• GOVERNOR'S COMMISSION ON PERSONAL PRIVACY
San Francisco Hearing - November 20, 1981

CHAIRPERSON BURT PINES: Let me welcome you all to the San Francisco Hearing of the California Commission on Personal Privacy. My name is Burt Pines, I am the Chair of this Commission.

I'd like to make some preliminary comments, then introduce the other Commissioners that are with us today. I think all of us realize that the world is becoming increasingly more crowded — this is the age of computers, of high technology, of machinery and hardware that is capable of storing enormous amounts of information about people -- whether that consists of credit information or medical records, arrest records, or other aspects of a person's private life. And as the world is becoming more crowded and more complex and more beset by technology, there seems to me to be an even greater need for a zone of privacy that a person can call his or her own. One of the tasks of this Commission is to attempt to help define that zone of privacy and make recommendations to the Legislature and the Governor for ways to improve that zone. This is essential we believe, for the preservation of human dignity in a high technological environment. And the right of privacy has certainly evolved over the years -- recently, the United States Supreme Court has held it a constitutional right. Earlier in the 70's, the people of California added The Right of Privacy to our own Constitution. Later on, in the mid-70's, the California Legislature recognized that law enforcement had no business in a person's bedroom and we've seen an evolution of the rights of privacy, both in terms of public understanding and judicial decisions. But there's much more to be done and we're going to be examining <u>where</u> additional recommendations are needed.

We'll be looking at a broad range of Privacy Rights — for example, the rights of privacy of people in institutions, whether they're aged individuals in a nursing home, or inmates in one of our prison facilities. What are their privacy rights? Do they have any at all? We're going to be examining how far the State should go in asking questions. For example, medical information for admission to a facility, and beyond that, what should be the access of government and others to medical information or arrest records, or other private information about an individual? We'll be looking at other areas of privacy -- for example, individuals who come into touch with our criminal justice system: victims, witnesses, jurors -- do they have any rights

of privacy, and must those be sacrificed because of the need of an accused for a fair trial. What about police surveillance — we heard testimony in Los Angeles last week about that problem — what are the limits between the legitimate needs of the police for some kind of surveillance and at the same time, the First Amendment rights or privacy rights of innocent people. Beyond the area of privacy, we'll also be examining discrimination based on sex or sexual orientation or marital status — it's very clear to me that the people of California will not tolerate discrimination based on sexual orientation — that was quite evident in a rejection of the Briggs Amendment relating to Gay School Teachers a few years ago. But despite that popular view, there continues to exist subtle types of discrimination, some not so subtle, in our society. Discrimination in housing, in employment -- we'll be seeking testimony about that. Discrimination in the way the laws are enforced. Administrative agencies have enormous discretion in where the agency wants to apply its resources. I know that, from having headed a law enforcement agency in Los Angeles. And we'll be very interested in what can be told to the Commission about where the efforts are placed and what type of enforcement today is missing in the area of these civil liberties and civil rights. We'll be interested in testimony covering law enforcement practices, and where there might be discrimination based on sex or sexual orientation. We'll be hearing from people who will tell, as they did in Los Angeles, about discrimination in inheritance taxes or employee benefits (for example, Medi-Cal benefits or bereavement leave) that flow from different kinds of employment which apply if people are married, but do not apply if people are not married. These are the kind of issues -- just to give you a sampling, that we are going to be examining and that we're hearing testimony about.

This Commission was formed earlier in the year by Governor Jerry Brown. The purpose is to study invasions of privacy and to study discrimination based on sexual orientation and report back to the Governor, late in 1982, with our findings and recommendations. We welcome the participation of people who are here and hope that you'll continue to assist us. These Hearings are just a small portion of the work of this Commission. Most of the work is going to be done by committees -- they are setting up task forces -- they are going to have their own hearings in different areas — the information is available to you and we urge your continued participation.

Our budget for the staff is very small — we have a big job, but we cannot do it without the involvement of a great deal of private citizens, such as those that are on this Commission. None of us are paid who sit on this Commission — we are doing

this because of the committment to these issues and we need more assistance from the public.

At this time, let me go briefly around the table and introduce the members of the Commission. I'll start with the table to my right at the far end. GARY COOPER, who is an Information Policy Analyst; seated next to him, DEL DAWSON, Administrative Aide to Supervisor Lee Dolson; on his left, is GODFREY LEHMAN, an Advertising Consultant and author of articles on trial juries; to his left, is GEORGE ESKIN, formerly Chief of the Criminal Branch of the City Attorney's Office, now an Attorney in private practice in Ventura; and to George's left, KAY COULSON, an Associate Director of Seminars on Sexuality.

Over to my right, at the far end, NORA BALADERIAN, a Mental Health Consultant in private practice in Los Angeles; seated next to her is BARBARA WAXMAN, an Educator with Planned Parenthood; next to Barbara is WILLIAM KRAUS, Administrative Aide to Supervisor Harry Britt; seated next to him is WARDELL POMEROY, Academic Dean of the Institute for Advanced Study of Human Sexuality; to his left, is AUDREY MERTZ, a Psychiatrist of Sacramento. Next to me, is TOM COLEMAN, the Executive Director of this Commission, who heads the Staff and has been a motivating force in the creation of this Commission and its on-going operations. To my left, is WALLACE ALBERTSON, President of the Los Angeles Community College Board of Trustees; seated next to Wally, is JERRY BERG, an Attorney in private practice in San Francisco. Next to Jerry is LESTER PINCU, Professor of Criminology at California State University at Fresno; seated next to him is PAUL LORCH, Editor of the Bay Area Reporter, in San Francisco. Seated next to Mr. Lorch is FRANKIE JACOBS GILLETTE, Social Worker and Educator in private practice in San Francisco, and finally, at the end of this table, TED FERTIG, an Association Executive in Sacramento.

These are the Commissioners -- there are twenty-five altogether -- but these are the Commissioners that were able to make this Hearing. And, I might mention, that a number of them are doing so at their own expense, because there is not sufficient budget to even provide all the transportation for our Commissioners.

A brief word about our Hearings. We have a number of people that have signed up in advance, and we're giving first preference to them. But we will try to hear from everyone who has come here today to testify. We are going to be hearing from

30-plus witnesses; we have a lot of ground to cover. We're asking each person to try to keep his or her remarks limited -- five to ten minutes at the most, and to be as precise as possible in your comments. The Commissioners then will have the opportunity to question any Witness. I'll ask the Commissioners, as we did in Los Angeles, to ask those questions through the Chair, and to keep the questions brief, so we can move along with all of our Witnesses.

We certainly welcome any written comments, if you're not able to say everything you can today orally, please follow-up in writing. Everything you provide will be read and considered. And, as I said earlier, we welcome your continued participation.

Think that covers my preliminary comments -- our Executive Director doesn't seem to have any further preliminary points that have to be raised, so we'll begin with our first Witness -- and we're pleased to welcome JUDGE MARY MORGAN, from San Francisco. Judge Morgan . . .

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JUDGE MARY MORGAN: Good afternoon, Commissioners, and Ladies and Gentlemen . . . My name is Mary Morgan and I'm here to testify about discrimination against lesbians and gay men concerning child custody decisions and a few brief comments from my own experience, based upon the role of judicial discretion in those decisions. I'd like to preface my remarks by saying it's an honor for me to testify here -- I consider this Commission extremely important, and indeed, historic. There have been only one or two other Commissions like this in the country. I know that, as an Attorney, I have used the findings and recommendations of those bodies in my work -- they have been extremely important. I know that you are engaged in a very careful and thorough fact-finding process and investigation, and I am very confident that your recommendations will be as helpful to other people as past commissions of your nature have been to me.

I'd also like to say, just by way of introduction, that I am not here testifying today as a Municipal Court Judge. I'm here to share with you my experiences as an Attorney in the Bay Area and about the experiences I had until a few months ago, when I was appointed to the Bench. I was an Attorney for approximately nine years, practicing here primarily in the Bay Area -- and practicing almost exclusively Family Law for the past five years. For the past year and a half, I was certified by the State Bar of California as a Family Law Specialist. During the nine years that I was an Attorney in this area, I advised and represented literally hundreds of lesbian mothers and gay fathers who were afraid of or were actually having serious problems about custody of their children or visitation with their children. Quite frankly, there is really no way of estimating on an accurate basis, how many such cases are contemplated, feared or actually go into court. Most of these cases are handled and resolved one way or the other at the trial level and there's really no way of collecting accurate statistics about them. However, I can tell you that, a few years ago, a survey was done by the State Bar of California of all Superior Court Judges in every county throughout the State -- and you might be interested in knowing that there have been lesbian mother and gay father custody cases, contested cases, that have gone to hearing in every single county in this State.

I'm very sorry that I have to report to you that it is the sad reality that many many children -- each and every year -- are deprived of quality relationships with one of their parents, primarily on the grounds that that parent is a lesbian or a gay man. I must say, that this is particularly ironic today, in light of the explicit public policy of the State of California, that it is in the best interest of all children to have close and continuing contact with <u>both</u> parents, after those parents separate. Child custody decisions -- and what I will limit my remarks to about those decisions -- come in the course of dissolution or paternity proceedings, and these are primarily in Superior

Court. All too often, these decisions are clouded by the ugly shadow of homophobia. Stereotypes and fears based on ignorance. Not evilness or malevolence, but primarily ignorance, which all too often supplants rational evaluation of the parent/child relationship. The result is a general erosion of the importance of family relationships in our society. I'd like to give you a few concrete examples of this — not to give you a long "laundry list" of problems, but rather, to share some experiences that I've had.

All too often when a family counselor or a judge realizes that an issue in a case is the sexual preference of one parent or the other, the attention in the case becomes focused almost exclusively on the sexuality of that parent -- to the detriment evaluating the quality of the relationship between the children and that parent. Questions such as: "Do you show affection in front of your children with some of your friends of the same sex?" Now, Ladies and Gentlemen, I can assure you that the same question in that same manner is never asked of heterosexual parents because you would simply assume that (of course) all heterosexual parents act in a sexually appropriate way in front of their children. That is not necessarily the case at all -- but that is a prime question that is asked of gay parents. Quite often, the erroneous assumption is made that all lesbians, because they relate to women, hate men, and all too often, the question is asked of the lesbian mother: "Well, do you know any men? Do you have any male acquaintances? Will your children be deprived of male role-models?" I guarantee you that no such question is ever asked of a heterosexual parent, even though we know that there are many heterosexual people that simply don't like people of the opposite sex. It doesn't mean that they don't have a sexual relationship with people of the opposite sex, but that is no comment upon the quality of their social relationships. All too often many assumptions are made that, because a child is going to live particularly with a gay father in this city, or even a lesbian mother, that that child will be exposed to violence. I had the suggestion once by a family counsellor that a gay father should not have custody of his son, because he lived in the Castro District, and after all, living in the Castro, he would undoubtedly be subject to some sort of violent attack, wouldn't he, after all? Well, Ladies and Gentlemen, if you follow that logic to its logical conclusion, black parents in the South, where there is violence against blacks, should be deprived of custody of all their children for the sake of their children and we should protect all our children against social evils regardless of the consequences of being separated from their parents!

Unfortunately, a sad result of focusing on the sexual preference of the parent rather than the quality of the relationship between parent and their child, is that placements are made that simply are not satisfactory. I have known all too many

cases where, after prolonged litigation, and the child is awarded perhaps to the heterosexual parent, that that parent (after the dust has died down, and the litiga- is over), quietly returns the child to the other parent because, after all, he or she really didn't want that child. Perhaps didn't want that responsibility, but wanted to fight that public battle -- wanted to show that other person that they weren't going to be publicly humiliated by their ex-spouse now relating to someone of the same sex!

Another sad commentary is that children are often divorced from their entire family as a result of a poor placement where it is based purely upon sexual preference and not upon the love bonds between parent and child. I have known cases that once a child, against his or her will in particular, and particularly teenagers, were placed with a parent purely based on sexual preference, often run away, often end up getting into trouble with the law, sometimes they end up with their parent that they wanted to live with in the first place, but all too often they end up in Juvenile Hall. I'm sure that was never our purpose. Why do all these things happen? It is probably a list of reasons longer than you or I could deal with, however, I'd like to share a few reasons that I think.

One is that I think homophobia among judges and mental health professionals is all too often unchecked and uneducated and unacknowledged. Unfortunately, it is these people who have a great deal of power in the decision-making process. It is not because judges and mental health professionals who experience this homophobia and exhibit it in these decisions are "bad people" and I really want to reiterate that, it is simply a reflection of the general homophobia in our society and the unwillingness or inability of major institutions in our society to run counter to that homophobic streak.

Second, there is often the mistaken belief, and quite frankly, the basic <u>fear</u>, that children who live with lesbian mothers or gay fathers will grow up to be gay. There is absolutely no scientific proof to this point -- indeed, all of the few scientific studies that do exist, show basically no correlation at all between the sexual preference of the parent and the ultimate sexual-identity and development involvement in a child. Quite frankly, of all the gays and lesbians that I know, I don't know anyone who also had and lived with a gay parent or lesbian mother -- and if we pursue the idea that the sexual preference of the parent is going to rub off on the child, then perhaps we should remove -- since it doesn't work quite in that way, but in fact, the opposite -- perhaps we should remove all our children from heterosexal parents to make sure they don't turn out to be gay!

