WILLIAM R. PETROCELLI: The focus of my remarks is a little bit different than the testimony I've heard so far this afternoon. I'm really addressing the broader problem of privacy in its totality — the invasion of privacy as I see it. I'm the author of the book, Low Profile, which was published this year by McGraw-Hill, and it goes into the various areas of the invasion of privacy.

The thing that I would like to focus on is contained in the statement that I think is being distributed to you right now. Maybe just reading from that will be a lot quicker. When I began writing Low Profile, I didn't know the full extent of the privacy problem. Since then, it has become clear to me that the most serious threat to privacy is not from people who are intent upon snooping on others, although a great deal of that goes on. The more insidious danger comes from the thoughtless use of modern technology, particularly the computer, by well-meaning people who are just trying to do their job more efficiently. We're stumbling into a 1984 society almost by accident as we allow more and more computerized data banks to grow without any thought as to the threat they pose to personal privacy. And here, I think, is the main message I want to get across. Any laws that you recommend to the Legislature should pass one basic test: are they computer-proof? If they aren't they may not be worth the trouble.

There are four basic computer characteristics that we need to keep in mind. 1) there is the ability of a computer to scan a data bank and compile all the information from different sources that pertain to a particular individual, 2) there's the reverse capability that enables the computer operator to scan a data base and come up with a list of persons who match a pre-determined set of characteristics, 3) there is the capability of computers to inter-link by telephone, so that data banks in various parts of the world can function, in effect, as one giant computer, 4) there is the extraordinary vulnerability of computers to electronic crime and unauthorized use. The combination of these four factors makes a computerized file of personal information a highly dangerous commodity that should be handled with as much care as a lump of nuclear waste.

Let me mention a few specifics. California Consumer Credit Reporting Agency Act allows credit bureaus to disclose personal information on computers to anyone with "legitimate business need". That kind of vague phrase is no protection at all. The big credit bureaus usually have a 100-million or so computerized files with as many as 20,000 computer terminals in the offices of clients, giving them direct-access to the data base. As a practical matter, anyone at an office of a bank, an insurance company, or other company with such a terminal, can get a credit report on anyone else by punching a few buttons and the request for information never passes through human hands. Similarly, a credit card issuer or any other company that wants to pre-

screen a list of potential customers, can provide a credit bureau with the financial, social or other characteristics at once, and get back a list of persons who meet those criteria based on information in the credit bureau's computer. In effect, the credit bureau "sells" its list to anyone who wants it. We need specific laws to stop this sort of thing, and I would propose the following:

- That it be illegal to make consumer credit information available by computer access by anyone not an employee of the credit bureau without prior written consent of the consumer;

- That the definition of "legitimate business need" be tightened so as to confine it to consumer-initiated transactions — this would eliminate pre-screening;

- That credit bureaus be prohibited from using computerized credit files unless the system will make a fool-proof record of the date, time, and identification of anyone gaining access to the data.

In a related subject, I would propose laws against the formation of informational conglomerates, such as EQUAFAX Company. This Atlanta-based company owns one of the largest credit bureaus in the country, operates an investigative bureau with more than 39-million files, compiles computerized driver records obtained from government agencies, operates a collection agency and processes computerized medical records for hospitals and doctors. Now this type of massive data bank is a threat, whether it's in public hands or private hands. Right now, there are no laws preventing the formation of informational conglomerates and no real way to prevent the mis-use of personal information that they have in their data banks. In effect, if you have computerized information in several data banks and access to those banks, you can run them together and run a computer-matching on them and find out how many blue-eyed Republicans drive Volvos and do any other kind of characteristic you want to come up with!

We should be taking a hard look at computerized record trail that will be developed by the next generation of bank cards. I think this is an area that has been totally neglected: banks are stumbling into something called "Electronic Funds Transfer Systems" that will allow a bank to transfer funds from the customer's account to the merchant's account electronically, as the card is inserted in a terminal at the store. But one central computer will have to link all the stores and the banks and anyone who can gain access to that computer can follow a person electronically from store to store like a cat with a bell around its neck! Merchants can "piggy-back"

on to the EFTS system and insert details of the transaction into the computer that can then be bifurcated into the store's computer for inventory control. But this compounds the privacy problem because the central computer will not only know where you are, but the details of what you're buying. So anyone running a surveillance on a computer, trying to find out what a particular individual is up to at that time, will not only know date-to-time, where the person is buying the thing and using their card, but they will also be able to get the details of what exactly they're buying, which is a tremendous invasion of privacy. Although I didn't put it into the prepared statement, you an reverse the process. You can trigger it so that anytime anyone buys a particular item at a particular store, that will ring a bell and you will get a name back. So you can start with the name and find out what the person is doing, or you can start with a set of characteristics and you'll get a list of names back.

I think we're stumbling into the world of EFTS without a thought being given to privacy. As a minimum, we should do the following:

1. Strictly license EFTS data banks and require the tightest control on access;
2. Outlaw bifurcation and "piggy-backing" so as to minimize the data base in other words, eliminate the details of the transaction from the data base;
3. Require full disclosure to the customers of the privacy risk in an EFTS system.

There are similar problems with government data bases. Strict rules should be adopted to prevent computer-matches of different agency records unless authorized by law. This was done tentatively by OMB in the Carter administration to set up guidelines as to what computer-matches could be run between different agencies — could you run a match of names of all government employees against the names of all of the Welfare recipients to find out who's double-dipping — that sort of thing. There are legitimate needs for it on different occasions, but you need regulations and laws to prevent bureaucrats from deciding to do it on their own.

Finally, I'd lend my support to a variety of needed legislative actions that don't fall into any particular category but that affect the right of privacy. Confidentiality of Medical Information Act should be implemented without delay — it was adopted in 1979, but implementation was delayed by the Legislature until July 1st of this year and then delayed again until January 1, 1982. Just briefly, what this Act provides is to require full disclosure to the patient of what they're signing, when they sign a

document authorizing disclosure of medical information. Without this law, everytime you check into a hospital, everytime you apply for insurance and any other kinds of instances, the fine-print of the contract may be a waiver of your right to confi dentiality. Employee privacy rights should be protected. Employees should be given the right to see their files and employers should be prevented from giving out information about employees unless they have important reasons for doing so.

Special rules for company health plans should be adopted that would prevent the insurance company from informing the company about health problems of its employees. This is a particular problem. Company health plans are probably the most abused when it comes to invasion of privacy, because the insurance company will filter the information back to the company and the company will do much of the administrative work on the plan. Or sometimes the insurance company will think that the company needs to know about particular ailments of employees, because the company is paying the bill for the insurance.

The whole problem of employee surveillance and privacy on the job needs to be examined. Finally, polygraph should be outlawed entirely for use with job applicants. There is simply no justification for that.

Finally, I think privacy within the legal system — there's been some discussion on that today — should be examined. If the panel is interested in the rights of jurors to privacy, I support their concern there and I think the legal system needs a very careful "look at" to see ways in which the privacy rights of the people involved in the system could be better protected. Thank you.

COMM. PINES: Well, there's a lot here! Thank you, for writing this down and your thoughtful presentation. I wish you had been here earlier to hear another witness ____________ because I'm sure we'd have liked to have had the benefit of your views. Let's start with the questions . . . Mr. Pincu . . .

COMM. PINCU: Yes — I'm wondering about Credit Reporting Agencies. Could you tell us briefly what you know about what kind of material they might collect that we would consider of a personal nature — that is, a person's life-style, etc.

MR. PETROCELLI: Well, I think probably the most likely thing they would collect is the companies with which you do business. I don't know if it would relate so much to personal privacy as it would financial privacy, and the two tend to overlap at some point. They will get credit reports, they'll get information from almost anybody with whom you do business — they'll get reports from landlords, reports from stores — anyone with whom you establish credit.

COMM. PINCU: The reason for my question was, we were told by the TRW people that although they assured us that they didn't, there were other agencies out there that collected personal data on people's lifestyles — whom you're associating with, whether you're gay or straight, etc., etc., and that's the direction of my question.

MR. PETROCELLI: There's really two types of credit agencies. One is the Credit Bureau, like TRW, that collects information from different sources, they just act as sort of a "depository" of information. Unless somebody reports it to them they don't get it. Basically, what they get is financial information: who you're doing business with. But there's another allied group that we call Investigative Bureaus they go sometimes door-to-door to find out information about people. Usually, this comes about as a result of applying for some kind of insurance or applying for a job. Now EQUAFAX, one of the companies I mentioned here, which is a competitor of TRW, is both types of agencies. They own both. In addition to all kinds of other things.

COMM. PINCU: Would you be able to provide us with a list of those Investigative Agencies?

MR. PETROCELLI: Sure. As I said, there are many of them. I just gave you the names of the big ones. There's a lot of work done on this by the United States Privacy Commission three or four years ago, and they have a massive set of reports, which I'm sure you are probably privy to.

COMM. LEHMAN: You indicated that some of these credit agencies sell this information to anybody who might be interested in it for whatever the price is. Do you know of any cases where this is sold to these juror investigative agencies?

MR. PETROCELLI: Not sure ... they probably do. I really can't say for sure.

COMM. LEHMAN: May I read a paragraph from your book? I have your book right here. A very good book, I've read it.

MR. PETROCELLI: How can I argue with that?

COMM. LEHMAN: This is just a paragraph that you wrote yourself: "The most gratuitous invasions of privacy in any court proceeding are reserved for the only other laymen involved, the jurors. In the interest of finding an unbiased jury, or one biased

in his client's favor, an attorney is given broad latitude to question jurors about their backgrounds, attitudes, employment, religious beliefs, and so on. As with parties and witnesses, however, the most significant actions go on outside the courtroom. Most communities have various Jury Reporting Services that compile dossiers on prospective jurors for use by attorneys. This includes voting registration, marital status, voting records on prior juries and anything else that can be picked up from the public records or any other attorneys. Like anyone else involved in legal procedures, the jurors are likely to find that their private lives have become public knowledge." You didn't make any comment here about this and the Constitutional rights of the jurors. I didn't know whether you'd want to say anything on that.

MR. PETROCELLI: I don't know about the Constitutional rights. I think it's an abuse and I think that it should be corrected. I think there are ways of getting unbiased juries without going to the extreme that many Jury Reporting Services go to in order to get that kind of information. And I think it's true of many other people in the legal process, too. That's part of a chapter on a lot of other aspects of it, too.

COMM. PINES: I wanted to follow-up on some of your recommendations. You indicated that you thought it should be illegal to give the credit information to anyone without prior written consent of the consumer. So, in the ordinary transaction, then, when credit information is desired, there would have to be some consent to obtain any credit information. Is that what you mean?

MR. PETROCELLI: Well, I didn't go quite that far, though I might agree with that statement. I think to make computer access available to anyone who is not an employee of the Credit Bureau itself, without the prior written consent of the consumer is an abuse. There is a good argument for saying that Credit Bureau information should not be available by computer or any other means, to anyone without the consent of the consumer. Although there are some legal problems connected with that, and perhaps even some Constitutional problems. But what I'm concerned with are the Credit Bureau data bases and computer banks that are available to anyone who has access to a computer terminal. For example, there is no private investigator who is now authorized by law to get a Credit Bureau report. But, if you ask a private investigator if they can get it, they say sure they can get it — they just know somebody in a bank or an insurance company somewhere who has a computer terminal and just does it for them. So that the law, in effect, is meaningless. Anybody who <u>wants</u> a copy of your credit report can get it — it's just that simple!

COMM. GILLETTE: Just a point of information that I'd like to get, because it's kind of frightening, what you have said in terms of the abilities of computers to provide so much information. And I take it that, raising the question about the other side of it, about someone who needed an alibi, could go to the computer and say I was in such-and-such a store buying something at the time, and that might legally save his life or something or other.

MR. PETROCELLI: Oh, sure. As a matter of fact, our universities are raising a whole breed of potential computer criminals. The way you teach how to computer program, I'm told, is to give someone a problem on how to crack a computer: how do you program this computer and break all the controls of entering into it. So ambitious students have changed the whole data bank on a university computer and given everybody an "A" in their class and that sort of thing. Sure, you can work it both ways, if you're smart enough to know how to work the computer data bank. You can either get information on someone else, you can change the data base so as to embarrass someone else, or you can change it in a way to aggrandize yourself, maybe get some money out of a bank, for example, by computer.

COMM. GILLETTE: Well, I wasn't thinking about changing it, but just as another use of it.

MR. PETROCELLI: I see what you're saying. Going to the computer simply for an alibi. That's true, but I think that's too high a price to pay for an alibi. It's more likely to be used against you.

COMM. COOPER: Much is made of the point that an individual, if he gives his consent, then it's alright to disemminate information, so long as it's within the area which he signed. I'm concerned that often people sign their consent, because they need the service — you want health insurance, so sure, you sign a consent to share that information, otherwise, you won't end up with the insurance. If you agree, with my point-of-view, what are your thoughts — how do you deal with that issue?

MR. PETROCELLI: That's a very difficult one. That's the one weakness, the main weakness I can see in this Confidentiality of Medical Information Act. There's no straight provision in there, which says that you can't ask for people to give their consent in unreasonable or unrealistic situations. I don't know — the alternative is probably to say that if you pass a law that says someone doesn't have to give their consent if they don't want to, then the insurance company will say: "We don't have

to issue you insurance." I think there are areas where informed consent is a legitimate alternative. I agree with you — it's sometimes over-used. And sometimes it isn't informed at all. It really has to be in bold type and in plain English so that a person understands what they're giving up. But, I think there are areas — well, I'll give you one example: the polygraph. I think the polygraph in employment should be flat-out outlawed! Instead of a law that says that it can only be used with the employee's consent, I think the law should say that you can't even ask the employee to give their consent — because, you talk to any polygraph operator, and they'll say that the employer is sending people down to their agency to be given a lie detector test and they get them in there, and they always persuade them to do it. The veiled threat is that if you don't give your consent, you're going to lose your job.

COMM. PINES: How about in connection with police work?

MR. PETROCELLI: Well, yeah, I wouldn't go so far as to say they shouldn't use them in police work, although the problem is, that the polygraph is unreliable.

COMM. PINES: I meant for employment as a police officer.

MR. PETROCELLI: Oh, employment as a police officer ... I think that if a person wants to use it in connection with a crime to try to clear themselves voluntarily, maybe there's a use for it, but I think that agency that's using the polygraph as a basis for determining whether to hire someone, let it be the police or whatever, I think they're making a big mistake. It's just unreliable, for one thing — plus being an invasion of privacy on top of everything else.

COMM. PINES: A lot of police administrators would differ with that.

MR. PETROCELLI: There's a lot of literature on the polygraph, and its problems.

COMM. ___________: (QUIETLY) About as good as Tarot cards . . .

MR. PETROCELLI: Almost.

COMM. LORCH: How would you describe the level of your depth of expertise on the subject?

MR. PETROCELLI: Well, I think I know more about some areas of it than others. I'm a lawyer by profession, and I look upon it from the point-of-view of a consumer. For example, I'm not a computer operator, and I'm not a polygraph operator, so I base my research on what I've read and people I've talked to.

COMM. LORCH: How much research?

MR. PETROCELLI: The book took me a couple of years to put togesther and took a substantial amount of my time. It's hard to quantify in terms of hours. Very hard.

COMM. ESKIN: I have a question about your comment about the polygraph examination itself constituting an invasion of privacy. Is it an invasion of privacy to determine whether the person who is being examined is telling the truth or not?

MR. PETROCELLI: Well, it's an invasion of privacy on a lot of levels. First of all, it intruding upon your body mechanisms in measuring — what a polygraph really does is measure perspiration and blood-rate and that sort of thing. The questions that are asked are usually very intrusive. A polygraph operator, once they get you strapped to the box, is really free to go in any direction he wants, and that's what they say they do. They wait and see what kind of reaction they get, and if they get an "interesting" reaction, they'll continue questions in that area. And they may very well get into the most private and intimate matters. It's an invasion of privacy in that the information they glean from the test, be it true or false — I think one of your witnesses said this earlier — even true responses given on a polygraph can be used against you! Sometimes people get on the machine, and get so panicked that they'll tell you anything just to show that they're telling the truth and they reveal all kinds of private information. I just think that it's so inherently unfair, that it really ought to be confined to the narrowest possible area.

COMM. PINES: Where would that be?

MR. PETROCELLI: Well, I think voluntarily with criminal work. I think if there's some legitimate reason that a person thinks they can clear themself of being suspected of a crime. I know of instances where people want to go in and take the lie detector test to convince the police that they "didn't do it." Frankly, if I were the

police, I wouldn't rely on the person passing the lie detesctor test, but if the police want to rely on the person passing the lie detector test, and if the person wants to take it, maybe there's a legitimate use for it there. That's about the only area that I can think of.

COMM. PINES: Any other questions? I think all of us have a curiosity about your book, so the sales may go up pretty soon.

MR. PETROCELLI: Well, I hope so. Thank you . . .

• • •

WESLEY LUEKENS: Good afternoon. Thank you, to the Commission for this opportunity. I'm going to be very brief.

My subject is the privacy of jurors and potential jurors.

