Personal Privacy's specific charge is to "study the problems of discrimination based upon sexual orientation or the invasions of the rights of personal privacy in both the public and private sectors, documenting the extent of such problems, exploring in what forms the problems are manifested, noting existing remedies, and making recommendations as appropriate"^{1/}.

The purpose of this report is to establish the meaning and examine the effects "invasions of the right to personal privacy" in a family context. The Committee on Family Relationships' primary interest is to highlight the need to protect the right of personal privacy in order to establish and maintain functioning family units which are free from unwarranted intrusion by the public and private sectors.

For the purpose of this report, "personal privacy" is defined as the right of an individual to make self-determinations regarding the manner in which his or her intimate associations are formed and the right to continue those associations free from intrusion, scrutiny and/or discrimination by government or the private sector. An invasion of this right of personal privacy would occur when individuals are prevented or deterred from forming intimate associations, when discrimination against citizens occur as a result of an intimate association, or when information about the nature of a person's private life is gathered and/or disseminated without a compelling need to do so in order to protect the health and safety of others.

The information used in this report was gathered through the public hearings held by the Commission on Personal Privacy, by bibliography searches, and by observation of Committee members of their own communities and families.

The focus of the report is upon the diversity of family forms and the unique problems which arise from a presumption of the commonality of the traditional nuclear family.

^{1/}Executive Order B74-80.

III. SOCIOLOGICAL ASPECTS OF THE CHANGING FAMILY

A. THE DEFINITIONAL DILEMMA

In producing theoretically based studies of family forms, family needs, attitudes toward family, or cross-cultural studies, sociologists tend to adopt two types of approaches to applying notions of what a family is: (1) the term "family" is defined for the purpose of the hypothesis being tested^{3/}; or (2) the study is conducted with no stated definition of the term "family" and research data is gathered in reliance upon the notions of the subjects as to what constitutes a family.^{4/}

Sociologists have done numerous studies of families in which they challenge each other's conclusions due to the fact that their definitions include or exclude certain elements.^{5/} Other sociologists look at family as a sociological problem. An article released by Donald W. Ball in 1972 dissects the notions of family and household, and examines ways in which "family" could be defined in order to remove cultural bias in the definition.^{6/} Mr. Ball cites a myriad of previous articles which concern themselves with definitions of family and in his comparative analysis found that "...two moral dimensions... underline most such definitions in North America: (1) religious perspectives; and (2) legalistic constructions. Although they form the basis for the formulation and execution of social policy, these versions of what the family is about speak to ideals what the family should be rather than what families may be in terms of observable social conduct and

^{3/}Hendrix, Lewellyn, "Nuclear Family Universals: Fact and Faith in the Acceptance of an Idea" Journal of Comparative Family Studies; Vol. VI, No. 2, Autumn, 1975. pp. 125-138.

^{4/}American Research Corporation and the Gallup Organization, American Families - 1980, An In-Depth Survey and Analysis, American Research Corporation, C 1980.

^{5/}Lee, Gary R., "The Problem of Universals in Comparative Research: An Attempt at Clarification", Journal of Comparative Family Studies, pp. 89-100.

^{6/}Ball, Donald W., "The Family as a Sociological Problem: Conceptualization of the Taken-for-Granted As Prologue to Social Problem Analysis", Social Problems, Vol. 19, No. 3, Winter, 1972, pp. 295-307.

This report examines sociological changes and the variety of functioning family units in society today.

It is clear that due to the diversity of families, the problems of privacy invasion or discrimination faced by individual families is unique to that family and could not be examined in depth here. However, problems which are generic to most families which do not fit the traditionally recognized nuclear family model are examined.

II. RECOMMENDATIONS OF THE COMMITTEE

As the examples of research and public testimony indicate, the Committee on Family Relationships puts forth the following findings:

1. A dilemma surrounding the meaning of the word "family" exists in a sociological, theoretical context as well as in social work practice;
2. The presumption that "family" means a married, heterosexual couple with children no longer applies to a major portion of the population;
3. Persons whose family forms do not fit this presumed model suffer from exclusion from legal tax and services protections;
4. The nature of variety the family forms in current society warrants definitions that are inclusive rather than exclusive of nontraditional family forms;
5. The right of personal privacy involves the right of an individual to choose intimate and familial associations without intrusion upon information related to the nature of the relationship and without legally or governmentally imposed limits upon such choices; and
6. Any consideration of definition or any definition of family put forth should consider the following elements: continuity of commitment, mutuality of obligation, economic and/or domestic interdependence, and love and caring.

social organization."^{7/} Mr. Ball's observations and conclusions are within a theoretical context, yet they hold true for practitioners as well. Ann Hartman, in a recent Human Services Guide on family assessment in adoption, makes the following observation:

"A fourth major impact on adoption practice is the change in the American family itself. Family forms are altering and proliferating. The traditional family unit consisting of a working husband, a homemaker wife, and children is increasingly rare. Changes in the family require that agencies rethink their definitions and requirements in the search for families. The variety of children awaiting permanence requires a variety of the life styles and arrangements of families that may be found for these children. This variety is consistent with the pluralism that is fundamental in American life."^{8/}

Sociologists whether they research and study social phenomenon or practice social work recognize the problem in formulating definitions of "family". Without a firm construct as to what constitutes a family, the nuclear family ideal is presumed and other forms of family lose the critical services and legal supports for the familial bonds they form, whether those bonds are formed in biological or in chosen families.

B. TRENDS IN THE CHANGING FAMILY

Certain trends in household and family formation indicate an increase in the incidence of alternate family forms.

The number of individual households has increased 20% since 1970, and 53% of all households in the United States now consist of only one or two persons.^{9/} Between 1960 and 1975 the number of divorced women heading families nearly tripled.^{10/} Between 25% and 30% of all children are in one-parent families at any point in time.^{11/}

^{7/}Ball, p. 296.

^{8/}Hartman, Ann.

^{9/}Wattenberg and Reinhardt, "Female-headed Families: Trends and Implications", Social Work, Nov. 1979, p. 460.

^{10/}Grossman, Allyson Sherman, "The Labor Force Patterns of Divorced and Separated Women", Monthly Labor Review, Vol. 16, 1977, p. 50.

^{11/}Bane, Mary Jo, "Marital Disruption and the Lives of Children", Journal of Social Issues, Vol. 32, No. 1, 1976, pp. 103-109.