We also often find the belief, and indeed fear, that the children will be stigmatized by virtue of living with a lesbian mother or gay father. That may or may

not be true -- but, I would suggest to you, that children often experience stigma for a whole variety of reasons: some kids are fat, some are skinny, some are short, some are tall, some wear glasses, some children have learning disabilities, some children have speech impediments -- that is a source of teasing and stigma for all children.

I would suggest that just because a child doesn't live with his Lesbian mother, for instance, doesn't mean that somehow, someone won't find out and that child will experience some teasing. And I ask you -- and you should ask yourselves-- who can better help this child learn how to deal with that problem? The Lesbian mother, who has learned how to deal with it herself, or the homophobic heterosexual father, who is not going to help that child -- because, basically, he hasn't been able to deal with it himself. Finally there is, I think, the mistaken belief that all our parents are primarily the role models for our children -- we might want to believe that it's true, but in this day of a highly technological society, I believe it is no longer true. Most parents work, our children probably spend more time in their schools, day-care centers and in front of the TV, than they do with us. And I would suggest that if we want a serious role model, that we look to these other institutions and the effect they have on the development of our children, than simply to the parents.

I don't have concrete suggestions right now as to what we should do with some of these problems, but I would suggest that we look to two major areas, (1) the importance of educating decision-makers in this area, judges and mental health professionals -- as I say, these are not "bad people" but we too often have people making decisions where they simply haven't been educated in that area, (2) I think a whole wide variety of laws need to be looked at, re-evaluated and revamped so that all forms of family relationships are nurtured and incouraged by our society and when we have alternative family forms legitimized in our society, I think we will find less and less discrimination against particular forms of family arrangements based on sexual preference. Thank you.

COMM. PINES: Thank you Judge Morgan for your thoughtful presentation . . . and are there any questions from any Commission Members?

COMM. ALBERTSON: Judge Morgan, first let me say what a pleasure it is to meet you -- I've heard such a great deal about you and I've been looking forward to today for that reason, among others. One of the self-imposed charges of our Commission, particularly the sub-committee on which I serve relating to family relationships, is to redefine "family" -- could you give us any suggestions from your very experienced background on how <u>family</u> might be redefined in terms of the changing mores and societal needs and demands of this late 20th Century?

JUDGE MORGAN: Well, I haven't given any specific thought to the wording of the definition -- my own feeling, in just sort of an impressionistic way, is that, to me, a family is a group of people who live together, who love each other, nurture each other and give each other their support. And I'm not sure that we need the binds of a legal marriage or blood relationships in order to establish that.

COMM. ALBERTSON: A colleague of yours in Los Angeles, Joan Dempsey Kline, sort of off the top-of-her-head one afternoon, said that the "key word" was INTENT. Which I gather is sort of what you're getting at — the intent of the people involved in wanting to be part of a living unit.

JUDGE MORGAN: That's probably a very good word. Yes. Intent.

COMM. COULSON: You mentioned several times, the need for education for judges and mental health workers — have you any thoughts on how that might be mandated — if so, should it be mandated, or how do we go about encouraging that?

JUDGE MORGAN: Not to be fecitious, but I'm discovering it's very hard to mandate anything about judges. I do have one very concrete suggestion, though -- that in fact, might have a spill-off on judges. In the Code of Civil Procedure, starting at Section 1740 -- there is an act called the Family Conciliation Court Act, which is becoming extremely important in the area of child custody decisions now. Part of that act goes to the qualifications of anyone who can act as a family concilliator or counselor, in the employ of any county. I think that there should be something written into that statute that would require explicit training or experience in the area of the sexual development of children and some sort of general training and sensitivity to different life-styles and sexual preference. I think that's at least one place to start.

COMM. PINES: Do you have any recommendations as to how this Commission could find out more information dealing with the issue that you raised: the role-model issue. You mentioned that the studies are contrary that have been made so far. I'd appreciate it if you could let us know some of those studies and if you have any suggestions on further studies that we could make?

JUDGE MORGAN: Very briefly, I'd be glad to send you a letter with more careful citations. Someone that I know of, and I'm sure Dr. Pomeroy knows many people — there is a Child Psychiatrist and an expert in sexual development in the

State of New York, at the University of New York at Stonybrook, named Dr. Richard Green. There are a number of people at UCLA, including a Dr. Martha Kirkpatrick. And I'm sure, between the two of them and Dr. Pomeroy, you could probably put your hands on most everyone who knows something about it in this country.

COMM. ESKIN: Judge Morgan, do you see a role for this Commission in attacking the myths and stereotypes which contribute to homophobia in society at large and not just among those who are the health care professionals and the judges making the decisions in these Family Law situations?

JUDGE MORGAN: Yes, sir -- I think so. I think to the extent that your Report includes findings and discussions on certain issues as to the kinds of discrimination that exists and the myths that discrimination is often predicated on. And the circulation of your Report — I don't think it should be something that is esoteric that is locked-up in libraries. I think it should be given very wide publicity. I think it is extremely important.

COMM. PINES: Any further questions? Thank you very much for being with us today, Judge Morgan, and sharing your thoughts with us.

JUDGE MORGAN: Thank you.

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ARTHUR LAZERE: My thanks from the start for putting me on the agenda and giving me a chance to say a few words — I see a lot of friendly faces up there including my good friend and neighbor, Frankie Gillette. Always a pleasure to see Frankie. Let me tell you who I am and why I felt I should be here today . . .

I'm a CPA in my own practice in San Francisco, I'm President-Elect of the National Association of Business Councils — which is the United States nationwide Lesbian and Gay Business and Professional Association. I'm the former President and I continue on the Board of Directors of the Golden Gate Business Association, which is San Francisco's Lesbian and Gay Chamber of Commerce. I'm also a member of the board of an organization called The Community Transitions Job Power — I was just elected Treasurer. The program is one for placing up-front gays and lesbians into jobs, and functioned at a very high level of efficiency for several years — by and large, taking people off of Welfare and putting them into paying jobs. That program is now essentially defunct. It was CETA funded and the CETA funding is no longer there. But in that context, too, I have some exposure to problems of employment in the gay and lesbian community. Also, peripherally, I'm a member of the Board of Trustees of the Bay Area United Way. So I do get my fingers outside of the gay community once in awhile.

I've asked to have passed around, and I didn't bring quite enough copies (I didn't realize I'd have the full Commission here today), a file that I pulled out of my files which is one experience that I went through as President of the Golden Gate Business Association, which I think is a perfect illustration of discrimination against lesbian and gay people in their places of employment. And that is the subject on which I'm focusing on today.

The first letter in the file is dated October 18, 1979 — it is really a memorandum that was from Ed J. Daly, President and Chairman of the Board of World Airways, which is located in Oakland. And I've highlighted in yellow for you on the front page the particular line of this letter to which I take great exception, of course. It reads: "The Teamsters have gone on record in support of queers as reported recently in the San Francisco newspapers. This company doesn't need hoodlums, racketeers, queers..." and it continues from there. Could you ask for a more blatant discriminatory remark — a statement of policy which was addressed to all of their employees of this company? It was forwarded to me anonymously by a very frightened employee of this company. I took it upon myself on receiving it to write a letter to Mr. Daly, which is dated November 13th, in which I called him to task for this blatant discrimination and asked for a retraction and an apology. And of course, what we really were looking for was a pledge of non-discrimation on the

basis of sexual preference. My letter was not answered. For many many months, our various community organizations considered a possibility of boycott as a way of trying to deal with Mr. Daly and to change this injustice that was going on.

I point out to you at this point that I, as a leader in the lesbian and gay business community has no recourse under law against Mr. Daly that I know of. World Airways is in Oakland, they fly out of Oakland Airport. Oakland has no anti-gay discrimination law on the books. The State of California has no such law on the books and we have no such Federal law. And the achievement of such a law is one of the goals that I work toward in my role in the community. So I had no legal redress and I was stuck. Outside of mounting a boycott, I saw no other recourse to deal with this kind of injustice. Finally, World Airways opened a sales office in the City of San Francisco and San Francisco has a non-discriminatioin law. As soon as that happened, I had my man, and I went to the San Francisco Human Rights Commission and I registered a complaint -- they followed up very quickly on it on April 14th with a letter which I have in front of you and that letter and only that letter elicited the response that I got from Mr. Daly, dated June 9, 1980 -- in which he makes an excuse about his use of the word "queers" -- I'll leave that and you can read that and judge for yourself. He tells me the word "queer" means "phonies and counterfeits" and he was really saying that his company didn't need phonies and counterfeits. My reply to him called him to task for that particular bit of flim-flam. But also thanked him for a pledge of nondiscrimination which we could do no more than take on faith at this point until we have a law that can deal with it in this sort of situation.

Now that's a blatant and ugly case and probably extreme. Discrimination against gay and lesbian people is usually more subtle than that. But it does exist and it exists in hiring and in promotion and in salary reviews that people have in their places of work. Homosexuality is not illegal in California, where we have a Consenting Adults law. But being homosexual subjects every gay man and lesbian woman to the scorn of a society that has for generations treated us as objects of contempt and ridicule. Who among us, gay or non-gay, has not experienced the fag jokes around the water cooler, or the litany of name-calling in the school yard? I don't think there's a person who hasn't experienced that in their own personal life. That hundreds of thousands of gay and lesbian citizens feel that they must conceal their life-styles at their place of work in order to protect their jobs and their careers is the strongest evidence that such discrimination does exist. And the incredible emotional toll that such a double-life takes on its practioners is an unacceptable price for society to exact from people whose only offense is that they love each other.

I'd like to point out to the Commission that the State of Wisconsin House of Representatives, just last month, on October 23rd, passed a Bill to add the words "sexual orientation" to all Wisconsin State Laws on non-discrimination, thereby covering employment, housing and public accomodations. The Senate of Wisconsin, which is their more liberal chamber, is expected to pass the Bill in January and Wisconsin will be the first State in the Union to so act. Can California do less? We need the law to set a standard of fairness and a equality for that ten percent of its sons and daughters who are homosexual. I urge this Commission to recommend such legislation and to get that message across was the reason that I came today. Thank you.

COMM. PINES: Thank you very much Mr. Lazere for your articulate remarks -- is there any further studies or information that you could provide, perhaps as a follow-up of other instances of discrimination in the private sector. That is certainly an area that we want to examine and the more documentation that we have, the stronger the final report could be.

MR. LAZERE: I personally don't have any. I think there must be some work at the San Francisco Human Rights Commission, which this Commission might ask for and any other jurisdiction within the State that have local anti-discrimination laws.

COMM. ESKIN: Could you facilitate our obtaining a copy of the Wisconsin statute?

MR. LAZERE: I would be glad to. It isn't passed yet, so I'll get a copy of the Bill.

COMM. ESKIN: Get a copy of the Bill to Mr. Coleman and he can see to it that we receive a copy. Thanks so much.

COMM. FERTIG: Mr. Lazere, are you aware that the Governor of this State issued an Executive Order approximately a year ago in which precludes any discrimination because of sexual orientation? Are you aware of that?

MR. LAZERE: Yes, I'm very much aware of the Executive Order. As I understand it, the Executive Order covers employment by the State of California -- it does not reach into the private sector whatever.

COMM. FERTIG: Yes — if I may ask you a further question. As a licensee for the State Board of Accountancy, have you ever experienced any discriminaton because of your sexual orientation from that body?

MR. LAZERE: No, I haven't -- but of course, I don't think the State Board of Accountancy, at least at the time I received my license, which was done on a reciprocal basis, had any way of knowing my sexual orientation.

COMM. FERTIG: Are they aware now?

MR. LAZERE: If they read the newspapers, they must be!

COMM. GILLETTE: I would just like to ask one question -- and that is: do any of the organizations with which you participate have any plans to do a survey or study — to document any of the discriminatory actions?

MR. LAZERE: Not at the present time. My national organization is a very new one and has a number of plans in front of it -- but our finances at this point are limited One of the studies that I would like to see done, and I am starting to push for it and it may take some time to see it get done, is to take a very limited area, because that's the only way we can get an effective, meaningful study I'm told by people who do market studies and things -- but I think we should survey the Graduate Schools of Business as a business organization and find out what their policies on discrimination on the basis of sexual preference are in hiring, in tenure, and in recruiting on those campuses. An interesting story did come to me: at Harvard University, gay student groups are organized and went to every school at Harvard and achieved from every school a pledge on the basis of non-discrimination in hiring, tenure and recruiting on campus. Including the Law School. This has effectively stopped both the FBI and the CIA from recruiting at the Harvard Law School . . . because those are both agencies which blatantly discriminate against homosexuals.

COMM. PINES: That's occurred at other law schools as well. Our firm is recruiting around, and we've experienced the same programs. I think that's a healthy progrom that's going on now.

MR. LAZERE: The only unit at Harvard University that did not comply is the School of Business!

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LEO SPIEKERMAN: Good afternoon. Mr. Pines, members of the Commission. My name is Leo Spiekerman, and I'm Manager of Legislative Affairs for TRW Information Services.

TRW, Inc., our parent corporation, is a diversified world-wide manufacturer of high techology products, services for electronics, space system, transportation, industrial and energy markets. TRW Information Services is one of several major operating units within TRW's electronics and defense sector. As an organization, TRW Information Service offers two primary product lines: our Consumer Credit Reporting Service, Credit Data, and our Business Credit Reporting Service. We are pleased to accept your invitation to participate in the Commission Hearings on Privacy and for your information, describe our practices as they pertain to our Consumer Credit Reporting operation.