I'd like to relate my experience in being exposed to the jury selection process in Alameda County. The specific case I was called on -- this followed, by the way, three or four days of being called to various courts, and I was rejected from three different jury panels -- these were challenges for cause, and I should state that my occupation is an insurance broker, which somehow precludes me from many cases sitting on a jury, by Defense and Prosecution alike. But in this particular case, there was a black man who was accused of driving while intoxicated, and my name was called to sit in the jury box. And then the examination of my personal life began - first, by the judge, and then by the prosecution and the defense. I haven't segregated the questions I was asked, but these questions were asked:

- Where did I live? [I gave my address, which happens to be in a nice section of the Oakland hills]
- What was my occupation? [Insurance broker]
- Was I married? [No]
- Did I drink? [Yes] Daily? [Usually]

Then a question I know came from the Defense:

- In reference to your occupation, do drunk-drivers create any particular problem for you in your business? [We exchanged some information on the sense of that question, and I said, "No, it's our business to advise and counsel any insurance buyer to provide them with the very best possible price, and it is not a particular problem for us]
- Do you feel that you can be a fair and impartial juror? [Yes]

So, after questioning of several prospective jurors, I was then challenged pre-emptorily by the Defense and excused and thanked. And I was really shocked at this, because I thought in all other cases, I could see the reasons for the challenge. In this case, I felt that this was really going to be a shoe-in -- I was on the jury and yet, I was being dismissed. This started me to thinking about why this should happen. I could only assume that my place of residence and my occupation were presumed to be contrary to the interests of the Defendant.

So, on further inquiry, and I did look into this further, I learned that were so-called "Jury Books" that are compiled with references made to determine suitability

of any person to sit upon a jury. I don't believe that, in the instant case, that book was consulted, but I don't believe such a book should be permitted in any case at all. I think that we should probably revert to the system used in England today, where there are no pre-emptory challenges — people are impaneled on the jury and they sit upon the jury and the jury is simply a cross-section of a random-choice of jurors. There are many people who have written on this subject, I find I'm not prepared to read or quote from them today, but I've read something further and I'd be glad to give some written evidence of that selected group, which I would give in writing to this Commission.

COMM. PINES: How did you feel about the questions that were asked? Particularly about your private life?

MR. LUEKENS: Well, after being in various courts for three days, you become pretty well accustomed to hearing these, and you realize that they're going to be asked.

COMM. PINES: Did it bother you?

MR. LEUKENS: I think you stiffen your back and you answer them — that's what you do.

COMM. PINES: Did you feel that it wasn't the business of anyone but yourself?

MR. LEUKENS: I didn't see how it had a bearing on me — it was ego-deflating. Now, my ego relative to justice being performed, perhaps is a minor challenge, but there I was, and I think I'm an honest person, and a fair person, and capable of performing jury service in my community, listening to instructions of the Court, listening to evidence, and rendering an opinion based on that evidence — and I should say, to this date, I have been called for jury service on four separate occasions. I've yet to sit on a jury. And I answer the questions fairly.

COMM. PINES: Have these generally been criminal cases?

MR. LEUKENS: Some of them were criminal cases. I've been called twice for Municipal Court service and twice for Superior Court.

COMM. PINES: Was there any one party that generally excused you?

MR. LEUKENS: I can't answer that — I'd have to — usually these were challenges for cause, and I don't know that the cause was always revealed in court. The Defense or the Prosecution would approach the bench and then I'd be excused.

COMM. DAWSON: I would like to know, in light of this list of questions that you gave us, do you feel that the result was that you were being unfairly treated by the system or was there an invasion of your privacy in those questions?

MR. LEUKENS: Yes, there was an invasion of my privacy in that the questions did not seem to me to be relevant to the case or to my service upon the jury. That was my opinion. In other cases, there were questions in other courts, there were questions that were asked that, if I had been asked the question, I would have found rather embarrassing.

COMM. PINCU: It seems to me that we do have certain rights guaranteed by the Constitution like a right to a fair trial. Now, I'm wondering if an attorney in wanting to determine whether you may have formed any pre-judgments or pre-biases or have anything that might interfere with your being able to form a fair decision on a case — how else would you propose he do it other than ask you questions?

MR. LEUKENS: If it actually worked in that manner, I think you're probably right. But I think you probably know that, as the system works now, it is the aim and goal of both the Defense and the Prosecution not to determine that a jury is fair and impartial, but rather, that it has the appropriate bias to their particular side! And I don't think they're doing a very good job of it. But the fact that you give each side equal access to challenges and so forth, instead of being a jury of peers, I suspect that most juries impaneled turn out to be a minority representation of the community, rather than a majority representation.

COMM. LEHMAN: You mentioned that you were challenged pre-emptorily by the attorney representing the black litigant. Presumably, now your appearance is conservative and you live in a conservative area and you're in a so-called conservative business, but in fact, in your own personal life, you actually employ people in the insurance organization do you not?

MR. LEUKENS: That's correct, yes.

COMM. LEHMAN: Do you pay any attention to the race of the applicant in hiring an insurance representative of some kind?

MR. LEUKENS: No, we don't.

COMM. LEHMAN: I mean, you don't treat representatives — you don't pay any attention to their racial background or their sexual orientation or anything like that in your own organization?

MR. LEUKENS: No, the makeup of our organization is pretty well representative of both the racial and sexual orientation of the community.

COMM. LEHMAN: So, in fact, the attorney who challenged you, if he presumed that because of the surface presentation, that you'd be prejudiced against his client because he was black, it was a fase presumption?

COMM. PINES: We don't know that, Mr. Lehman.

COMM. LEHMAN: I was asking — maybe I shouldn't have put it that way -

MR. LEUKENS: My only response to that is that I think that the Defense Attorney denied herself, and it was a woman, she denied herself a juror who could hear the testimony and render a fair judgment. That was my intention, and I thought this was going to be a first for me, a rather thrilling opportunity, having been declined from so much jury service, and here, I thought there was no reason for her declining and there I was, tossed out.

COMM. PINES: You're a good citizen. So many people want to get OUT of jury duty. It's always a pleasure to find someone who wants to serve who is also busy and has other things to do.

COMM. PINCU: Just one more, having been forced to think about this issue. I'm still having problems balancing the right of a Defendant, especially in a criminal trial, who doesn't have the choice whether to be there or not, with your right of privacy, where you could just refuse to answer the question, and then be dismissed for the possible invasion to your privacy. It seems to me that we have two rights going here that are in balance and it seems to me that perhaps one might be somewhat more important than the other. I would be interested in your comment on that.

COMM. PINES: I think he already commented on that. It was the same question you asked. He said if the inquiry pursued areas of bias it would be one thing, but they

asked him if he was married, and where he lived and things -- isn't that what you were saying before?

MR. LEUKENS: That's correct. I don't see that the areas of questioning forbidden in the English judicial system have really delivered up prejudicial trials.

COMM. LEHMAN: I just suspect that you're not wanting any questions to be asked. Or am I not hearing that correctly?

COMM. PINES: He said he would welcome questions if it was . . .

MR. LEUKENS: Right ... "Had I ever been convicted of drunk-driving" ...well, I might not like that question, too much, in this instant case. Yes, I probably would not like that. I can't scope out for you the areas of questioning that I would consider permissable at this time. But once you've opened the prospective jurors to a line of questioning where can you reasonably stop? I think the attorneys appearing in the court probably are more clever than I am in formulating these questions.

COMM. __________: I heard you saying that you questioned the purpose of the questions, not so much that they were to provide a fair trial, but that they were to give the two lawyers a possibility of succeeding in their mission.

MR. LEUKENS: I felt they were "profiling" me rather than trying to determine whether or not I would be biased in their favor.

COMM. PINES: I think there was a good point in that. That is a tough issue, I think everyone recognizes there's the two sides and it's something that we're going to be grappling with a little bit. Mr. Eskin, you've been on both sides, Prosecution and Defense -- would you seat this man on a jury? You don't have to answer that . . .

COMM. ESKIN: I was just going to respond to Commissioner Pincu. It seemed to me that what MR. Leukens was saying, in layman terminology, was that the 6th Amendment to the United States Constitution insures the right to an impartial jury. That's all that's said in the Constitution: <u>an impartial jury</u>. And the advocates pursue a process in which both are not seeking an <u>impartial</u> jury, they're seeking a <u>favorable</u> jury -- favorable to the conflicting sides. And so, they would rewrite the Constitution to say "a litigant has a right to a <u>favorable</u> jury"!

COMM. PINES: Thank you very much for joining us. Hope you make the jury someday!

• • •

THOMAS MEYER: Good Afernoon, Ladies and Gentlemen of the Commission. My name is Tom Meyer, I'm a lawyer in private practice in Richmond, California. I'm the Regional Counsel of the National Jury Project, a national project which assists trial lawyers in selecting impartial juries. I also devote a substantial amount of my own practice to assisting lawyers in selecting juries. I think I'd like to begin by observing that the National Jury Project is, I think, very sensitive and sympathetic to the concern that our citizenry increasingly needs protections against encroachments upon their privacy — especially in this day and age of modern technology.

At the same time, we feel it would be a grave mistake to try to combat this danger by restricting the ability of litigants to root out bias and prejudice on juries, whether this be done through restricting voir dire, as apparently you've talked about here today, whether this be done by efforts to restrict the ability of lawyers to interview jurors after trials, as is sometimes done, or whether it be done by restrictions on the ability to conduct limited investigation of prospective jurors prior to trials.

It goes without saying that the right to a fair and impartial jury is basic to our system of democratic government. The practice of voir dire, to root out hidden bias — I'll make this observation in light of the last speaker, who apparently indicates that there is no voir dire in British courts, but in practice, voir dire arose in Medieval England, under the common-law system — it's traceable that far back. Our system of voir dire in this country, pre-dates our Revolution. It has its origins in the attempts of the King's Court to try to try American citizens. Virtually every widely regarded commentator from the days of Koch, Blackstone, through in our own system, Chief Justice Marshall, the first Chief Justice of the Supreme Court in the United States, through Justice Holmes, through our present Court, have repeatedly emphasized the role that voir dire plays. And the interesting thing about that is, is that they all have made very eloquent statements about biases that jurors may or may not know that they have, and which they may or may not intentionally conceal. This is the whole purpose, obviously, of the voir dire process. And efforts to investigate jurors and the limited extent that that's done, and I'm going to comment on that in a moment, obviously have no sense, unless you have some appreciation of the fact that people in this society do have biases, and those biases will effect their ability to sit impartially on a case.

Let me give you an example of this in a criminal case. There have been any number of polls that have been occasioned by national research organizations on Presumptions of Innocence and the duty of a criminal defendant to take the stand. In a recent poll done by the George Fine Organization and commissioned by The Washington Post, they found that 54% of the population believe that a criminal

defendant should be required to take the stand to testify on his own behalf. Now, obviously, that's the sort of bias that one has to feel free, if one is a defense lawyer, to probe into and to at least inquire from the jury, how strongly they hold such an attitude, maybe where they got that kind of attitude, and whether and how it will affect their ability to sit fairly and impartially in a criminal case.

I think that those levels of biases have always been with us, because in a way, they are simply part of human nature, they are not a reflection that people are bad or evil — we all have our biases — the question is, which of us are better-suited to sit on some cases rather than others, and to what extent do we have the ability to set some of those biases aside, no matter how hard we may try, in order to sit fairly and impartially on a jury.

And I think it is one of the reasons that voir dire is such a long-standing practice in our judicial system — is because human beings have always had these biases. But I think that there is a reason for voir dire today that is even more important than it may have been previously. And that is because of the sophisticated media techniques that we have today, where so many of these cases are spread across the television sets and radios, that people form very strong opinions. That wasn't true a hundred years ago. And it's becoming increasingly true, so I think that the need to protect against this becomes increasingly important as modern technology and the media becomes more sophisticated.

It's also true that we're becoming an increasingly litigious society, and whereas, fifty years ago, people may have said, "I'll never find my way before the court, and I don't care whether the litigants really get a fair trial or not," it's much more likely that the typical citizen nowadays is going to find themselves in court in some level of the judicial process that will have to have a jury and I think that they have a stake — increasingly, our citizenry has a stake — in the trial process and ensuring that it's fair.

Now, we have very limited time here and I know that there are an enormous number and range of issues that I would to address and you'd perhaps like me to address. I want to make two very brief points about some of the things I have heard sitting here for the last hour. I'm going to try to be brief on those.

One is a point with respect to voir dire which the last gentleman made and I think one of the previous speakers brought up.

You've got to realize our organization has been in existence since about 1975, and many of the people in our organization go back in jury work and doing this kind of work through the past decade — to 1971 or so. We've interviewed thousands of jurors after trials to ask them their reactions to what the voir dire process is. "What did you feel ..." because we're trying to learn what is the effect of voir dire —

what do jurors resent, exactly the kind of questions in a way that this Commission is inquiring about. And we have found that there is a lot of disatisfaction with the jury process, but we have found that jurors resent enormously that they've got to sit around for days before they get called to the jury. The high-point of jury service, is when they get called into the box and someone asks them questions. Often they're offended when _no_ questions get asked. They resent not getting paid enough for jury service. The fact is that they rarely resent the questioning process itself. Now, occasionally, they do and I think that the answer for that, the reason that they do is because the questioning process is not intelligently or tactfully conducted. It's badly done. In exactly the same way that you resent it when you're talking to someone on the street that is not tactful, that does not listen to your responses. What jurors tell us after trials what they want, if they didn't like the question, they say, "The lawyer wasn't listening to me, all he wanted to do was propagandize me, all he wanted to do was indoctrinate me as to the theory of his case," or they say, "He didn't respect me enough - he wasn't listening to my answers." Lawyers frequently proceed by rote. I think it's very true what the last speaker said, they may ask a bunch of questions which aren't terribly relevant to the process. That is _voir dire_ which is not adeptly done. It doen't make any sense. We have found invariably that, when jurors are intelligently questioned, and you can explain to them what connection your questions have to the case at issue, they don't resent it at all. In fact, it's amazing to me, the amount of personal information you can go into if it is done in a reasonably sensitive way, and if it is connected to the case.

So, my point on _voir dire_ is that I think the notion that citizens feel the _voir dire_ process intrudes upon their privacy is a highly exaggerated one, and I'm not altogether clear where it comes from. In the case of the last speaker, I had the feeling that it came from the fact that there was some - I think he was very candid in the fact that he didn't get selected. But I think it's relatively difficult to find jurors that feel that they can't be questioned or ought not to be questioned in areas where they feel it can have some reasonable basis in the trial. Now, it's another trick to figure out what those areas are.

Now, let me make one brief point about jury investigation because that's a very controversial subject and I think I have mixed reactions to it, myself. We occasionally do some limited investigation of jurors prior to trial. I say "limited" because it's not my impression, from doing this work for several years now, that the amount of pre-trial investigation that's done is very nominal. I was talking yesterday to the staff person who's been in our west coast office of the Project for the last five years, and we were trying to estimate in how many cases we actually did some kind of investigating of jurors, and it amounted to less than one percent of the

cases in the past five years! Generally speaking the investigations are done in highly-publicized trials. Frequently, when there's a lot of defense lawyers and people can afford a lot of money, they may hire somebody to go out and try to do some investigations. We have found it is not the most impressive or worthwhile of the activities that a lawyer can do because it's very very difficult to make any kind of judgments about people. Most of the energy goes into courtroom jury selection. It is my impression that is done on such a limited basis, that to actually legislate against a practice which is so highly limited, meaning actual investigations of people, is "over-kill".

I can conceive of areas where there would be intrusions into privacy. But I mean, it's very difficult, as this Commission probably knows, as you've been hearing testimony enough about it, to remedy every single ill in terms of privacy, and it's my reaction that you cannot do an absolute guarantee that a lawyer won't go out and try to find someone. I mean, if you were a lawyer, and you happened to run into someone at a cocktail party, and they knew someone in a trade union and it was the same trade union as someone on your jury, or a prospective jury, I suppose you'd ask "Do you know anything about so-and-so, does he or she have any strong opinions on this subject or that subject?" I don't see how you can completely contain that. But my point in that regard of jury investigations is that it it's a fairly limited phenomenon that I don't think represents a major threat to citizen's rights of privacy.

COMM. PINES: Just to quickly follow-up with the prior speaker. Where he lives, whether he's married or not — how does that probe bias?

MR. MEYER: That's hard to say, you see —

COMM. PINES: Isn't that really just trying to "catagorize" him? In a way.

MR. MEYER: Well, if that's all a lawyer knew about him and they exercised a challenge on that basis, I would say that's foolish, it is trying to catagorize him, and if they excluded him on that ground, it would be very very poor selection. It doesn't make any sense. We try to encourage lawyers to be more probative and in a way, that's how you get into the more sensitive areas. But the advantage of being more probative is that jurors begin to understand what you're getting at.

COMM. PINES: Shouldn't those kinds of questions be prohibited?

MR. MEYER: Which type?

COMM. PINES: The two I just gave: how large a family he has, and those kinds of questions . . .

MR. MEYER: The trouble with prohibiting is this, any lawyer will probably tell you that they're the prelude to the next question, because when you want to ask how large the family is, that may not have any relevance of itself, but the next question is going to be, "What does your son do?" Because you're trying to find out, for example, in a civil case, whether the son — let us say it's an automobile accident — you're trying to find out if any members of the family are insurance adjustors or any members of the family have had accidents recently, in which they received grave injuries? So, I think the answer would be that it tends to be a predicate to the next question, and it is so very difficult to separate out a question which, in and of itself, provides no information from a question that will lead to bias. Will lead to something relevant. That's the trick. It's very difficult. It's the province, theoretically, of the trial judge to do that. It's difficult at best.

COMM. ESKIN: MR. Meyer, what result would flow if both sides had the resources of organizations equal to your own? What would be the result in the jury box? Would that be an impartial jury?