This information indicates that in the current era, individuals are more likely to choose life styles to suit their needs regardless of whether the life style fits any particular social model. Due to the diversity of families that this creates, traditional "family" support systems may be unresponsive to unique needs.

According to a study of female-headed families by researchers Wattenberg and Reinhardt:

"Major events such as marriage, separation, divorce, widowhood, remarriage and the birth of children create life shaping circumstances that determine whether women can control their economic and social fate. The multiplicity of these events in the lives of female heads of families contributes to a constantly shifting array of living arrangements."^{12/}

These researchers, one of whom is the State Demographer of the State of Minnesota, have identified the trends which are: "Reshaping American Families".^{13/}

According to their study, the number of women between the ages of 20 and 24 who remain single has increased in proportion to the number of those who marry. In 1960, 28% of the women in this age group were unmarried and in 1977, 48% of this age group remained unmarried. This indicates that women are shifting the timing of their marriages. In addition, the proportion of women who choose to remain single through the age of 29 has increased from 11% in 1970 to 18% in 1978.^{14/}

More recent statistics from the U.S. Bureau of the Census point more specifically to the proportion of the population who live in households which are considered "nonfamily" households. According to an advance report from March 1981, on households and families:

"Data from the March 1981 Current Population Survey (CPS) indicate there were an estimated 82.4 million households in the United States in March 1981. About 60.3 million were family households (maintained by two or more persons

^{12/} Wattenberg, p. 461.

^{13/} Wattenberg, p. 460.

^{14/} Wattenberg, p. 460.

who are related and living together), and 22.1 million were nonfamily households (maintained) by persons living alone or with other unrelated persons). Since 1970, the total number of households has increased by 30 percent: family households by 17 percent and nonfamily households by 85 percent (table 1).^{15/}

The report goes further to state:

"Of the 8.9 million increase in all family households between 1970 and 1981, almost one-half was due to the increase in family households maintained by a man or woman with no spouse present."^{16/}

According to the data presented in this preliminary compilation of 1980 census data, 73% of the population of the United States currently lives in a "family"^{17/} household, while 27% live in "nonfamily" households. It is significant that the number of "nonfamily" households exceeds 22 million, with approximately 13 million of these households headed by women.^{18/}

The trends in household formation have also changed over the last 40 years, with a greater proportion of U.S. citizens living in "nonfamily" households. The population of "family" households has increased 73% since 1940, while the population of "nonfamily" households has increased 538%.

This dramatic trend can also be seen from 1975 to 1980. During this five-year period, "family" households have increased by 9% while "nonfamily" households have increased by 42%.^{19/}

These "nonfamily" households are comprised of an adult, two unrelated adults, or a combination of adult and child or adults and children. The United States' population includes 2.8 million households that consist of two unrelated adults living together. Approximately 500,000 (or 18%) of those

^{15/}U.S. Bureau of the Census, Current Population Reports; Population Characteristics; Series P-20, No. 367; "Households and Families by Type: March 1981 (Advance Report)". U.S. Government Printing Office, Oct. 1981.

^{16/}See footnote 15.

^{17/}"Family" in the U.S. Bureau of the Census definition, consists of two or more persons, residing together, who are related by birth, marriage or adoption. All others are considered "nonfamily".

^{18/}See footnote 15.

^{19/}See footnote 15.

households include children, and although it can be presumed that both adults contribute to the nurturing and upbringing of those children, these are not considered traditional families and the nonbiological parent has no right to care for the child in the manner that a recognized parent could.

All 2.8 million of those households cannot get family medical insurance, nor can the future be secured by one partner for the other in times of disability or death under current laws and policies regarding what constitutes a "family".

These statistics merely indicate that there are changes in how individuals choose to live. No matter how these functional living units form their familial support, the support system is not considered "traditional" since the family is not one that is under the legal sanction of marriage.

During the period while this Committee was researching this issue, members of the Committee became increasingly aware of the numbers and varieties of family configurations in their own daily lives.

The most common of these nontraditional families are two adults who reside together and share a partnership based upon their common needs for comfort, security, and an emotional bond. In some cases, marriage is an option for two co-residing adults and in some cases it is not. For example, a middle-aged mid-income male is currently residing with and supporting his female lover until he can locate an attorney who was supposed to have carried through the divorce papers from his previous marriage. Since his divorce papers were never filed, he is in the position of supporting his future wife with no medical or dental insurance coverage or the ability to claim her as a spouse for income tax purposes. This situation is much more common for Lesbian and Gay couples, since they never have the option to marry.

Other family forms include a community of aging persons who now own a large communal farm in Vermont where they live and work together until they die or become ill, in which case they are cared for by their "family" in the commune.

A single, disabled man lives with his homemaker/choreworker and they share his disability income and the salary paid to the choreworker as common survival funds. Neither of the two could live alone and over the year in which they have lived in this manner, their familial bond has become very strong, even though the relationship is not sexually consequential for either partner.

Another interesting family discovered by the Committee was one in which a Gay man in his mid-twenties whose parents are still living was granted custody of his teenage brother by a Nevada court. The elder brother belongs to P.T.A., contributes time and energy to the younger brother's school activities and even corrects his own grammar as he speaks to insure that he provides a positive and successful role model for his younger brother.

Another type of family recently established itself and its rights in Orange County, Florida. In 1969 a group of elderly men and women established the Share-A-Home Association and lived together for at least eight years in a 27-room mansion. This group had to fight some of their neighbors who sued the group for violating single-family zoning in the area. The circuit court judge who decided the case stated that a group of people who pooled their resources "with the intention of sharing the joys and sorrows of family life is a family".^{20/}

In an age when only 11% of the elderly live with their children or with other relatives^{21/} the possibility of creating a family of elderly persons to share the joys and struggles of family life could be a great relief to an elderly person who may live alone on a poverty level fixed income.

C. PUBLIC HEARING TESTIMONY: COMMON PROBLEMS ASSOCIATED WITH CHOSEN FAMILIES

Much of the Commission's public hearing testimony dealt with the unique problems experienced by individuals and couples who due to nontraditional family status, experience exclusion from the rights afforded traditional families. Testimony on family issues revealed certain commonalities in family relationships as well as common concerns of persons in alternate relationships.

Major commonalities regarding the fundamental need to form intimate relationships emerge in the testimony. The ability to choose a family and to strive for equality in legal protections and government-provided services were the most prevalent concerns expressed by persons testifying on their family status.