TRW is keenly aware of the current debate about the privacy of personal information and the potential abuse presented by the private and public sector's record-keeping practices. As the first credit reporting agency to computerize vast amounts of data, protection of individual privacy has traditionally been a basic principle of our operating code of ethics. It is TRW's hope that this written statement and its testimony at these hearings will assist the Commission in its deliberations on whether further legislation of the private sector is necessary or desireable.

With the introduction of its computerized Credit Reporting Service in 1965, TRW has adopted three important operating principles: 1) the right of the consumer to inspect, challenge and request correction of any information contained in his credit profile, 2) collect only relevant factual and timely information, 3) endorse the premise that information gathered for one purpose shall not be used for any other purpose. In 1971, the United States Congresss recognized these principles, and legislation entitled the Fair Credit Reporting Act. This act provides for the comprehensive regulation of credit reporting agencies and monitoring by the Federal Trade Commission to ensure compliance with the act. TRW strongly endorses and supports the letter and spirit of the Fair Credit Reporting Act which recognizes and safeguards the public interest while being responsible in a treatment of operations of credit grantors and credit reporting agencies. TRW's credit data clients referred to as "subscribers", are limited to bonefide grantors of credit, other credit reporting agencies, commercial entities or organizations who have a legitimate business need for credit information, and who have entered into written agreements to use credit information in accordance with TRW's code of ethics and the Fair Credit Reporting Act.

Before a firm or organization is issued a subscriber access code it must first meet a strict set of eligibility criteria. A subscriber access code is simply a mechanism by which a credit grantor can accesss the TRW credit file. TRW does not provide access to filed information to governmental agencies for non-credit granting purposes. In other words, while it does furnish credit information to such agencies as the Federal Housing Administration and the Veteran's Administration, in connection with loan guarantees, it would not, as a matter of policy, provide access to the Internal Revenue Service or the Federal Bureau of Investigation without having to do so by a court having jurisdiction to issue such an order. In its simplest form, a TRW data profile can be viewed as a computerized accounting of an individual's credit history. It is limited in its scope primarily and solely to credit information. Each profile essentially contains three categories of data elements. Identifying information, credit transaction data, and selective public record information. TRW Information Services developed the capability to gather, store and disseminate credit transaction information to support the needs of the credit granting community. Those subscribers who contribute their data do so in an effort to reduce the need to contact one another to obtain the status of certain accounts.

This information is essential to the evaluation of credit applicants in today's expansive credit invironment. Additionally, the exchange of accounts-receiveable data, through the credit reporting process, has greatly minimized the problems of verifying the authenticity of both the request and requestor over the telephone.

Section 605, of the Fair Credit Reporting Act, entitled "Obsolete Information" prescribes the permissable retention period for derogatory data and certain items of public record. To ensure compliance with this section of the act, TRW has developed a standard rentention-and-purge cycle for all relevant data elements. The accuracy and timeliness of both the rentention and purging of information is assured as it is an automatic process within TRW's existing soft-ware system which review all transactions and public record information monthly. Less than two percent of the number of profiles we issue result in a consumer contacting us. Yet, the size of our operations has given us considerable experience in responding to the needs of the consumers who desire to review their credit information. By strongly supporting the enactment of SB 1977, we demonstrated our firm belief that the consumer is entitled to a fully decoded written version of the information stored about him. This Amendment was introduced by Senator Rose Ann Vuich and became effective January 1981. We also supported a similar measure recently enacted in the State of New York. In declaring its support of the Fair Credit Act, TRW has in effect declared its support of many of the abstract principles of fair information practices embodied

in the Privacy Act of 1974. However, it is TRW's belief that existing legislation, such as the Fair Credit Reporting Act, the Fair Credit Billing Act and the Equal Credit Opportunity Act designed specifically to avoid potential abuses, adequately protect individual privacy in this credit environment. Because of the existence of this lesgislation, we should examine the effectiveness of it prior to determining whether further legislation or regulation is necessary.

In TRW's views, privacy laws, whether applied to the public or private sector, must serve freedom of expression, personal privacy and the public's right to know, as well as the right to business and industry to collect and use information for legitimate and essential purposes. To achieve this objective, proposed legislation must be carefully directed at clearly identified areas of abuse. American business operations are too complicated to be regulated on the basis of broad generalizations.

We appreciate the opportunity to present our views to the Commission, hoping our comments will assist the Commission in its efforts to be responsive to the public.

COMM. PINES: Thank you very much, Mr. Spiekerman for appearing today on behalf of TRW -- just by way of background, can you tell us how many individuals you have credit information on?

MR. SPIEKERMAN: TRW Credit Data currently stores information on approximately 86,000,000 consumers in this country.

COMM. PINES: Are you the largest in the country?

MR. SPIEKERMAN: We are one of the largest, yes.

COMM. PINES: A lot of us have shopped places and seen these little terminals that businesses have, where they punch-in data and receive an okay or not — is that hooked up in any way with your systems?

MR. SPIEKERMAN: No, it's not, sir. Those terminals are primarily hooked up to their own internal verification systems. Subscribers normally gain access to the TRW system through remote terminals or through picking up the telephone and verbally identifying themselves as being bonafide credit grantors with a legitimate access code, and only then is that information released.

COMM. PINES: For example, if they have your automobile license, they'll often ask for that, then go to the telephone — are they calling TRW frequently?

MR. SPIEKERMAN: Typically, the process works by an applicant filling out a credit application and whatever information is provided in that credit application is what is used in making the inquiry to establish an identification of the individual.

COMM. PINES: So you're not involved in the quick-turnaround calls from the retailer when they're trying to get an okay to approve a check?

MR. SPIEKERMAN: The process is almost instantaneous -- but in the regard that I think you're talking about is if you're applying for a purchase in the store, and you give them your credit card -- what they're doing is verifying that your account has been conducted in a satisfactory manner and that you're below the limit of approval prior to approving that particular sale.

COMM. PINES: I know there'll be a lot of questions and I just have one additional question — and that is, your determination of a bonafide credit source or organization. I gather that someone could open a one-person retail store and qualify for credit information on consumers.

MR. SPIEKERMAN: TRW's particular internal policy is that we actually do a physical site inspection to determine that, yes, this individual is a bonafide credit grantor, that he does have a business license, that they are listed in the directory, and that, in fact, they are there to stay.

COMM. PINES: And once they have that standing, again my one-person retail outfit, are they limited on who they can ask information about? I mean, can they ask information about one of your 86,000,000 people?

MR. SPIEKERMAN: No, the Fair Credit Reporting Act provides that the access should only be for the purposes of legitimate business purposes or for the extension of credit.

COMM. PINES: Do you have any internal mechanism for knowing that when you get an inquiry?

MR. SPIEKERMAN: Only through our initial site inspection. Before we qualify the agreement with the individual --

COMM. PINES: I understand. Once you qualify the individual, does that individual have access to all 86,000,000 people?

SPIEKERMAN: Yes, he does.

COMM. PINCU: You stated that only your subscribers can tap into your information. Are you then telling us that a local law enforcement agency, such as the Sheriff's Department or the Police Department or an investigator for the District Attorney's Office would not be able to get an address or information about one of your subscribers?

MR. SPIEKERMAN: The Fair Credit Reporting Act provides that yes, that information would be available to governmental agencies. It is TRW's policy, however, not to provide that information to governmental agencies unless the source is the Housing Administration or the Veteran's Administration. For legitimate credit granting purposes or loan guarantees.

COMM. COULSON: It's my understanding that the consumer has the right to review his or her credit rating with you at any given time — how is this made known to the public? Are most people aware of this — do you think it is TRW's responsibility or your subscriber's responsibility?

MR. SPIEKERMAN: Ms. Coulson, unfortunately, most people are not aware of it. TRW accepted that responsibility in trying to educate the consumer — we have a lot of paraphernalia, a lot of booklets, documentation that we try to distribute as widely as we possibly can, to alert the consumer exactly what their rights are in terms of reviewing their credit file, the ability to come in and challenge the information and request a correction to be made, which is then reinvestigated and updated if need be.

COMM. COULSON: You have all this information available, but it's not being disseminated or being read or —

MR. SPIEKERMAN: Yes. In spite of our efforts, there are a great many people who really do not know what their rights are in the arena of credit.

COMM. COULSON: Do you have any suggestions on how that could be enhanced?

MR. SPIEKERMAN: Well, if every individual credit reporting agency took on the responsibility of educating the consumer, in terms of funding drives for dissemination of information for what your rights are, and distributing booklets and so on and so forth, yes, I think it can be achieved. TRW, as a matter of fact, spends more money on consumer activities and consumer education than it does on marketing.

COMM. COULSON: Do you think it should be a government responsibility to provide public service announcements for this sort of thing?

MR. SPIEKERMAN: Well, that's hard to say. Public service announcements, I'm sure, would reach a wide base of the population -- the simplest way that a consumer should be able to gain information about how a credit reporting agency works is to simply call the credit reporting agency and find out what's involved in gaining acess to the information, reviewing the information and challenging that information.

COMM. COOPER: First of all, I'd like to express my appreciation for you coming here on relatively short notice. My question deals with the profiles on individuals and you indicated that there's public record information associated with those profiles. Could you break that down?

MR. SPIEKERMAN: Sure. TRW chooses to retain only bankruptcy information, tax lien information and judgment information. These are essentially the three catagories that comprise our public record data.

COMM. COOPER: I have one other question unrelated to that — do you have statistics on the numbers of people who avail themselves — you know, examine their own records during the course of a year? The numbers who would want to see and check the accuracy and completeness of their records?

MR. SPIEKERMAN: We respond to approximately half a million consumer requests a year. Out of this total, roughly six percent (or 40,000) avail themselves of the physical availability of the facility.

COMM. LEHMAN: If the FBI or an agency like that came to you with or without a warrant, could it get just a general line on one of your subjects -- nothing to do with credit. What's your policy about this? Do you give out information?

MR. SPIEKERMAN: We would not respond to such a request.

COMM. LEHMAN: Even if he had a warrant of some kind?

MR. SPIEKERMAN: The only warrant that we would respond to is a warrant that was issued by a judge or a court having jurisdiction over such a matter.

COMM. LEHMAN: Well, if you responded in this way, would the individual be informed that this information was given out to the FBI?

MR. SPIEKERMAN: We could not inform the individual -- it would have to be up to the inquiring agency to make that notification.

COMM. ESKIN: Mr. Spiekerman, the businesses which can access information, which are businesses (by your definition) which extend credit -- would that reach, for example, a one-person law office?

MR. SPIEKERMAN: It may very well. We have, in instances, signed service agreements with attorneys, although it is not our policy to do so.

COMM. ESKIN: Now, what about the services which investigate prospect jurors. Would such a business have access to such information as you have compiled?

MR. SPIEKERMAN: No sir.

TOM COLEMAN: Would an owner of a four-unit building be able to subscribe to your services because he or she rents?

MR. SPIEKERMAN: Yes, he will.

TOM COLEMAN: What about a single-family dwelling -- a landlord who owns a single-family dwelling?

MR. SPIEKERMAN: No. Since a single-family dwelling — our policy would probably dictate that there is not enough turn-over and not enough volume in that kind of activity to warrant access to a credit reporting agency.

TOM COLEMAN: And is there anything in your agreements with your business subscribers to prohibit them from being an intermediary for some other party — like say, the police want information and one of the force happens to be the owner of a four unit building?

MR. SPIEKERMAN: The Fair Credit Reporting Act would prohibit that type of activity. It imposes penalites for unauthorized access of any individual's credit profile.

COMM. PINES: Can you tell us of any abuses in the field by other companies that should be brought to our attention?

MR. SPIEKERMAN: Well, the Fair Credit Reporting Act set a widely accepted standard when it became effective in 1977. Prior to that point in time, there were significant number of abuses which added impetus to the enactment of the Fair Credit Reporting Act. In recent times, however, there has been enough attention focused on the subject, that, for the most part, most of the larger and visible credit reporting agencies are very ethical and very moral in their operations.

COMM. PINES: You know, at times there have been instances of computer frauds and your company, at times, has been victimized. How fool-proof is your access system today?

MR. SPIEKERMAN: Our primary security - the transaction security method - is by assigning a security password to every number that identifies the subscriber. Now that security access code should be known only to that one subscriber and to TRW. And that is, in fact, what authorizes the access into the system. We do have a great deal of physical security of the data processing center — which I would invite any one of you tour at your convenience, of course. That, and in addition to some other matters that I couldn't discuss here to maintain their integrity.

COMM. ALBERTSON: You indicated the process generally is that a business subscriber starts with the credit form, and then plugs in for a quick turnover of information — turn it around the other way — do you advise your business subscribers as to what kind of information to request on those forms and if so, how extensive, how broad would that information be on advice from you?

MR. SPIEKERMAN: No, Ma'am, we do not advise our subscribers what type of information they should be collecting from their applicants. I can tell you that in the majority of the cases, is what is known to us as the identifying information is limited to the last name, first name, middle initial, the spouse, the age, the employment, the social security number if that's available and perhaps a previous address in addition to the current address.

COMM. PINES: And where do you get your basic information from? Banks, merchants? What?

MR. SPIEKERMAN: Banks, retailers, bank credit card operations, finance companies, small loans, share that information with us -- a total of about eight to nine different industries that report their information to us.