MR. MEYER: That's awfully difficult to say. I would hope that, if both sides had the resources of organizations like us, they would learn to do voirdire more intelligently and more sensitively. In other words, they would ask questions which are more pertinent. And we would ask and encourage lawyers to listen more to responses. Lawyers have a tendency to mount the podium — and I would think that in terms of the in-court process, it might make it more understandable and rational to jurors. The question as to how it affects the over-all result in terms of justice is a very difficult one to answer. Are you better off with the first ten people in the box, or are you better off with a system where you have a certain amount of challenges, and you can remove people for biases that you perceive. I think the theory of our system that has been expressed in several Supreme Court cases, is that you cannot hope to remove all biases from the jury, but you can hope to remove the extremes on both sides.

COMM. ESKIN: Well, if I may, just briefly. First of all ____________________ ________________ of juries, and I benefitted from programs which organizations put

on. I've been a prosecutor and a defense counsel and I try to utilize the techniques which the organization has taught me and I'd try to conduct a probing of voirdire examination, I'd try to gain as much information as I can, and my natural instinctive reaction to the suggestions of those that have been made by those who question the system that we have allowed to evolve, was negative. I had difficulty with your suggestion that jurors aren't bothered by questions about whether or not they were the victim of a rape or whether any member of their family has ever been the victim of a rape, or whether they've ever suffered a criminal conviction, or any member of their family has ever suffered a criminal conviction. I don't know how delicately you ask those questions, so that they're not invasions — whether they're married, to the person who's married and has three children at home, that may be a real easy question (I don't mind answering that question), but maybe the person who's divorced or widowed or has spent thirty or forty years searching for a mate, that is an "uncomfortable" question. Whether they belong to a Gay Rights organization, in a prosecution for 647(a), thereby revealing other things about themselves that they didn't really care to share. I really question the statement that you are pursuing an impartial jury consistent with the Sixth Amendment because I really believe that your notion of an impartial jury, at least in the criminal sphere, is one which is predisposed to acquit. And as a defense attorney, I hope to employ your skills and tactics to find a jury that's predisposed to acquit. But a jury that's predisposed to acquit is not an "impartial jury".

MR. MEYER: I detect two thrusts of your question. Let me try to deal with the latter one first. In the criminal area particularly, it is our fondest hopes that we could ever in this day-and-age of law and order attitudes about criminal justice issues, that we could ever get a jury of people predisposed in our favor. It is just an incredible task. The fact is, that I was indicating earlier, most people come into criminal trials, not believing these legal fictions that, if the person is innocent, they wouldn't be there in the first place. They actually feel that, if they're charged, "where there's smoke, there's fire." And you have your work cut out for you in terms of removing some of these biases. At least in the criminal sphere, I would say that the lawyers that we work with and for, would be very happy with our work if we could get a jury in which the extremes of bias the people that are least likely to give the defendant a chance at all, the ones that you're afraid are going to be just saying to you "I can be fair and impartial," but the first words out of their mouth when they go back in the jury room to deliberate, is "I don't care what anybody else says, "My daughter was beaten up last month, and I say, we convict him!" Getting those people off the jury is a hope you can have and I don't even

think that most of the time, it's accomplished. You don't have juries that are predisposed for defendants. You can't have it in this kind of society. What kind of cross-section of our society is predisposed to criminal defendants? No matter where you look at them? You can't get that kind of a jury. I think the point may be more valid in civil cases. Can't you get a jury which is predisposed for you? In criminal cases, I don't see it. Now, the other point that you made about whether or not jurors resent some of the questions. I think there is a distinction. Some of the questions may indeed make the jurors uncomfortable. But there's a difference between questions which make a juror uncomfortable and a question which a juror, in retrospect, believe are not justified. I won't argue with you that there aren't some questions, for example, "Have you ever suffered a rape?", "Have you ever been convicted of certain offenses?", "What kinds of crimes have close members of your family recently suffered?" that are going to cause people and do cause people some discomfort. The question is, is that dis- comfort in some context, justified? Even those people, and I've time and again interviewed people, and you probably, too, have after trial. If you asked them about their question they said, "Well, yeah, at first I felt that I didn't know exactly why you were asking it, and I felt a little unclear, but I finally understood why you were asking it and I think it was okay." Invariably, that's what we hear. And when you go and talk to them after the trials, if you talk to jurors, frequently they'll talk to you in great length, and if they were so terribly frustrated by it, they wouldn't be so forthcoming. So I think that there is a distinction between the discomfort that people might feel and the fact that it's justified.

COMM. LORCH: Burt, I have to talk. You're referring to studies that you've made, MR. Meyer, after the trial -- have these been all of jurors that have been selected and have stood through the trial, as opposed to those who were not selected?

MR. MEYER: Well, we try to interview people who have gone through the trial, and some that were excused because we want to find out what their reactions to the selection process were.

COMM. LORCH: Would you say that these studies were equally balanced?

MR. MEYER: I'm not sure what you mean.

COMM. LORCH: Well, your study was based on a certain control group over here, as opposed to a certain control group over here, to come to a logical conclusion — because you came to conclusions that most people didn't mind. And I was just wondering the scientific basis of the study.

MR. MEYERS: I don't think the testimony that I've given about what juror's reactions are is based on any kind of scientific sampling techniques. I wouldn't maintain that I — this is my experience as a trial lawyer, who asks people questions afterwards, and it's my experience from talking to other jury workers, that rarely do people resent the process.

COMM. GILLETTE: Do you ask them a question like "do you resent being asked these questions" — do you ask specific questions like that?

MR. MEYER: Oh, yes, I mean, the difficult thing, the reason why this is such a delicate process is that it depends how the questioning is done. Invariably, people will resent questioning which is poorly done. How do you regulate, by passing legislation against a lawyer's ability to ask a question rationally, intelligently, articulately and sensitively?

COMM. PINES: Just one or two questions — our problem is that we have a lot of people waiting, we're about an hour behind scheduled appearances . . .

COMM. ESKIN: I feel this may be an area just as with credit information, where we're sacrificing some privacy because that's just the way things are going, so as the gentleman before you sat in the chair and said he stiffened his back but gee, I guess I have to disclose this thing — just kind of acqquiesing in the process. My question really is of you — IF this commission decides to pursue this issue, and creates a taskforce for a study, could we count on the participation of somebody from National Jury Project, either you or Beth, or somebody?

MR. MEYER: I think so.

COMM. LEHMAN: In your book, that is, in the book, The Jury Project Work, you use the expression "urging the attorneys to go into a probing voir dire to private opinions. You said earlier that you were just having a limited inquiry. Is not this a First Amendment violation something like Star Chamber?

MR. MEYER: Well, what we mean by probative voir dire is a voir dire which seeks to root out actual biases. Is that a violation? You know, violations in this society as they've always been intrepreted, are difficult questions or questions of balancing rights. And I can't answer that. I mean, ultimately, my answer to that would be no. No court has yet held it to be a violation of the First Amendment, and the theory is that a price you've paid to try to obtain fair justice is that jurors have to disclose certain amounts of information that sometimes may make some jurors slightly uncomfortable. But the hope is that the benefit that comes out of it is worth it.

COMM. PINES: Thank you very much, Mr. Meyer, we appreciate your coming down here and we may call upon you again as the work of the Commission progresses.

• • •

ROBERTA ACHTENBERG: My name is Roberta Achtenberg and I'm here in my capacity as the Co-Chairperson of Bay Area Lawyers for Individual Freedom, which is a lesbian and gay bar association in San Francisco and surrounding areas, and we have a membership of about 175 lesbian-gay lawyers, law students and legal workers. I'll just add to the list of my credentials that I'm formerly the Dean of New College Law School in San Francisco, and formerly a law school teacher and as I stand here in my representative capacity to talk to you about the concerns of prospective lawyers and young lawyers that also apply, I think to the concerns of other professionals seeking licenses and seeking to retain their licenses and seeking to be free of employment discrimination to work in the areas in which they were trained professionally to work. Those people on whose behalf I speak are particularly lesbians and gays, trained in the professions, who seek licenses, and seek employment.

I'm sure that it comes as no surprise to you as Commissioners, and I'm sure others have stated it, quite clearly, that lesbians and gays face tremendous legally sanctioned discrimination, even in the State of California, even in the City and County of San Francisco. And that as much law as has been created by the California Legislature in terms of the Brown Act, the decriminalization of private consensual sexual conduct, and as much law as has been created in the courts in the person of the California Supreme Court, and the Courts of Appeal, surrounding issues that concern gays and lesbians, there remains large areas of legally sanctioned discrimination that, in fact, lesbians and gays do suffer.

I talk to a lot of law student groups, people who are in law school, and they want to know everything from what's it like to "come out" and be a lawyer, to if I come-out while I'm in law school, will there be any problem of me getting my license? Certainly, this just isn't relegated to lawyers, but that's the area in which I have the most experience. And they're afraid for a lot of reasons. Certainly, they know that the law as it presently exists, would forbid deprivation of a license once it had been obtained, merely for the fact that they are lesbian or gay. And certainly, they also know that the law would prevent any licensing body of this State from failing to grant their application for a license, merely because they were lesbian or gay. That's what the law would say about this, but their fear, I think, is in part grounded in what they see about them — which is, personal opinion of people everywhere, you might say, or many people, that in fact, there is something <u>wrong</u> with conducting oneself as they presently refer to, as a lesbian or gay "life-style" and they also read in the newspapers about issues concerning granting security clearances, they're being deprived of security clearances, merely because a person is lesbian or gay, which remains a legally sanctioned form of conduct for the federal

government and I know that's not within your purview, but I'm trying to talk about the kinds of things that they see around them and the kinds of things that they fear, let's say, on a psychological level.

COMM. PINES: Let me kind of direct this a little more. Are you suggesting that people are discriminated against by the Bar in the admission to the practice of law, and if so, if you could direct our attention to specific cases, that would be useful.

MS. ACHTENBERG: Well, what I was about to say is that in fact, being lesbian or gay per se, at least since the enactment of the Brown Act, has never been an articulated ground upon which people have been denied license to practice as far as I know. I've polled some of my members who do a lot of discrimination and licensure cases, and no one has been able to point to a case where the mere fact that a person was lesbian was used per se, as a ground to deprive them either of an existing license or to prevent them from obtaining their license. What we do find is, however, that criminal convictions of people who are lesbian or gay for public acts of sex under 647(a), either as it was formerly construed or even under the present narrowing construction that the Supreme Court has given it recently, I think it was in 1979, has posed significant problems for lesbians and gays in trying to gain lincensure, not just from the Bar, but in other areas as well, or to retain licenses.

And there is also a "hodge-podge" of intermediate appellate court cases and a very general intrepretation about the applicability of convictions, prior criminal convictions, and prior inquiries by other licensing bodies — whether they were the result of a criminal conviction or alleged acts by people, whether they resulted in arrest or whether they resulted in conviction that have to do with giving licensing bodies tremendous discretion in how those matters relate to ability, let's say, to practice law or relate to an issue of whether they constitute moral terpitude, let's say, in the area of law practice or determining suitability for the practice of law.

One of the issues I wanted to bring before you specifically, was some attempt that this Commission might make to limit discretion of licensing bodies along particular guidelines that, in fact, do not appear right now under the judge-made law of the California Supreme Court and Appellate Courts, for determining what is moral terpitude and how convictions can and should be used in determining issues of moral terpitude.

I guess it's a recognition on our part that broad judge-made law, though it has had a salutory effect in many cases, and I certanly wouldn't deny to you the importance of the Gay Law Students case or such cases that have been rendered by the

California Supreme Court and other courts, in favor of freedom in this State to be openly lesbian or gay are unimportant — they certainly are important, but they are broad pronouncements and do not carry with them the protection that is needed by gay professionals seeking licenses or seeking to retain their license as these cases come up.

COMM. PINES: Are people turned down today for licensing because of 647(a) convictions?

MS. ACHTENBERG: Yes.

COMM. PINES: Can you document that or provide us with . . .

MS. ACHTENBERG: Well, I have in fact, taken a poll of some people who have handled those cases. I can give you the recent case where — I guess this is not a 647(a) case — but I'm assured that, in fact, that does occur. And as I say, I'm only here in my representative capacity. I could give you further documentation and would be happy to do so.

COMM. PINES: It would be helpful if you could follow-up with that. Because we would not want to go out and be recommending the elimination of that standard, if in fact, it's not applied. I'm just trying to direct this a little bit ...

Ms. ACHTENBERG: 647(a) is not the only issue, and certainly, as a woman I would point out that 647(a), which is enforced mostly against men, and which doesn't make it any the less unjust, is enforced mostly against gay men — discriminatory enforcement of a statute like that, with which I can also provide you imperical verification, therefore has a disproportionate impact on gays seeking license.

I would like to bring to your attention a case of a lesbian seeking license to practice law where eight years prior to her seeking this license, she was a licensed school teacher who was alleged — this was at the time when private homosexual conduct was illegal in this State — she was alleged to be living with another woman, and was investigated for purpose of possibly taking away her license to be a school teacher. The investigation did not result in having her teaching license taken away, but some eight years later, when she sought admission to the California Bar, and you have to list on the Admission Application what prior licenses you have held and the questionnaires go out to the licensing agencies that are appropriate, the questionnaire came back with information about this prior investigation and her admission to prac-

tice was held up more than a year, and it's not really clear to me at this point in time whether or not, if the lawyer who was representing her, had not tried every way possible to hamstring the committee of Bar Examiners in their inquiry with regard to her prior conduct, that she would be a lawyer today.

That is the issue of prior investigations, some of which took place when conduct which is presently legal was, at that time, illegal. But we're seeing people still suffering the stigma of the former criminalization of private homosexual conduct as well as people continuing to suffer the stigma of convictions under the former interpretation of 647(a). And I'm sure other people will talk to you about 647(a) the way that it's present being enforced, and the discriminatory impact on lesbians and gays with regard to that.

I would only bring up one other issue which has to do with a plea I'm sure others would have made of you, that you recommend legislation prohibiting employment discrimination against lesbians and gays and I don't say that without thought to the political tenor of the times and the likelihood that such legislation, even if recommended by this body, would pass the State Legislature. Although I trust it would be signed by at least this Governor, if it did. And that has to do with the likelihood of an openly lesbian or gay professional to be able to find employment in his or her field. I would only illustrate the point by explaining to you that a number of local gay law student organzations at the local law schools, attempted to get their placement offices in the various law schools to inquire of prospective employers that use the placement facility. Bay law firms will seek to interview prospective graduates of law schools and they use the premises of the law school to do that. The law schools sort of foster that -- the way you get to be a renowned law school, is to offer the likelihood of employment to your law students. To get them to inquire, at least, the prospective inquirers, whether they had any official policy with regard to hiring lesbians and gays. Now, this is not the same thing as getting them to sign something where they guarantee them that they don't discriminate, which is in fact, what they are required to do under present civil rights legislation, with regard to sex, race, religion and national origin.

COMM. PINES: I think it varies. I know our firm has signed those statements in some law schools. In order to be able to . . .

Ms. ACHTENBERG: Right, the most any law school has been able to get out of any law school placement office, is an agreement that they would submit this although they wouldn't force any employer not to use their placement facilities, even if they refused to sign anything that described their policy with regard to employment

of gays. All that I'm saying is that the attempt to prevent discrimination against lesbians and gays proto-professionals on this is half-hearted at best, and certainly does not go anywhere near as far as it should go to guarantee that in fact these people will be free of employment discrimination.

COMM. ESKIN: Penal Code Section 1203.4 provides for what we refer to as "expunging" criminal records at the end of a successful period of probation. There's a big exception in there with respect to State Licensure. As an alternative to what you've suggested in terms of redefining moral turpitude or defining moral turpitude, might we consider legislation that would eliminate that exception? Expungement means expungement for all purposes?

MS. ACHTENBERG: I think that would go a long way toward doing that. That would, at least in the area of criminal conviction, and we're talking about prior investigation, however, we're also talking about perhaps limiting interpretation on the the kinds of moral terpitude that licensing agencies would be free to utilize. So, yes, it would in the area of criminal convictions, I think.

COMM. KRAUS: Roberta, I think in the beginning when you were talking about speaking to lesbian or gay law students, who made inquiries as to whether or not they would be in trouble if people found out they were gay, and I guess what's prompting my question, is that there's been a lot of questions from Commissioners today about wanting examples of discrimination — do you find that those questions come from the kind of atmosphere of non-approval of being lesbian or gay, which induces fear in people of "coming-out" and saying they are lesbian and gay and that, because protections are inadequate or unclear or whatever, many cases of discrimination never occur because people hide during their lives, because if they didn't hide, they would be found out and subject to discrimination. What I'm trying to say, is that it seemed to me one thing that's occurring to me is that a lot of this doesn't surface because people don't allow it to surface because they're afraid. Is that what's cropping up in the kinds of questions you were talking about?

MS. ACHTENBERG: You certainly have that kind of fear being expressed by law students. Many of them who come to the functions put on by gay law student organizations, either come anonymously or don't want to sign their names, partly because they know they may at some future time have to "pass", and that's a realistic expectation on their part, that they might have to, either to get needed employment

or retain an employment once it's obtained. I think it's a realistic fear and one that I have seen evidenced time and time again. It's not easy, as you well know, to be known as a lesbian or gay man, and it's particularly difficult in the professions — it's particularly difficult as a lawyer, where you have to seek the (at least) grudging approval of others, you have to go to court, you have to maintain a professional relationship with lawyers, opposing counsel, and that kind of thing, and certainly the common prejudice against lesbians and gays serves in all kinds of ways. Legislation can only go so far to minimize that, but it can at least set the tone, I think, and indicate the minimal level that we have of expection of how people should conduct themselves and what is permissible and what is an impermissible basis on which to discriminate against people — I beg your pardon, between people.