^{20/}Jones, Rochelle, The Other Generation: The New Power of Older People, Englewood Cliffs, J.J., Prentice-Hall, 1977, p. 58.

^{21/}Hess, Beth B., Growing Old in America, New Brunswick, N.J., Transaction Books, 1976, p. 26.

Jimmy and Betty, both disabled, are a couple who depend upon their individual social security benefits and Medi-Cal benefits for bare subsistence. They both testified that they love each other and desire to marry. However, due to their status, once married the benefits they now receive as individuals will be significantly reduced. According to Jimmy and Betty, they are not yet married because of the benefits they will lose. Their choice to marry is limited by the threat of a loss of basic subsistence.

Daniel Brzovic, representing the Western Law Center for the Handicapped, elaborated upon the public assistance limits on the right of choice to form a family. According to Mr. Brzovic, the law is not neutral with respect to marriage. Various governmental assistance programs in California (including the Social Security Income Program, the Medi-Cal Program, and the In-Home Supportive Services Program) decrease benefits significantly for married persons. He concludes that it is more beneficial for persons dependent upon public assistance to remain single.

Dr. D., a 37-year old Gay man who has been with 34-year old lover for 11 years testified to the Commission about his attempts to adopt a child. No agency (except for illegal alien smugglers) could recommend an adoption nor conduct a home study for Dr. Dee as an openly Gay man. Virtually all persons Dr. Dee contacted regarding the possibility of an adoption told him he would be better off to adopt as a single man and he should not reveal that he is Gay. Dr. D. and his lover own two homes; one near water out of town where their friends, many of whom are non-Gay, visit with their families. Although Dr. D. has a stable relationship, a secure profession and is a community volunteer worker, his choice of expanding his family by raising a child is limited. The governmental agencies responsible for adoption did not in any way oppose the adoption itself, but they did not want to grant the adoption to an admittedly Gay couple.

Another concern which was raised by Dr. D. and by an attorney who represents persons in alternate relationships, deals with the informational privacy choices regarding the nature of the relationship. Dr. D. wanted services from an adoption agency but would not withhold what he considered to be critical information about the nature of his family relationship. He was not granted services due to his lack of willingness to withhold the information that he is Gay and is in a stable committed relationship with another man.

Other individuals may choose to maintain their privacy regarding information on the nature of their chosen family relationships yet they desire services and protections for their family partners regardless of whether the relationship is under the sanction of marriage or whether any sexual intimacy exists at all.

Steven Kelber, an attorney that deals in part with Estate Planning and Probate is Cases, testified on this issue. Non-traditional families enlist Mr. Kelber to plan for one partner to be able to keep the family home and goods upon the death of the other partner. One option presented by Mr. Kelber is for one partner to adopt the other. According to him, if this was to be done, the entire family would be notified. He noted that clients will often wait until the death of their parents in order to maintain privacy about their adult adoptions. In this case, protecting the privacy of information regarding family choice was not possible under the current law and practice.

As these examples show, one critical concern in formulating definitions of family is not only to protect the right to choose the family, but also to protect the right to choose whether to disclose the nature of the family relationship.

Perhaps the most prevalent concern of persons who appeared before the Commission had to do with aging and securing the future in nontraditional families. Mina Robinson, gerontologist, testified as follows:

"...caring friends who can name each other's beneficiaries of their estates are taxed at very high rates. The State is confiscating funds that could help provide for people's old age. In these days when we are increasingly being told we must not look to government for help and social security itself is in danger of collapse, it would seem that we should be encouraged and even be given incentives by the State for taking care of each other, certainly not penalized."

Dorrwin Jones, Executive Director of Meals on Wheels in San Francisco, put the issues to the Commission quite directly:

"I have lived with my friend for 21 years. We are responsible property owners, taxpayers, and voters and have professionally contributed tremendously to the quality of life in the entire community. Yet, as aging Gay men, we are denied recognition as a family unit.

This can mean problems with intensive care units when either of us is hospitalized, prejudice in nursing homes in which we could be confined, and then survivor problems with funeral services, wills and estate taxes and insurance companies."

Donna Hitchens, attorney for the Lesbian Rights Project in San Francisco, testified about her clients' problems that surround family issues. According to Ms. Hitchens:

"...at least one-third of all Lesbians are also mothers and have children living in their home, so their family units are units involving both adult couples and children. Some of the regular problems involve the lack of any legal protection to the biological mother's lover or her rights in her parenting relationship with the children. She may have co-parented those children for ten years and if that relationship dissolves or the biological mother dies, she has no legal protection to continue in the parenting relationship..."

"Another problem that is regularly encountered is around medical insurance. The California Insurance Code prohibits discrimination on the basis of sexual orientation in the provision of insurance with one exception which is medical insurance: family policies. So if you have a couple where the partner is employed and has some kind of medical coverage, she cannot cover the children of that family even if they are economically dependent upon her. They cannot be covered as family members for medical insurance purposes."

As can be seen in these examples of testimony, current law and practice exclude protection of the rights of personal privacy for persons who choose nontraditional relationships. This lack of protection for persons who formed such relationships limit choices and exclude alternate families from the fundamental securities provided under the law.

D. MOVING TOWARD A MORE REALISTIC DEFINITION OF FAMILY

Sociologists have put some structure to the definitional problem and have formulated various definitions which in their views more realistically reflect the actual social order and function of the unit called "family". The American Association for the Advancement of Science in its Selected Symposia

Series of 1979 published an analysis of the various models of family for which a working definition can be derived. These models are the legalistic model, the structural model, the normative or moral model, the functional model, and the social psychological model.

In examining the functions of the family, this Symposia Series report recommends the following working definition:

"Whether by blood, religious or legal contract or simply mutual consent, any individual sharing or choosing to share each other's lives and/or living space for any emotional, economic or social reasons can be considered a family."^{22/}

The social psychological model for framing a definition is addressed as follows:

"Social psychologists usually focus on the individual and her/his self-identified 'significant others' as the definition of the family group and they, along with therapists and social welfare workers are almost required to work from this model."^{23/}

The report then synthesizes all of the various models examined in it and ventures that:

"A family is a group of people who are bound by their common work efforts from which the common consumption arises."^{24/}

Ball, in his study of "The Family as a Sociological Problem" puts forth the definition:

"...based upon the empirical realities of the actual social arrangements of the contemporary everyday-any day world: these may be defined as any cohabitating domestic relationship which is (or has been) sexually consequential, i.e., gratification for members or the

^{22/} Snyder, David Pearce, ed., The Family in Post-Industrial America, Some Fundamental Perceptions for Public Policy Development, American Association for the Advancement of Science Selected Symposia Series, 32 Westview Press, Boulder, Colorado; C 1979, p. 31.