COMM. PINES: In other words, if I'm doing credit transactions with a department store or I have a credit card or I have transactions with my bank, they're sharing all that information with you.

MR. SPIEKERMAN: Yes, they do.

COMM. FERTIG: Does your company have a definition in writing as to what is a legitimate business purpose, and if so, would you provide it to the Commission?

MR. SPIEKERMAN: No, our company does not pass judgment on legimate business purposes -- however, these are the exact words that are used in the Federal Fair Credit Act.

COMM. FERTIG: But you have no definition?

MR. SPIEKERMAN: Well, we have our own internal policies and we have our own interpretation as to the legitimacy of the credit grantor -- or the institution that is making the inquiry to us. But beyond that, we have no control in terms of whether or not that particular inquiry is for a legitimate purpose.

COMM. FERTIG: Could you share briefly what your definition is internally?

MR. SPIEKERMAN: Well again - prior to signing a service agreement with a

potential subscriber, we do a physical site inspection, to determine the nature of the business that the prospective subscriber will be engaged in. How long has he been in business, is his telephone number listed in the directory, does he have a business license — all these matters are taken into consideration on an individual basis.

COMM. FERTIG: And this is a matter of contract?

MR. SPIEKERMAN: This is a matter of policy.

COMM. FERTIG: One other question — I happened to have seen one of your reports on me, and I'm wondering if any of the members of the Commission would ask you, in writing for a copy of one of themselves, would you provide it?

MR. SPIEKERMAN: I certainly would, as a matter of fact, I hope I've brought enough Authorized Disclosure forms that I can leave here.

COMM. PINES: I don't think most people know about this right. I think if we asked for a show-of-hands, we would not get many hands up — at least from this group.

MR. SPIEKERMAN: I hope that this provided a forum.

COMM. FERTIG: I would like to add that I questioned an item on my report and it was corrected immediately.

MR. SPIEKERMAN: Thank you very much.

COMM. COOPER: When the Federal Fair Credit Reporting Act was passed and set limits on the type of information in the files, I imagine the files contained broader types of information — more information than is now set out in law. Has that old information been purged, if I'm correct on the first part of my question?

MR. SPIEKERMAN: I think there are two facets to your question. One, is that there are still some agencies that do retain information that may be categorized under the investigative sense, and that information relates to moral and personal habits, life-style, religion, arrest records — purely subjective. TRW does not store any of that information. We are only interested in an objective factual credit profile. The second facet was that, derogatory information may only be retained for

a period of seven years and that's mandated by the Federal Fair Credit Reporting Act. The only exception to that, is bankrupcies, which may be retained for a period of ten years.

COMM. BALADERIAN: In terms of the information you are just mentioning, in terms of moral or personal private information -- how many people would you say that those kinds of information are kept on? You don't keep it on 86,000,000.

MR. SPIEKERMAN: We don't keep it at all.

COMM. BALADERIAN: Right -- but you're saying there are other large companies comparable to yours -- could you give us some kind of estimate on that number?

MR. SPIEKERMAN: I could not presume to make any statements on behalf of the industry, or those credit reporting agencies that do maintain that information.

COMM. PINCU: A quick question -- granted, TRW doesn't collect the personal data, but could you speak just for the industry in terms of that personal data that IS collected by some of the agencies perhaps less scrupulous than yourselves -- is that information also available to the consumer if he or she so requests it?

MR. SPIEKERMAN: It's included in the Fair Credit Reporting Act, so it should be included, yes. It should be part of the disclosure . . .

COMM. PINCU: In terms of actual practice, do you know if that's done?

MR. SPIEKERMAN: No, I do not -- but the Fair Credit Reporting Act being the primary piece of legislation dictating the actions of consumer credit reporting agencies, I could see no reason why it wouldn't be done.

COMM. PINES: Thank you very much, Mr. Spiekerman, for coming up here from TRW and being of assistance. We may ask for further assistance as the work of the Commission progresses.

MR. SPIEKERMAN: I'll be more than happy to participate.

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JAMES A. EMBREE: Good afternoon, Mr. Chairman and Commissioners . . . my name is Jim Embree, I'm the Superintendant of the Preston School of Industry, which is a correctional institution operated by the California Youth Authority — one of sixteen such correctional facilities in the State of California for the incarceration of youthful offenders convicted of criminal offenses.

I'm here to speak to the Commission today on two specific issues which your sub-committee on corrections has identified as being issues which are of concern to you. One has to do with a lawsuit that is currently at the appellate level in the State of California. Earlier this year, two young men incarcerated in one of our institutions in Stockton, filed a lawsuit with the San Joaquin County Superior Court charging that the presence of female staff on the living unit in which they were incarcerated, was an invasion of their privacy and that these female staff had the opportunity and the obligation to observe them while they were performing personal body functions such as taking showers. Approximately two months ago, the Superior Court in San Joaquin County decided in favor of these two young men and the Order was that these female staff will be removed from the living units. The California Youth Authority has appealed that decision, and as I said, that issue is now before the appellate level. It was presented to the Apellate Court approximately thirty days ago, the Appellate Court has ninety days to respond — so we should be getting a response to that issue shortly.

I want to speak to the Commission this afternoon regarding the two areas that the Youth Authority made their response to that suit — because I think they're very important to this Commission. One area of response, or defense, as you might say, has to do with equal opportunity of employment for female staff. I, as a Superintendant, when I hire a Youth Counsellor or a Group Supervisor, I hire a youth counsellor or a group supervisor irrespective of gender. The duty statements that are on file for people in those positions with those functions have no relation to sex. I expect a female to perform the same duties that a male performs in those classifications.

I think the Commission is very familiar with the whole concept of equal employment, so I won't dwell on that too much other than to say that the concept of Equal Employment has presented the court with a competing issue to the issue of Privacy as interpreted in the Constitution. I am primarily concerned with the second point that we made in response to the suit and that has to do with the concept of "normalcy". And It's a very difficult concept to prove in court - because there is very little hard evidence to support that concept. But we believe, and I believe, that the practice of having female staff on a living unit provides an environment of normalcy that is conducive to the incarcerated individual's rehabilitation.

Many of our young men come into our institutions having had very poor experiences in terms of their relationships with females. They've had very poor role-models in terms of the females that have been in their life. Some of those role-models have been manipulative and some of them have been destructive. Many of the young men who come into our institutions are guilty of offenses against females in particular, and so their image of females is such that, if it's not changed, they would go out into the community and commit such offenses again. Our feeling is that, by having staff in our living units — and these are staff who are responsible for their case work service, for their security services, for their daily subsistence kind of services -- by having staff who are stable and positive images, that we're exposing them to a degree of normalcy that they would not otherwise have experienced. And that in itself, in addition to whatever actually goes on between those individuals and their therapeutic relationship, is going to go a long way towards rehabilitating those young men in terms of changing their attitudes about females.

As I said, that's a concept that is very difficult to present in court. But I would hope that it is a concept that this Commission could have some appreciation for in terms in what we are trying to do. Actually, what we have proposed to the appellate level court is a compromise of sorts in that we will do whatever we can to ameliorate the problem of the direct-vision or observation of the female staff of young men taking showers, as an example -- by either building shower stalls or by having "modesty shields" in front of the showers — whatever it is we need to do. But we do NOT want to remove those women from those living units.

The second issue (I'm sure you've all been exposed to recent publications in the media) concerns the so-called "bugging" of our chapels in our institutions. The charge is that we are installing listening devices in our places of worship and that is an invasion of the privacy of the young men who are going to church and participating in our church services. And I wanted to bring to the attention of the Commission the actual reasons why these devices are being installed and what their purpose is.

Some of you have had the opportunity to visit some of the institutions of the Youth Authority or the Department of Corrections. And I think you've had an opportunity to see some of the kinds of <u>groupings</u> that occur during the normal schedule of an institution's day: the kinds of groupings that occur in the dining hall and the gymnasium and in the classrooms and, although you may not have observed it, the kind of grouping that occurs in the chapel. The primary responsibility of any institution is to keep the inmates incarcerated. The second responsibility of any institution is to provide a safe invironment -- and by a "safe environment", I mean where the inmates are safe from each other and where the staff are safe from the inmates!

The way that we go about discharging that responsibility -- we have what we call the Primary Alarm System and a Secondary Alarm System. The Primary Alarm System is an alarm system that is carried by each staff person -- it is an FM alarm system that they can carry on their person which, if the button is pushed, it sends out an FM signal which is received in the control center and the security staff are then dispensed to that area. The back-up system is what we call a Sound Security System. This is a system in which we have a receiving speaker in any area where there are large groupings of wards or inmates. That would be in the classrooms, in the dining hall, gymnasium, and in the chapel. This system is set, (the frequency is set) in such a way as to monitor the normal noise-levels in those areas. That is, if the noise level in those areas is the "norm" (and the norm is quite high in terms of noise levels, as you can imagine, when you've got large groups of people doing various things) the person that is in the control center does not listen to what's going on in that particular area. It is only when the noise-level reaches a particular pitch above the "norm" that that system is keyed. And the person in the control center knows that something is going on. Now the kind of noise-level that would take to trigger the system, would be the kind of noises generated in a disturbance (in a riot, an assault, an attack) when someone is screaming, or yelling -- not the kind of noise that goes on during the normal routine of a classroom or a gymnasium or a chapel service. What I'm trying to say is, that those sound security systems would not pick up the normal conversation of two people that would happen to be in that room or in that area which had the sound system in it. For example, if it's in the gymnasium, and you know the kind of noise that goes on in the conducting of a basketball game, if two people were talking in that gymnasium, the sound security system could not pick it up. In a church, for example, with the kinds of sound that go on during a normal church service, if two people were having a conversation in one of the pews during that church service, the sound security system would not pick it up. However, if one person or two or more people started rioting, if one person was being attacked and screamed and yelled, the sound security system would pick it up.

I don't think the press has delved into that, because of course, that's not newsworthy, but it is the intent of the Department to provide as safe and secure a system as we possibly can, and we feel that the church is not the sanctuary where these young men will not commit the kinds of offenses and acts as they have in the community. A number of churches in the community (I'm sure you are aware) have been violated with crimes and we certainly don't feel that our churches are any different. I should also add, that all of the chaplains that are employed by the Youth Authority support the concerns that have been expressed to the press. Many of the chaplains

have told us that they find no problem with having that system in the chapel and, as a matter of fact, they feel quite secure in knowing, that should something occur in that church service, that help would be on the way immediately.

I should add that, we do not plan to put that system in the chaplain's offices, where they would hold private conversations with young men, nor do we plan to put it into what is termed the "confessional area". Actually, we have no confessional areas as do regular churches — those usually take place in the chaplain's offices. Any questions?

COMM. PINES: Yes - just to follow-up, because I think there was an impression given that there was a "bug" in the confessional. Your system is in the chapel itself, so there's no system in the chaplain's office —

MR. EMBREE: No. It was originally intended to go into the chaplain's office, but in discussion with the chaplains, and in talking about their concerns, the Department decided not to do that.

COMM. PINES: With respect to the chapel itself, if there are just two people alone in there talking, can the system pick it up?

MR. EMBREE: No, it would not pick that up.

MR. PINES: Is that because of the way the system is designed or -

MR. EMBREE: Well, it's because the intent of the system is security and two people talking is not a security problem.

COMM. PINES: What I'm getting at -- is it just a matter of "turning up a dial in order to pick it up?

MR. EMBREE: No. If the person in the control center turns the dial up as far as he can turn it up, it's not going to pick up — it's not sensitive to that level of noise.

COMM. PINES: You're saying then that the system is incapable of picking up two people's conversation in the chapel.

MR. EMBREE: Right. And I should also add that the person responsible for

listening to this system has a zillion other chores to do -- that person is the hub of the institution's security. That person is busy 24 hours a day . . . they've got many many more things to do than to listen to sound security systems.

COMM. FERTIG: First of all, I wanted to thank you for coming all this distance to be with us today. So on behalf of the Commissioners who are members of my committee and the two observers, I want to thank you for your courtesy on November the fifth.

MR. EMBREE: Thank you for having me.

COMM. FERTIG: I'd like to ask you one question, other than what you've covered. Would you please speak briefly on the issue of segregating the wards within the institution and sending them perhaps to different lodges, specifically homosexual wards.

MR. EMBREE: All right. I can only speak for my particular institution because that is under my control and our policies. We don't have a system of segregation as such -- we do have a system of classification. Each young man that is received in that institution is classified as to what their sophistication level is, what their age level is (obviously). Let me preface my remarks by saying that this institution, the Preston School, houses 580 young men between the ages of 17 and 24. The average age is 20. Now, I'm sure all of you can appreciate the fact that there are 20-year-olds, and then there are 20-year-olds. We have some 20-21-year-olds that we program with 17-year olds because of their degree of sophistication and because of (simply) their physical weakness. And so our classification system is an attempt to place young men in their appropriate living unit to where they survive with their peers, frankly. When we receive an overtly homosexual ward, we have to consider how "blatant" his homosexuality is. How he displays that homosexuality and whether he is going to be displaying it in a negative way that's going to cause problems, or whether he's going to deal with it in a positive way that does not cause problems. And it's very important in terms of the security of the institution.