COMM. GILLETTE: You spoke of the fear of getting licenses and I wonder if you would take that a little further in terms of once a lawyer, gay or lesbian, is working, is there the same feeling of prejudice on the part of the judge and the court that might affect the outcome of the work being done?

MS. ACHTENBERG: For the most part, most lawyers who are "out" don't imagine that at least the judge necessarily knows that they're gay or lesbian. Certainly, there are a number of vocal gay and lesbian attorneys who would expect to be recognized. But for the most part, I don't know that, unless one conducts oneself in a way that would perhaps be unbecoming of a lawyer, that one would necessarily be drawing that kind of attention to oneself. I think it would be more commonly known among fellow-lawyers that that was the case and I think it is — I can't cite you any statistics, I can only give you my own experience — it is clear to me that I am treated differently by my fellow lawyers, not only because I'm a woman, but because I'm a lesbian, and they know that I am. As I say, I'm not sure that you can do anything about that, directly or perhaps within my lifetime (I hope that you can), but I think that whatever legislation you might be able to recommend might go some distance in at least making the structural realities slightly different and perhaps people's attitudes will follow suit.

COMM. PINES: Thank you, and I hope you will follow-up with any specific information that you could provide. I think the more factual information we can furnish the Legislature, if we were going to recommend such a change in the law, the more chance there would be.

• • •

SUSAN CRONENWETT: I'm here to speak to you on the needs of sex education. I've been listening all afternoon, I guess, to trying to cure problems and illnesses with legislation, and it has been my experience as an educator, we tend to put money and effort after the problems arise and there seems to be very little effort to try to prevent through educational processes.

The human sexuality problem is extremely broad and very little is being done in our K-through-12 System to try to present an educational program to young people to deal with their own sexuality, understand their own bodies, understand the human interaction between people. I was the Sex Education Coordinator for the State of California about eighteen months before I lost my job because of public pressure on the department to eliminate it and me, personally.

There is a State Board of Education approved framework, called the School Health Framework, that provides for sex education to be taught in the schools. In fact, it's hardly happening. Because of teenage pregnancy and the problems that teenagers are facing with abortions misconcepts, the statistics I could go on with venereal disease, abortions, unattended pregnancies, school drop-out rates, on and on. There was an attempt to try to initiate a program in the schools. 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.

The basic barriers I want to talk about — first of all, I'd like to reinforce the fact that teachers out there know it's a need, they deal with young people who have questions, they deal with the problems they see in their classroom, the male-female, the male-male, female-female, whatever the problems, teachers are aware of it, when you deal with young people from kindergarten on up.

When I was doing the program, I met with 218 School Districts and approximately 1400 teachers who constantly reiterated "It's time we took a stand and said this is an important educational program. Youngsters need it, I don't know how to teach it. I have no place to go for help." There were approximately 1,000 teachers who did not get served because of the elimination of the program, who were clamoring for help and who probably still are. Programs were eliminated as a result of opposition. Even when school districts go carefully and survey their populations and gest 80-90% support, a large vocal minority blocks the programs and they get stopped. Therefore, children and parents are deprived of something they need and want. And I'm extremely concerned about that.

Some of the barriers I'd like to point out to you that we face, first of all, there are two Ed Codes that deal with sex education (51550), it is the only Ed Code that provides for a credential being revoked from a teacher if they violate it and it has

to do with notification of parents, and if a teacher willfully does not follow this code, they can have their credentials revoked. I went around the State of California, trying to encourage teachers that their job was not in jeopardy if they taught human sexuality to youngsters. I lost mine.

There's also another code the Personal Beliefs Code (60650) that deals with a lot of the things you are talking about right now. Teachers don't even know this code exists. Because there are no programs to go around the State and no leadership at the State Level, or at any level, to explain to teachers how to respect the personal beliefs of youngsters. So, well-intended teachers who try to deal with personal beliefs of students, violate the Code. They also don't know how to teach sex education, so a lot of times it's done very very poorly.

When I went around the State dealing with school boards and superintendants the first response I got was "who's going to teach it?" Their first terror was having a personal profile of somebody that was a fine upstanding citizen talk to their kids, so they'd be sure their religious mores were well represented. As a Sex Ed Consultant, I put my personal reputation on the line, reporters bombarded me, opponents bombarded me. They wanted to know my religious preferences, they wanted to know if I were married, they wanted to know the age of my children, and anything else they could find about me — I have a binder about two inches thick of personal information that was printed in the newspapers, that I was the personal "banner carrier" for sex education in this State. It has taken a considerable amount of time to get over the amount of time I was being ostracized personally, the ridicule I had to face, large groups of people were after me, I even read in the newspaper in Orange County that some lady would kill me if she could get her hands around my neck, because I believe children have the right to know about their bodies.

During the program, we developed a guide for teachers that tried to touch in a conservative manner the problems that young people are facing. It researched the areas that affect teenagers. The word homosexuality appeared in the guide <u>one</u> time, obviously, it was an attempt to open the door for teachers to deal with that topic with their students. It was not enough for the gay community and the lesbian community — they were extremely upset that we didn't deal with it in depth. The opponents felt that the one word encouraging discussion about homosexuality as a lifestyle, was encouraging youngsters to take it up, and therefore, it was a banner that was flagged around the State and the media, that sex education encouraged homosexuality.

Any of the controversial subjects that were even mentioned in the Guide as a point of discussion, were used as an issue to say it was being encouraged, when we stated that youngsters should read, learn about, research, make decisions.

Essentially, what I would like from you is some provisions to protect the rights of teachers the rights of people who want to promote sex eduction, the rights of the youngsters to have a right to know about their bodies. And when we deny them that right, we encourage the spread of venereal disease, unintended teenage pregnancies, sexual abuse and many other sexual problems, that are psychological that go on through an entire lifetime. And I'm sure you've been hearing data of the psychological problems youngsters face — they're being bombarded by the media, and the subtle languages, and they have no place to go for answers. Thank you . . .

COMM. PINES: Thank you. I just want to briefly inquire about the absence of sex education in the schools — as far as I know, it's taught in all the schools, isn't it?

MS. CRONENWETT: No - it's relatively non-existent in the elementary schools, junior high . . .

COMM. PINES: Is it touched on in health classes or something like that?

MS. CRONENWETT: Okay, it's provided for and it needs to be a curriculum approved by the Board. There are some school districts doing it. In my travels around the State, if I found a school district doing it, it usually wasn't uniform. It was one teacher in one school, and other teachers did not do it, if there were a curriculum. I know some districts have a program. They try to keep it quiet if they do, a lot of programs went down the tubes last year because of the heavy abuse the State took when my position was eliminated, essentially, in my own children's school district, it was totally removed from the curriculum. If it is there, it's an elective course, that students can take with parental permission, or parental notification and usually it's not available to all students or maybe just once in a short unit in high school.

COMM. PINES: And what's the position of the State Board of Education?

MS. CRONENWETT: Like I said, there is a School Health Framework . . . a K-through-12 framework that provides for Human Sexuality to be taught. Which the Guide was based on. It's a local option, whether a school district wants to do it or not. A lot of them feel it's much too controversial to deal with the vocal minority who opposes.

COMM. WAXMAN: I have three questions, but first, I want to say to Susan,

"thank you, for coming." My first question is having to do with the minority that you spoke of, the group of people who did put pressure on shelving the Guide. Could you discuss how they coelesced, and how they in fact put pressure on the State level?

MS. CRONENWETT: In fact, it originated through one individual who developed a ten-point issue statement that I have copies of, but basically it said the State was encouraging homosexuality and divorce and encouraging youngsters to have abortions without their parent's permission. The Guide is 168 pages long, and they quoted ten sentences out of context, and I found that this letter was circulated and sent out every fundamentalist religious group in the State, it was circulated through a network of Right-to-Lifers or Pro-Life individuals, it was circulated through AP and UPI — I read about it in the papers. I understand it was put under windshields and it says: "Please write to the State to oppose." I think the State received 2,000 letters responding to this flyer and they never did see the Guide.

COMM. WAXMAN: The next question is, you mentioned the word "leadership". Where do you believe the leadership belongs in this State for helping to develop sex education programs?

MS. CRONENWETT: You mean, in what unit, or through the Department of Education?

COMM. WAXMAN: On what level do you think the leadership belongs?

MS. CRONENWETT: Any program in the past that has received any kind of credibility with schools has to come through the Department of Education. We've seen in the past, that if any new program is to be implemented or to have an uniformity, it needs to start somewhere and then let local school districts adapt it or adopt it at their own pace. Usually, it takes about five years of leadership and training to reach teachers and school districts so that they have a comfortable understanding of what needs to happen and it becomes part of an ongoing curriculum and not just one or two leaders who want to take it over. So I do think the Department of Education should provide leadership.

COMM WAXMAN: One more question, about the __________________________. What is your conditions ______________________________ to enable young people to free access to sex education.

MS. CRONENWETT: I have never had problems with ____________________ because of ____________________(PROTECTION TAPE BARELY AUDIBLE DUE TO LOUD MECHANICAL NOISE AND DISTANCE FROM SPEAKER) and implement it -- the 97%, I think, have been surveyed throughout the State, of parents allow their child to stay on a program, once that letter goes home. It's less than 3% and in some instances, it's less than 1%. Invariably, every teacher who has talked to me about a parent pulling their child out of a program, as a result of notification, has had some serious sexual problem or unintended pregnancy within a year.

COMM. PINES: Yeah, I realize that some people are more knowledgeable about this whole field than others, and it would be helpful if you could just quickly, with bulletins, outline the kinds of subjects that come within your view of sex education or human sexuality, because I was just commenting to Tom, I remember we had a class in hygiene, and you basically see pictures of the reproductive systems and learn how the ovary descends and the rest ... you're talking about something different.

MS. CRONENWETT: Absolutely. The Guide covered six areas. And when you say sex education may be happening, human reproduction may be happening in the science class, but that's not really what most people define as Human Sexuality. The Guide covered Family, studying the family from A to Z, it covered decision-making, it covered inter-personal relationships, it covered the human reproductive system and a complete life cycle. It covered pregnancy prevention, including abstinence and family planning clinics, and it covered coping with stress. And it did so in depth, which is what most educators do define sex education as dealing with the entire realm of human inter-action as well as the so-called "plumbing". Which is frequently taught in two or three day courses and then "we've done our job."

COMM. PINES: I'm glad you made that distinction.

COMM. BERG: In the Bay Area there's a foundation called The Human Rights Foundation and they have a program that you may be familiar with called "Demystification of Homosexuality". It's my understanding that this program is taught in a number of Bay Area highschools and a couple of the Junior Colleges, and it usually lasts for a few days and is part of the curriculum and the Foundation provides in most instances, a lesbian and a gay man to go in and talk about themselves. And I'm wondering from what you say, and from your experience, if this an appropriate thing to do, a dangerous thing for the school districts that choose to do it, and my sense of the program is that it's been very well received although on a limited basis.

MS. CRONENWETT: Obviously, any exploration or any in-depth sex education program is based on what the community will accept. In the Bay Area, the community accepts probably far more than most of the State of California, and the heavy homosexual population around here dictates the fact that there is acceptance in the curriculum of discussing the topic. There is no place in California where children do not want to ask questions about homosexuality — that can be very controversial and in some instances, the Board says: "If you teach sex education, you are not to discuss it, and teachers are warned that if you discuss it, you're jeopardizing your program and your job, and I've been told that repeatedly.

COMM. BERG: What sort of recommendations would you propose in terms of our deliberations and our final report. Do you have any specific areas that we might target in our looking?

MS. CRONENWETT: Well, I don't believe that ignorance and prejudice can be alleviated until we have a good program that's consistent throughout the State of California. It's a long time coming, when you talk about prejudice, for minorities, and we've come a long way, but we still have a long way to go. And it starts in the schools with integration and learning about each other. If we block information from human beings, then we can never grow, and that's essentially what we're doing by blocking sex education . . . I would like to see some recommendations, and even legislation, that requires programs to be presented in the schools. Obviously, for religious belief, parents can still pull their children out. But if we have no strong leadership, and people willing to take a stand, and say: "I can handle a few angry people, but I'm willing to go on because it's important," and what we have is elective Boards who run for cover, and this is a hot issue.

COMM. COULSON: Thank you very much for your testimony. I've read your Guide, and it's wonderful, and I was so disappointed to know that it was not going to be used!

MS. CRONENWETT: I think it's being used . . .

COMM. COULSON: I wanted to make a statement that sex educaton is occurring —

MS. CRONENWETT: Silence — right.

COMM. COULSON: Silence is one form of sex education — kids are learning that sex is something you don't talk about. My questions have to do with a couple of things. Studies that I've read, show that 90% or more of all parents want schools to provide sex education for their children and if the minority is 10% or less . . .

MS. CRONENWETT: It's probably 2%, who are very very vocal.

COMM. COULSON: Who are really getting in the way of 90% of the people getting what they want for their children — how can we coelesce the 90%? Getting the awareness that sex education — I'm a Sex Educator, and sex education is like hanging a red herring or a red flag in front of people and just getting the bull charging at the red flag — my goal in life is to make sex education socially acceptable! Why shouldn't it be? All other kinds of education are, but not sex education — have you got any ideas?

MS. CRONENWETT: Well, there's some things I've learned very much the hard way. First of all, anytime you say "sex" in a school, it ends up in the papers. And in a day and age, when education is not very popular with a lot of people for a lot of reasons, nobody wants to get out there and say: "I support this." Then, when the doors close, they come up to you and say: "Gee, this is really necessary." But nobody will take a public stand. This is what happened with the Department.

COMM: COULSON: I've forgotten, in your Guide, is there any recommendation for meeting with the parents?

MS. CRONENWETT: Absolutely. The whole program was getting a Parent Advisory Group. Let me quote, in Kern County, I worked with them for approximately a year. They did an extensive parental or community involvement program. They did surveys, they had community groups, before anything was started, they had 80% support of every parent in that school district through the K-through-12 program. They took the curriculum that had taken them two years to develop to the Board, fifty people showed up, screaming and hollering, before the press. The program was abolished. I don't know how we can cope with that, because when you have 80-90% saying: "it's important, I want my child to have it," we're denying them rights. My own children are being denied rights because of one small school in San Juan School District in Sacramento, which is a very large school district — the community raises such a fuss that all the schools had to stop it last year.

COMM. COULSON: I would like to contact you afterwards because my committee is Education and Counseling and we're very much into this issue, if I may.

MS. CRONENWETT: I think the pressure has to be taken off the local school Boards by saying it's a State Mandate, because if the school boards are running for re-election, they're going to be recalled if they do something. Or at least they're going to try. It turns out to be a distortion — the 10 points that were written about this Guide ignored 165 pages of encouraging responsible decision-making and personal self-assessment and growth and dealing with the real problems that youngsters face. But they made everyone angry. I mean, even people who support sex education can be made angry by a distortion or a twist of words.

COMM. ESKIN: There were two points made last week in Los Angeles on the subject, one the disparity of philosophy with respect to drug education — we need a lot of it to discourage people from using drugs, versus sex education, if we have any of it, people will be encouraged to it. And this other thing about mandate reminds me that someone suggested that sex education be required and the burden be shifted to the student and family to show that they don't want to have that education. Would you endorse such a . . .

MS. CRONENWETT: I would endorse such a program. It also needs to be pointed out that 80% of the parents tell their children nothing, and so we're leaving it wide-open and those are usually the parents who are fighting the hardest to block it in the schools. Yes, I do endorse the mandated program, always with the option of withdrawal, of course. Because there are strong religious feelings. I don't think the opposition would accept that because they wanted it stopped for all, not just their own.

COMM. PINES: We really need to move along, although this is an issue I know all the Commissioners are interested in and we'll be pursuing. I thank you for coming in, and for all the work you've done and overcoming a lot of obstacles.

• • •

JUSTIN KEAY: Thank you for inviting me, and to tell you a little bit about what I do. I am Justin Keay, I'm the Manager of the Office of Information Practices. This Office was established by additions to the California Civil Code in 1977, the law became effective in 1978, and like the Constitutional Amendment, arose out of the concern for the proliferation of record systems, data banks, information-sharing, and general governmental intrusiveness into the private lives of individuals. It is largely modeled after the Federal Privacy Act of 1974 and often gets confused with it.

The Information Practices Act at this time governs only State Agency records and it excludes, by specific reference, the California Courts and the records of the Legislature, and the State Compensation Insurance Fund. It does not cover units of local government and it does not cover private enterprise except in rare instances, where private enterprise performs work under contract for the State. The law, in theory at least, places some limitations on State Agencies in the collection and maintenance and disclosure of information. And I'll jump to the main strength of the law, in my opinion, and that is, with the exception of criminal law enforcement records, has provided almost total access to the individual who is the subject of records. The big exception to that is the area of criminal law enforcement records. Some of the requirements on state agencies are that when they collect information from individuals, that they must tell them what it's for, whether it's mandatory, voluntary, what are the uses, what are the consequences of not providing it, where it's kept, how it can be accessed, and so on. The law contains general provisions about the maintaining the information with relevance and necessity to the statutory or constitutional purpose of the agency. That leaves a lot open for question or debate, however. It provides civil remedies and some penalties for violations of the law.

In 1978, shortly after it became law, their immediate problem became evident, and that was in the area of conflicts between the Information Practices Act and the State's Open Records Law, which is called The Public Records Act. In California, that is also modeled after the Federal Freedom of Information Act. All four of these laws get confused sometimes as to their meaning and their actual application.