^{23/} Snyder, p. 33.

^{24/} Snyder, p. 35.

production of offspring. These are the relationships most often associated with the emotions of love and the home where the members are conventionally situated or otherwise".^{25/}

Ann Hartman, in her guide on finding families and adoption, proposes the following:

"In attempting to develop a mode of practice that is responsive to our pluralistic society, two definitions of family are utilized; one that is relatively simple is the biological definition of the family as an extended network of blood kin. A second definition of family relates to function and could be defined as any two people at a minimum be they two adults or an adult and child who share commitment to one another of caring and continuity."^{26/}

Judge Mary Morgan in her testimony to the Commission responded to a question regarding how family might be defined in terms recognizing the changing mores and societal needs and demands of the 20th Century:

"...my own feeling in just sort of an impressionistic way is that to me a family is a group of people who live together, who love each other, nurture each other and give each other their supports and I am not sure that we need the binds of a legal marriage or blood relationship in order to establish that."

As a result of the review of published literature and public hearing testimony, the Committee on Family Relationships has identified elements common to the families which should form the basis of inclusive definitions that are in concert with the current social realities:

1. Continuity of commitment: A family unit should include commitment to the family by its members over a significant period of time;
2. Mutuality of obligation: Members of families are mutually bound by their commitments whether those commitments are formed by contract or by implied mutual agreement;

^{25/}Ball, p. 302.

^{26/}Hartman, p. 15.

3. Economic and/or domestic interdependence: Members of family units depend upon each other to perform the functions of everyday life including the bread winning and/or household activities necessary for consumption and survival.

PRW:B-1222/1-15

CALIFORNIA TAX LAWS AND ALTERNATE FAMILIES

INTRODUCTION:

The California state tax structure, where it makes distinctions in personal relationships, divides the people of California into two groups - those who are related by blood, marriage, and adoption (and thereby a "family") and those who are not. The manner in which a person is taxed, whether through personal income tax, sales and use tax, property tax, and until recently, gift and inheritance tax*, all hinged on the person's relationship to the recipient or donor of his/her monies or property. There are many laws in the Tax Codes which give unequal treatment to various groups of taxpayers depending solely upon their interpersonal relationships.

The Franchise Tax Board has contracted with the Commission on Personal Privacy to study and evaluate "tax principles and policies of the State which affect unmarried individuals, couples, or 'alternate families', such as the equity or inequity of allowing joint filing privilege to married couples and denying it to unmarried couples who function economically in the same manner as married couples."

This report summarizes those tax laws in which a taxpayer's family relationships and marital status affects the manner in which the taxes are assessed. Tax principles and policies apparently favor some family forms or household composition and disfavor others. The three areas of tax laws covered in this report are: personal income tax, administered by the Franchise Tax Board; sales and use tax, and property tax, both of which are administered by the Board of Equalization. This report reviews these tax laws in terms of their equity or inequity toward unmarried couples, or "alternate families" who would be considered single individuals in terms of the current tax laws.

SUMMARY AND RECOMMENDATIONS:

It is evident that a person's marital status has a significant effect upon the manner of taxation and the amount of tax to be paid. The magnitude of the effect is different in each case, dependent upon a myriad of factors, not the least of which are the personal relationships of the taxpayer and the amount of the taxpayer's income.

*Propositions 5 and 6, which passed this June, repealed the existing statutes governing gift and inheritance taxes.

Married couples are bound by community property laws. Each has rights to one-half of the aggregate income of the couple. This can have a beneficial effect in cases where the income of one spouse is significantly higher than the other through utilization of a joint tax return. Dual-income married couples can also income split and file separate returns as though unmarried. Unmarried couples do not have the option of sharing their tax burden. Despite the Marvin decision which recognized contractual rights between unmarried cohabiting couples, the California tax laws identify only three groups of taxpayers: married, single, and head of household. When one partner of an unmarried couple is a dependent of the other, the taxpaying partner does not even have the advantage of being allowed to file as head of household, because the tax laws do not recognize the dependent as qualifying the taxpayer for head of household status.

It would be precipitate to recommend that all tax provisions for married and unmarried couples be equalized. There are benefits and disadvantages on both sides. The problem with this aspect of the California tax laws lies mainly in the nonrecognition of bona fide relationships between two people who have the same nurturing, supportive commitment as in a marital relationship, because (1) California does not recognize common law marriages, and (2) two persons of the same sex cannot be married legally.

This report covers only those areas in which married couples and unmarried couples are treated differently in the tax laws. There are a variety of alternative family relationships outside marriage within which the members of the "family" provide the same type of care and mutual support, both economic and emotional, as traditional families. In reality, the configurations of family extend beyond the strict limits of "blood, marriage, or adoption" recognized in the California tax laws. However, the changing makeup of families in households in society has not been reflected in the tax laws.

These tax privileges and penalties have an impact on freedom of choice in family relationships. Taxpayers who have never been married to each other but who live together may refrain from marrying solely for tax reasons. Married couples may divorce and either continue to live together or remarry after the end of the tax year solely for tax purposes. There are couples who do not have the freedom of obtaining legal recognition of their "family" status.

The tax laws represent a myriad of compromises where the main dilemma seems to be whether persons should be taxed as isolated individuals or as members of a group whose family ties to other taxpayers affect their taxpaying capacity. When the term "family" is defined, inevitably groups that are only marginally or ceremonially different, so far as relevant economic or social relationships are concerned, are excluded and unrecognized.

There are several simplistic ways to deal with this problem. One is to extend the joint filing privilege to unmarried couples who maintain a "bona fide" relationship; another is to recognize same sex marriages and give these couples the same rights and privileges of all married couples. The tax laws also could be revised to give married couples the opportunity to be considered "unmarried" where it is more advantageous to do so. Before any comprehensive recommendations can be made which have such sweeping implications, it is clear that a more careful study of the State's tax laws needs to be made.

