

ROBERT HENDERSON: I work at Lockheed and run a computer there. My case has to do with discrimination as far as employment.

I interviewed with the Boy Scouts of America back in October, 1978. I interviewed with three different men at different times on different days and, during that process I admitted to one man that I lived with my girlfriend at the time. He said that it was no big deal, that was OK. The process went smoothly, they were waiting for me to graduate in December, 1978 before they would go on with processing my application.

In February of 1979, they called me back for an interview with the same man who I admitted I lived with my girlfriend. At that interview was a man from Oregon who came down and they both asked the same questions, getting to know who I was and Mr. Ross asked me the same question. I told him again at that time that I lived with my girlfriend. At that point, he acted like I had never told him that before and he said that he thought that might cause some problems. He asked Mr. Ross from Oregon whether or not they'd ever had that type of a situation up there. He said yes, and he asked if there had been any problems caused by it and he said none.

The interview went on. Five minutes after that, Mr. Vitich, who was in charge down there, (with the Boy Scouts of San Diego) came into the interview. He sat there reading his mail and then finally, Mr. Ross went to him saying that they had a problem. That I lived with my girlfriend. He asked him what kind of problem that would cause. He went on about the history of the Boy Scouts, talking about things that had gone on in the past. Then they just said flat that I could not be hired because I lived with my girlfriend.

I forgot the name of Mr. Ross from Oregon so I happened to call back to get the name for my own records. I asked Mr. Vitich what his name was. In this conversation, he asked if my girlfriend would mind going out to breakfast and lunch with him so that they could explain why they couldn't hire me. On Valentine's Day of 1979, they took us out to breakfast. We talked for about 1-1/2 hours and told me that they couldn't hire me because of their social image.

From that point on, we filed with the Division of Fair Employment and everything just went on from there. We appeared in court already and the first decision is on our side. We're waiting to see if there is an Appeal.

We went to court in July of last year. We received a favorable decision from the Commissioner of the Division of Fair Employment in San Francisco. It was an Administrative Hearing.

COMM. ESKIN: Did this take place in San Diego? What was the position for which you were applying?

MR. HENDERSON: Yes. I had been working with the Boy Scout leaders, training them how to improve their troop — that would not have been working with children at all, and I had done fund-raising. I'm not sure what the title was.

COMM. ESKIN: When they asked you concerning your living status, did they explain why, other than the Boy Scout "image", it is of concern to them who you live with?

MR. HENDERSON: They just said that they were concerned with their social image. They were afraid of what people might think.

TOM COLEMAN: Did they give you any options?

MR. HENDERSON: When we went to breakfast, from that date, he gave us two weeks to decide whether or not Liz would move out, whether or not we would get married or we would just forget about working for them, period. At that two week point, when I gave them that decision, he would give us from that point 30 days to remedy the situation, in his words, meaning that I would have to kick her out or marry her to get the job. This was at our Valentine's Day breakfast.

COMM. ESKIN: Did they indicate whether they monitored the living situation of their employees across the country, or their marital status?

MR. HENDERSON: No. All I know is when they asked one of them to report the name and qualifications of the other gentleman who got the job, the guy said because he was married, he had a kid and he was looking for a house.

COMM. ESKIN: Did they indicate to you whether if you were to marry that you would be required to report periodically on the status of your marriage?

MR. HENDERSON: No. all I know, is when they asked one of them to report the name and qualifications of the other gentleman who got the job, the guy said because he was married, he had a kid, and he was looking for a house.

COMM. ESKIN: Did they indicate to you whether if you were to marry that you would be required to report periodically on the status of your marriage?

MR. HENDERSON: No.

COMM. FERTIG: Were you ever shown anything in writing to indicate the policy of the Boy Scouts of America?

MR. HENDERSON: Against what we were doing? I don't think there was a policy, no.

COMM. FERTIG: Did they tell you who would make this decision?

MR. HENDERSON: No, they just did it themselves.

COMM. COULSON: How did they phrase the question to you?

MR. HENDERSON: They asked me about my family plans, you know, who I live with, what I'm doing, and so I told them that I was living with my girlfriend. They wanted to know if I had roommates, they wanted to know everything about me, I guess, so I just answered them truthfully.

COMM. COULSON: Were the options ever outlined to you in writing? They were never subsequently given to you in writing?

MR. HENDERSON: No. It was over breakfast that he took us out to.

COMM. COULSON: And he never subsequently issued them to you in writing?

MR. HENDERSON: No, he didn't.

COMM. BALADERIAN: I want to know if asking about your living situation is a legitimate question of pre-employment.

MR. HENDERSON: I don't think it is.

COMM. PINCU: It seems to me, as would one of the other witnesses, that had you lied to them that would probably be the end of it and you would have gotten your job. Is that your feeling about that, because that is what I am hearing.

MR. HENDERSON: That's how I feel, yes. And the way I was lead on . . .

COMM. PINCU: So, if you had been a hypocrit and had lied about it, everything would have been fine . . . you decided to be honest and tell the truth, and as a result, you didn't get the job.

MR. HENDERSON: Exactly.

COMM. PINES: You followed the Boy Scout Oath . . . !

COMM. ESKIN: When you were interviewed and the subject came up, and they asked questions about your living situation did you consider the questions to be an invasion of your privacy? Were you offended by the nature of the inquiry before you realized that it was of some importance to them?

MR. HENDERSON: I wasn't offended, because I didn't think it was that big of a deal. I was proud that I was living with her, and what we were doing. I'm not ashamed of it now and I just answered them truthfully.

COMM. ESKIN: Do they cite any precedent that in other States this had occurred, and so they had made the same type of decision -- or have they reversed themselves in Oregon, or wherever?

MR. HENDERSON: No, they just did it right there -- made up their minds at that interview that began in February.

COMM. ALBERTSON: Do you recall on the application where they asked you your marital status?

MR. HENDERSON: I don't remember it, but I imagine there is one of those little boxes where you check off if you are single or married or whatever.

COMM. ALBERTSON: Did you sign the application?

MR. HENDERSON: Yes.

COMM. ALBERTSON: Do you know what the reaction of the local Boy Scouts has been to your legal action and in terms of what your recovery might be, would they still be in a discriminatory posture against you, do you think?

MR. HENDERSON: Well, I know when we first filed and made out the report, they first said that they didn't have to comply with the laws -- and they figured that they didn't have to hire someone like me. That was their first reaction. When they were told that they did have to comply with the laws, because they were a corporation, then they decided to say that I wasn't qualified. That was their way of dealing with the situation. But they're adverse against us, definitely.