But the problem that developed was in the area releasing information that had always been considered in the public domain. Typically, the identities of offenders, incarcerated felons, for example, and what they were in for and how long their sentence was, and so on and so forth — and some problems in disclosing Worker's Compensation Appeals records, which are judicial records. So that the law was amended then to make it clear then that The Public Records Act supercedes the Information Practices Act as to disclosing information, making it available to the public. Some people felt that that "gutted" the Information Practices Act, that it was a destruction of the privacy protection provisions. I personally don't feel that way, but

it is arguable in that if a State agency decides to make a very sensitive record publicly accessible, (let's say, my medical file), maybe I wouldn't care, but let's assume that they did, I would have no redress under the Information Practices Act. It would not be a violation to release my medical file to the public under the Public Records Act. I probably would have, in the case of a medical record, redress under the Constitutional Right of Privacy, and whatever other torts might exist on that. It continues, however to apply to inter-changes between State agencies, but I must admit that it is not awfully strong in curtailing that kind of activity. There has been some. And again, I would stress that the area that it's most enforceable is the area of access to the individual who is the subject!

I'm open to questions -- I should back up for a moment, and say that we have a several-fold function. We are to assist individuals in gaining access and exercising their rights under the Information Practices Act. We are to assist State agencies in complying with the law, and in doing that, we publish guidelines (I wish I had them ready to hand-out here, but I will if Mr. Coleman would wish, I'd be happy to mail those when they're ready about mid-December). We mediate disputes between individuals and State agencies with respect to record-keeping practices and our only enforcement power is to cite them for violations of the law, to the office of the Governor, the Legislature, and the Attorney General, unless it's the Attorney General that violated the law, then we'd cite him to the appropriate District Attorney, I guess.

COMM. COOPER: Now that you have experience with this legislation for a few years, what is your feeling about extending the application of the law to include city and county governmental records?

MR. KEAY: That was looked at by the legislative analyst (I'm going to dodge your question only momentarily), the legislative analyst did a report on the implementation of this law in January of 1980, which probably is also available to the Commission, if they're interested. They recommended against it at this time. I think their charge was specific to law, sheriff and police agencies. And they based their negative recommendation on the potential cost. I'm not totally convinced that that is necessary -- that they were necessarily accurate, but that was their conclusion, and the cost factors come in -- most of the governmental agencies object to the reporting systems of records, keeping track of what they actually have and in some cases, disclosures, certain types of disclosures have to be recorded. And of course, access. There is some access to local law enforcement records now (certainly, rap sheets). Although I think this is abused. I think the Public Records Act provides to incident

reports, namely crime and accident reports, but I know that that is abused. My feeling is that the Information Practices Act could be applied to local government without a tremendous amount of undue cost. It might require a little larger office than we now have, if the same function were to extend to local government.

COMM. PINCU: Do you get involved with the central records or information for agencies such as the California Youth Authority -- does that come under your jurisdiction?

MR. KEAY: Not to a great extent. If there's some complaint that comes to our attention, such as a wrongful disclosure, an exchange of information that another entity had no right to we might get involved in that way. It's very difficult for my office to "second-guess" a State agency and say, without a lot of research and looking into it thoroughly, and we have only two people in the office, to tell them that they shouldn't be collecting a certain kind of information, for example. But it does happen.

COMM. PINCU: The reason for my question is that I'm really struggling to understand some disclosure guidelines of the California Youth Authority. Central Files, which contain all kinds of information on the juveniles, include very sensitive psychiatric data which is computerized, and which, for example, could be given to the Department of Motor Vehicles without any need to know. I mean they can access that information, apparently, and I'm trying to, for the life-of-me, understand why that would be possible.

MR. KEAY: I frankly can't — I didn't know it was that extensive. I didn't realize that they were making this kind of information available to DMV. I would personally question their right to do that.

COMM. PINCU: U. S. Border Patrol, U. S. Department of Justice, California Department of Justice, California Department of Motor Vehicles, California State Police, California Department of Corrections, California Sheriff's Office, California District Attorneys Office, County Probation, County Superintendant of Schools, County School Districts, County Welfare Department, local Police Departments, local School Districts, Rehabilitative Services, contracting public and private — they can access all of this information, including education, and psychiatric files, on a ward without any logging of information.

MR. KEAY: Through the computers. I'm glad to know that.

COMM. PINCU: I'll be happy to provide you with a copy of this. I'm just curious w-h-y.

MR. KEAY: I can see why they would share it with other criminal law enforcement agencies perhaps, but I'd certainly question the DMV having any access to it. I can't see any justification off-hand, without looking at it, but I'm glad to know that.

COMM. COOPER: I'm curious, you said you had as your responsibility the information policy of all State agencies, primarily the dealing with individual right of access to information about them in the systems, is that right?

MR. KEAY: That is the strongest area that we can really make a determination whether the individual who is the subject has a right or not. In the area of disclosures or the maintenance of information, and collection for that matter, too, it's very judgmental, and its kind of a second-guessing kind of thing. But in the area of access by the subject, there's not much second-guessing.

COMM. COOPER: What I'm concerned about is that if you have this responsibility on a statewide basis, did you say you have two people in your office?

MR. KEAY: That's right.

COMM. COOPER: Two people to oversee this implementation of that law in the State?

MR. KEAY: That's right. There were five at one time, but we're operating under reduced expectations.

COMM. ESKIN: Just before Commissioner Pincu asked his question, you said something that was almost an aside about being aware of some abuses, and I think you were relating to local agency practices, rather than State. What was that?

MR. KEAY: I think what I was referring to, is that I'm quite confident that not all the local agencies, who, incidentally, are not subject to this law that I'm responsible for, abuse their (well, it's not even their discretion, in my opinion), to allow access to incident reports by subjects of that report. I'm not an attorney, but it appears clear to me in the law that they have that right under the Public Records Act.

COMM. ESKIN: They have the right to --

MR. KEAY: -- to access the local government, the sheriff's or the police department's file on the incident that involved them.

COMM. ESKIN: In other words, if a person were the subject of a complaint by another person, and they wanted to have access to whatever written documentation, you're saying that some local agencies deny them access?

MR. KEAY: Well, okay, in certain cases where there is a threat to life or property, obviously the individual would -- they can withhold it on that basis. But it's 6254(f) of the Government Code, and again, I may be stepping a little bit out of the scope of my authority, but I get a lot of these -- I become aware of these kinds of activities -- and I know of instances where individuals who, in fact, they were very minor crimes, they were denied access to the report about themselves.

COMM. COOPER: Has your office undertaken an educational program to tell the citizens of California that they have this access right to records about themselves?

MR. KEAY: When the law was first passed, and before it actually became law, the then Secretary of the State and Consumer Services Agency, which is near the top of the hierarchy that I operate in, made a number public service addresses and I guess we had four or five visits from not only local, but Los Angeles and San Francisco television stations, since 1979, there's been very precious little publicity, and I think there's a lot of people that are unaware of the law or our office.

COMM. COOPER: That was going to be my next question. I know it's subjective, but in your opinion, do people in this State know they have this kind of right?

MR. KEAY: I suspect a lot of them do not know.

• ◦ •

BARBARA BLOOM: I do intend to be brief for your benefit as well as my own. My name is Barbara Bloom and I represent an organization called Centerforce, which provides direct services to prison visitors throughout the State of California. We operate nine Visitor Centers at or near nine State Prisons and two Federal Prisons in California.

I'm here to speak about one area of personal privacy as it relates to prisoners and that is the area of the Family Visiting and/or Conjugal Visiting process. I know you heard from Don Spector earlier today from the Prison Law Office, so I won't belabor the point, but Section 2600 of the Penal Code, the Civil Rights of Prisoners, says that prisoners are entitled to every Constitutional right exercised by free persons, except for those which would be inconsistent with the operation of the institution. Included in this is the right to personal visits and the right of personal privacy. This right, however, has not been applied consistently to prisoners.

The Family Visiting Program in the State Prison System is an opportunity for prisoners to have a 48-hour visit in a private setting, a trailer and/or a housing unit with his/her immediate family, which is defined by blood-relatives and/or his/her spouse. Non-married prisoners and those prisoners without close family are excluded from the Family Visiting Program. They have personal visits but they may not have <u>private</u> visits.

I'm here to recommend that that right is extended to non-married prisoners and to those prisoners who do not have close family or have no family whatsoever. So, basically I'm saying I would like to see the Department of Corrections expand their Family Visiting Program so that they will provide an increase in visitation for all prisoners, based on the fact that it is a "humanizing" approach to corrections, number one, and number two, that ninety-five percent or more will be coming back to the community at some point in time, and how can we expect these persons to come back to a community that they have had no contact with for a number of years?

There was a study done by Holt and Miller in 1972, Department of Corrections sponsored it, which maintained inmates who have the connection to their families and their communities, do better on parole. In this study, Holt and Miller recommended that possibly the program of Family Visiting would be extended to "common-law" relationships. Well, of course, in California, we have a problem in that we really don't recognize common-law. I'm not here to talk about what types of "families" we're looking at. We could get into all kinds of sticky situations, and I'm sure you have questions about that, but I'm here to say that I think it would be a very humanizing, a very wise, and ultimately a cost-effective thing to do.

COMM. PINCU: Speaking of visiting, I don't know if you are aware that the

California Youth Authority recently has restricted visits, just regular visits because they don't have conjugal visits, to just families because of so-called overcrowding.

MS. BLOOM: I know, yes. It's kind of a double-bind in that sense, when you have overcrowding, one of the ways to alleviate some of the tension and possibly even violence is to increase the family visiting or the visiting in a private setting. And on the other hand, and what I'm talking about in terms of expansion of this program, is costly, but so is the building of more prisons.

TOM COLEMAN: In the area of building more prisons, does your organization — are you monitoring or watching or engaging in dialogue with prison officials about creating more privacy spaces, privacy rooms?

MS. BLOOM: At this point, we've had some dialogue in terms of the environmental impact report on the intended prison at Tehachapi, and we have stressed the needs of visitors and the rights of prisoners to those visits in terms of making visiting easier. We've also stressed the expansion of family visiting, but we have not really, at this point, talked about what I'm here talking to you about.

TOM COLEMAN: Is that area that, if we inquired . . . could we be of any assistance inquiring of the Department of Corrections and Youth Authority as to their plans for future construction, whether they're taking this into consideration, and if so, how?

MS. BLOOM: That would be very appropriate.

COMM. LORCH: Barbara, you avoided the sticky wicket part of it, which is convenient for us all, but if you have not bottom-line, how will we come up with a bottom-line, or are we going to open-up Pandora's Box — the immediate question has always got to be, where do you draw the next line? Where do you end the intrusion? One would feel that some penal authorities might think that you're inviting chaos, that there's no stoppage. That you'd have camps of "whatever" outside the prison and coming into the whole area of prostitution — I know you avoided it, but . . .

MS. BLOOM: I'll answer it. I think I can. The prison system has a screening process. Persons on parole are not allowed into the prison without prior approval of the Superintendant or Warden of that institution. Also, there is an eighteen-year age

limit on persons that can visit without an adult. Also, people are marrying now in prison, as you know, and the way I really started scrutinizing this whole area is that I did a study on prison marriage at San Quentin. And I'm finding that persons are marrying often-times to be eligible for the conjugal visits. Many persons who marry prisoners have had prior offenses years ago. Prostitutes marry prisoners. What I'm trying to tell you is that the sanction of marriage does not necessarily eliminate the kinds of problems that you're talking about. The screening process, though, may in terms of whether person as been convicted of a felony or whether there are drug convictions involved.

COMM. LORCH: Do you think this is a right or privilege to a model prisoner?

MS. BLOOM: It's a basic right ... it's part of the Penal Code 2600 — the Legislature so spoke in that.

COMM. POMEROY: Would you enlarge your private visits to same-sex people?

MS: BLOOM: Speaking personally now, I would open that private visiting program to all consenting adults. And I would say that we must also look at the fact that sex is not always the motivating factor for a private visit, although the press and some of you in this room would like to think so. When I interviewed prisoners and their wives, the word "intimacy", "close-ness", "feeling like a person again", those kinds of words were used. And I'm not underplaying sex, becaue that's also part of it. But I'm saying that persons do spend time together on the outside and don't engage in sexual activities, and I'm not here to judge at this point.

COMM. ALBERTSON: Mr. Pomeroy's question is part of the question that I was going to ask, and thank you for the answer — but I wonder if you could help us in seeking a redefinition of the term "family" — because, obviously, if we're talking about extended and expanded family visits and affectional relationships, it seems to me that we're talking about something that is other than a legal bond as recognized by the State under marriage laws.

MS. BLOOM: I would say that we would look at the alternative families as they exist on the outside. There isn't any real clear definition . . .

COMM. ALBERTSON: Which aren't recognized on the outside . . .

MS. BLOOM: Which aren't recognized on the outside? I'm thinking of some of the recent cases, the Marvin decision, for instance. Some of the — there are community sanctions for persons living in houses together that aren't connected by blood or by marriage . . . I don't see why those same views can't be put to use on the inside. In other words, why should the State sanction — if you want to call it "morality" or "marriage" in terms of eligibility for a private visit. You're talking about maybe redefining the title. I haven't really given it much thought what we would call it if we expanded it, but I'm sure that wouldn't be a problem.

COMM. ALBERTSON: Well, we'd be very happy to have further input from you on this subject. That is one of our self-imposed assignments, to redefine "family".

COMM. ESKIN: I asked Mr. Spector a question that assumed the absence of certain civil rights and with your help, now, I see that there are far more civil rights available to prisoners under 2601 than I ever imagined. Subdivision "D" sets forth the civil right to have personal visits, provided the department may provide such restrictions as are necessary for the reasonable security of the institution. Would an adequate alternative to the redefinition of the department's policy guidelines be to amend this section to say "to have personal and private visits"?

MS. BLOOM: I would say that probably that would be the easiest way to get around that.

COMM. PINCU: Yeah. I'm very interested in your remarks. If we could have a list of your recommendations I would very much appreciate it — the kinds of recommendations you made — I think basically what you're saying is that it's probably enough to remove one's freedom without having to remove their humanity, and inremoving their sexuality, that's what we're doing in our prisons.

MS. BLOOM: I would agree and then once again, I'll remind you that it's not only that isolation is punishment, isolating a person from his or her community, but we have to remember that those people go back, and how can we expect them to go back with all those skills and ways to relate to humanity when they've been totally taken away?

• • •

ACTING CHAIRPERSON ALBERTSON: Our next witness is Anthony Silvestre and I might say as he's coming down, that Mr. Silvestre is the Chairperson of the Commonwealth of Pennsylvania Governor's Council on Sexual Minorities. We're very pleased to have you visiting California, Mr. Silvestre.

ANTHONY SILVESTRE: I want to tell you I'm honored and pleased to be here. I want to thank you for the opportunity to address you for a few minutes.

I bring the greetings of our Council -- our Council has been working since 1976 in many of the same areas as I hear the testimony presented, many of the same areas that you will be working in. I want to share with you, not only our greetings, but the results of some of our work. And I'm bringing with me, from Pennsylvania, copies of the Minutes of our Council which I hope will be helpful to you; believe me, this is not all of the paperwork we've generated that I have with me. Like good bureaucrats, we have pounds more and, hopefully, you'll have your staff enjoy themselves by going through it and will get some good information from it.

When you read our records, you'll read about the abuse of children, you'll read about rape in prison, you'll read about the neglect of rights of old people, of disabled people, of many of the other most vulnerable people in our society -- and I know that you'll be moved, as you've been moved today, and as you were moved last week, in hearing about the abuses that many of our citizens face because of unjust bigotry, because of governmental and private agency inappropriate intrusion into the private lives of the citizens of our States. I think that the work of your Governor and your Legislature to set up this Commission, should be commended -- this is an attempt of Government to police itself and hopefully to reform itself.

I think that the Study that will be generated from your work is going to be very important. It will serve other political jurisdictions, other counties, states, cities, as well as the Federal Government in helping politicians, helping governmental leaders work in more effective ways to ensure that the right to privacy is a real right for our citizens. Your Study is going to serve scholars by alerting them to new areas of research. Your Study will serve service providers, attorneys, government officials, by educating them about the often unintended effects of their programs, their policies, their regulations. Your Study is going to assist community organizers by giving them better ways and new ways to identify problems as well as new objectives. And I think that your Study can serve the People of California by indicating ways for them to arm themselves to protect their own right to privacy.

The security of these rights, however, will occur only if your recommendations are implemented. We have examples, many examples of Studies that have been done in areas relating to privacy, where good, solid recommendations have been generated

and where they've been ignored. We have examples such as the Hooker Report, from the National Institute of Mental Health, which came out with recommendations in the 1960's related to sexual orientation. Those recommendations, for the most part, have not been implemented. We have the example of Oregon, where a very very effective, efficient, competent task force was established to work on securing the rights identifying the discrimination against sexual minority people and gay people. That report, very fine report, listed many recommendations. Again, most of them remain only in the report and have not been implemented.

I think the lack of implementation results from a number of factors. The first, of course, is the obvious one: resistance to change, and I think that's going to be a political issue. But I think there are other structural issues that you can deal with very effectively. In hearing the testimony today, it's obvious to me that you're dealing with a lot of different constituencies. You're dealing with old people, you're dealing with prisoners, you're dealing with young people, the disabled, poor people, middle-class people, people who go through the court systems. You're dealing with constituencies that no single agency in government deals with. Many agencies deal with these various groups. Your Department of Health deals with each of these groups in different ways, your Departments of Personnel, your Corrections people, your Insurance people — all respond in different ways to the needs of all these various groups.