There is one area in the tax laws, however, which seems patently inequitable and inconsistent and deserves recognition. Under Section 17042, an unmarried individual can file as head of household if he/she has a qualifying dependent. The term "qualifying dependent" in this context only includes persons who are related to the taxpayer by blood or marriage. It does not include unrelated individuals living together, even though one may furnish chief support of the other, and may claim the other as a dependent for the purpose of a personal exemption credit. This is an inconsistency in the tax codes which has a disadvantageous effect on unmarried couples. It is, therefore, recommended that Section 17044(a) of the Franchise Tax Board codes on personal income tax be repealed in order that any taxpayer with a recognized dependent for which a personal exemption credit may be claimed can file under head of household status.

BOARD OF EQUALIZATION

Following are three sections of tax laws administered by the Board of Equalization which recognize and favor married couples and traditional families and appear to be disadvantageous to unmarried couples and persons in alternate families.

1. Section 6285 of the Sales and Use Tax Law

Persons who wish to add another person to the title or to change title of a vehicle, vessel, or aircraft must pay a State tax of 6-6.5%. Exemptions are made when the person selling the property is either the parent, grandparent, child, or spouse, or the brother or sister if the sale between the brother or sister is between two minors related by blood or adoption, and the person selling is not engaged in the business of selling this type of property.

The specific exemptions from the burden of this tax are afforded only to persons falling into certain blood and adoptive relationships. It does not recognize those persons who have entered into an alternate family relationship not related by blood, marriage, or adoption, who may have the same financial or emotional relationship with each other as do traditional

families. In some cases the financial and emotional ties among traditional family members are more tenuous than those among members of alternate families.

2. Rule 462 - Change in Ownership Property Tax

Rule 462 allows for nonreappraisal of real property when transferring between spouses, whether voluntary or involuntary, by operation of law, grant, gift, devise, inheritance, trust, addition or deletion of an owner, property settlement, or any other means. Generally, there is a reappraisal of real property as of the date of the change of ownership unless the transfer is between co-owners or joint tenants or between spouses, or unless the transfer can be shown to be for the purpose of perfect title to the property. The rationale here is to recognize the community property rights of spouses and to obviate the economic hardship engendered by the termination of the marriage or death of a spouse. This is a privilege not extended to unmarried couples who function essentially as do married couples but who cannot legally marry. This is also a privilege not extended to single individuals who are lifelong companions and who function economically in a spousal support relationship.

3. Rule 135 - Homeowner's Property Tax Exemption

Recognition of only traditional spousal and family relationships is also shown in Rule 135 on Homeowner's Property Tax Exemption filing. Rule 135 states that the signature of one spouse who is co-owner is valid for the other co-owning spouse for the initial year of filing of Homeowner's Property Tax Exemption and for subsequent years. It is also permissible for a husband to appear for his wife or a wife for her husband and sons or daughters for parents and vice versa at hearings of the Board of Equalization. Such regulations give preferred status to spouses and blood relatives while not recognizing persons who may actually have a more intimate association to the taxpayer in an alternate family situation.

FRANCHISE TAX BOARD

The following pages outline areas in the personal income tax codes which are inequitable to unmarried couples and tend to benefit married couples. Of course, the advantages or disadvantages of these income tax provisions is dependent upon the amount of income the taxpayer has, as well as upon his/her marital status. In California each spouse has half interest in the couple's community property. For all property acquired by a married couple the respective interests of husband and wife are "present, existent, and equal". The community property interest of each spouse even extends to a surviving spouse. The surviving spouse's half interest is considered

"to have been acquired from or to have passed from the decedent" and his/her estate. Special provisions in the tax laws, such as Section 17046 covering a surviving spouse, serve to reduce the tax burden on married couples. A husband and wife can elect to file a joint return combining their income and deductions. This can be done even where one spouse has no income. Single income couples or couples in which one income is significantly higher than the other would incur a lower tax liability by being married and utilizing a joint return. Thus if only one spouse was employed and earned \$20,000, the tax laws permit the couple to be taxed as if each spouse had earned \$10,000.

Married couples also have the option of filing separate returns and being taxed at the same rate as unmarried individuals. Despite the income splitting privilege on joint returns, it is advantageous in some cases for a husband and wife to file separate California returns. This may be true in cases where a husband and wife have separate incomes and deductions, and there is a limitation on the amount of the deduction which is tied to the income level, such as for medical expenses.

While there are tax laws which benefit married couples because of the State's recognition of community property, the dual holding of property and income can also have a disadvantageous tax effect. Certain losses, for example, are deductible. However, they are not deductible if the losses are between family members. Married couples are recognized to have a vested partnership and the liabilities of one spouse are automatically assumed by the other. For example, the Franchise Tax Board holds each spouse liable for the entire payment of taxes on the couple's income and may collect from either spouse even after the marriage is dissolved.

1. Definition of Head of Household, Sections 17042-17044

An unmarried individual can file as head of household if he/she maintains a household that is the principal place of abode for an individual who is within specified classes of relationship. These classes of relationship of qualifying dependents follow traditional family lines. A qualifying dependent can be any one of the following persons over half of whose support is received from the taxpayer: a son, stepson, daughter, stepdaughter, descendant of a son or daughter of taxpayer, legally adopted child, brother, sister, stepbrother or step-sister, father, mother, or ancestor of either, stepfather, stepmother, son or daughter of brother or sister, brother or sister of father or mother, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, sister-in-law, or, in California, a disabled cousin who is institutionalized. A taxpayer can also claim any other person whose principal place of abode is the taxpayer's home and who is a member of the taxpayer's household as a dependent, but only those family members listed above can qualify the taxpayer as head of

household. This means that unrelated individuals living together do not qualify even though one may furnish the chief support and be entitled to an exemption credit for the dependent. Unmarried couples must file as single individuals and neither partner may qualify for and receive the lower tax rate of head of household.

Married individuals have the advantage of being able to reduce their tax burden by filing jointly and can also be treated as "unmarried" for the purpose of determining filing status if the taxpayer lives apart from his/her spouse for the entire year and has a dependent child. The principal advantage in California of the unmarried classification is that it puts the individual in a position to qualify also as "head of household" and get the benefit of the larger personal exemption credit, higher standard deduction, and the lower tax rates that go with the head of household classification. However, this "head of household" advantage does not extend to unmarried couples even though one of the partners meets all of the dependency definitions. The definitions of dependent in the tax codes are inconsistently applied. Any person for whom the taxpayer provides the chief support can be claimed as a dependent except in this one instance of qualifying the taxpayer for the head of household classification. This clearly accords unequal treatment to unmarried persons.