COMM. ALBERTSON: But not qualified must be _____ in that they --

MR. HENDERSON: Well, they started, you know -- all we want to talk about is what went on in court -- I don't want to talk about what they said, but they just definitely commented ... seemed like I was really not qualified to do anything ... walk, talk or anything. They brought in a Priest, a Mormon Councilman, as witnesses for them.

COMM. PINES: Were you in Scouting as a boy?

MR. HENDERSON: Cub Scouts. My dad is a Commissioner, a non-paid Commissioner, in the Burbank Council for the past 20-30 years. That is what got me interested in the job.

COMM. PINES: I see. Any further questions? Well, we appreciate your both coming down here today. It's something we're certainly interested in and we appreciate having your input.

MR. HENDERSON: Thank you very much.

COMM. PINES: Hope good things happen for you.

MR. HENDERSON: So far, so good.

. . .

TIM CURRAN: I am a sophomore at UCLA. Let me explain very briefly what happened between me and the Boy Scouts of America . . .

I had been a Boy Scout from October, 1975 until I became eighteen, in October, 1980. I had participated as a Scout, gone up through the ranks, had been a Patrol Leader, was in the leadership corps of the troop, and held the advancement award of Eagle Scout, which is the highest award that the Boy Scouts can bestow.

When I turned eighteen, I was no longer a Boy Scout. I was promoted by my troop to the position of Adult Leadership, Assistant Scout Master. During that same period of time, I identified myself as a gay person and had been putting together my gay identity and had gone through the whole routine of "coming out" to my parents and my friends, and I went to my high school Senior Ball with a male date. (It was a gradual progression). I had joined an organization of young gay activists in the Bay Area called the Gay Community Coalition. A local newspaper, The Oakland Tribune, decided to do a story on this Coalition. As the Recording Secretary, I was a featured player.

This was during the summer of 1980. At about the same time as this article, I applied to work on the National Boy Scout Jamboree as a journalist staffer. Shortly thereafter, I moved to UCLA to begin school there. In October, I got a letter from my Scout Council, which is up in Contra Costa County, saying that my application to work on the Jamboree had been refused and I could no longer be a Boy Scout. Actually, what they said was we'll have to discuss your future association with the Boy Scouts.

I was quite stunned. At first, I couldn't figure out what they were talking about. Here they had given me an Eagle Scout Award and said that I was an excellent Scout and had admitted me to the Order of the Arrow and all of these wonderful things -- I really couldn't figure out what they had in mind. All of a sudden, it dawned on me that it was because of the Tribune article. I was surprised.

So, I called the Chief Scout Executive of the Mount Diablo Council. I had a conversation with him during which he said point-blank, after a little prodding, that it was because I was gay, that I could no longer be a Boy Scout and we would have to discuss this at a later date.

Over Thanksgiving, Mr. Alexander and my parents all sat down and discussed it and the upshot of it all was that it was a "policy" (a nebulous word) of the Boy Scouts that anybody could be a Scout Leader except those whom they felt didn't exemplify the image of Scouting, who didn't come up to what they thought was a good standard moral example to the younger Scouts. The only two groups he cited at that time were atheists and homosexuals, and I, being a homosexual, was out.

I immediately got in touch with Susan McGrievy of the American Civil Liberties

Union. They were very enthusiastic about my case and we filed suit in the end of April of this year. Since that time both the original suit and the amended suit have been dismissed by Judge Weil of the L.A. County Superior Court. That is where the case stands now. We are going up on Appeal very shortly. There were seven Causes of Action in the original Complaint. One of those, the Second Cause, was Interference With the Right of Privacy, a fundamental right. It is a very short Complaint, so I will just read you the gist of it:

"The matter of the plaintiff's sexual orientation is of a private nature and unrelated to job performance or membership requirements. It is the fundamental right of the Plaintiff herein to homosexual orientation free from interference by the Defendant."

COMM. PINES: I gather the Complaint was dismissed because the court felt there was not a Cause of Action.

MR. CURRAN: Well, they never got to the issue of whether or not I have a right to a homosexual orientation to keep from interference. Basically, what was discussed in court was the right of the State to legislate the Boy Scouts. The Boy Scouts being a private organization, there is quite a bit of debate over whether or not the State has sufficient cause to interfere with their membership requirements. We contended they do and the Boy Scouts contended that they don't.

COMM. PINES: The issue was also whether they're a business establishment or a private club.

MR. CURRAN: Right.

COMM. PINES: You've learned a lot about law in this whole effort.

MR. CURRAN: I sure did.

COMM. PINES: Want to be a lawyer?

MR. CURRAN: No -- my father is an attorney, but I have no -

(GENERAL LAUGHTER)

COMM. ESKIN: Over the months, I think you mentioned Mr. Alexander, he is with the Monte Diablo Council. From that initial meeting with your parents, did you have other conversations with Boy Scout leaders concerning the issues?

MR. CURRAN: Well, on a very unofficial level, sure, I talked to my own troop which is very enthusiastic in support of me. My own Scout Master was very helpful at putting together the original suit. He supplied quite a bit of information. I talked to other Scout leaders across the country, I've done radio talk shows and had people call up. Most of them have said what difference does it make?

COMM. ESKIN: Do you know how many troops there are in the country?

MR. CURRAN: Not exactly, but I would guess about 2,000 to 3,000 troops.

COMM. ESKIN: Does the Boy Scouts of America hierarchy, or whoever is pulling the strings, making the decision, other than these men, suggest that among the 2,000 to 3,000 troops, there are not Scout Masters and Boy Scouts who are also gay?

MR. CURRAN: It does stand to reason, doesn't it, but no, I've never asked them.

COMM. ESKIN: Do you know whether they pursue any inquiries concerning the sexual preference of their Scout Masters and members?

MR. CURRAN: They do not, as far as I know.

COMM. ESKIN: So it is only when sexual preference has become a subject of public notoriety they they are concerned about its affect on the public image of the Scouts.

MR. CURRAN: That is correct. In point of fact, as far as my attorneys have been able to determine through rather extensive research in the Library of Congress, there is no public written policy that homosexuals or athiests may not be members of the Boy Scouts. Presumably, this is an unwritten policy. It is not openly public.

COMM. SMITH: It's real clear in my mind that corporations and government agencies should be held accountable -- that we should seek to end discrimination by them -- I'm curious if you could share your own thinking about why you feel a private association should be accountable . . .