Your recommendations, therefore, cannot easily be implemented because there's no single source of power that can be motivated to move on the recommendations and because the recommendations will have to be adjusted to fit the structural, political and bureaucratic structures that exist to deal with the many different problems that you're addressing.

In Pennsylvania, we have found that the changes needed include training, they include review and the rewrite of many various policies and regulations, they include education, they include the formulation of new legislation, they include on-going monitoring of programs. None of those things can be done by any existing governmental body, either in Pennsylvania or in California. In Pennsylvania, one of our very minor projects was to make sure that sexual orientation was included in the non-descrimination policies promulgated by the Department of Welfare. We had the absolute support of the Secretary of Welfare, the absolute support of the legal people in that department. When we tried to implement it, we were faced with the fact that no single person in the State even knew how to locate all the non-discrimination policies that existed in the Department of Welfare!

What we had to do was to send student interns and have them spend approximately ten weeks going through every policy and every regulation in that Department

— enough policies to perhaps fill half this room! We found that not only was sexual orientation missing from most of those policies, but so was protection for other minorities. Some policies included the disabled, others did not. Some policies included older people, others did not. And so on.

So what we find is that the bureaucracy is not changed by pressing a button or pressing ten buttons or pressing fifty buttons. It's changed by continual monitoring of programs, continual monitoring of regulations, continual monitoring of the implementations of those programs and those regulations.

So I would like to recommend very strongly to this Commission that you consider the establishment of a committee as soon as possible, to begin identifying, describing and creating methods to support the establishment of an on-going mechanism in the State of California to ensure that these recommendations that you will circulating will, in fact, be implemented. What I'm suggesting is that there can be no monitoring, no exhaustive change of the bureaucracy unless we set up a well-staffed, financed mechanism within this State to ensure that privacy will be respected and that the dignity of the constituants of your State will be guaranteed.

COMM. PINES: Thank you very much for your observations and recommendations and being with us today.

COMM. LORCH: Mr. Silvestre, what was your budget?

MR. SILVESTRE: Our budget is zero. The project of our whole council is financed simply with travel expenses for the members and various of our exenses are paid by the different departments — we have no paid staff, and we have no finances that we have access to directly. We only have the finances by different agencies in the State who contribute resources to us.

COMM. LORCH: To put it another way — what do you think it cost?

MR. SILVESTRE: Well, it's according to the kind of mechanism that's established. I think that's the important work that needs to be done. There are different mechanisms that can be used — one mechanism might be a task force which would use already existing State workers, powerful State workers, who would meet regularly to constantly review their own agency's work to ensure that the recommendations of this Commission are followed. So you can use some existing services already there, and you might be advised to hire some additional staff.

COMM. LORCH: Was your work in Pennsylvania considered a success?

MR. SILVESTRE: Our work continues — the Council continues — some people consider it a success and some do not. We've done a number of things and I won't bore you by going down the list, but we have established trainings, for instance, we have had trainings in all the State Police barracks throughout Pennsylvania. We've had trainings in all of the departments, we've helped establish a program for sexual minority youth in Philadelphia, where those youth are placed with adults without consideration of the adult's sexual orientation — which means we have gay foster homes and gay group homes in Philadelphia. We've worked with various unions to be sure that they've included protective language, ensuring non-discrimination in union contracts. And I could go on. We've had some success — we could have more success with paid staff. But we haven't gotten there, but I hope you folks do.

COMM. ESKIN: This Commission is scheduled to expire next year. Do I understand to the response to MR. Lorch's question, that the mechanism, or a mechanism that you suggest could be constructed even in the absence of specific legislative funding?

MR. SILVESTRE: Yes, our Council was established by Executive Order under Governer Schapp and it continues under Governor Thornburg. States vary, but in Pennsylvania, Executive Order is one method for setting up Councils and Task Forces to carry out various executive duties. Yes, you can set something up without legislative approval. Things could be established at the level of the Governor's Office, they could be established at the level of your various heads of departments and agencies and so on. I think there's many many variations that are possible.

TOM COLEMAN: At the time this Commission was created, I believe there were two Executive Orders on the Governor's desk. One was to create this Commission to study these problems, and another to outlaw discrimination for reasons of sexual orientation or invasions of privacy in areas beyond just State Employment — Delivery of Services, Credit by the State, Contracting by the State, Professional Licensing by the State, or any other matter whatsoever, and in that legal instrument which would have issued such directives to the agencies, there was a mechanism called an Inter-Agency Coordinating Committee, which would have had representatives from all the various Secretaries of the various agencies. Is this the type of a mechanism you're talking about? What I hear you saying is that if we wait until we file a Report to make recommendations and then all disband, and go back into the private sector

and never meet again, that your fear is that nothing will ever come of it, and yet, that you feel we can take steps now to work with the agencies to create something that can carry the work forward?

MR. SILVESTRE: Absolutely right. First, I think that the Commission's work even to date, has produced very real positive effects. The fact of having this Hearing and educating everyone who is attending these Hearings as to the horrible state of privacy in California, I think has been educational and very important in itself. However, if the Commission wishes the recommendations to be implemented, I think that it will be the Commission which will have to make a suggestion, because no one will know better than you folks what is needed — what the problems are, and what's necessary! As I sit here and as I'm sure I've spoken to various Commissioners outside the room, as you sit here, you hear of problems that you didn't know about, and I think you'll know more about these problems than many other people in this State and I don't know of any body that is more informed and could make better recommendations for the changes — make recommendations not only about what needs to be changed, but how it can be done.

COMM. PINES: Any futher questions? Mr. Silvestre, thank you very much for being with us. Wish you a successful conference as well . . .

• • •

COMM. PINES: Welcome, Mr. Sivil . . . If you'll just give me a second here, I'm going to have to head for the airport, our last plane leaves in less than an hour, so I'll pass the gavel on to Dr. Mertz. Wish I could hear more of it, it's been a very enjoyable program and we're learning a lot today.

DANIEL R. SIVIL: I'd like to thank you for the opportunity to be here this afternoon to share with you some of our experiences in Michigan last year.

The Witness Schedule notes that I will be discussing recommendations of a Task Force that was formed in Michigan last year. A copy of those recommendations have been furnished to Mr. Coleman and I would instead like to focus on one thing, a piece of legislation in Michigan which is entitled "The Omnibus Nursing Home Licensing Act".

But first a word about the Task Force. The Task Force was formed by the Civil Rights Committee of the Michigan House of Representatives. It was entitled Family and Sexuality Task Force. It dealt with several interest areas, including rights of parents and grandparents, sexual orientation and affectional preference, the media and children and so forth. I prefer not to go into depth on that Task Force because it's a superior example of how not to form a Task Force. Some of the mistakes that were made in the formation of the Task Force include the fact that it was unfunded. We had to define our own purpose, we had no clear instructions from the Civil Rights Committee, nor from the Legislature -- this of course results in inter-personal lobbyings so that people understand what we're doing. Perhaps most importantly, there was no real understanding of the possible practical results of our efforts. There was no understanding of the influence of what we recommended would be on the legislative and executive branches of the government. None-the-less, there were some practical results. Generally, they were increasing awareness of those issue and increasing communication with legislators. More specifically, the Chair of the Civil Rights Committee of the Michigan House is an Episcopalian Priest who is very dedicated to some of these issues. And he corresponded with the heads of various departments within our State Government, for example, the Department of Social Services. They have issued rules prohibiting discrimination based on sexual orientation, in general assistance medical programs. Michigan Civil Service Department is redrafting regulations to prohibit discrimination based on sexual orientation.

One issue I did want to focus on was this piece of legislation that is entitled "1978 Omnibus Nursing Home Licensing Act" -- a copy of this Act has been furnished to Mr. Coleman.

We first learned about this Act halfway through the tenure of the Task Force

which was January through December of last year. This is a very important piece of legislation. In the United States, this is the first and the only State-wide legislation that deals with sexual orientation, and more profoundly, personal privacy. It affects owners, operators, employees, residents, contractors and perhaps anyone else having anything to do with nursing homes. It in fact is, an Omnibus Act.

It impacts State policy of many departments of our State Government. The discovery of this piece of legislation raised many questions to us and we are still and without funds investigating those questions. Surprisingly, our first question is, how did sexual orientation get into this Act? In other words: "Who Done It?" We have absolutely no idea who put sexual orientation in this Act. Another question that's been raised is who knows it's there? Do employees of nursing homes know that discrimination based on sexual orientation is not allowed in nursing homes? Do the various departments in the State of Michigan know that they are not allowed to discriminate on the basis of sexual orientation in anything they do in connection with a nursing home? Also, are the provisions of the Act being observed? Are the provisions being monitored? Are the provisions being enforced? In short, the bottom line of these questions is: What Are the Implementing Procedures?

The implementing procedures for legislative acts, the implementing procedures for administrative rule promulgation. I would like, as soon as it's completed, to inform you on the Commission, of our findings about Michigan's 1978 Nursing Home Licensing Act.

I would like to say to this Commission, you are chartered by the State of California, you are working in the State of California, you are working for the State of California, but you are being watched throughout the United States!

I feel that what you are defining as personal privacy, demands re-emphasis on personal, namely, you are working on justice for every individual. You are instructing all of us. You are a model for all of us. You are, therefore, being watched with great interest.

I would like to offer to you personally, through David Evans, the Chair of the Civil Rights Committee of the Michigan House of Representatives, cooperation from the State of Michigan in these areas, knowledge of our laws, knowledge of our administrative rulings, especially knowledge of our implementing procedures (that all-important concern), and to facilitate for you contacts with key people in Michigan in the Legislature, in the executive branches of Government as well as experts in various fields.

This is my offer to you and is my recommendation to you. I'd like to thank you once again for letting me be here, and I'd like to thank you for the fine work that

you're doing in the State of California for the People of California, and more especially, for everyone of us. Thank you.

COMM. MERTZ: Thank you. We appreciate your view from another State. Are there questions from the Commissioners?

COMM. BALADERIAN: In terms of what you are doing, and questions of implementation, the next question I would have after that is monitoring. Is that something you're going to be looking at?

MR. SIVIL: The monitoring process is very complicated. We are just at this time at the point of investigating implementing procedures. It's amazing how much legislation is passed by a State Legislature and then is forgotten about. Something is "implemented" after someone finds out about it or decides to do something about it. The monitoring procedure follows from there. We're not at that point yet.

COMM. MERTZ: Any other questions? Thank you again, Mr. Sivil.

• • •

DR. ARTHUR C. WARNER: Members of the Commission, I'm here representing the National Committee for Sexual Civil Liberties. The Committee is now in its second decade. It's purpose has been to work for the dismantling of the entire criminal structure with respect to private consensual acts between people above the sexual age of consent. In so doing, the Committee has amassed over its still comparatively brief existence, a wealth of information, not only in this country, but in other parts of the English speaking world — with respect to the attitudes of sovereign states toward the sexual conduct of their citizens.

What I should like to do in the brief time that I have, is to try to give you an over-view of what is occurring in the United States and other jurisdictions outside of California. Also, to possibly make you aware, to the extent that you may not already be, of the rather unique character of the criminal reforms that began in your State with the enactment of the Brown Act in 1976.

There are twenty-four States today which have accomplished the reforms that I have just outlined. Those reforms entail, generally, reforms of the sodomy laws, repeals of fornication laws, repeals of adultery laws, and substantial modifications to the open lewdness and sexual solicitation statutes. With resepect to the sodomy, adultery and fornication laws, one can probably say that almost half of the jurisdictions, namely twenty-four States, have so reformed. However, in the overwhelming majority of these reformed jurisdictions, these reforms were the consequence of the enactment of large penal codes involving several hundred revisions of statutes, with the result that the particular criminal provisions to which a Commission such as yours would be concerned, were very often buried in the midst of other non-sexual and non-privacy-oriented legislation. The consequence of this is that the issues, political, social and other, that these criminal statutes carry in the political arena, were, in most jurisdictions, not thrashed out in the legislature. Here is where California is a salient exception.

The Brown Act did, by special legislation, what in every other State but one, was accomplished generally through the enactment of these large penal codes. It is true that in a handful of States, particularly Pennsylvania and New York, this was substantially done by judicial reinterpretation of existing laws. It is also true that in New Mexico the reform was established as part of a general revamping of the rape laws. But the fact remains, is that the issue, certainly of homosexual law reform, was in this jurisdiction publicly debated, publicly discussed and legislatively enacted.

There are other aspects of the legislation in this State which set this State off from its neighboring jurisdictions. Not only neighboring, but from the rest of the country. As no doubt most of the members of this Commission are already well aware, an exception was made in the Brown Act with respect to the scope of the

contemplated reform. Namely, that it did not apply to prisoners under prison jurisdictions. Whether youth authorities or whether adult authorities. One might ask oneself what substantial difference this would make, since in other reformed jurisdictions it's quite clear also that prisoners do not clearly engage in sexual acts licitly. The answer is that in one case, one is dealing with a continuation of felony convictions, and in another case, with violation of prison regulations.

The fact, however, that you have had a public forum in which these matters have been discussed, in my view, enables you to engage in necessary administrative emendations of existing regulations which might not be possible elsewhere. This raises the issue of privacy generally and the relationship of sexual conduct to privacy.

We heard earlier witnesses speak this afternoon of the voir dire system and the violations certainly in the view of some people that that system entailed. There are, I believe, and in fact it's only this afternoon that I've come to this conclusion, so it may not be deeply held, two aspects of privacy and I submit, at least for tentative consideration, that you have so far been considering only one.

What I should like in the remaining few minutes to discuss is man's dominion over his body. Which is an aspect of privacy that I do not believe you have considered. But which I believe is inherently implicit in the Lockean Doctrine with respect to property and person. If you look at what the founders of our Constitution conceived of as inherent in life, liberty and property, if it means anything at all, if the due process clause of the Fourteenth Amendment, going back to the law of the land of Magna Carta, if it means anything at all, it means man's dominion over his own body. That raises questions quite beyond the sphere of sex and quite beyond the sphere of privacy. We must begin, I would say, with a reconsideration of such things as the suicide laws. If man does not have the right over his own body in terms of suicide, then certainly he has little to complain about with respect to questions put to him on a witness stand, which certainly, it would seem to me, do not encompass that degree of invasion of privacy as does such a prohibition against suicide.

If we think then beyond the suicide laws, it seems what we are dealing with is man's dominion over his body — if this Commission comes to the view as I suspect any Lockean must, that man must have dominion over his body, and if we satisfy that first essential of privacy, is satisfied. I believe then we have layed a firmer basis to test the second level of privacy — that is, man's reputation.

Man's reputation is perhaps his single most precious possession, but even the worst sullying of that reputation still does not measure up to a violation of his dominion over himself. And I think somewhere along the line this Commission might

want to separate with respect to the importance of these two forms of privacy. That's all I have to say.

COMM. MERTZ: Thank you very much, Dr. Warner.

• • •

DAVID PAYNE: My name is Dave Payne ... I'm a Stanford student and I'm an Administrative Intern at our local high school district, and I'm here, to some extent I guess, representing students.

I'd like you to consider tonight an invasion of privacy which affects me and millions of other young male Californians. We are require to register ourselves and our whereabouts with the Federal Government. The Government's systematic scrutiny of our identities and our whereabouts is, in itself, an invasion of our individual privacies which reminds me of Big Brother's actions described in Orwell's "1984". The Draft, for which this procedure exists, would be to ask the ultimate invasion, and indeed, abrogation of our privacy. U.S. Attorneys presently have the names of 108 young men whose prosecution are expected at any time. The method of obtaining these names is diverse, and to me, very questionable. Anyone has the right to send in the names, any name at all, to the government Selective Service, to be checked on and see if they've registered. We've cringed at the methods used by McCarthy to track down suspected Communists. I suggest that the same selective method of enforcement exists today, considering Draft Registration.

High School and College Records are being used and/or could be used by the Selective Service in tracking down non-registrants. There is presently a Bill in joint committee and by that, I mean tonight, that has passed both Houses. It's a Rider attached to the Defense Appropriations Bill that allows Social Security and IRS information to be used in tracking down non-registrants. The Privacy Act is drastically threatened. This invasion of privacy may seem to you far removed from the issues of this Commission, but individuals on their own, acting as a group or as a commission, such as yours — or even as an entire State can bring an end to such invasions of privacy.

Mark Twain inspired me to speak today, and I quote him:

> "Each must, for himself alone, decide what is right and what is wrong, and which course is patriotic and which isn't. You cannot shirk this and be a man. To decide against your convictions is to be an unqualified and inexcusable traitor, both to yourself and to your country. Let men label you as they may. If you alone of all the nation shall decide one way, and that be the right, according to your convictions of the right, you have done your duty by yourself and by your country. Hold up your head, you have nothing to be ashamed of."

I ask to you to formally and informally urge our State Representatives and Senators to rebuff infringements upon the Privacy Act — to end Draft Registration

and forbid the Draft to ever come again to this land. Secondly, I would like our State Government to pass a resolution stating those same ideas. Finally, I would urge you to urge our State Government to keep Public High School, College and University Records from being disclosed to the Selective Service in the tracking of non-registrants. Thank you very much.

COMM. MERTZ: Thank you. Questions . . .?

COMM. ESKIN: I thank you for coming. You are the only person in the two weeks of Hearings who has brought that issue before us and your comments concerning the potential sources of investigation remind me of another subject that hasn't been brought before us and that's the growing popular (at least in Southern California) organization called "We Tip". Nobody has come to us from that organization extolling its virtues or expressing concerns about the invasions of privacy that it represents with respect to neighbors anonymously calling up information about each other and what a fertile area it seems to me for such snooping eyes, would be neighbor's sons who haven't registered. Thank you.