2. Rules Relating to General Definition of Dependent - Section 17057

Among the restrictions as applied to the dependency requirement is a statement "an individual is not a member of the taxpayer's household if at any time during the taxable year of the taxpayer the relationship between such individual and the taxpayer is in violation of local law". This section of the tax codes for California would preclude the possibility of bigamous partners from claiming two families as dependents. California has decriminalized other forms of private sexual conduct between consenting adults so the rights of privacy of cohabitating couples and alternate families have been maintained to this extent. (However, this is not true in all states.) Further, "local laws" can extend beyond State laws relating to cohabitation. The term "local laws" may also encompass local housing authority and zoning regulations. The single family zoning ordinance has been challenged in several places in California, the most significant being the City of Santa Barbara vs. Adamson where the Supreme Court voided on privacy grounds a single family zoning ordinance which prohibited the occupancy of residences by household members who are not related by traditional family ties of blood, marriage, or adoption. The single family zoning ordinance could restrict the cohabitation of unmarried couples. The relationship would be in violation of local law and as a result one of the

partners could not be claimed as a dependent under Section 17057(f) of the personal income tax laws. There also exist local housing authority regulations, one of which was invalidated on privacy grounds (Atkisson vs. Kern County Housing Authority). This regulation forbids low income public housing tenants from living with anyone of the opposite sex to whom the tenant was not related by blood, marriage, or adoption. Again, the relationship of the unmarried cohabitating couple is in violation of local law and therefore the dependent partner would not meet the definition in the tax code.

While potentially these cases may open up tax questions as surmised above, as a practical matter the Franchise Tax Board would probably not be aware of such situations and would probably not deny dependency status on these bases.

3. Minimum Tax on Tax Preferences - Section 17062-64.7

The restrictions on filing status not only affect tax rates, which are considerably lower for married couples filing jointly and head of household than for singles, but also affect the minimum tax on tax preference items. This minimum tax is an additional tax on taxpayers who benefit substantially from various forms of tax-free income or deductions - generally those with higher incomes. The preference tax exemption is \$4,000 for a single person and \$8,000 for a married couple, "surviving spouse", or "head of household". In addition, the minimum tax rate for singles is higher than for head of household, for married filing jointly or for "surviving spouse".

4. Surviving Spouse - Section 17046

Another advantage accorded married couples is that a joint return can be filed by the surviving spouse for up to two years following the death of the husband or wife if the surviving spouse does not remarry and maintains the household for a dependent child. The benefits of income splitting with a deceased spouse allows the application of the lowest tax rate and is a benefit denied unmarried couples. A surviving spouse may also income average for the two years following his/her spouse's death under Section 18241-46 even with the zero income of the deceased spouse. The surviving spouse provisions were added to reduce the hardship to widows and widowers with small children who previously had the joint filing privilege.

5. Credits for Personal Exemption - Section 17054

Filing status also determines the amount of tax credits allowed for personal exemptions. The credits are deducted from the tax computed on taxable income without benefit of

such exemptions. The exemption credit for the 1981 tax year for a single person was \$35. For a married person filing a short return as head of household or surviving spouse the exemption credit was \$70. In addition, a dependency credit of \$11 was allowed for each dependent. The drawback to head of household status is that no dependency credit is allowed for the first dependent required to qualify the taxpayer as "head of household". In this case, it would be to the unmarried couple's advantage not to claim head of household but this is generally more than offset by the high tax rates of the single filing status. There is also an exemption credit of \$11 provided for a blind non-wage earning spouse. There are no provisions for this additional exemption credit for blind dependents.

6. Renters' Credit - Section 17053.5

A tax credit is allowed to anyone who is a "qualified renter" and the credit is deducted from the tax liability. The renters' credit is \$137 for married couples, head of household, and surviving spouse, and \$60 for single individuals. The credit for a married couple is \$17 over that of an unmarried couple under the apparent assumption that "two cannot live as cheaply as one". If a husband and wife file separate returns, the entire credit can be taken by either partner or can be divided equally between them so that each partner of the couple would receive at least a \$6 advantage over single individuals. The tax codes on renters' credit have been liberalized for married couples to the extent that if one spouse is granted a homeowner's exemption, the other can claim renters' credit if they both maintain separate residences. For unmarried couples where one is a dependent of the other, the dependent cannot claim a renter's credit, although the dependency of a husband and wife on each other is not questioned.

7. Special Tax Credit for Low Income Taxpayers - Section 17069

A special tax credit of \$56 is allowed for single taxpayers and married taxpayers filing separate returns, if the adjusted gross income is \$5,000 or less, and \$112 for a married couple filing a joint return, head of household, or surviving spouse, if the adjusted gross income is \$10,000 or less. While this may appear equitable on the surface, an inequity occurs when one partner is a non-wage earner and is dependent upon the other. In this case, the married couple may, on the basis of one or the other partner's sole income, claim a credit of \$112, whereas the sole wage earner of an unmarried couple must file as a single individual and receive a credit of only \$56, since the head of household filing is denied them.

8. Alimony and Separate Maintenance Agreements - Section 17081

California tax codes provide certain tax benefits to divorced spouses. Alimony payments made as a result of a Decree of Divorce or separation are includable as income to the spouse who receives the payments and are deductible by the spouse who makes the payments. The deductions are made off the adjusted gross income. In cases where an unmarried couple contract to provide support payments upon dissolution of their relationship ("palimony") the payments are not deductible to the payer regardless of whether court ordered or not. These payments would be termed a personal expense and not deductible under any circumstances.

9. Moving Expenses - Section 17266

A deduction is allowed in the computation of adjusted gross income for certain moving expenses in connection with the commencement of work at a new principal place of work. There are basically two types of moving expenses which can be deducted. The tax laws do provide for deduction of actual moving expenses, such as travel, payments to movers, and hotel expenses, for any individual who is a member of the taxpayer's household and who occupies both the former and new residence of the taxpayer. However, there are additional restrictions which apply to deductions of qualified residence sale or lease expenses which are incidental to the move. This section specifies that the sale or exchange by the taxpayer or his spouse of the taxpayer's former residence, the purchase by the taxpayer or his spouse of a new residence, or settlement or acquisition of the lease by the taxpayer or his spouse are qualified residence sale, purchase or lease expenses. However, if the taxpayer is unmarried, only that portion of the residence or lease expenses which are attributable to the taxpayer can be claimed as a deduction. For unmarried couples who are joint tenants or tenants in common it would appear that this section applies only to the taxpayer who is required to move regardless of the relationship of the couple to each other. Therefore, for an unmarried couple in this situation the taxpayer who is required to move would only be allowed to deduct one-half of the cost of the sale, purchase or lease expenses.