MR. CURRAN: The Boy Scouts of America is a multi-million dollar corporation. Beyond that, many organizations, for example, trade unions, are private organizations in the same kind of way but are held accountable to the government. Generally, when there is some kind of economic involvement...and indeed, it is an economic involvement with the Boy Scouts. First of all, it is a business establishment as Mr. Pines pointed out, and secondly, being an Eagle Scout is an economically very advantageous honor. It will assist in getting you into college, it's very beneficial in getting scholarships, I've discovered -- In some of the scholarship interviews that I went through, it became an extensive topic of conversation. In addition, once you get out into the real world, I've talked to business people who have said, flat-out, that all else being equal, given a choice between someone who is an Eagle Scout and someone who is not an Eagle Scout, they will hire the Eagle Scout every time.

COMM. SMITH: But it is an honor that you describe, as opposed to actual employment.

MR. CURRAN: It is an honor bestowed upon a Scout which a person cannot get in any other way. You cannot be an Eagle Scout unless you are a Boy Scout. An illustration that the Boy Scouts brought up all the time was that if Curran wins, then that means that the ladies bridge club, which wants to get rid of, (say) the 4th hand, who they want to get rid of for no other reason except that she is too good, they will have to let her in because that is an arbitrary classification. That is ridiculous. First of all, the Boy Scouts isn't a ladies' bridge club. That ladies bridge club has a very selective code for membership - you have to be a good friend, which narrows the field considerably. But the Boy Scouts will let anyone, if they're male, between the ages of eleven and eighteen, they'll let you in. They advertise broadly -- it is a very widely open field.

TOM COLEMAN: In the lawsuit, is anything raised about the fact that private associations or corporations are bound to adhere to their own rules or anything like an after-the-fact rule being imposed about --

MR. CURRAN: That was one of the Causes of Action in the Amended Complaint, that you have to, you can't just make these things up as you go along.

TOM COLEMAN: But if they are up front about it. Like a seminary in Kentucky that won a lawsuit in the Supreme Court, which in advance said in their literature: if you are homosexual, don't come to this seminary. Even though they're a school,

you can make the same arguement, but they are up front about it. Is one of your grievances that the Boy Scouts have never been up front about that policy to the general public or Scouts coming in? They lure you in and get you all enthused and involved and then later —

MR. CURRAN: There are numerous ones which go beyond that which say that if you say up-front that you can't or won't admit homosexuals, that that is wrong.

COMM. FERTIG: Were you stripped of your credentials?

MR. CURRAN: I was removed from the Boy Scouts. I was participating as an adult leader in my troop and they yanked that membership.

COMM. FERTIG: They can't yank your Eagle credentials?

MR. CURRAN: Well, they can and they can't. Once you've given someone the honor of (say) The Academy Award, you can't un-give it. In the same way, once you have given someone the honor of Eagle Scout, it is impossible to take back.

COMM. FERTIG: What I want to know is, have you been purged from Boy Scout records?

MR. CURRAN: I have no idea if I have been purged.

COMM. FERTIG: Do you consider yourself still a Boy Scout?

MR. CURRAN: I consider myself an Adult Leader of my troop. I can't participate because my troop would get in trouble and their charter would be revoked and all kinds of nasty threats . . .

COMM. BALADERIAN: If I wanted to hire you, and you put on your application that you're an Eagle Scout, and I called them — what would they say about it if I wanted to confirm your status . . .

MR. CURRAN: I have no idea what they would say. They probably would say he's a homosexual, too. That is just a guess.

COMM. BALADERIAN: Regarding, the information on your application, would they say yes he was an Eagle Scout in good standing, a recipient of a meritorious award, or whatever . . .

MR. CURRAN: I suppose they would have to answer honestly that they did award it to me — I don't know what they would say beyond that, now that it's been . . . I don't know whether they can technically the honor away from you or not — maybe they have. It's rather an arcane kind of thing . . .

COMM. PINES: Any other questions? Well, you've certainly been an articulate witness and we appreciate your coming down here. And I hope things work out well for you. Keep us informed . . .

MR. CURRAN: Thank you.

. . .

E. H. DUNCAN DONOVAN: I think the Boy Scouts would do well to try to get as many of those as possible . . .

(LAUGHTER AND GENERAL APPLAUSE FROM THE ROOM)

I represent the Gay Rights Chapter of the ACLU. I am on the Board of Directors of the ACLU Affiliate of Southern California as the Gay Rights Representative.

The Gay Rights Chapter is particularly concerned with the registration of former sex offenders. I want to read a statement:

"Registration of former sex offenders in California is a modern version of the Scarlet A for adultery. This dehumanizing practice, which has a destructive effect on the family image, in which one of the parents is so stigmatized, is not inflicted on ax murderers who have paid their debt to society."

Under Criminal Code 290, persons convicted of rape and child molestation and lewd conduct must register with their local police departments as a former sex offender. If they move, they must register again with their local police department. The cases in which there is no victim, the lewd conduct cases, represent the bulk of the registration cases. Most of these are for sexual activity or solicitation for sexual activity in more-or-less public places: parks, lover's lanes, public toilets and theatres. The kind of personal damage which registration of the former sex offender can do was brought to the attention of the Gay Rights Chapter of the ACLU of Southern California in recent weeks.

An upper-middle class man, the father of three children, happily married, came to us for help. I wish to repeat happily married. He had been convicted of an act of lewd conduct involving another man. Now totally past the specific case, he is registered, stigmatized with this status, and open to the whims of any police investigation. The sentence against him has been passed and sentence has been executed, but the trauma to him and the trauma to his family of the original offense is still there as a continuing thing, not unlike the Scarlet Letter of Hester Prine.

She was in Salem when that Puritan town was really a theocracy, but he lives in a democracy from which the church is separate from the state. The religious successes of Salem assured that if he had been a mass murderer, his debt to society, whatever that means, would be considered paid. But he is constantly aware that a police investigation can rip away his privacy and that of his family! At any moment, he could be exposed to his neighbors. At any moment, he could be exposed to his employer. Can you imagine him moving into a small town, not a small town in the South with a storybook Sheriff ... how about a small town like Signal Hill, California.

What could happen when his daughter meets the son of the small town constable? As a former newspaper reporter covering the police beat both here and in San Francisco, let me assure you that an interesting story becomes the matter of gossip in the Department. The Scarlet Letter is always an interesting story!

Registration of former sex offenders is in conflict with a fundamental principal of English law, a principal which sets the English tradition, which we follow, apart from most of the world. That principal is the presumption of innocence. We believe that a man or woman is innocent until proven guilty. Registration presumes that a man or woman is guilty unless proven innocent. That principal of the presumption of innocence is basic to our concept of freedom, the American concept of freedom.