If, for example, we were to have a very young man who displayed his sexual preference in a very flamboyant nature, we know we're going to have problems through our experience over the years. If we place him in a living unit where he is going to either form the kinds of relationships which are going to cause problems (and I can explain that further by saying they get into relationships with triangles, where there are going to be jealousies and assaults or fighting over this particular

individual -- or situations where there may be favors involved that are going to be paid for through cigarettes and other kinds of contraband that may come into the institution), we have to consider each individual as an individual. And if we feel that an individual who is displaying their sexual preference that is going to be such that it's going to cause us some severe security problems, then we're probably going to place that individual in what we call our "protective custody lodge" -- and that is a lodge where we have individual rooms. And it is a lodge where we have the kinds of programs and the kinds of counselling staff where we feel that individual can be best protected and the rest of the young men in that institution protected from that individual.

COMM. PINCU: Regarding the sound security system. Basically, it's designed in order to pick up volumes of sound, not necessarily to hear conversations.

MR. EMBREE: Exactly.

COMM. PINCU: And it's supposed to be a sound security system. One of the things that occurred to me when we toured the institution (incidentally, thank you very much for all the courtesy) was that you could hear conversations, and that if you turned it up -- if there weren't just a whole group of people, but just a few individuals talking, you actually could discern conversations . . .

MR. EMBREE: Conversations where? May I ask . . .

COMM. PINCU: In a unit, if there were only two or three individuals speaking

(INAUDIBLE)

[NOTE: No "overlap" available between two reference tapes at this point.]

COMM. PINCU: [Mid-sentence] ...you could put filters on there so that it would just pick up volume, but you couldn't discern the specific conversation, especially regarding the whole issue of the chapels.

MR. EMBREE: If you heard individual conversations over the sound security system, I suspect it was because the conversations were right under the speaker and that they were at a very loud level. Because in the living unit, as you go into the living unit, you have 55-57 young men and there is almost no such thing as a "normal tone" conversation. All conversations are held at a very high level because of the competing noise. If you have two young men, or two people who are sitting right under the speaker and are talking to each other in a very loud tone of voice, then I suspect, yes, then it would pick it up and that's probably what you heard. As to the filters — I'm not an electronics technician, and I really can't speak for that -- but that's an idea, and if that's something that works, then it's something we'd certainly consider.

COMM. PINCU: One last question and that is, you said that there weren't any microphones or sound systems in the chaplain's offices and all that . . . and yet, apparently there was some attempt, at least originally, to place them there . . .

MR. EMBREE: Yes. It was our plan to place them in the chaplain's offices because the chaplains do an awful lot of individual counselling in their offices . . . their offices are usually in isolated parts of the institution, adjacent to the chapel, and if there's not a service going on in the chapel, then their office is extremely isolated. Which means there may not be another staff person within the building or within a hundred yards.

COMM. PINCU: Would there be a way of balancing your security needs, which I believe are legitimate, you don't want a riot in a church and you don't want wards hurting each other and all that, would there be a way of balancing your security needs and the needs of at least some of the chaplains, for privacy, perhaps by having security staff actually attending service?

MR. EMBREE: Whenever we have a church service, we do have staff attending -- the staff who bring the young the young men from the individual lodges that they live in, will send one staff person, depending on the number, to the church service. We simply do not have the numbers of security staff to assign a Security staff member every time a chaplain has a young man in his office. The chaplains work five days

a week. They provide services in the chapel on Saturdays or Sundays, depending on the religion involved. The rest of the time, they're doing counselling — they're doing religious and other kinds of counselling. Much of that is done in their offices, so that they're in their offices a lot during the day, and as I said, they're fairly isolated, there's no one else around. We cannot have a Security person standing outside the chaplain's door everytime he wants to take a young man into his office to talk to him.

COMM. PINCU: I meant like church services and all that.

MR. EMBREE: During church services, there are Security staff present, yes.

COMM. GILLETTE:: I also had the opportunity to visit your facility and was impressed with what I saw, and I gather from what you're saying today, that the basic reason for "bugging" has to do with security for staff.

MR. EMBREE: Security for staff and security for the young man. The majority of the assaults that take place in an institution take place between the wards or the inmates.

COMM. GILLETTE: Now, is the gym bugged?

MR. EMBREE: Yes.

COMM. GILLETTE: And the church is at this point, too. Is this where your major confrontations occur or plans for confrontations?

MR. EMBREE: In the church? Let me first start out by saying that my church does not have a sound security system. It has it in the plans — the capital outlay plans. In the two years that I've been in this particular institution, we've not had any major incident in the church, no. In the three years I was Superintendant of a former institution, we had one major incident in the church. I consider a major incident as when you have to call out Security and use gas in the church. We had one.

COMM. PINES: Just to clarify -- there are a number of CYA institutions. Is that correct?

MR. EMBREE: Yes. Sixteen, including Preston School of Industry.

COMM. PINES: In some of those institutions, can the sound system pick up a confession?

MR. EMBREE: I don't believe so, no. That was not the intent of the sound security system. The reason why some institutions have them in the church and some of them don't is that we're presently in the process of upgrading our sound security system and expanding it -- for a number of reasons. One of the reasons is that we're all significantly over-crowded and as institutions get more and more over-crowded they have more and more problems.

COMM. ESKIN: Mr. Embree, I came here from Ventura today, and unfortunately I wasn't aware of either of the issues that are apparently the subject of some litigation. I don't think that time is going to permit you to explain what is very curious to me and that is, the "normalcy" that the women custodial officers attempt to establish with the inmates. How that's achieved? I hope maybe time will allow you -- but I'm more curious about the extent to which you, as a Superintendant of an institution believe that inmates in such an institution are entitled to zones of privacy and if so, how would you define them?

MR. EMBREE: I'm glad you brought that up. I happen to operate an institution where we have twelve living units. Only five of those living units have individual rooms. The rest are open dormitories. When I say an open dormitory, I mean a barracks-type situation in which are now 56-58 young men in a room that was designed to sleep 50. Because we are overcrowded. I just mentioned that, as you experience more and more overcrowding, you experience more and more problems. Much of that has to do simply with an individual not having enough living space around them. And I think the experiments which have been conducted with animals demonstrate that as you begin to crowd animals more and more they begin to act more and more bizarre.

In direct response to your question, I think that each individual in an institution should have their own room, to begin with. I don't think you can effectively house 20-22-year-olds in a barracks situation when they're in a facility that's not of their own choosing. If you have a college dormitory, if you have a military barracks, that's one thing. But in a prison, where you already have a certain amount of antagonisms involved between people and the fact that they are there because they don't want to be there and are serving time, I think it's a totally different situation. And my personal believe - my professional belief - is that each individual should have their own room.

COMM. PINES: Just to follow-up on what Mr. Eskin said, does your institution recognize any privacy rights — for an example, can a person be searched any time, strip-searched?

MR. EMBREE: With cause. There has got to be cause. There's got to be some reason for staff to believe that person possesses a weapon or contraband that they're not supposed to have. If a person is strip-searched, then that strip-searching must be done by a person of the same sex. If body cavities are going to be searched, than that has to be done by a medical person. A doctor, a physician.

COMM. PINES: How about personal possessions being searched?

MR. EMBREE: Personal possessions again can be searched with cause. If an individual's room is going to be searched, that individual should be there — if that individual cannot be there, and the room needs to be searched immediately, then the individual must be notified that their room was searched and if anything was taken out of that room, they must be notified what was taken and what has been done with it.

COMM. LEHMAN: Have you ever gotten any requests from any agencies, whether they're inside government or not, sending you, say, a list of names and asking you if any of these individuals have ever been an inmate at Preston School?

MR. EMBREE: We get inquiries like that all the time. The privacy policies of the State of California do not allow us to give out that kind of information if the individual they're asking about is a juvenile. We can give that information if the individual is an adult, but only that information which is considered of public record. If it's, for example, case work information, or information that individual has divulged in a case work setting, we cannot give out that information without the individual's permission -written permission.

COMM. LEHMAN: So somebody sends in a list of names about a person who is now an adult, and asks if at any time in the past 20 or 30 years ...

MR. EMBREE: No.

COMM. LEHMAN: You do not furnish them the names — you just tell them you can't give —

MR. EMBREE: We do get inquiries about people. Particularly the institution I'm in, Preston, is almost ninety years old. And so we're constantly getting inquiries about people who were there in the 20's, 30's and 40's. An illegitimate request for information about whether or not they graduated from high school -- can they get a copy of their high school diploma, and so forth.

COMM. LEHMAN: But you don't give out --

MR. EMBREE: Actually, we don't have information on anyone who is not there now. We don't keep that kind of information. That has to go downtown to Sacramento, the central office.

COMM. LEHMAN: Oh. When they're discharged, you don't have the record then?

MR. EMBREE: Right.

COMM. COOPER: Is the policy for the release of the information state-wide for each of the sixteen institutions, or is it up to the separate --

MR. EMBREE: No. That policy is State policy and affects all institutions.

COMM. PINCU: On the one hand I understand the institutions do protect the information, on the other hand, I'm very concerned about your central files, which are computerized and include medical information, educational information, and psychiatric data and all that. And I have in front of me a list of agencies that can tap into that file, including the U. S. Border Patrol, the Department of Justice, the California Department of Justice, Department of Motor Vehicles, California State Police, Department of Corrections, Sheriff's Office (that's county), the County District Attorney, the County Probation Department, etc., etc., so there at least seems to me, unless I'm reading this wrong, to be some potential for some real abuse of some very classified information that even the ward might not even have access too, and his attorney clearly doesn't have access to, and this information, according to this sheet, is available without any kind of logging at all. Now, am I mis-reading this?

MR. EMBREE: No, I can only say that that is State policy. That is State law. That is not my particular policy. But I should add that the individual, the ward or inmate does have access to that information. You mean, the information in his file?

COMM. PINCU: Well, he has access to his psychiatric information unless the information could be dangerous to the ward or to others. However, it's on the com puterized file and all these agencies would have access to the total file. Which strikes me as being a bit bizarre. Including The Department of Motor Vehicles!

MR. EMBREE: I can't answer that. The individual does have access to it and the individual's attorney has access to it, with the individual's consent.

TOM COLEMAN: You mentioned negative displays of homosexual behavior. Are there people who show positive displays of homosexual behavior?

MR. EMBREE: Yes. I think I tried to make it clear that if an individual can conduct themselves in a very positive manner, then they are not necessarily segregated. They are allowed to have access to whatever programs are suitable for them.

TOM COLEMAN: And the ones who do the negative displays — do they have any openly gay staff people that they can identify with as role-models to learn appropriateness?

MR. EMBREE: You say "openly gay" — I'd have to say no. No, not at this time, and in that particular institution. No.

COMM. LORCH: You made the distinction between the "negative" and "positive". How would one exhibit his homosexuality "positively" in an institution such as yours?

MR. EMBREE: When I said negatively and positively, I have also to say that's a very subjective decision on the part of the person in charge of classification. A very subjective decision. But a way that it might be displayed "positively" or "negatively" is flirting, as an example. What you and I might call flirting — I don't hear that term much anymore — maybe it's got something to do with the generation — but an individual that flaunts their sexual preference with the other wards in such a way as to promote to attempt (well, in the free world, it would be to attempt to make dates with them) — but in an institution that kind of behavior is not acceptable and that's what we would mean by negative.

COMM. LORCH: Am I to take then, that "positively" means they do nothing.

MR. EMBREE: Positive means they do not perform the negative.

COMM. LORCH: But that means they do nothing -- there is no means or room for expression.

MR. EMBREE: Right. But all young men have room for expression of their personality and their particular values and so forth with their peers and I don't want to say that we have 65 to 80 robots on grounds. I'm not sure I know what you mean by "positive expression".

COMM. LORCH: No, you made the distinction. I was asking you.

COMM. PINES: I think he's answered the question as best he could. Mr. Fertig.

COMM. FERTIG: One last question to Mr. Embree, if you don't mind. The three other charges that we have from the adult and correctional agency are to look into the policy on family visits, on the incidence of rape in youth authority facilities and on confidential and internal communications including one-on-one, staff-to-ward, staff-to-staff, ward-to-ward and mail. I wonder, in your expertise if you could provide in writing two items for us: Would you provide the members of the Commission with your treatise on delinquency prevention that appeared in the Quarterly approximately a year ago, and would you, with the permission of the Director, provide us with some input on family visits, rape and internal communications.

MR. EMBREE: All right.

COMM. PINES: Thank you very much, Mr. Embree, for sharing this information with us and making the trip here.

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WILLIAM WELLS: Members of the Commission visited the Youth Authority at Preston, of which Mr. Embree is the Superintendant and I am the Program Administrator of some of the special units: the Intensive Treatment units, where we deal with severly emotionally disturbed youth. It was at their request that I attend this Hearing and if there were questions that I could provide any particular answers to or at least my own experience, which is approximately twenty years. Any comments that I do make, I would like to clarify, are my own and don't necessarily represent the Youth Authority. I tend to make my own comments irrespective of the parties listening -- whether it be the Director or otherwise, so I want it to be clear that it is me and not the Youth Authority speaking.

COMM. PINCU: Just for the record, I want to thank you very much for your courtesy -- and yours was certainly one of the exemplary programs that we've seen and I was also impressed with the individuation which you did with the Wards and the way that you seem to respect the individuality of the wards in your units.

MR. WELLS: Thank you, Mr. Pincu.