• • •

STEVE BLOCK: Good evening, it's a pleasure to be here tonight and to have this opportunity to add a few thoughts of my own about the Commission's work and about imposing task ahead of it in coming to grips with the subject of privacy.

I've been asked to address a few comments to the broader issue of what privacy really involves and I believe I was invited to testify largely because I have been allotted the mixed blessing of teaching a course next semester at the Law School at Berkeley somewhat grandly entitled "The Right to Privacy." And I was warned by a friend when I undertook that effort that one really never knows a subject until one teaches it. And indeed, as I haves begun to familiarize myself with the many faces of privacy, only gradually have I come to realize what it was I've gotten myself into.

I suspect that more than a few of you on this Commission have experienced similar sentiments as you've come to complete the initial stages of your own work. One reason that getting a handle on privacy is so difficult, is that even a definition is elusive. Probably the most famous if not the most illumination formulation of the concept was offered by Justice Brandeis, who called it "the right to be left alone." And it certainly was no exaggeration for Brandeis to term privacy as so-defined as "the most comprehensive of rights." For even the casual observer will recognize that since virtually every governmental enactment or action affects someone's right to be left alone, the outer boundaries of privacy, broadly defined, are arguably coextensive with the law itself. And the very breath of that notion, however, and the license that it affords, has a paradoxical effect upon those of us charged with rendering privacy in meaningful and an intellectual concept and also a workable value in the law. It imposes upon us as the first order of business, the need to narrow the focus of attention to set priorities, to find more limited definitions, in short, to locate privacy as a unique and managable value among many, rather than an all-encompassing one which con- sumes the whole.

And I hope to attempt, as my contribution tonight, an effort to identify at least one possible point of departure for that effort. One aspect of privacy which has emerged in recent years, as perhaps the predominant focal point of attention, is that interest sometimes characterized as "the right to intimate association." While the contours of that right remain somewhat ill-defined it is focused for the most part upon individual autonomy in the matters of sexual freedom, child-bearing and the like, and seems to have something to do with protecting a zone of liberty that is at the core of the individual's sense of identity.

Legitimizing those interests as matters of privacy has not been easy. In the first place, they are not predicated like more traditional privacy concerns, upon a desire to shielf some activity or information from public view. It is, for example, as offensive to the freedom to make child-bearing decisions, to prohibit the public sale

of contraceptives, as it is to prohibit there use in the bedroom. Similarly, many of us would suggest that discrimination based upon sexual orientation is an invasion of our privacy, even if predicated upon the individual's public declaration of his or her sexual preference. In short, the spectrum of privacy which we are discussing, is really an aspect of individual liberty. Somewhat far afield of privacy as traditionally conceived.

A related problem has been the difficulty of identifying a unique and distinguishable sub-set of privacy within the broader category of liberty. Why, for example, are contraception, abortion, and sexual orientation matters of privacy, whereas freedom of religion, the right to travel, even freedom of speech are not? All this has had a certain tendency to undermine the legitimacy of protecting intimate association as a matter of privacy, and I fear (as an aside), that the lack of coherent analysis on the subject may well make it easier for a more conservative United States Supreme Court to dismantle, at least on the Federal level, the doctrine all together!

I think there is, however, a way to clarify our thinking on the subject, and I think that it comes at least in part from shifting the focus of attention from the character of the rights asserted to the kind of governmental interest advanced as justification for intruding upon those rights. In other words, let us turn for a moment away from the nature and importance of the individual's interest in child-bearing or in sexual freedom, and examine instead, what kind of justifications are typically asserted when the government seeks to interfere.

I think that when we look at those aspects of intimate association protected under the umbrella of privacy, we find almost invariably that the governmental interest traditionally advanced to justify interference, ultimately reduced to matters of morality or paternalism. The State's attempt to restrict various forms of sexual activities and interfere with intimate associations, has amounted for the most part to nothing more than an effort to impose its code of morality on all citizens and sit in loco parentis on individual decisions. In other words, the State has been unable, and undeed until recently, has not even tried, to justify its interference in those areas upon demonstrable harm to non-consenting parties.

And I would suggest that the emergence of intimate association as a matter of privacy has less to do with the newly-found appreciation of the importance of the individual rights involved, as it has with the gradual discrediting or morality and paternalism at legitimate basis of governmental intrusion. As the court put in finding unconstitutional the exclusion of gay citizens from the Federal Civil Service, "a pronouncement of immorality tends to discourage careful analysis because it unavoidably connotes a violation of divine, Olympian or otherwise universal standards of rectitude. However, the Civil Service Commission has neither the expertise nor the

requisite annointment to make or enforce absolute moral judgements and we do not understand that it proports to do so. Its jurisdiction is at least confined to the things that are Ceasar's and it avowed statement of immorality is not more than the prevaliing mores or our society. But the notion that it could be an appropriate function of the Federal Bureaucracy to enforce the majority's conventional codes of conduct in the private lives of its employees, is at war with elementary concepts of liberty, privacy and diversity."

In essence then, these matters have been conceived of as private in the sense that they are simply beyond the legitimate interest or concern of the State. And I think that it's important to recognize that privacy, so conceived, is not limited to simply matters of intimate assocation. Indeed, there are any other number of concerns, from the use of marijuana to attempts at obscenity regulation, that I would suggest are similarly fit subjects for scrutiny by this Commission as violations of privacy. In short, I think it's essential for the Commission to begin developing a coherent concept or philosophy of privacy and to define in some meaningful way, the permissible limits of governmental intrusion into our lives.

I would suggest that at least part of this process is a commitment to the principle that morality and paternalism standing alone, do not justify interference with individual liberty. Thank you.

COMM. PINCU: May be have a copy of your paper please?

TOM COLEMAN: A number of us, particularly some on the staff, have been struggling with this whole area of philosphy of privacy Where does it end, where does it begin? Can the concept consume the entire Bill of Rights, if we just say that it's all matters of personal autonomy and so on? Personally, I feel that the Commission has come to a fork in the road where some serious consideration, reading, research, dialogue, brain-storming and so on, needs to be done about a philosophy of privacy and that might help us limit some of the kinds of things that we can do. We've seen witnesses all over the area on numerous subjects, and we can't cure all the ills of the world, but maybe one contribution we can make in addition to tackling a few of them, is to begin this — trying to get a working handle on it — for people that may implement what we do. I would be personally pleased and delighted, if in this process, you would assist us as we come to grips with it.

MR. BLOCK: I'd be happy to help.

• • •

DORRWIN JONES: Good evening Commissioners . . . I'm here to just briefly comment on a subject very close to me, and I'm sure whether it's been dealt with earlier in the day, but at the invitation of Mrs. Albertson, I'm here tonight and I'm delighted to be asked to do this.

I am Dorrwin B. Jones, the Executive Director of "Meals on Wheel of San Francisco, Inc." and I speak this evening as a gerontologist and as a long-time activist in the gay community. I am therefore especially concerned with the aging process as it affects the lives of lesbians and gay men. This coming spring I will complete thirty-two years of involvement in community organizations. Throughout this long period of time, I have served on numerous boards, committees, and task forces enabling me to observe the ever-present struggle for individual rights. There is more than sufficient data to support our disgraceful treatment of older persons in this country, and in re-reading this, I didn't mean to imply that data supports the treatment, it supports the charges. There is disgraceful treatment of the elderly, and re-reading that, I'm not sure I worded it right.

Ranging from the complexity of government forms, they must continually endure to the frustrating attitudes whom they must encounter in all kinds of daily situations. I just yesterday had an interesting session at the Social Security Office and they were telling me about the <u>incredible</u> number of pages now, which are contained in these forms — they're becoming larger and larger in terms of elderly people dealing with them and the energy this takes is astronomical. Beyond the usual challenges of finding housing, adequate nutrition and dependable transportation, if one is a lesbian or gay man then society may add an additional list of problems. The pressures to which gay people have been subjected are too numerous to adequately explain in this brief presentation. But certainly must include: antiquated laws in employment discrimination, unfair tax regulations, and unwritten harrassments of every conceivable nature. To survive the onslaught of government, family and religious organizations, one must possess incredible courage and energy.

I have lived with my friend for twenty-one years, we are responsible property owners, tax-payers 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 whenever 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 sometimes insurance companies. It is encouraging to know that the Commission on Personal Privacy exists and I urge you to investigate this much-neglected subject of aging in the lesbian and gay community. It is especially important to consider what action can be taken by the government to alleviate the oppressive conditions

which are currently being ignored. I shall be very happy to assist the Commission in such a project. Thank you, Mrs. Albertson, for giving me this opportunity to testify. My telephone number and address is here and should the Commission take an interest in this subject, I should be delighted to help in any way I can to further this work.

COMM. MERTZ: Thank you very much. Do you have any specific recommendations for action that could be taken to alieviate the problems that you've mentioned?

MR. JONES: Well, some of the things that I've gone into, I've just mentioned, because it's much too extensive to go into at this time. But Mrs. Albertson knows there's a marvelous conference which was just held at Dominguez Hills, California State University on Aging in the Gay Community, in October. It was the first, and quite an historic occasion, and we spent a whole weekend, Saturday and Sunday discussing issues with excellent panelists and speakers. And they're so wide-ranging in terms of kinds of things that we face, as aging gay people that you would need a day or two to really go into this. But certain specific things that I've mentioned here, such as arrangements to recognize relationships which have gone on for many years. I mean there are horror stories I could tell you, you would not believe, about situations in hospitals and with funeral homes and with settling estates and insurance companies! I don't think, many times, that people realize the number of long-term relationships which do exist in the gay community. For some reason, people seem to think they're all rather transient relationships, and yet, we have many friends who've been together for many many years. I just attended a funeral last week for a very dear friend, a lesbian who died after being with her friend for fifty-three years. So, it represents a whole new area of trauma which has been going on a long time, but which has not been recognized until recently. So any help that could come, I see this as something that's going to have to happen in the legislature or in the courts -- I'm not quite sure how we go about it, but certainly, some of these things could be corrected in terms of our rights about estates and tax laws and that sort of thing, which we need to look into.

COMM. ALBERTSON: We're very interested as a "starter" for re-defining the term "family" that may then lead to towards some specific legislation that would take care of some of the points that you've raised, and have been raised here today and also in Los Angeles last week. And I for one, to speak for our sub-committee on family relationships, would like very much to be in touch with you in the weeks ahead, to have your input in this regard. Thank you for being here.

MR. JONES: Thank you. I think the key to that is this family unit, because in the United States now, I don't know how you can really accurately define a family unit, even in heterosexual relationships, they're so constantly changing with the divorce rate and all of the arrangements of children and custody, and all of this. To say that two people who have been together for ten, twenty, thirty years are not "family" is just ridiculous. It's something which must finally be declared legally in this country. I'm not talking about weddings and marriages and things, I'm talking about really recognizing a family unit.

COMM. BALADERIAN: Yes, as a member of the Sub-Committee of the Commission on Aging and Disability, I'd like to be able to call on you and ask for your support.

MR. JONES: I'd be very happy. I have my address and telephone number there, and also attached is a second page a copy of the Newsletter which came out — we do have a national association now, of lesbian and gay gerontologists, and that second page is concerning that and the conference down South.

COMM. ESKIN: I was not aware of the problem before last week, and at the Hearing in Los Angeles, a woman testified whose forty-year relationship had recently terminated in death and she told us some of the horror stories that she lived as a result of the various problems and I think that there are some of us who feel that, whether it comes through a redefinition of family or whether it comes through authorizing a person to designate with respect to taxes, contracts, insurances, that there are some legislative remedies that just may very well be available.

Mr. JONES: That's what I was hoping . . . thank you very much.

• • •

KEVIN WADSWORTH: Good afternoon, Commissioners. There have been quite a few very important topics covered today and last week and I think the last one (to me) struck home. I have not been with my lover for twenty-one years, but I hope to and it's something we all should think about.

My specific topic, however, is a little bit different and I don't know if it has been necessarily addressed. I'm reminded that George Bernard Shaw in 1933 or 1936 noted that:

> "An American has no sense of privacy — he does not know what it means, there is no such thing in this country!"

In some ways, I tend to agree with him. As a person who happens to be homosexual, I am very much and deeply grateful for the many who made, by law, what I do in the privacy of my own home of no concern to the State or to the public.

Privacy, however extends beyond the physical. There's also the emotional and psychological right to privacy to which we must speak. And please be assured that when I mention homosexual or gay, you could insert black, anglo-saxon, woman, disabled — I think it applies to us all. I wrote this and so I'm addressing it from my viewpoint.

Emotionally, homosexuals have no privacy and I believe that politicians above all else are the prime reason. We have been made an issue of by those who would seek power. The religious political movement make us out to be perverted child-molesters who seek to impose homosexual values upon the Great American Family. The leadership of the California Assembly constantly touts their commitment to AB-1 but they refuse to allow the Bill on the floor for vote, once out of committee, for fear of embarrassing fellow Democratic Legislators. Our Governor wants to be Senator, and pulls the television spots on minorities, including homosexuals, so that he might avoid the criticism and loss of votes from certain voting populations in and outside his own party. This Commission, to me, was a political gambit that was timed so that your Report will be presented to a new Governor who has no committment whatsoever to its purpose, or recommendations, no favors to repay you as members and perhaps as individuals, and shall undoubtedly forward your Final Report as so many other Reports have been forwarded to whatever Siberia or elephant graveyard that awaits Reports To Be Ignored.

The House of Representatives has created another household word out of Larry McDonald with his bigoted amendments to the Legal Services Corporation Act. In the United States Senate, we have three Republican Senators from obviously good clean nuclear families who have introduced the misnomer Family Protection Act which manages to offend practically everyone. Even here in San Francisco, we have a fire

in an area known to have as residents "practitioners of S&M", and our ever-popular Fire Chief comments to the press that he could practically smell the flesh of burning bodies trapped in the shackles of torture chambers located in the burning buildings. There was no one there. And our Immigration and Naturalization Service delights in deciding who is Queer or not amongst visitors to our Land of Freedom. I can only assume they used the tried-and-true lisp and limp-wrist test in determining who is Queer or not.

These and other examples of emotional deprivation of privacy must and should be addressed by you. Not only do they cause anger and fear and worry and emotions attendant to being oppressed, they also cause one to worry about one's friends. Politically, I trust homophobes -- to be just that: homophobic. And I can deal with that, which I expect. It is often, however, our supposed political friends and supporters of whom I must be wary! I never know when they will turn on me for political purpose and benefit. I find it discouraging and disheartening to be used, to be treated condescendingly, to be attacked, to be constantly told that I am "different" and that I shall always be viewed as different. I distress at having to be a political issue when all I want is to be me -- to be free and enjoy the life that I share with my lover and my best friend.

In closing, I am reminded of Robert Browning, who, as we, sought some reason and logic of life, and though I may disagree slightly with the illusion manifest in this quote, I assure you I deeply empathize with Mr. Browning, when he says:

> "I give the fight up.
> Let there be an end.
> Privacy.
> An obscure nook for me.
> I want to be forgotten,
> Even by God . . ."

Thank you.

COMM. MERTZ: Thank you. Are there any comments or questions from the Commissioners? (NONE)

• • •

DR. WILLIAM PAUL: My name is Bill Paul — I'm the Research Coordinator for the Task Force of Sexual Orientation, Division Nine of the American Psychological Association. This is a four year task for research and education that was mandated by Division Nine for the Society for the Psychological Study of Social Issues.

The purpose of the task force is to gather information from current research that relates to homosexuality as a social issue. This has involved thirty-one researchers over a four-year period. I don't want to give you the entire summary of our findings, although this summary is attached to what I am giving you — rather, there are a certain range of data that relate directly to the work of the Commission. I'd like to talk about these findings as they apply to California and your Commission mandate.

I would say, first of all, that this is an educational issue since there is a widespread pattern of misinformation among the public, based on a lot of popular beliefs. Many of these have formed quasi-official doctrines that have been inculcated traditionally in education. Now, California is in a better position than other States, but to some extent, this inculcation of doctrine about sexual orientation persists. This happens in a social context and the context is one of a massive hate-campaign being directed not only at gay and lesbian people, but also toward feminists and toward women who dissent, for example, from certain religious doctrines that they seek to impose. I think it's also pertinent to certain inter-group conflicts that have been generated in this State, and I would say that in addition to the hate-campaign, that we've documented and studied, there's also a widespread pattern of media distortion.

Now, in that context, there are certain clear education needs — one of those needs is the development of curricula that talk about the target groups in terms of communities, rather in the case of gay and lesbian people, talking about them as sexual beings.

The conditions that we have found include widespread discrimination on the basis of sexual orientation, especially in terms of due process and equal protection of the law. There are also widespread examples of invasion of personal privacy. One of the most dramatic aspects of these forms of discrimination and violation of personal privacy is violence. Now this violence transpires in random attacks against target groups, and also tends to spill-over into violence against people who aren't necessarily belonging to these groups. So for example, in San Francisco, there was the bombing of the Women's Building this last year, and the Women's Center is a center of feminist's though, but also is a center for the lesbian community. And it was very hard to distinguish whether lesbians or women were being attacked. But the women's community denied any attempt to isolate lesbians as a target group. An attack on women or any women was considered an attack on all women. Certainly, in this case,

the feminist community was the target group.