In times of social panic, various kinds of registration have been proposed. In the 50's it was proposed that Communists be registered. The ACLU opposed that. Thank God for our freedom this did not happen. More recently, there were demands for domestic passport. This radical demand to hobble-free travel of Americans was proposed as an instrument to control immigration from Latin America. Let us pray it does not happen.

In the 1940's a little girl of three was sexually assaulted and murdered. Her body was found in the Baldwin Hills area. During the social panic which followed this terrible crime, hundreds of male homosexuals were rounded up by the Los Angeles Police Department and questioned. Many of them were embarrassed in front of their employers. Please note that male homosexuals were rounded up to investigate the murder of a female baby. In times of social panic, fanned by sensational stories in the press, and I was working for the press at the time, such irrational things do occur. Also, in the 40's the registration of former sex offenders was made law. That was the first time that anybody had to register in the State of California except to vote.

Since ancient Greece, thinkers who have been concerned about morality and government have recognized that a tension does exist between the State and the individual. Our founding fathers recognized this tension and said that the power of the State was so overwhelming and so subject to abuse that the individual must be protected from that power.

Police States at the Left or at the Right do not see the need to protect the individual. They oppress the individual in the name of order. Violence by the State is no substitute for order, which is more likely to be found in a country like America which protects the freedom of the individual.

I urge you to look at the pernicious registration law in light of the evil effect it has on our tradition of justice, our tradition of equality, our tradition or personal privacy, protection from the state, and our tradition that laws should be enforced without regard to class.

COMM. ESKIN: Mr. Donovan, there have been various proposals in Sacramento for amendment of Penal Code Section 292 to delete registration for persons convicted of 647(a) - Lewd Conduct, or 314.1 - Indecent Exposure. I understand you to be suggesting repeal of Penal Code Section 290.

MR. DONOVAN: That would be the position of the ACLU . . .

COMM. ESKIN: And you would question why a person convicted of a sex offense should be required to register for the rest of his life, irrespective of the relief available under P.C. Section 1203.4 or any other expungement of statute that a person convicted of armed robbery or murder is not required to register.

MR. DONOVAN: We don't think that the person convicted of armed robbery or murder should be required to register.

COMM. ESKIN: Well, they're not . . .

MR. DONOVAN: We don't think anybody should be expected to register under this type of situation. The feeling here is that you create two classes of citizens.

COMM. ESKIN: It is not really the registration that presents guilt but it is the way in which it is utilized.

MR. DONOVAN: The registration itself and the way it is handled makes a presumption of status and you are guilty of a status.

COMM. ESKIN: But the registration only flows from a finding of guilt.

MR. DONOVAN: The registration makes the status a real thing.

COMM. COOPER: Are there similar practices in all of the other States or are there some of our States that don't require registration?

MR. DONOVAN: I'm sorry, I don't know that. I hope that there aren't many. I suspect that you have available to you a person who knows quite a bit about that, Mr. Coleman.

COMM. SMITH: It would be interesting to see those that do it or that don't. Did you say this was passed in the 1940's?

MR. DONOVAN: Yes in 1944.

COMM. SMITH: Do you know what the rationale was at the time of passage?

MR. DONOVAN: My memory of this is very vague. My memory of the murder of the child in Baldwin Hills is quite sharp. It occurred at roughly the same period. We were in a war, civil liberties were not considered to be something that important, a threat to the State was the situation in which civil liberties were set aside. The Japanese, you recall, were rounded up. So, the community feeling for the individual was not as strong as we normally have. That feeling flows up and down through the history of our country. Extradition laws and so forth.

TOM COLEMAN: Are you aware of the unpublished appellate opinion that says that there has to be a hearing before a person is required to register in each individual case?

MR. DONOVAN: No I have never heard of it. I'm glad to hear it.

COMM. FERTIG: In the States that don't have registration requirements ... is the crime rate regarding sex offenses statistically higher or lower in those States that DO have registration or what is the correlation between registration and control of those types of offenses? What do the statistics show, or do they?

TOM COLEMAN: I don't think there has been any study on that. As a matter of fact, in California, there is a lack of information about whether the registration records of Lewd Conduct are in fact ever used by the Los Angeles Police Department for any valid purpose or anything like that. There is just a lack of information. No one has taken the time to study it.

MR. DONOVAN: You might find it somewhat interesting -- I do -- there is a skewing on Lewd Conduct in several areas that I think are startling. The cases, for example, that arise in public washrooms. The standard work on the subject was done by Professor Laud Humphreys at Claremont Graduate School of Criminology. 54% of the men involved were married men. In the cases of lover's lane type of things, there are several areas in Griffith Park which are lover's lane areas. It is interesting. The

male homosexuals go to a certain street and the heterosexuals go to another street. Occasionally on a heavy day, there will be a little interaction, but usually they stay on their own side of the park. They are not shocked when they see the others interact on a busy day. But for many years, it was only male homosexuals who were being arrested by the Los Angeles Police Department. Only male homosexuals! Some of the gay activists protested this with an idea that perhaps, if there was a real serious problem in the park that was offensive to the general public, that perhaps uniformed officers going into these areas with some regularity would stop the practice instead of sending vice squad officers who appeared to be interested in carrying-on.

So the Los Angeles Police Department reacted in a way we didn't expect. They started arresting the heterosexuals and we, of course, did not want that, either. But I understand that it has gone back and it is only the homosexuals that are being arrested.

COMM. ESKIN: Getting back to the registration for a moment. The ostensible law enforcement justification for registration is that it facilitates investigations of new crimes. Do you have any information about how, in fact, registration is utilized by law enforcement agencies?

MR. DONOVAN: It is my understanding, and this is on casual investigation and casual inquiries from various police deputies, that filing registration just lays there dormant for all offenses. Nothing is done until something might come up like the murder of a little girl and then everybody will be swept up again.

COMM. ESKIN: But not differentiating between the various categories and offenses that require registration?

MR. DONOVAN: That's right.

COMM. PINES: Thank you very much, Mr. Donovan . . .

. . .

JOHN VANDURIS: I am a professional Geneologist, lecturer and teacher in that field. I am also here representing a religious group, United Lesbian and Gay Christian Scientists, Inc. We are a national organization. But, I think I can also speak for the Lesbian and gay religious community at-large as to basic problems that we are having in the privacy, in the areas of church affiliation.

I think the only church in the gay community that does not have this problem is the Metropolitan Community Church which was founded by the Rev. Troy Perry. For those of us who have remained in our own affiliate creeds and church denominations are having problems throughout the country. I think this is predominantly because of the right-wing factors, the Fundamentalists, the Old Time Gospel Hour and the Rev. Jerry Falwell. It boxes the church's intimate area where if they do not come down on the gay and lesbian community for immoral acts or our sexual orientation in the church, it creates problems for us in our churches.