COMM. PINES: There's a question about what your program is and what it does -- perhaps you could briefly acquaint us with that.

MR. WELLS: There are youth that commit offenses -- criminal offenses, and are then adjudicated by the courts, but at the same time, based on a variety of diagnostic work, psychiatric, psychological, have been considered severely emotionally disturbed. These youth normally would be placed in the mental hospitals in many many cases, but because of their aggressiveness, because of their danger to other patients, they are committed to the (I should not use the word "committed") -- we have programs, the Intensive Treatment Program -- there are three of them in the State, one at Preston, one at Sacramento at the Clinic, one at a clinic in the Los Angeles area, and these programs are developed to specifically provide care along the same lines or same degree of quality that would be provided by a mental hospital. I'm a little prejudiced, I think a little more, that's why I was hesitating on the term.

COMM. PINES: Does this cover the whole gambit of emotionally disturbed people or is it limited to mentally disordered sex offenders.

MR. WELLS: It is not limited at all, no.

COMM. PINES: I asked that because one of our Commission notes it looked like it was so limited.

COMM. FERTIG: Mr. Wells, thank you again for coming, especially all this distance. Going back to Commissioner Lorch's question of Mr. Embree, regarding "negative" and "positive" roles of individuals who are overtly or not overtly homosexual -- do I understand correctly that, on your particular program, there are or could be wards who are homosexual and in a "positive" mode, would remain in your program rather than be segregated into custody lodges?

MR. WELLS: I just knew you were going to ask that. Well, as Jim, (I'm sure) was aware after the first question from the Commissioners, that when you get into negatives and positives, you're in trouble, automatically. I've been with the Youth Authority approximately twenty years, and I've seen lots of kids over the whole spectrum of problem areas. A lot of the kids that we have in the Youth Authority, O. H. Close or at Preston, or any of the other institutions, there's a number of them who are ambivalent about their sexual image -- they're ambivalent about sex, period. Many of them have been involved with a variety of sexual experiences with the familial setting as well as the extremely bizarre. My experience with kids overall, is that the youth in the programs themselves really establish the tone of a program. I don't think you can really separate out -- in terms of percentages, kids in the Youth Authority anymore than you can the public in general. The vast majority of them, at least profess to be heterosexual in their orientation, a very very few profess to be homosexual in their orientation. You have a fair percentage who profess to be, and are in fact, ambivalent. In that particular group, we do spend time with them. I don't know in terms of "negative" and "positive" -- I suppose my particular philosophy and others who work in our program, feel that there is no way, whether we would prefer to or not, there is no way to force one's opinion on other people -- be it young men of 15, 16, 17 or 40 or 50 year-old people. So, we try to help them explore their ambivalences, we try to help them explore their problems, be it sexual or anything else. And that is where we are on it -- we don't make a point of sexuality per se, and we don't make a big thing of it as such.

COMM. PINCU: Let me ask you what may be an unfair question. One of the things that we were shown when you talked about various treatment modalities that you had, was something that was kind of a behavior modification model where you were monitoring physical responses and all that. From a privacy standpoint I'm curious whether that really is a behavior modification program because that word

wasn't used, and was the use of aversive therapy i.e., a negative stimulus, in that, whether the individual has any choices in that, and for what kind of individuals do you use it for -- do you use it for sexual orientation and so forth and so on?

MR. WELLS: It's not an unfair question. I think it's a legitimate one. You know Dr. Palmer, who is our Treatment Administrator in the program. He is a staff psychiatrist, and is at Atascedero today, otherwise he'd have been here. We are developing, and it is in the development stage, a program to deal with violent sexual offenders. And we've spent a great deal of time looking at a variety of programs, and I'll be very frank with you, there is a dearth of knowledge in the whole field. Atascedero, I think in terms of California, is as well-recognized as any place. We are in the process of developing a lab that Dr. Laws, who is in charge of the Atascedero program, and would be functioning with us at least as a consusltant -- he has been up to our program, he's read our particular proposal -- we have perhaps some of the same doubts that you would. Our focus is to be clearly on violence, on aggressive kinds of acts. It is not to change homosexuals into non-homosexuals, if that were even possible. I frankly don't think it is.

COMM. PINCU: Will you be using aversive therapy?

MR. WELLS: We will <u>not</u> be using aversive therapy, period. There is some question whether a young man will use what one might consider aversive techniques on himself. The entire participation in the program will be voluntary. The young man, before he ever enters into the program, will be very well aware of the entire process -- so will any other significant ones in his family, so that we -- we want to be totally open with this. The sole purpose is in our hopes of working with young men who wish to change some of their orientation and again, the focus is in terms of the <u>violence</u>. We will be dealing with some extremely violent young men who are committed to our program, for rapes, murders, serious rapes, where severe injuries have occurred, things like that.

COMM. MERTZ: I wondered what treatment methods you've used to date. You mention this as a new program that may come on. What have you been doing with young men who have committed rape or child molesting?

MR. WELLS: Our program focuses on skill-training. A lot of it. We use a number of skill-trainings in terms of values clarification, sex education. I think what one considers the standard in the field. Our focus is not sexuality per se.

Our focus is on youth and the offending behavior in society in that sense. We're not trying to make them something other than less offensive to society. The entire time per week that a young man spends in some form of treatment is around 27-1/2 hours per month -- so you're running something close to seven hours a week. Lots of individual work. Some group work. Our program probably -- I guess the best way I can explain it, is to say we don't have a program in terms of a model. We zero-in, we take a close look, based upon a whole variety of judgments made by many many professionals in the field. Within our program, we have full-time psychiatrists, as I noted. We have three full-time psychologists, which I think, in our particular case, are excellent. Social workers, and a whole variety of professionals, including nurses. We look at the uniqueness of that particular individual and have him help us identify what are problem areas in his life and what he wishes to change.

COMM. ESKIN: Do you receive wards who have not been convicted of violent sexual offenses, whose offense consisted of participation in a sexual act with a member of the same sex? A consensual sexual act . . .

MR. WELLS: No. Under the law, and I'll be very frank with you, I let other people worry about the law, my focus tends to be on treatment and working with kids, rather than the specifics of law -- there is, as you're well aware, a law in terms of statutory rape. There are kids that have been committed -- it tends to be very few, but we had one who was committed a year or so ago, in fact it is the case that went to the Supreme Court, where it was consensual and the young man, I think was 18, and the girl was 16 -- so from a legal standpoint, yes -- he was.

COMM. ESKIN: In the homosexual setting, do you ever receive wards that have been convicted of participating, say, in an act of Lewd Conduct in a public place?

MR. WELLS: I don't recall any. No, I don't think so.

COMM. BALADERIAN: Do you have any standard requirement or programs on sexuality education and privacy protection training for your staff, all levels, through which they're required to pass?

MR. WELLS: In terms of our specific program, yes. All of our staff are trained. We put a great deal of emphasis in terms of training and I think all of us are at the degree of age, or whatever you'd like to put it, to realize that training and training are two different kinds of things. Training doesn't change people's philosophy some-

times. Yes, we do train our staff in specific techniques and in terms of increasing their knowledge. We have staff that I think, in my own personal opinion, it doesn't "take" in terms of changing the particular ways of relating to people. Yes, we do, and I see it as partially effective.

COMM. BALADERIAN: Could we get a copy of your standard policy on sexuality training? Hours that they are required?

MR. WELLS: Surely.

COMM. ALBERTSON: You mentioned earlier that you will not use aversive therapy. But that a youth might use aversive techniques upon himself. Now, how does he know what aversive techniques are unless he's told what they are? I'm unclear as to what you really mean.

MR. WELLS: You're right. Atascedero program that is being maintained by Dr. Laws, uses particular aversive techniques in terms of their lab work with their youth. In our opinion, and in no way discounting the work that Dr. Laws does at Atascedero, we don't because of the age of the young men that we work with, and perhaps our own particular philosophies that no sense of force should be used — and no determination has been made at this point, whether we will, in fact, even offer aversive objects in this sense, but if they <u>are</u> used, the young man will use them by himself without any type of coercion whatsoever.

Ms. ALBERSTON: How does he find out about them?

MR. WELLS: It would be explained to him by our staff, surely.

COMM. ALBERTSON: In other words, you are using aversive therapy.

MR. WELLS: No, Ma'am. The explanation is not the use.

COMM. PINES: We really are running behind. I think we'd better cease the questions at this point. Thank you very much, Mr. Wells, for joining us.

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JAMES FOSTER: Mr. Pines, and members of the Commission, my name is Jim Foster — I'm a resident of San Francisco, and have been for the past twenty years. I'm presently employed as a Special Consultant to the Chairman of the Democratic National Committee. I'm pleased to testify before you today. The matters of concern to this Commission go right to the heart of some of my deepest concerns . . . namely, how do we as a society, protect and enhance our privacy in the midst of what appears to be massive sweeping and transformational social change in all of our institutions, not the least of which is our traditional view of the American Family. In recent years, we have seen the development of various groups concerned with saving or preserving the Nuclear Family.

For our purposes, Nuclear Family is defined as as husband-breadwinner, a wife-housekeeper, and a number of small children. The Nuclear Family has been the standard socially-approved model in this country as well as most of the technologically advanced nations since the mid-1860's. Over the last 25 to 30 years, we have seen a very dramatic decline in the number of people living in this familiar structure. The latest United States Census Bureau Report could well be entitled "The Incredible Shrinking American Household". The figures clearly indicate that as the population increases, more and more of us, are living with fewer and fewer of us.

In 1930, each household averaged 4.1 persons. By 1950, the figure had declined to 3.5 — by 1970, the figure was 3.1 and by 1980, the figure had shrunk to 2.8. In Washington, D.C., the number of persons living in households is 2.39 and in New York City, the number is 1.96. Perhaps the most dramatic example of the changes that are occurring lies in the growth of the number of people living alone. In 1790, only 3.7% of American households had one person in them. 160 years later, the number had increased to 10.9 and over the last thirty years, that number doubled to 22%. The largest jump in figures occurred during the 1960's and 1970's and is apparently continuing through the 1980's.

The Census Bureau figures confirms what many independent studies have been reporting. The Harvard/M.I.T. Joint Study for Urban Studies Report, authored by Mary Jobane and George Maznick, clearly indicate that these very dramatic changes in the Nuclear Family structure were due to choices people were making in the way in which they chose to live.

During the past twenty years, men and women in their twenties left their parent's home to live alone. They no longer had to be married in order to have their own home or apartment. The elderly, including widows, are now less likely to move in with relatives. Divorced people are less likely to move in with relatives, and more likely to set up their own smaller households. Despite all the nostalgic talk for the three-generational family, the figures clearly indicate that there is little, if any,

commitment to living in it. While we talk wistfully about the warmth of the large family, fewer and fewer of us are willing to risk the pressures of it.

The figures from the United States Census quoted above become even more startling in the finding of the United States Department of Labor. The number of people living in the classically defined Nuclear Family, made up of working father, housekeeping mother and two children, is 7% -- in other words, 93% of the entire national population does not fit into the mold of the Nuclear Family. Even if our definition is broadened to include families in which both father and mother work, or those in which there are fewer than two children, still, two-thirds to three-quarters of the population exists outside the Nuclear Family.

No matter how we define it, nuclear households continue to decline while other alternative family groupings continue to grow at a phenominal rate. The indications of this phenomena are many. There now exists in the United States, a population explosion of people who choose to live alone outside of a family all together. Between 1970 and 1978, the number of people between the ages of 14 and 34 living alone nearly tripled -- from 1.5 million to 4.3 million. Today, almost a fifth of all homebuyers in the United States are single. Many formerly married people are living alone and apparently finding it agreeable as witnessed by the tremendous growth industry of singles bars, entertainment centers, real estate developments catering to single people, travel tours and other services and products designed for an independent single person.

According to United States authorities in the Census and Labor Departments, more and more of us are electing to live together outside of marriage. In fact, the number has doubled over the past ten years. The government has recognized this changing social pattern by changing long-established regulations and allowing such couples to occupy public housing. Courts from Florida to California are engaged in redefining traditional legal and property matters in relationship to the rights of such couples -- particularly when they break up. Additionally, the courts are now concerned with a variety of problems raised by the decline of the Nuclear Family and the rise of alternative family structures. They are now grappling with such questions as lesbian child custody, parental malpractice, gay rights, and property settlements between unmarried spouses.

There is a growing number of people choosing not to have children. The difference between the emphasis on child-rearing at the turn of the century and our relatively child-free culture of today, is staggering. By 1970, only one in three adults lived in a home with children under the age of 18. Because of the many divorces, break-ups and separations, many in Nuclear Families, one-in-seven American children is being raised by a single parent. And in urban areas today in this country, the figure

is a staggering one-in-four! This is according to a study by the Washington, D.C. Urban Institute.

These and other dramatic illustrations clearly point to vast and sweeping change in the American Family -- the truth is, that we have been blindly following a myth that the Nuclear Family is firmly entrenched as a basic institution of our laws and our laws have reflected this.

It is apparent that millions of people are not being served by the continuation of systems and structures that perpetuate this myth. Alvin Toffler, in his recently published book, "THE THIRD WAVE", explores the possibilities of the future:

"The technologically advanced nations of today are honeycombed with a bewildering array of family forms. Homosexual marriages. Communes. Groups of elderly people banding together to share expenses and sometimes sex. Tribal groupings among ethnic minorities. And many other forms co-exist as never before. There are contract marriages. Serial marriages. Family clusters in a variety of intimate networks, with or without shared-sex as well as families in which mothers work in different cities. Even these family forms barely hint that the even richer variety bubbling under the surface. When three psychiatrists, Kellam, Ensminger and Turner, attempted to map the variations of families found in a poor black neighborhood in Chicago, they identified numerous forms of mother-grandmother families, mother-aunt families, mother-stepfather families, and mother-other families.