10. Medical Expenses - Section 17253-57.9

An itemized deduction is permitted for medical expenses not compensated for by insurance or otherwise to the extent that such expenses paid for medical care of the taxpayer, his spouse, and dependents exceed 3% of the adjusted gross income. In addition, a deduction is allowed for one-half of the amounts paid for medical insurance of the taxpayer, his spouse, or dependents, limited to a maximum deduction of \$150.

Any medical insurance in excess of \$150 limitation is includable with other medical expenses subject to the 3% rule. Amounts paid for medicine and drugs are includable in medical expenses only to the extent that they exceed 1% of the adjusted gross income. The tax codes do not provide a deduction for medical expenses which were made to a person who is not the taxpayer's spouse or dependent. This creates an inequity for unmarried couples, where one partner pays for the medical expenses of the other. However, no deduction is allowed for payment of such medical expenses if this person is not a spouse or a dependent. This compounds the problem already existent with couples who are not married, as most employers will not extend coverage of health insurance beyond the employee's spouse and dependent children.

11. Casualty Losses - Section 17206

An ordinary loss deduction is allowed for certain types of losses which are not compensated for by insurance or otherwise. In the area of losses arising from casualty or theft, the deduction of casualty or theft losses not connected with a trade or business is limited to the portion of each loss in excess of \$100. For the purposes of the \$100 limitation, a husband and wife making a joint return are treated as single individuals. This means that if an unmarried couple incurs a theft or casualty loss of an item they jointly own, each can claim a loss of one-half of the value of that item and each must apply the \$100 limitation, thereby reducing the amount deductible as a loss by \$200. A married couple can jointly deduct the entire loss with only a \$100 limitation.

12. Retirement Savings for Certain Married Individuals - Section 17241

Both California and Federal laws allow deductions for contributions of individual retirement accounts or for the purchase of an individual retirement annuity or bond, commonly known as "IRAs". The basic IRA deduction under California law is the lesser of \$1,500 or 15% of the individual's compensation or earned income. The laws also provide an additional deduction for the benefit of a "nonworking spouse" up to an overall limit of \$1,750. The extension of provisions to nonworking spouses applies also to the categories of IRA accounts. The maximum that can be contributed to an IRA account is \$2,000 per person who works, \$4,000 per couple with two working partners, each one qualifying for individual IRA, or \$2,250 for a married couple with only one working partner. The nonworking spouse provisions recognize, in part, the contribution and investment of the nonworking spouse in the marital partnership. However this does not extend to unmarried couples who may function in the same manner as married couples, with one partner dependent upon the other.

The Federal tax system imposes an additional burden on the married taxpayer. In California tax law, married couples filing separate returns have the same tax rate as unmarried individuals. This is not true in the Federal system. In determining Federal income tax liability, whether the taxpayer is married is among the principal criteria employed to determine the amount of tax due. The Federal tax rate schedule for unmarried taxpayers imposes a lesser tax liability than that for married taxpayers filing separately. This is the so-called "marriage penalty" which occurs when dual income married taxpayers who have incomes that are approximately equal incur a greater combined Federal income tax liability than if they had chosen not to marry. California tax laws do not have a "marriage penalty" per se. However there are several provisions of the tax codes which are applied differently, depending on the taxpayer's marital status, which have a disadvantageous effect on married couples.

This next section outlines California personal income tax laws which present inequities to married couples and can be beneficial to unmarried couples.

1. Losses, Expenses, and Interest With Respect to Transactions Between Related Taxpayers - Sections 17287-17289

Losses which are incurred in a trade or business, incurred in a transaction entered into for profit, or arising from casualty or theft, are generally deductible. However, losses on transactions between members of a family or certain other related interests (such as a grantor and a fiduciary of any trust) are not deductible. Members of the family include the taxpayer's brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants (this does not apply to adopted children). This limitation has an effect in several tax areas. Section 17289 "Constructive Ownership of Stock" states that an individual shall be considered as owning stock owned directly or indirectly, by or for his family. Therefore, any losses sustained in the transfer of stock between certain family members or corporations owned by family members are not deductible. For example, a taxpayer was denied a deduction of loss which he sustained on the sale of stock to a corporation wholly owned by his brother, since the taxpayer was considered a constructive owner of the stock owned by his brother. Taxpayers are not allowed to deduct any losses sustained in the sale of property to a family member. This applies only to property which was used for income producing purposes. For example, a husband may not sell a rental he owns to his wife at a loss and claim the loss as a deduction. However, if a couple is unmarried one partner may sell such property to the other at a loss and, because their relationship is not one of blood or marriage, can claim the loss as a deduction. Further, the receiving partner can claim an accelerated depreciation on the property.

2. Gain On Sale of Personal Residence - Special One-Time Exclusion - Section 17155

California law provides a maximum \$100,000 once in a lifetime elective exclusion for gain on sale of a principal residence of the taxpayer. However, the exclusion cannot be applied to any sale or exchange by the taxpayer if an election by the taxpayer or the taxpayer's spouse with respect to any other sale or exchange is in effect. For married taxpayers, if either spouse had previously made an election to exclude (even if while unmarried or during a former marriage) neither married taxpayer may elect to exclude. The amount of gain which can be excluded from the gross income cannot exceed \$100,000 on a joint return and \$50,000 in the case of a separate return by a married individual. However, if an unmarried couple co-owns a residence, each partner can claim the full \$100,000 exclusion on their part of the gain upon sale of the residence. The only advantage of married individuals in this instance is that only one spouse need meet the three-year holding requirement (i.e., the property must have been used and owned by the taxpayer for a cumulative total of at least three years).

3. Credit for the Elderly - Section 17052.9

Individuals who have attained age 65 are entitled to receive credit against the tax imposed, after deducting credits for personal exemptions, equal to 15% of a designated amount that is reduced to the extent of social security benefits and certain other retirement income items. The designated maximum amount is \$2,500 for single individuals, \$2,500 for a joint return where only one spouse is eligible for the credit, \$3,750 in the case of a joint return where both spouses are eligible for the credit, or \$1,875 in the case of a married individual filing a separate return. Separate returns for married individuals are only allowed when the husband and wife never part at all times during the taxable year. The amount of the tax credit decreases after the adjusted gross income of a single individual exceeds \$7,500 or that of a married couple exceeds \$10,000 (\$5,000 for a married individual filing separately).