For example in the Christian Science Church and the Mormon Church, for the past eight years, if you were openly a homosexual, for those of us who have been spiritually inclined to write for the Journal, the Christian Science Monitor (a daily newspaper), or the Sentinel, we are ostracized the minute we speak out on lesbian or gay rights. There are no freedoms in the Mormon church or the Christian Science Church to speak out on these issues. If we have in any areas written articles of spiritual subject matter where it has not pertained to homosexuality, the moment it is found out that we are openly gay, we are either banned or threatened with excommunication from our church. I think that this should not be allowed. I don't think the churches should come into our bedrooms and dictate to us what we are allowed to do. I think this is an area of privacy that should be looked into because under the Constitution, there is definitely a separation of Church and State.

I don't think that because we are in an alternate lifestyle, the various aspects as to what happens in our church community is our own business. I think also that in many cases, we are not allowed in many areas to be individuals once it is found out. For example, in the Christian Science Church, or Mormon or any other denomination, the minute that it is found out from the headquarters, it has come down to a branch church, your parents are ostracized and you are not felt to be welcome or comfortable in that church the minute it is found out that you are openly gay. I think this is going on across the country in most major denominations and I think that privacy from where we are coming from should not become church policy as to our sexual orientation.

COMM. PINCU; You said that the discrimination that the churches are practicing against homosexuals should not be allowed. If you follow that line of reasoning, then you are saying that the government should impose a non-discrimination requirement

upon the churches who happen to have some very strong moral feelings about what should or should not be somebody's sexual practice. It would follow from that then that you do not approve of the Separation of Church and State since you want the government to regulate the churches.

MR. VANDURIS: No, I approve of the Separation of the Church and State. What I am saying is that people, like the Rev. Falwell, and other organizations have pushed many of the churches into a corner. They are not allowed on an individual basis to take up, whether it is heterosexual or homosexual, the issues.

For example, for the past eight years, not only in heterosexual subject matter in the Sentinel and the Journal, has it been totally ludicrous, but the issue of spiritualism in our church with the subject of healing has not been in any direction in an area where we can understand it either. All I'm saying is that leave the churches to do what we should do and let people in the government do what they should do. People like Falwell are doing both sides, they are going to the various legislative bodies throughout the nation, primarily in California, San Francisco and Los Angeles, and Dade County Florida, and they are implicating laws where we are not, due to sexual orientation, and we are being discriminated.

For example, for those of you who may watch the "Phil Donahue Show", the topics have been for about six to eight months, about homosexuality and sexual preferences. In the State of Florida, there is a code now that states, that funding will be cut off if there is a coalition on campus, and this is directly because of the Moral Majority and the various religious groups lobbying in Florida. It has happened here, for example, on "NO ON 6" and many other things.

COMM. PINCU: I'm still not clear what your recommendation will be. I mean, true, these things exist and true, many of us don't like the fact that some churches take positions that we do not agree with, but I'm not sure what your recommendation is.

TOM COLEMAN: Are you suggesting that if the churches lobby, churches that have been given tax-exempt status, which is basically the government subsidizing the churches to the tune of millions and millions of dollars, that if they lobby to try and enact anti-gay legislation, or whatever, the government should remove or take away their tax-exempt status? Is that one of the types of things you advocate?

MR. VANDURIS: That's one. For example, for the past four or five years, the Old Time Gospel Hour and Jerry Falwell have had funding from the private sector.

We, in the lesbian and gay community, have had no representation on television! When the Gay Politics/Gay Power paired two years ago, we went to Mr. Nogales who is the Director of Programming at CBS here in Los Angeles. We were told flatly that if it was not sensationalism or stereotyping the gay community, they would not air it. We tried to get a program on where it would be an interreaction of the gay/lesbian community speaking out on issues. The Rev. Troy Perry will be bringing out a program next year basically on the topics confronting Jerry Falwell. We in the religious community, eventually hope that we can get airing, but we are talking about funding, of which we in the lesbian and gay community, do not have for air-time or any media exposure, to let people out there know that we consider ourselves (even though we live an alternate lifestyle) children of God, and we have integrity and on an individual basis, we have a right to do what we want to do.

TOM COLEMAN: So, you are suggesting that the Equal Time and Fairness Doctrine of the Federal Communications Commissions be applied to the religious programming that goes on around the country, and that the gay community should be allowed equal time to confront those programs which are anti-gay?

MR. VANDURIS: That is one remedy.

COMM. PINES: Other questions or comments? Thank you very much, Mr. Landers.

• • •

JAMES LONG: I am a Consultant, Counselor and Child Care Worker and also currently working as a Consultant with the California State Department of Mental Health Lesbian/Gay Work Group on a Statewide Mental-Wellness promotion type thing.

What I am here to address the Commission about is a personal matter.

I was doing my Student Teaching and working in a school for emotionally disturbed children in Dade County Florida in 1970. I was fired from that job, shoved out of the closet. I came to California that same year where that record followed me. I was unable to get a job in my field.

I eventually got a job working with Union Bank here in Los Angeles and I worked there five-and-a-half years. During my time of employment there, after the first year and a half, I was promoted to a job as a Customer Service Representative, covering Northern California. The bank promoted me, but paid me a salary \$200 below what they normally paid for that position, I later found out. I couldn't figure out what was going on, but they were having meetings in the corporate offices discussing the fact that I was a suspected homosexual and that they decided to pay me less than they paid other people for that job to see if I could do the job. I'm not sure that they were concerned about -- me molesting the customers, or their money.

I did that job for two years in the Northern California area. A person was hired to be my supervisor. I was given a review and in that review, I was told that I did my job very well but was too effeminate for the position. When I registered a complaint about that, I was demoted and transferred back to Los Angeles, put on a night shift in the Computer Programming section. I worked my way back up into a supervisory position.

When it came back to getting into a management position, I was in line for a promotion and was passed over. I was called into the office of the Vice President of the bank and was told that unless I got married and denied I was gay, that I was no longer qualified for promotion. I proceeded to hire an attorney, (Tom Coleman), and registered a complaint with the Fair Employment Practices Commission. That complaint was rejected because it was out of their jurisdiction, so they said. Then I went to work full-time for the Lesbian and Gay Community Services Center here in Los Angeles. I worked there as a Counselor for quite a few years and there is another issue I'd like to address.