"Faced with this veritable maze of kinship arrangements, even fairly orthodox scholars have come around to the once-radical view that we are moving out of the age of the Nuclear Family and into a new society marked by diversity in family life. In the words of Sociologist Jessie Bernard, 'the most characteristic aspect of marriage of the future will be precisely the array of options available to different people, who want different things from their relationships with one another.

"'The frequently asked question: What is the future of the family? usually implies that as the industrial age Nuclear Family loses its dominence, some other form will replace it. A more likely outcome is that, during the coming age, no single form will dominate the family mix for any long period. Instead, we will see a high variety of family structures. Rather than masses of people living in uniform family arrangements, we shall see people moving through this system, tracing personalized or customized trajectories during the course of their lives.'"

Again, this does not mean the death or total elimination of the Nuclear Family. It merely means that from now on the Nuclear Family will be only one of the many socially accepted and approved forms. As the New Age sweeps in, the family system is becoming de-massified right along with the production system and the information system in society.

Again, this does not mean the death or total elimination of the Nuclear Family. It merely means, that from now on, the Nuclear Family will be only one of the many socially approved and accepted forms. As the new age sweeps in, the family system is becoming de-massified right along with the production system and the information system in society. The focus of most of our political institutions and structures has been to wage war on the changes I've just mentioned. Witness the introduction of the Family Protection Act in the United States Senate. For those of us who are aware of these sweeping changes, affecting the traditional view of the American Family, this war often appears as a desperate last-gasp effort of those who are unwilling to give up the myths of the past and to deal with the realities of the present and the future.

The question then, has shifted from should we merely make modifications to structures that are quickly becoming outmoded, or should we construct new institutions which are in keeping with the changing reality of people's personal relationships? An opportunity exists here to bring the whole matter of personal relationships into conformity with the social changes that are happening now and those that are coming.

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

"In the field of values, we need to begin removing the unwarranted guilt that accompanies the break-up and reconstruction of families. Instead of exasperating unjustified guilt, the media, the church, the courts and the political system should be working to lower the guilt level. The decision to live outside a Nuclear Family framework should be made easier, not harder. Values change more slowly as a rule, than social reality. Thus we have not developed the ethic of tolerance for diversity that a demassified society will both require and engender. Raised under second-wave conditions, firmly taught that one kind of family is "normal" and the others <u>suspect</u>

if not deviant, vast numbers remain intolerant of the new variety in family styles. Until that changes, the pain of transition will remain unnecessarily high. In economic and social life, individuals cannot enjoy the benefits of widened family options so long as laws, tax codes, welfare practices, school arrangements, housing codes, and even architectural forms all remain implicitly based toward second-wave families.

They take little account of the special needs of women who work, or men who stay home to take care of their children, or bachelors or spinsters, or of the between-marrieds, or aggregate families, or widows living alone or together. All such groups have been discriminated against in second-wave societies."

Toffler's analysis is interesting, but I do not ask that you take any of it on his word alone. Look to your own experience for proof of the many changes that are occurring around us. There can be no question that the long established socially accepted Nuclear Family is undergoing major changes. These questions are revolutionizing relationships between all of us. I wish you every good thought as you grapple with the complexities of these enormous problems. Thank you.

COMM. PINES: Thank you, Mr. Foster, for your analysis and observations. That was well presented. I hope you'll leave us a copy of your remarks. Any brief questions?

TOM COLEMAN: I understand that you did a study for the Controller's Office in the area of looking at inheritance taxes from the perspective of the paper that you just delivered and that one of the recommendations was that there be some type of task force to really seriously look into knitty-gritty types of detailed matters in examining the tax structure in California. Will you be willing to help us with our endeavors in the tax area, and share with us some of your information?

MR. FOSTER: Certainly. I don't think, for instance, that it's any accident that we have in California, Proposition 13! Proposition 13 is a direct result of a lot of the information that is presented in this paper. I think that as the tax structure or as our political institutions become less and less responsive to the <u>real</u> needs of people, people do two things, they get very apathetic toward it, which is certainly the response that's been shown in election after election over the last twenty years, where the turnout has been smaller and smaller, and in their unwillingness to participate in a tax structure that they don't feel supports them any longer. So, I'd be very interested in working in that direction.

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DON SPECTOR: First of all, I'm an Attorney at the Prison Law Office — we provide legal services to prisoners at San Quentin, and I'm here to talk about the privacy issues that prisoners face.

I would like to start off by discussing why it's important for the Commission to look into privacy issues in prisons in particular. I think Dostoyevsky started off the discussion a few hundred years ago by saying that he judges society by how it treats its prisoners. And I think what he meant by that was, because prisoners have no power, how the society treats them tends to show the minimum standards which that society will tolerate. In other words, whatever it does to its prisoners, it does purely on a gratuitous basis and as just a way of showing what it thinks is the best treatment for an individual. That's why prisoner's rights are very important.

The privacy issues that I've been dealing with as an Attorney at the Prison Law Office are basically four. I will run down each and give a couple minutes explanation about what they are.

The first one, the Commission has already recognized in that hand-out which I received. That involves the rights of non-married prisoners to have what are commonly referred to as "conjugal" — but they're more accurately referred to as family visits in the prison. Family visits are where a prisoner gets to spend time alone with members of his family in a very private setting. There's no guards available. In that respect, it's the only time a prisoner has which is private — the only time when he is away from the glare of the guards. At present, California law says that you can only have those visits if you're related by blood, marriage or adoption. I have a client who had a common-law relationship with a woman for seven years prior to his incarceration. After the incarceration, they did keep up, however, under the regulations of the department, she's not allowed to have family visits with the man she loves.

That case is now pending before the California Supreme Court. One of the interesting things that you might want to know is that during all the argument on that case, the Chief Justice, one of the first questions she asked me is: "What privacy interest does this involve?" I was kind of at a loss if she didn't understand what the privacy interest was, but what I explained was that in California, in a case which was decided about two years ago, that the people have a right to live with whomever they choose, regardless of their legal relationship, and a prisoner's right to live with whomever he chooses is the closest approximation to that of a family visit, in which he can approximate the time at home with a person.

The other case, which is very relevant to privacy, and my case, is what is commonly referred to as the "abortion decision" where the Supreme Court held that the State's have to fund abortions for poor women, and in that opinion, the Courts

talked about the fact that the State, through its power, cannot directly or indirectly invade a person's right to privacy. And in this respect, I think that by having a regulation which allows people to visit only if they're related by blood, marriage or adoption, it coerces people into changing the structure of their relationship and having them get married. The status of the case is that it's pending. I don't know when it will be decided.

The other issue which has been litigated in other areas, but not too much in California, although there is one case on the point, is the prisoner's right to privacy from members of the opposite sex during certain times when the person is in certain compromising situations. Mainly, this is involved when prisoners are taking a shower, do they have a right to have only male guards watching them for security reasons, while they're taking the shower? Other courts have held that the prison's female wards have a right not to have male guards watching them when they're naked -- but no appellate court, at least, has held for the men in the reverse situation. That's a kind of a touchy issue, especially where the women guards are at issue, because it runs into Equal Employment concerns for the women guards. They don't want to reassign women guards if that's going to be their detriment. They have certain constitutional and statutory rights in that respect.

The other area where prison guards are a problem is with searches. When a prisoner or a visitor is searched, the prisoner or the visitor have a right to have only members of their own sex search them. This has been pretty well established. The prison does have regulations that does govern that. The topic of searches brings up the topic of searches, which is to say, first, what rights do prisoners have in being searched, when can they be searched, under what kind of conditions can they just randomly search the prisoner's cell, can they do it if they have some information, can they randomly strip-search the prisoner, can they explore his body cavities without any probable cause -- things like that are major issues. There are also the issues of searches by means of x-rays or other mechanical devices and when can prison authorities do that to prisoners.

Now, the other side of that coin is when can prison authorities search visitors? As you may note, wives of prisoners and other prisoners want to come in to visit them, and in order to do this, they're subject to being searched prior to their entry into the prison. What rights do the prisons have in searching these visitors before they go in? Now, going through a metal detector, having pat-down searches is not much of an intrusion, but prison authorities also allow the prison staff to do an unclothed body-search of visitors. This primarily involves wives of prisoners who are suspected of bringing contraband into the institution. This is a fairly serious intrusion into their privacy rights, and the question is, when can they do it and if somebody refuses to

be strip-searched, because they are modest or for a variety of reasons, what can the prison do about their refusal to submit to a search. At the moment, they've concluded that the person is bringing in contraband and they're not going to let them in. Period. Regardless of what other reasons the woman might have. That has been overturned by the courts, but has been a particularly long and hard struggle to get these searches less restrictive and less frequent.

The last issue that we're dealing with is, as you might have read in the newspapers, is "bugging". It has just been revealed that the Warden at San Quentin had bugged one room in the visiting area of the prison. That one room happened to be one room where attorneys are allowed to visit. There have been various court proceedings on this issue. Obviously attorney/client privileges is absolutely confidential and it's a felony in California for a correctional or any institution to bug an attorney/client room. They've admitted that the bugging devices have been there since 1977, but they say they haven't listened in on any attorney/client conversations. That's an issue I guess will be litigated and the truth — my opinion, of course, is that my clients are afraid to talk to me now. That raises another issue, if it's not an attorney/client conversation, what right do prisoners have to confidentiality when they're talking to their loved ones and their friends? There's a case brought by the ACLU before the California Supreme Court now involving a county jail, which is saying that they don't the security reason, if they don't have the information to make them believe that this person is planning an escape or is planning to bring in contraband or doing else illegal, they don't have the right to listen in on these conversations.

COMM. PINCU: I was interested in all of your remarks. One of the issues I'm particularly interested in is the whole issue of conjugal visits. Now, according to what you said and it's true, there really is no legitimate sexual outlet for anyone who is incarcerated other than if they're married and if they happen to be in an institution that has conjugal visits.

MR. SPECTOR: All of the institutions have conjugal visits.

COMM. PINCU: So that if anyone is in any state other than that of matrimony, there's no legitmate way that one can express one's sexual needs. That's correct?

MR. SPECTOR: Well . . . that's correct, yes.

COMM. PINCU: I just want to state that there are some countries which seem to be somewhat more enlightened on this subject. In Holland and Denmark one can visit with whomever they wish privately, be they of the opposite or same gender, and what goes on between the two individuals is their own business.

MR. SPECTOR: Well, that's what concerned the Supreme Court. We let people who aren't married in, where are we going to draw the line?

COMM. PINCU: Why draw the line?

MR. SPECTOR: That's what I said, but they looked at me with quite a bit of incredulity when I suggested that in my papers. I'm glad I didn't have to answer the question.

TOM COLEMAN: Could you provide us with a copy of the pleadings in the Supreme Court litigation on the Family Visits?

MR. SPECTOR: Sure . . .

TOM COLEMAN: By the way, was anything mentioned that this totally exludes people who are living in same-sex relationships, long-term relationships?

MR. SPECTOR: Well — no, it wasn't, and I didn't want to raise it -- one step at a time, I was having a hard enough time getting this one through.

COMM. ESKIN: Mr. Spector, I want to steer away from the family visits issue and the attorney/client room "bugging" issue, because I think they're easy. How would you reconcile, if you were called upon to make a decision, what appears to me to be conflict between an institution's legitimate concern for security and the inmate's rights to privacy? And that would touch upon both the searches of inmates and visitors and privacy for members of the opposite sex, but moreso with respect to searches.

MR. SPECTOR: Well, the privacy of members of the opposite sex is easier, so I'll answer that one first. I think its easy enough to put sort of translucent glass around the showers.

COMM. ESKIN: Obviously.

MR. SPECTOR: Well, it's not obvious to everybody . . .

COMM. ESKIN: What about the problem of security, with respect to searches and searches of visitors.

MR. SPECTOR: Well, our position has been that they're entitled to search a person prior to their entry into the prison if they havesome facts -- and I emphasize that word facts, not a hunch or anything -- to make them believe that the visitor is bringing in contraband. That seems pretty reasonable to me. The question is, to what extent are they entitled to search these people and I think an unclothed body search might be appropriate in many instances. However, I don't think it's appropriate to go into their bodily cavities or something like that. The main issue concerns when are they going to get in again if they refuse for legitimate reasons. And I think, since security is the only issue concerning prison officials, they should be able to get in anytime that the prison officials don't have any information to believe that they're carrying in contraband, or that they're willing to submit to a body search.

COMM. ESKIN: I'm placing myself in the role of the institutional director who has no information about this person -- doesn't know who the person is, other than whatever information is required to be presented at the time they request the visit -- then there's a big shoot-out . . .

MR. SPECTOR: They don't search, if they don't have any information. And it's a violation of your Fourth Amendment rights for one thing, to search without any reason. A visitor, a free person, is presumptively innocent, whereas a prisoner has less rights, because he's already been convicted . . .