Whether married or unmarried couples benefit more from this tax credit is dependent upon the couple's income level. A married couple with only one spouse eligible for the credit can receive a greater tax break than two single individuals because he/she can also take two personal exemption credits and can have a higher income (\$10,000 vs. \$7,500 for single individuals) before the amount of tax credit begins to decrease. However, a married individual filing separately has a lower initial amount from which to calculate the credit (\$1,875 vs. \$2,500 for single individuals) and a lower maximum income level at which the amount of credit is reduced, than a single individual.

4. Child Care Credit - Section 17052.6

California law allows a tax credit for certain "employment related expenses" of children and other dependents, known as "qualifying individuals". The term "qualifying individuals" applies to a dependent of the taxpayer who is under age 15, a dependent who is physically or mentally incapable of caring for himself, or the spouse of a taxpayer who is physically or mentally incapable of caring for himself. The employment related expenses incurred are those expenses which relieve the taxpayer of the household services and care of the qualifying individual and which enable the taxpayer to be gainfully employed. The credit is allowed against the net tax after deducting certain credits and is for 3% of the qualifying expenses reduced by 2% for each \$100 of adjusted gross income in excess of \$15,000.

There is a provision in this section that the employment-related expenses not exceed either the taxpayer's earned income or, if the taxpayer is married, the lesser of the taxpayer's earned income or the earned income of his spouse for the year. This has a disadvantageous affect on the married taxpayer because if one spouse is either a full-time student or the qualifying individual, the spouse will be deemed as having an income of \$166 per month (for every month of the school year of a student) if there is one qualifying individual in the household, or \$333 a month if there were two or more qualifying individuals. These figures are applied whether or not the spouse receives any income whatsoever. The amount of credit, because it is tied to the family income, can be significantly reduced under this limitation. In addition, a married couple can claim the child care credit only if they file a joint return - which may not be advantageous in conjunction with other tax provisions.

5. Capital Gains and Losses - Sections 18161-18172 and 18181-18221

Certain gains and losses of personal assets are classed as "capital gains and losses" and are subject to special rules. Generally, capital gains are given favored tax treatment and capital losses are subject to restrictions. Capital gains and losses are ordinarily involved with the disposal of a "capital asset" (as defined in the tax codes) and the gain or loss must result from a sale or exchange. California tax laws limit the deduction allowed for any net capital loss remaining after applying certain percentages and offsetting capital gains. The deduction is limited to \$1,000 on a joint return of a married couple or the return of an unmarried person, and \$500 on the separate return of a married person. A single individual is allowed to deduct up to twice as much as a married individual. This difference was established based on the community property provision of marriage.

A capital gain or loss treatment of depreciable property used in business is denied on a sale or exchange, whether directly or indirectly, between a husband and wife. However, in a sale between the partners of an unmarried couple, there are no "family" restrictions to capital gains and losses. This section is a little more narrowly applied exclusion than that of a regular loss deduction (Sections 17287-17289) but still represents a disadvantage to married couples.

6. Adoption Expenses - Section 17259

California law allows an itemized deduction for adoption expenses. Such expenses include medical expenses of the mother of an adopted child incident to the child's birth, and also includes legal fees and other costs relating to adoption. A husband and wife filing a joint return may deduct only those adoption expenses which exceed 3% of their aggregate adjusted gross income and the maximum deduction cannot exceed \$1,000. If unmarried, filing as a single person or head of household, a taxpayer may deduct those expenses which exceed 3% of his/her adjusted gross income and the maximum deduction cannot exceed \$1,000. A married person filing separately can claim a deduction of up to a maximum of only \$500. For an unmarried couple, each partner can claim up to the \$1,000 maximum deduction, in the rare instance where both partners are involved in the adoption. A married couple, however, may claim no more than \$500 each.

7. Husband and Wife, Liability for Tax - Section 13555
Allocation of Income Between Husband and Wife - Section 17616

The tax returns of a husband and wife are considered inter-linked even if they file separate returns. The Franchise Tax Board has the authority under Section 17616 to distribute, apportion, or allocate gross income between spouses if it is determined that it is necessary to reflect the proper income of the spouses, even if they file separate returns. This is the same sort of unity that the Board recognizes for two or more persons, organizations, trades or businesses, which are owned or controlled directly or indirectly by the same interests, in order to prevent evasion of taxes. On separate returns, any community property income or deductions must be split equally between husband and wife. The jointly earned income of an unmarried couple, regardless of how the income was managed or spent, can be allocated to the partner to whom it would be more beneficial for tax purposes, because their union is unrecognized. The recognition of liability for tax of a married couple for each other, however, is much more specific than it is for unmarried couples. It is clear from the tax laws that married couples have a vested partnership and that

the liabilities of one spouse are automatically assumed by the other. Section 18555 states that the spouse who controls the disposition of, or who receives or spends community income, as well as the spouse who is taxable for the income, is liable for payment of taxes on the income.

The liability for tax of a married couple filing a joint return is joint and several. The liability can, at times, not even be relieved by the dissolution of the marriage. A former spouse can be held liable for the tax for the period of time that the couple was married. In one case where the taxpayer and her former husband had filed joint returns during their marriage, both were jointly and severally liable for the tax on the aggregate income. The Franchise Tax Board issued deficiency assessments and asserted liability against the taxpayer rather than her former husband as she appeared to have the greater capacity to pay. Tax liability also can extend beyond the death of the spouse. One-half of the spouse's community earnings can be allocated to the deceased spouse and one-half of the decedent's community earnings can be allocated to the surviving spouse and the surviving spouse can be taxed on the whole.

Unmarried couples do not automatically assume liability for each other unless it can be shown that they have mutual business interests. Under California law, there is a provision to relieve the innocent spouse in a married couple of liability for additional tax and penalties in certain cases of wrongdoing in joint return situations. The provisions are written in such a way that it must be shown that the innocent spouse did not significantly benefit directly or indirectly from the items omitted from the gross income and that in signing the tax return he/she did not know of and had no reason to know of the omission. This can be very difficult to prove.