While working at the Center, I had developed relations with the Department of Public Social Services in Los Angeles County and began a series of workshops about youth attainment and educating Department of Public Social Services workers in regards to gay/lesbian issues. We found a big problem with eligibility workers when clients who were referred by the center to the D.P.S.S. for food stamps or Medi-Cal -- part of the questioning to determine eligibility is to ask personal questions about

an individual's lifestyle: who they are living with, what the nature of the relationships are, and so forth. Many times eligibility workers turn down clients because of the nature of the relationships -- gay/lesbian relationships.

TOM COLEMAN: Do you see the need for some kind of agency to handle employment discrimination cases that gay people are involved in, or should gay people simply litigate on their own individually and have lawyers?

MR. LONG: I see the need for a special agency, primarily because one of the main problems with employment discrimination in the private sector is that if an individual is being discriminated against on those grounds, to go into court, that individual must take the risk of "coming-out" and becoming public. Many times those issues deal with family issues, private issues, other things become involved. Many times it is too threatening for lesbians and gay men to deal on a private level with that type of discrimination.

TOM COLEMAN: So, the agency might be able to conciliate or remedy the complaint kind of in-house, with a low profile, without having to go to court?

MR. LONG: Yes.

TOM COLEMAN: What about the financial considerations of going to court yourself versus going to an agency? With respect to the Department of Fair Employment and Housing, if you go to them, and if they were to take a case -- would you pay for it or is that taken care of out of the Department's budget?

MR. LONG: I feel that the Department of Fair Employment Practices should take care of these issues on their budget.

COMM. SCHULTE: I wasn't clear on part of the story. In terms of your employment record, the documentation that followed you. You said that when you moved from Florida, you had trouble getting a job because of previous experience. Was that part of your employment record? The reason I'm asking, is I thought I heard you say when you were working at Union Bank, they suspected you were homosexual.

MR. LONG: It followed my employment record. My personnel officer who hired me was a friend of an employment person from a private agency and I was hired through that private agency to work for the bank. The rumors that were passed along,

the employment director saying something to someone else, and so forth.

COMM. SCHULTE: You said you worked in child care. Has your openly gay orientation been a problem in terms of child care work?

MR. LONG: No, it has not been to this point. Many of the children who need child care are children of lesbians and gay men and it is a non-sexist, non-racist child Care Collective in Echo Park/Silverlake. Their license, as far as I know, is not threatened by the fact that I'm hired as an openly gay child care worker.

COMM. ALBERTSON: I was interested with what you had to say about food stamps and Medi-Cal having read those regulations. I know that you're talking about orientation and ultimately alternate families. In the 70's, I was an eligibility worker and was told not to give those services to hippies, which they were not able to define. I was curious as to how that's operating now. Is it the open declaration of being gay or how is that established ... or is the question only having to do with income and relationships?

MR. LONG: There is a question by the eligibility worker - what is the nature of your relationship? I hear that you are living with someone.

COMM. ALBERTSON: What they want to know is how much money do you share?

MR. LONG: Correct. What I'm saying many times is on the level of the eligibility workers, I've had personal experiences with eligibility workers who had let their personal opinions about that person's lifestyle interfere with their determining eligibility for that client.

COMM. ALBERTSON: That's correct and they have to give you a written reason why you denied.

MR. LONG: Right and I think it goes back to the issue of the person who is applying for those services feeling free to fight that kind of a determination because of disclosure.

COMM. PINES: What were the years you worked for Union Bank?

MR. LONG: 1971 until 1975.

COMM. PINES: Do you have any information about whether the same kind of discrimination still exists?

MR. LONG: I know people who still work there. It is limited. It has improved somewhat for gay people and women in financial institutions. Not that much and for racial minorities as well. There is still an underlying discrimination that goes on with people I met who still work with the bank.

COMM. PINES: Thank you very much for joining us.

• • •

HAROLD W.: You might wonder what is wrong with arresting men who are conducting themselves in a lewd and lascivious way in public places. That is what I want to talk about — what is wrong about that.

Criminal law has a proper place in regulating how people behave, particularly in public places and it sounds reasonable on its surface. I think it is called a rational interest that the State has. But if those laws are used solely or primarily in a discriminatory fashion, I think a better word is tyranny than law and order. If those laws invade a person's private sex life, then they really are simply an invasion of privacy.

Isn't public sex offensive to people? I question really how much of that goes on for men, that is, homosexual men, who are arrested for that crime. Certainly, it is my experience that the "hit" ratio is extremely low, but the question in my mind isn't that, it is whether the law is enforced equitably. Are innocent people protected?

In my own case, I certainly was not, and I put in a brief statement in the paper I submitted, if you wish to read that, regarding the specific facts of what happened the two times that I was arrested for Lewd Conduct.

So, social propriety is not so much the issue, any more than it is the issue in drive-in movies, where police choose not to go on their regular patrols for that sort of crime. Oh yes, heterosexuals are arrested for Lewd Conduct occasionally, if it is associated with prostitution, because Lewd Conduct can carry registration as a sex offender, and that way the police can compel someone to plead guilty to the crime of prostitution, so it adds as an added bargaining tool.

Sure, heterosexuals are arrested on rare occasions when an officer isn't feeling good that day and stumbles across them. For homosexuals, the situation is different. For gay people, it is part of regular patrol, regular program.

And after all, isn't it justified in the State law, isn't that what the Legislature meant in Subdivision (d) which said that whoever loiters in and about a public toilet? I don't know of any heterosexual toilets and I assume that the intent of the Legislature is filtered down to policemen.

I think one of the problems of coming to grips with the issue is the unwillingness to recognize that privacy does not exist in a person's home. A home sure is an abode for privacy but it is not restricted there and it is not absolute there. Men have been arrested in their homes for indecent exposure and other such crimes, even while the doors are closed, because privacy exists when you believe that you have an expectation of it, not in the presence of someone who might be offended, whether that activity is in public or in private, whether it is in home, in your back yard, all of which have been declared public places at one time or another, or whether it occurs in a crowded building, a private conversation you are having over lunch or whatever.

I think all of us know where privacy is. It is where people behave with discretion and consideration for others. Discretion that they hope will not be intruded into by someone who has only the interest of discovering so as to complain, so as to create the crime which otherwise would not exist.

How could people be protected when there are notorious cruising grounds where citizens are offended, who against their will, see things that are offensive -- or their children? I believe that is an issue that should be faced. I believe it is a concern that should be met and it should be met in a humane way...for there are humane ways of dealing with that problem. And again, I mention some ways of doing that without resorting to the techniques we've used so far in our lives.