Now the content of this hate-campaign is worth consideration. We've done analysis, both in terms of content and themes. We find clear comparisons to Nazi propaganda and certainly to classical racism in the United States. I think the best comparison is to anti-Semitism. And there are certain verbatim quotes, for example from Anita Bryant in 1977, referring to gay people: "They can't reproduce, so they must recruit." Well, there's almost an identical quote from Heinrich Himmler in 1940 when he was the head of the S.S. What we find in the propaganda are certain categories of argument: "It's against natural law" ... "It's a personal disorder" ... "It's a social disorder leading to the destruction of the family, or the decline of civilization"... "It is a moral and religious violation of basic moral ideas in this society". Finally, social utility arguments that we predicted would become much more predominant, and these are extremely powerful as seen in the Palo Alto campaign recently: "It's not really a social issue - these people aren't really a minority - furthermore they don't have to do this - they bring it on themselves" ... "It's a personal matter, best kept private". At the extreme end of this argument, it comprises a kind of victim-blaming so that "There wouldn't be violence, if they didn't flaunt what they do" ... "They bring it on themselves" ... "There's no reason why there should be an issue, because after all, if they just kept to themselves, they'd be okay".

Before going on with the analysis of propaganda, I want to point out to the Commission that the concept of privacy is sometimes interpreted so as to oppress people, or to deny equal protection. That is, you have the right to personal privacy, and if you exercise that, you won't get into any trouble, but if you somehow relinquish your personal privacy, then to some extent you have to pay in terms of your right of free speech and assembly or equal protection. So that the very visibility of a target group incurs certain quasi-legitimate sanctions and that personal privacy is considered the refuge behind which they can hide. I think that's a very important conceptual problem that ought to be addressed by the Commission that personal privacy in itself can be misinterpreted.

Proceeding with the problem of propaganda, you'll notice that I did use target groups. I don't think that this inflicts oppression only on gay men and lesbians — it also spills over into people who fight for reproductive rights for example, or to visible feminists communities who may be heterosexual. But, if we can imagine columns of rational argument, cross-cutting these, we have themes. Now themes in propaganda are those things that evoke feeling, or are transmitted by imagery, the kinds of things that really play on emotion. Quite often it's between-the-lines in what we call a subtext. It's used widely in propaganda and certainly in psychological warfare. The themes we see in this hate-campaign — well funded and well organized, often based

outside of the State — are as follows:

Danger
Gender-role violation
Avoidance (the whole topic should be avoided)
Victim-blaming
Generalization

And then, some very heavy themes of contagion and pollution (pollution meaning revulsion or disgust and contagion meaning that it's like a disease that will spread, and that the society has vested interest in trying to presvent the spread of this so-called disorder, whether its feminism or homosexuality). The thematic properties of this propaganda campaign are interesting, because you see them appear in officially sanctioned educational materials all over the State. You see educational materials, in say, hygiene books, that still promote the notion of homosexuality as some kind of sickness or disorder — this is a scientifically invalid notion, certainly not supported by any legitimate social science organization in the country. In any case, although the promotion in educational institutions of these kinds of themes is declining, there is a still a repository of public misconception and myth that exists throughout the State. This educational imbalance happens in a context where there's very little access to accurate information.

In certain areas of the State, a citizen would have little more access to accurate information on sexual orientation than would a Soviet citizen — and indeed, the Soviet Union and other totalitarian countries do suppress information of this kind.

We should not, I think, assume that the prejudice or the bias is so deep that nothing can be done about it. It has been shown that prejudice or hatred towards homosexuality and toward lesbians and gay people are, in fact, patterns of thought that correlate with ignorance: a lack of education.

This was found by Lebitt and Classen. Conversely, Moran found that with a simple, brief one semester educational treatment, these sorts of prejudice and hatred could be reduced. In other words, there are resources in education and we shouldn't be allowed to "mystify" this problem. Indeed, although the Moral Majority and other right-wing hate groups would tell us that there is an overwhelming amount of resistence to equal rights for gay people, since 1970, there has been a ten-year rise in public support for full social equality for gay people. This has never been reversed by any of the hate-campaigns that have taken place. In fact, even when losing an ordinance, there's usually been a gain.

I think it's important to recognize as well, that some of the hate-campaign

deliberately attempts to incite inter-group hatred. For example, there's a purported conflict that's widely disseminated by the mass media, between ethnic and racial communities on the one hand, and gay people or feminists communites. It's assumed that rights for one will detract from rights for another, or that minority status for gay people would somehow detract or invalidate minority status for racial and ethnic communities.

Our Task Force, over a four-year period, found that lesbians and gay men are indeed a cultural minority by any standard of social science and in a very real sense, a religious minority since they dissent from a dominant religious ideology. Certainly the history of religious liberty has always been defined in terms of the right to dissent from the established church. So that, the educational imbalance that I speak of, and which has been widely documented, is a very real problem — there are patterns that amount to "thought control", including thought control as imposed over the professional life of someone like myself. In hiring and firing and academic promotion, in the places where academic knowledge is supposed to be generated, there's still a widespresad amount of bigotry. Now in that context, we can also raise questions of religious liberty since this "thought control" is imposed on behalf of certain religious pressure groups, or in response to pressure of a political kind that they generate. This is a very brief synopsis of some pertinent findings as you can see in the Press Release, it's a synopsis of our total findings, there's a great deal more. I'd be glad to respond to any questions the Commissioners might have . . .

COMM. MERTZ: Thank you very much for your testimony and your paper. Are there questions from the Commissioners?

COMM. COULSON: You mentioned that there are some specific educational materials being used that are very discriminatory. I wonder if I could contact you at some point and get the specifics for that? Because that would be very helpful to our committee in our work. If we have really specific instances of this kind of educational material.

DR. PAUL: Certainly. There's a research project that was presented at the American Psychological Association this year, a survey of psychology textbooks in particular, showing widespread bias. I'd be glad to supply that to the Commission.

• • •

LAWRENCE CRUZ: Good evening — it's rather late, and I admire your strength and endurance, you've been here a number of hours, but I do want to talk about an issue that I don't know if it's been talked about before (in Los Angeles), but it's an issue that comes close to my heart. I'm a Director of a long-term residential facility called Esperanza House — it's for adolescents, mostly sexual minority youth. And I would like to talk to you about the issues, the concerns and the problems that are faced by a sexual minority youth.

First, I need to define that term for you. Sexual Minority Youth includes gay and lesbian youth, trans-sexual, bi-sexual youth — youth who have been involved in prostitution, and also victims of sexual abuse.

Looking over the body of literature and just from my personal experience, I think it's safe to say that in our society, generally speaking, youth do not get validation and support for their sexuality. We all know that in adolescence, this is a time for exploration, but heaven forbid that they act upon their sexual feelings, and even worse, that youth have sexual feelings and act upon them that are not considered "normal" — that is, if they have the same-sex feelings, or they might have gender and role confusion, etc.

The youth that do have these feelings, oftentimes face ostracism and discrimination from their parents and relatives, from their peers and from schools, churches and other isntitutions. In the sexual minority youth, this often leads to feelings of isolation, alienation, and they do internalize these negative societal attitudes, which lead to self-hatred. If they do disclose their feelings and do disclose the fact that they identify themselves as gay or lesbian, oftentimes they may be thrown out of their homes. If that's not the case, oftentimes they run away and they run away to large metropolitan areas like San Francisco, Los Angeles, San Diego and other large cities in the United States.

To give you some perspective on this in terms of numbers, the San Francisco Police Department estimates that there are between one thousand and two thousand runawaysin this city every day, and that on a nationwide perspective that there are one million runaways across the country. Now statistics indicate that a large number, a disproportionate number of these runaways are sexual minority youth. Up to sixty-five percent. And when these youth do run away and they do go to large metropolitan areas, they are easy prey for exploitation because they have dropped-out of school, and because they have low educational skills, job possibilities are not there. There's no adequate housing, and in fact, they have the status of an illegal alien in their own country! Which means that because being a runaway is illegal and it is a status offense, they're not able to utilize the social services available. If they try to go to schools or if they try to go to hospitals or other social services, because they're not

residents, and because their parents do not live in these cities, they are usually brought to the attention of juvenile authorities. Our official policy in this State with out-of-county and out-of-state runaways, is that they're given a Greyhound ticket and sent back home. If they do get back home, this is exactly the situation they found intolerable in the first place, so their lives become basic survival. And life on the streets often leads to prostitution and often leads to trafficking in drugs and to drug abuse.

I must say, at this point, that these youth do not plan to become prostitutes, they do not plan to become drug addicts or become status offenders or to interface with the criminal justice system. They're leaving a situation they find intolerable, which is based on negative societal and institutional homophobia. Another situation that I've been dealing with in my work is wards of the court, wards of California youth who have been placed in foster homes and group-homes for whatever reason, whether they have abusive and neglective parents or because they are status offenders. These institutions and the Child Welfare System is inadequate to deal with these youth. They're insensitive and homophobic to their concerns, and what happens is that when youth who do identify themselves as sexual minorities or this becomes an issue in the group-homes or the foster homes, the counselors don't know how to deal with it. The social workers, probation officers and Juvenile Hall doesn't know how to deal it. So, again, they run away, and I'm talking about youth who are twelve, thirteen, fourteen, who leave the system, who don't have any support, who again end up on the streets. And even if they do stay within the system, and I'm talking specifically about wards of the court now, they do have a high incidence of placement failure, which means that they don't stay-put very long. In fact, in my personal experience, it's that most of these youth that I'm dealing with, in their very short span here on earth, they have gone through ten, eleven, twelve placements. Again, I'm talking about youth of fourteen who have no roots, who because they don't have any roots or support, they find themselves on the street, they find themselves living a basic survival life.

I could go on and on and give you a lot of these cases, but I do have some recommendations for you. My main recommendation is that all State institutions become aware and sensitive to sexual minority youth and their concerns and that the official policies and regulations reflect this. Our institutions, such as schools, that curriculums be adopted and adapted to fit the needs and issues of sexual minority youth. That even if sexual minority youth, specifically gay and lesbian youth, do not leave home, they still feelalienated and isolated because they don't get any support within the school system. You know, their peers, their friends ostracize them, the school curriculums talk about, in terms of sex education or socialization, only in

heterosexual terms. There are dances and senior proms, but they're not allowed to go, because they're not allowed to bring their same-sex partner. So again, curriculum needs to be written and to be utilized by the school systems that address these issues.

Another institution is a Child Welfare System, that in service training needs to be provided to social workers and/or placement workers about these concerns. There is an official policy in San Francisco Juvenile Hall that any youth who strays from the "norm", who brings up the issue of: "Well, I might be gay, or I might be lesbian," the official policy is: "You don't know what you're saying — this is only a phase," and in fact they do not give them any room or counseling to deal with these issues. Also in terms of licensing group-homes and foster homes, there needs to be within the licensing requirements, some mechanism that deals with this, that a foster home or a group-home cannot get a license unless they are aware of these issues in terms of taking courses about these issues, etc. Those are my recommendations, and I'd be glad to answer any of your questions.

COMM. PINCU: You describe things very very well, and I agree with almost everything you said in terms of the really rampant homophobia, specifically in the criminal-justice system, and specifically in the juvenile criminal justice system. We have no argument there. I'm a little confused about something, though — and that is, you're looking at education and training as somehow a panecea, it seems to me, for combating this homophobia. And at least from my experience, you're dealing with a homophobic institution to begin with. There seems to be something about people that go into these agencies that ...

MR. CRUZ: I'm a member of those agencies ...

COMM. PINCU: Okay . . . and they can attend all the classes as one wants to give, and the homophobia is still going to exist, so your recommendations sound nice, but I'm not sure they would do anything in terms of combating the homophobia that you have so admirably described.

MR. CRUZ: Well, obviously, in combating homophobia there needs to be a lot targeted areas, I'm mentioning one. In terms of school, I would say that during adolescence, the school system has more influence — I'm talking about peer affiliation — and also dealing with the educational system as a very influential part of a young person's life. This also coincides with the fact that at puberty and sexuality coming into being and think that this is definitely one area that needs to be addressed. Obviously, other areas in terms of combating homophobia need to be addresssed

also, but in terms of your mandate, I'm looking to you deal with an institution of our educational system in the State of California. There have been studies showing that if youth, including gay, straight and lesbian youth, get proper information and if they get speakers who come into the classes who are gay and talk and provide role-models, that this definitely doesn't eliminate totally, but it does bring up the issue of: "Oh, yeah, well, that's something to think about."

COMM. PINCU: I'm concerned about your many examples though, of youth being placed into these foster homes or juvenile halls and all of that, with clearly unsympathetic staff, and how we would remedy that situation.

MR. CRUZ: Well, there's no easy answers to this, but I think that, again, there needs to be, like I said, in terms of licensing -- and in fact, I've just gone through this myself in terms of licensing. In a group-home, you need to have a certain staff patterning, the State of California needs to know the background of the staff, there needs to be a Medical Director, all these kinds of things in terms of other issues that affect youth. And if there were some kind of requirement that youth workers need to take courses on sexuality, including homosexuality, that would, I hope, reduce some of the homophobia. I need to be optimistic, you know, because I think that if we buy in too, well then, it's not going to work.

COMM. FERTIG: I may not have heard you correctly ... the age of the young men and women in your home ... ?

MR. CRUZ: Actually, in terms of my program, they're fifteen, sixteen and seventeen. But in terms of the statistics of sexual minority youth who are involved in prostitution or who become runaways, you get them as young as eleven. And these are statistics from Juvenile Hall.

COMM. FERTIG: And again, just to make sure I heard you correctly, what is your source for bringing these people to you. Do they come on their own or . . .

MR. CRUZ: No - in terms of my program, they are wards of the court. We're the only group-home in California that deals specifically with sexual minority youth.

COMM. FERTIG: Wards of the San Francisco courts?

MR. CRUZ: No, it's California. We can get referrals from Los Angeles and San San Diego and other counties.

COMM. FERTIG: One other question. Have any of these people ever been incarcerated?

MR. CRUZ: Some of them have.

COMM. FERTIG: I think we would probably like to chat with you — our Sub-Committee is dealing with this area. Thank you . . .

COMM. DAWSON: I teach in community awareness programs in San Francisco and the Oakland Police Departments, and very often, almost always in fact, we bring in agency people dealing with youth as part of those training programs. A constant point of reference that I hear is the exploitation of the youth I would like to know what the incidence is of self-exploitation of youth and their sexuality and how we deal with that, as a privacy issue.

MR. CRUZ: Can you define that for me further — this self-exploitation?

COMM. DAWSON: Yes, youth itself exploit their youth and their sexual preferences. They are not always exploited. How do we deal with that as a privacy issue?

MR. CRUZ: In terms of my experience, and this is talking about runaways and prostitutes, my experience is that a great majority involve themselves in prostitution as a means of survival. Of course, there are a few that, for whatever reason, whether it be psychological or sociological, choose to leave home and specifically become involved in prostitution. This is an illegal activity and I don't have an answer basic to your question as to what do we do with these youth. My main concern is that we prevent youth from running away, prevent sexual minority youth across California, and hopefully, the nation, who feel the compulsion to leave home, or are kicked-out of their homes because they identify themselves as other than heterosexual. But in terms of answering your question directly, I don't know.

COMM. BALADERIAN: I have two questions — I just lost one — but the second one is, in terms of the policy that you mentioned regarding the Department of Social Services, to provide information to a child who expresses feelings of homo-sexuality, that it's "a phase" and hopefully, he or she will get over it in due time, is that written? Can you supply us a copy of that policy?

MR. CRUZ: This is based on my conversatons with the Director of Placement here in San Francisco.

COMM. BALADERIAN: Would you be able to speak with the Director of Placement here in San Francisco and request, on my behalf, that you've been requested by the Commission to receive a copy in writing?

MR. CRUZ: Fine. I don't know if I'm the person to do that, but I'll be --

COMM. BALADERIAN: I don't either, but I don't know who else to ask right now.

MR. CRUZ: The reason I mentioned this, was because when I was doing outreach on my program, which is obviously a very controversial program, he sat me down and said: "I want to tell you what the official policy is. The official policy is what I just said." And I answered, "I understand that adolescence is a time for experimentation and especially around sexuality, yet, there is a need to deal with these issues other than avoidance and rather than denial," and he just addressed me again with the official policy.

COMM. BALADERIAN: Sometimes official policies are written. Sometimes, they're not, but it would be helpful in terms of our work on the Sub-Committee on Aging and Disability, which we're looking a lot at. People who live in institutional settings. It would be very helpful to our Sub-committee.

MR. CRUZ: I'm be glad to provide you with as much information as I can gather.

COMM. BALADERIAN: The other question (the first one) has to do with the level of training now, and I've of the optimistic school that says that education can change attitudes, and if you have any information on the lack of training and its implications, that would be very nice.

MR. CRUZ: Actually, myself and a woman by the name of Sage Berkstrom, did write a curriculum guide for high school teachers that actually is the Human Rights Foundation's property, and that has been utilized in the San Francisco School Districts and Santa Barbara and other places in California and they're now in a second edition and I'm not exactly sure what the status of utilization of that book is, but there have been some attempts to deal with this.

COMM. BALADERIAN: May we receive a copy of that book?

MR. CRUZ: You'll have to talk with the Human Rights Foundation in San Francisco. They have the copies — it's their property.

COMM. MERTZ: Thank you very much for your time.

• • •

TOM COLEMAN: I'd just like to thank everybody . . . we've had two Public Hearings, last Friday and this Friday, and it's required a lot of preparation. I would like to thank all of the Staff Members, both paid and volunteer for all the excellent work. Things went very smoothly and we handled a lot of witnesses.

I would also like to thank the Commissioners for traveling and for sitting through these without real breaks or dinner breaks and so on, and going through the intensity and the experiencial aspect of our Study, and I just think it's fabulous that we've worked together the way that we have, and also thanks to the audience and the witnesses who participated.

• • •