It's easy to identify with a man who has been selectively, or perhaps erroneously, arrested. Suppose he is with a woman not his wife and the police break into an enclosed room. There they suspect drugs. They arrest him. Subsequently, he is exonerated from the crime - he didn't have drugs after all. What did happen in the process, unbeknownst to the police, unintentionally, is a man's private life is intruded into and it may be that his presence there with a hooker, a friend, with whomever, could destroy him professionally, and personally if he is married. We accept that kind of consequence because people should watch out how they behave. We know that the laws aren't always perfect, and exposure sometimes happens, and the system I think tries reasonably to prevent that. But what about when that man was broken into intentionally with the very knowledge beforehand that it would have that affect on his life? What about when it is known that those circumstances were not in and of themselves criminal, but the person was indeed innocent? That is intrusion of the government into people's private lives, wherever that may occur.

I object to what has happened to me and what happens to all gay people because it reinforces myths and prejudices against gays. Gays suffer prejudice not only in enforcement but they suffer it at the level of jury trial, at the level of sentencing with judges and that prejudice effectively denies them all the protection we assume our system has built within it. To avoid exposure, they will do anything, even plead guilty to a crime for which they are not guilty to avoid that exposure. We are talking perhaps of 100,000 and more, maybe 300,000 men in the history of California who have suffered this.

If these laws were enforced the same way with heterosexuals and your sons and daughters came home as registered sex offenders because of a drive-in movie, or you yourselves, or your brothers and sisters, the number can be 1,000,000, 3,000,000 Californians. Then would the law mean something. It would mean as much as it does now to me and to other men like me who have suffered this injustice.

So, I am not trying to excuse myself. As a matter of fact, I never did commit sex in a public place and I was never arrested for that. But there were charges made against me that were false. I believe there is a difference between propriety and criminal law. Propriety can be discriminate. People can have their own standards, but criminal law must be based on a single standard for all people, or perhaps we should do away with our Constitution which says that all laws of a general nature shall have uniform application because this law does not.

I might just mention in closing that not only does the criminal law need to be reformed, and it can be. It can be reformed in a way that it protects people while at the same time protecting the concerns and giving humane treatment to gay people. But I believe other areas should also be addressed, and that is, those areas of civil law and protections that enable men to accept their homosexuality openly without threat of losing their jobs, or their place of livelihood. So that men who are married, such as myself, who come to recognize their gay feelings late in life, men who do not want to be part of the gay subculture and have access to metropolitan Los Angeles or San Francisco, or feel much more comfortable in a small town or in another area where people are more conservative, but these people will also have the opportunity for social conversation through interchange with people who they know to be gay in their professional life who are successful and grow to accept that part of their lives and not have to resort, because there is no other avenue, to the remote, to the isolated, to the hidden places -- to places that the police know about.

COMM. FERTIG: Forgive me for asking you this. I picked up in your comments that you have been arrested twice? Have you been convicted?

MR. W.: Oh, yes. The first time, I couldn't get a hold of my attorney, although it cost me \$500 until the day before the trial, and he told me I was going to plead guilty to 415 (Disturbing the Peace), because I would most certainly have been convicted otherwise. On the first arrest, I might say, the officer said I fondled myself, and that is true, I did. What he did not say was that he put his face against a hole in the wall. There were a number of indiscretions, but he was, generally speaking, a decent officer and I hold no animosity toward that particular officer. I think he was more just fulfilling what he saw as his function.

COMM. FERTIG: What was the outcome of your conviction?

MR. W.: I got a year's formal probation with psychiatric counselling, reports, plus a fine.

COMM. FERTIG: And the second incident?

MR. W.: In the second incident, it was really protracted, and I was finally compelled, after consulting about seven lawyers, having a public defender. Finally I found one that I could afford who was kind enough to take the case. All of them said the same thing, that officers always stand by their reports in these areas, that I would almost certainly be convicted, regardless of what the officer's behavior was and regardless of the fact that I didn't do the things he said. So, to avoid jail, which would have destroyed me financially (I would have lost my house), my wife and I would have had to move, our children would be dislocated, I really had absolutely no choice but to plead to the charge and register as a sex offender in the city where I live.

COMM. FERTIG: That was in lieu of . . .

MR. W.: In lieu of going to jail.

COMM. FERTIG: One more question — your family is aware of this situation?

MR. W.: Oh, yes, my wife knew from the very beginning — we've always been honest with each other, and when I realized, after the first arrest, that I would have to accept my gay feelings, I went home and told her and we cried for many hours into the evening . . . but over the months that followed, we both realized, that what we had was worth keeping, and our first commitment was to each other. And I still feel that way and I want to keep that. But it's very difficult in today's society, and it might be more easy, if I had the resources and finances to live the kind of life that would be enjoyable for me. But unfortunately, I'm very locked-into the long hours, I'm locked-into trying my best to survive. It's very hard — when you work hard and you can't sleep the night before. Where you can't concentrate on your work, because you're preoccupied with the arrest and all the "flash-backs".

COMM. FERTIG: How long ago did this happen?

MR. W.: Four years ago.

COMM. FERTIG: Have you been called in by the police registration?

MR. W.: Oh, no, no -- in fact, the police chiefs that I've talked to on this issue have told me that they never consult the registration files in this matter. I've talked to two police chiefs, both of whom have told me that they never consult these files - registration for Lewd Conduct arrests. No one has ever called me in because of that registration.

(END OF SIDE ONE - TAPE FIVE - NO PROTECTION TAPE)

COMM. ESKIN: [Mid-sentence] . . . simply the fact that you move, or if you move, you will have to go down to a police or sheriff's department and register -- but you don't anticipate that it's going to result in any other invasion of your privacy, being subjected to being hauled out of your house or anything?

MR. W.: Oh, it certainly does. It invades everywhere. First of all, you have to live with yourself and I wonder, Mr. Eskin, if you could live with yourself as a registered sex offender -- you caused no harm to anyone, and you are intruded upon, and you are falsely convicted, would you accept yourself?

COMM. ESKIN: I think it's horrible.

MR. W.: But the greatest intrusion is that it intrudes upon your own perception of yourself and your own sense of worth and dignity. That is the worst. I will live with society, but I can't live with myself.

COMM. ESKIN: And that's associated with the indignity of going down and registering?

MR. W.: Yes.

COMM. ESKIN: I wanted to ask about this myths and stereotypes to which you refer. Have any thoughts about how those myths and stereotypes might be dispelled?

MR. W.: Only in generations perhaps.

COMM. ESKIN: Is it really that dismal?

MR. W.: Well, yes, it is, because it requires a change in society. You've got to remember that we're a society where political forces can get "play" out of certain

groups. They can get "mileage" out of it. And as long as those issues are tossed around, as they have been, this will only serve to reinforce that. And this has been done by police who are running for office or who are involved -- I think of Lloyd Martin, off-hand, and the things that he's said about gay people -- and in spite of having been set-back by the Chief of Police in Los Angeles, he still does pretty much the same thing in more subtle ways, although he no longer does it officially for the police. But politically, the forces of society, I don't see that changing the over-all picture. What will change is the gradual acceptance of gay people as complete human beings. Human beings in the full sense of the word, with the same values, the same concerns, the same virtues, and the same faults that everyone else has. I think that will happen as they feel the courage and the ability to be more expressive of how they really feel. I don't think that will happen in five or ten years . . .

COMM. BALADERIAN: For how long do you have to continue registering?

MR. W.: Well, under 1203.4 of the Penal Code, you're able to have your case expunged, but that's really kind of a meaningless phrase, because, under expungement, the State still keeps it. If you want to be a licensed insurance agent, they still know about that and you must declare it. The FBI knows -- a Secret Clearance requires that disclosure. If you want to be a professionally licensed person in California, that is required. All agencies have access to your police record. Everyone knows -- except your employer, who even may find out if your were or are a registered sex offender. I don't have to register again -- but on the other hand, there's no provision under California law for removing that registration that I've already made. So, the city I live in still regards me as a registered sex offender and still has that record. And when I called the C.I.I. in Sacramento, I was told by the computer operator there, or the person in charge there, that they will maintain that on their files, that is, entered as 290 Sex Registration for me until I'm age seventy.

COMM. BALADERIAN: What's that got to do with internal police practices -- how long do you need to continue registering -- you don't need to do it anymore?

MR. W.: Well, 1203.4 means that, if I move, I no longer have to register in that community.

COMM. BALADERIAN: Is that for X-many years, or --

MR. W.: No, because when you go into court, having successfully completed your probationary period, you're entitled to expungement. Unfortunately, expungement does not do what the word implies that it does.

COMM. McWHIRTER: Thank you very much for your testimony. I'm a bit unclear about what your attitude is towards the whole idea of sex in a public toilet, or parks, or places like that. I wonder if you'd comment.

MR. W.: Well, I think that it really should be viewed in the same context as sex in drive-in movies, for which very few people are ever arrested. That isn't to say that it's right or proper. As I tried to mention, (and maybe too quickly earlier, because of time) -- there's a difference between propriety and criminality. And the intrusion here is not in whether people behave in a proper way but whether their behavior ought to be considered criminal -- and whether criminal law should be discriminately enforced. That's the issue, and that's where intrusion occurs. I agree, sex in public places, where it's likely to be viewed by someone or offend someone is improper. I would agree with that. And if the laws were equitably enforced, it should also be criminal, to some extent.

COMM. FERTIG: Have you ever been told, or are you aware of any source or agency that has access to information that you have registered?

MR. W.: Yes, the California Penal Code states that it's in California Law. I had to study that, because I was unable to hire an attorney, and I tried to write a Petition for Habeus Corpus, and I was turned down at the Superior Court level, and now I have to refile at the Appellate level. So I am familiar with that.

COMM. FERTIG: Are you aware that there are a minimum of fourteen to eighteen agencies that have access to information about your registration?

MR. W.: That doesn't surprise me at all.

COMM. FERTIG: I'd just like to get this into the record --

COMM. COULSON (ACTING CHAIR): We can't hear you -- can you speak up?

COMM. FERTIG: I would like to get this piece of paper into the records . . .

COMM. COULSON: Still can't hear you.

COMM. FERTIG: I'd like to get this access piece of paper into the record in this area.

MR. W.: May I say, that Mr. Fertig was stating that a minimum of fourteen agencies, to his knowledge, have access at the State level to the record of registration.

COMM. FERTIG: They call it the Standard Authorized Agencies . . .

MR. W.: They're standard Authorized Agencies, yes.

COMM. FERTIG: There's no logging required -- I could pass this around for the Commissioners to see.

COMM. COOPER: I know the paper you're talking about, but I'm not sure -- at least, I don't think that paper and the files described therein are the Criminal History Files that you're talking about from the Department of Justice. I don't know if that applies. Your criminal history in Sacramento is at the Department of Justice. Since California has decided to have a right to know, there are a variety of agencies who have access -- they have to demonstrate under California regulatory law or it's mostly D.O.J. regulations that they have a need to know they can get that information for employment -- there are certain agencies for employment purposes who can access that -- government agencies, primarily. But I don't think that these files here are the same as the ones . . .

MR. W.: My wife tried to be a registered babysitter so we could bring more money in, and I had to tell her that wasn't possible. You know ... the Little League, that my boys play baseball on, wanted to have me work with them -- I had to turn that down. When my son was in the Boy Scouts, they asked me to come and help them, and I had to turn that down . . .

COMM. FERTIG: My point, Commissioners, is that the information is readily available through a variety of sources without the proper logging -- access without need-to-know, that's my point.

MR. W.: Mr. Fertig, may I respectfully say that information should never have been made in the first place? It's a slander! Prostitutes who are arrested time and time again, don't register as Sex Offenders on that charge. But men who cause no harm or offense to anyone in the public, and they've committed no concrete crime, other than that, supported by the sole unsubstantiated word of a Vice Officer, suffer the cruelest form of slander.

COMM. FERTIG: That's my concern, also the fact that this information is available, without much problem to anyone.

COMM. SMITH: You discriminated between propriety and criminality -- well, I assume from this that you are suggesting that the State perhaps remove certain types of offenses from the category which requires registration as a Sex Offender.

MR. W.: Certainly. I'm not even sure that registration does anything except in violent crimes, where the police really have to know. But, I think the treatment of exhibitionists is cruel and punitive and does not meet the true needs of the men who are exhibitionists. I would think that the needs of gay men who are exploring their homosexuality and assuming that they are guilty -- assuming that they have offended someone of the general public -- can be better treated by diversion programs where they are able to recognize the reality of social adjustment by men who are skilled and schooled in that. And where they could then avoid any further police record and maybe have that one sealed or expunged and that these men would benefit by that -- most men who are arrested under this charge, the vast majority, have been arrested only one time -- please bear that in mind.

COMM. SMITH: We can assume that they were arrested for categories of crimes that are best described as "victimless" -- in which the harm done to someone is either absolutely zero or very difficult to measure, if at all.

MR. W.: Well, yeah, as a matter of fact, according to the studies that have been made on arrests of gay men, 98% involved no citizen's complaint whatsoever.

COMM. COULSON: Any other questions? Thank you very much.

MR. W.: Thank you.

• • •