COMM. ESKIN: I would assume that the argument would be made that a person in a penal institution has sacrificed certain civil rights and one of them may be a privacy right, at least to the extent enjoyed by persons not in penal institutions.

MR. SPECTOR: That's why the issue of privacy is so interesting in the prison setting, because in a sense, prisoners traditionally have had absolutely no privacy, and now the courts are beginning to realize that, as human beings, you are entitled to some privacy. And some people feel like the nature of prisons in inherently taking away all of that privacy. There's a lot of conflict and tension between those two principles.

COMM. ESKIN: So you do acknowledge both — the prisoner's right to privacy as well as the institution's right to security.

MR. SPECTOR: Yes — I feel the California Legislature has answered the question very well, when they said that prisoners have all those rights that everybody else has except those necessary to provide institutional security. And the way that we've been able to win cases is because the prison has done things that doesn't have anything to do with institutional sescurity — it just has to do with their own biases, whims, caprices or whatever.

COMM. PINES: Thank you very much for appearing here, Mr. Spector, and sharing your information with us.

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SUSAN KNIGHT: I'm very pleased to be able to testify today for two reasons. One reason is that the area of sexuality and disability, the field in which I've been involved in for the last nine years, is a speciality area that often isn't addressed in the area of privacy, so I'm very happy to be able to talk about that today. I'm also very pleased to be following the man who just spoke on prisons because there is a lot of correlation between how people with physical disabilities are treated as far as their privacy rights and prisoners. When he was speaking, I was thinking "I sure hope I come up next!"

One of the things that happens to people with physical disabilities in this society -- and this is all people with physical disabilities, whether they are in State institutions or living independently, or by themselves, or under the control of their families. They are viewed by the society as being asexual. That they by-and-large do not have rights to sexuality, sexual expression, the right to decide whether they want to have children -- these kinds of issues.

That can be a pervasive attitude that becomes more institutionalized and more enforced, the more significantly disabled the person is. For the person who is mildly disabled, such as myself (I have cerebral palsy), that just may be an attitude that I grew up realizing that was shared by some of my family members. I may have heard people talk that I didn't need to worry about having children or marriage, for example. Something that I could deal with and make some decisions as an adult, whereas the person who has severe cerebral palsy, may not be able to be mobile in and of themselves, they're not able to walk, may not have speech, the person has almost no ability to rise above those attitudes without some protection in the law.

Areas where privacy really becomes problematic, and especially in the area of sexuality and socialization, has to do with anyone who has to have attendant care; has to have assistance in meeting their daily needs. When that happens to a person, whether their attendant is hired by the institution, or whether they, even through State-aid, have the ability to hire their own attendants, they are, by and large, at the whim of that particular attendant's willingness to provide them with their privacy needs. For example, I have talked to a number of people who hire and fire their own attendants, who find it very difficult to find someone who will be, let's say in the case of a man or woman who is using contraceptives in sexuality. A man who might require someone to help them put a condom on before sexuality, if their partner is not able to do that -- a woman who might not be able to insert a diaphragm or her partner cannot do that. Finding an attendant who will be willing to provide that kind of assistance is difficult, because by and large, the definition of "attendant care" does not include sexual kinds of assistance. And so, you might say, "Well, that person can fire that person and find somebody else," it may be very difficult to find someone

else. Because that's not seen within the usual job description of what attendants do. That's not required.

Another area in which privacy becomes very much incumbered is in institutional settings. That can be a chronic care facility, again using the person I described before who might be severely disabled and non-verbal who will end up in a State hospital or chronic-care facility. That person, though there is in this State a law that says there has to be a room set aside for private visits, that person, (again when you're talking about who are the people attending to that person) -- without assistance, that person will not be able to have the privacy and the use of the privacy that they may want. For sexual activity, or even socialization.

Another area is the area of residential schools. Now in this State, the two kinds of residential schools that I am professionally most aware of, are residential schools for children who are either deaf or blind -- and I know from what people have discussed with me who have been teachers in those institutions as well as people who were students, that the age of appropriate sexual expression for junior high and high school students is not by-and-large allowed in those institutions. Or, it may be allowed in one school in this State and not another. What I mean by that, is that there are incidences, for example, at the Berkeley Schools for the Deaf and the Blind, where students are not allowed to hold hands. That is not seen as appropriate behavior. But if you go to the Berkeley Public Schools that is allowed and is seen as appropriate.

So it's this kind of restriction on people's personal right because they are seen as not-sexual, or they shouldn't be sexual, that really restricts people's privacy and their ability to choose their sexual options.

I want to say again, just making a restatement I used of the person who may not be able to speak, that I think it's interesting that some of the largest amount of oppression that I have professionally seen has to do with persons with cerebral palsy who do not have speech because of their disability, and people who are deaf, who use sign-language, but do not speak. So the person who cannot literally "speak-up" is the person at most risk. However, I do think that any person with a disability who has to deal with the institutions of this State, who has to deal with the welfare system Medi-Cal is also very much at risk of having their privacy restricted severely.

COMM. PINES: For any other reasons than what you just described?

MS. KNIGHT: I think it gets down basically to the fact that if they, as with the prison example, if a person comes under the auspices of the State, their sexuality and their privacy rights are restricted. In my opinion, it has to do with the attitudes

of society. But, like I said, you also see it in prisons, and so I think it also has to do with a sense of the society that people who need services, who cannot purchase all their own services, do not have sexual rights.

COMM. PINES: Thank you very much, Ms. Knight, for your comments. There probably are some questions, undoubtedly from the end of the table . . .

COMM. WAXMAN: Thank you, Susan. When someone with a disability asks their attendant for sexual preparation, whether they're in an institution or whether they're living on their own. Are you aware of any of the consequences in terms of abuses from the attendant?

MS. KNIGHT: The abuse, if it could be labelled, you mean sexual abuse or -

COMM. WAXMAN: Being disagreeable about sexual preparation. Any threats or abuses from the attendant to the person with the disability?

MS. KNIGHT: Yes, I have had — people I've seen as clients, who discussed with me having both attendants that they've been able to hire as well as health-care personnel in institutions, who were abusive toward them and derrogatory toward them because they had sexual interests. I did some consulting in a long-term care hospital here in the Bay Area, where there were specific instances where I was going in and doing some counselling with some of the patients, and those particular patients were being ridiculed by staff members for even talking to me and the area and the issues of privacy had not even been directly addressed, but the fact that they were talking about sexuality was extremely threatening.

COMM. WAXMAN: What form does the ridicule take?

MS. KNIGHT: The people that I talked to saying that staff would come up to them to say: "why are to talking to that woman -- this isn't of any interest to you." Not allowing people privacy if they want it, saying "The door has to be open, I don't care what you want." And sexual abuse <u>does</u> occur in institutions and hospitals . . . again, for the person who is non-verbal they are at much more risk. Or mentally retarded, being sexually abused by staff members. Being told basically that they are being cared for by this person and if you don't do what I say, then I'm, you know, going to harm you and tell people that you wanted me to. Very similar to the problems of incest in families where the victim is being told that things are going to get worse if they talk about it.

COMM. WAXMAN: I've one more question. When some of your clients have discussed this with you, has there been any follow-through? Have they reported it to anyone? What's happened if they have reported it to the proper authorities?

MS.. KNIGHT: In the case where I was actually there, and was not hearing it as a past incident, what I was able to do at that point, which was already in process, was just to start education with the staff about the sexual rights and the rights to privacy of patients. And that really changed what was going on. None of the patients did report that to the administration. In my view, I have just not — I can't call this formal reporting, but anytime I have heard a person with a disability talk about complaining to administrative staff, they have been told that you don't have sexual rights in an institution, be that a hospital, chronic-care facility, a school — people do not have sexual rights. The policies, be those written down, or just historically, do not allow for sexual expression.

COMM. WAXMAN: Even when they report abuses?

MS. KNIGHT: Well, sexual abuse would be different. But consensual sexual activity between two people in an institution and a patient in an institution and someone from the outside. Basically, even if it's not written down, it's not allowed.

COMM. BALADERIAN: In terms of the institutional living that you're referring to, can you tell me what is the extent and level and content of training in regard to sexuality education and privacy protection that's received or required for staff at all levels?

MS. KNIGHT: To my knowledge, the only State mandated right that a patient in an institution has is to know that there is a room set aside for privacy, and that staff people need to know that as well. In my experience, I know of no formal training — I'm sure there is nothing mandated that speaks to continuing education for staff of institutions on sexuality or privacy.

MS. BALADERIAN: Do you happen to know of any programs in operation now which are non-manbdated?

MS. KNIGHT: What has happened, for example, I work at the University of California in San Francisco, where we have been requested by various hospitals and chronic-care facilities to do in-service training, so that has gone on in different

institutions, but I can't even think of one facility, including the University of California, that has on-going continuing education for their staff on privacy and sexuality.

COMM. ESKIN: The problems that you've described are strikingly similar to those we heard about in Los Angeles last week with respect to elderly people in private ward and care facilities in nursing homes and residential home-care facilities. It seems to be a recurring thread, whether it's a public institution or a private institution with respect to the absence of any sexuality or opportunity for private expression.

MS. KNIGHT: Again, I think this comes up -- what we're faced with, is that anyone who is considered on any level a Ward of the State, is not allowed privacy or a right to sexuality. Be that from the Penal Code, or from the fact that they need some kind of physical assistance -- due to age, for sure. I think they're identical.

COMM. PINES: Any further questions of Ms. Knight? Thanks very much for joining us.

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MARGARET FRAZIER: My name is Margaret Frazier and I'm an Attorney, licensed to practice in California and the District of Columbia. Since 1972, I have specialized in issues affecting persons who are developmentally disabled and mentally disordered. Just for purposes of better understanding, developmental disability is defined in the Welfare and Institutions Code and refers to persons who are mentally retarded, have epilepsy, cerebral palsy, autism and certain other types of handicapping conditions that are closely related to mental retardation. We have prepared testimony, and I hope that the Commission can have copies made and distributed to you because we will just be trying to highlight the items that are in our testimony.

I'm in charge of the Client's Rights Assurance Program with the Department of Developmental Services. There are certain specified rights in the Welfare and Institutions Code which the Legislature enacted in 1976 as part of the Lanterman Developmental Disability Services Act. Historically, as our previous witness has testified, and currently, there are certain assumptions about person with disabilities in general and even more so, I guess, with persons who are developmentally disabled. That these individuals are incapable of exercising rights and therefore should be denied rights . . . consequently, the Legislature felt that it was very important to specifically articulate rights, including the right to privacy.

Naturally, these rights are not self-implementing, those of you who are attorneys know very well that you can have guarantees of rights, but unless you have a way of implementing those rights, we can't be sure they will be enforced or respected. Consequently, we have a Client's Rights Assurance Program under the Department of Developmental Services. We have Client's Rights advocates in each of the nine State Hospitals under our jurisdiction, as well as the twenty-one regional centers.

These are private, non-profit organizations which contract with the Department of Developmental Services to provide various services to clients who are developmentally disabled and to their families. Also, we serve more than 70,000 clients through the Department of Developmental Services — 8,000 of whom I would say are directly in our care in the State Hospitals and the remainder live at home with their families and independent living and also in out-of-home placements, including licensed private health facilities and licensed community care facilities.

Consequently, we can tell you about the laws and regulations which affect the privacy rights and also the sexuality rights of the clients of our system, but as you can tell, it's a fairly decentralized system and the practice and the implementation of those rights varies from place to place. Much, of course, depends on the sensitivity of the direct-care provider's staff. Patty will be telling you something about training programs that we are providing, and the efforts that we are making both to provide

education to clients about their rights and about their own sexuality to their families, and also to the staff who are working with clients in the field.

PATTY BLOMBERG: What I do at the Department of Developmental Services is then to come along after the fact working part-time as a family life coordinator. It's not on the Civil Service Records, so don't look for it. It's sort of serving at the discretion of the Director of the time being. What I do is coordinate Family Life Committees and Coordinators in nine State Hospitals and twenty-one regional centers. I'm trying to set up and provide a Resource Center — we've just published an annotated Resource Bibliography that will be made available to members of the Commission at your request, which lists information in Family Life, Education, and Sex Education for people with developmental disabilities. I also work as a liaison to the California Committee for the Sexual Rights of People with Developmental Disabilities and Don Simons is going to be testifying later on today. He is probably the President of this State-wide group which is now comprised of about 1,000 parents, providers, consumers, etc., better able to give testimony as to what that State-wide committee does. They are advisory to the Department of Developmental Services.

I'm also assisting State Hospitals and Regional Centers in policy development. As all of you attorneys know, and Maggie, whom I work closely with, there's a great deal of difference between the law as it is stated, and the practices as they are practiced in both regional centers and State Hospitals. We've done a needs assessment of all of the twenty-one Regional Centers and over and over again they ask for training for residential facility operators in order to create an atmosphere for appropriate privacy and intimacy. The Care Providers Training Manual which was mandated by Maxine Water's Bill of last year, has one section in it to teach care providers about sexuality. Again, individual acceptance of the topic of sex education and people being sexual in institutions or in board-and-care facilities is up to the discretion of the individual board-and-care operator and/or down to the Psych-Tech and up to the Hospital Administrator in each of the State Hospitals that fall under our realm of power. I also teach human sexuality in the college system in Sacramento. And I think it's easier at times to teach sex education (from what I hear) and special education schools than as I was a Special Witness before the Ways and Means Committee last year during all of the scuttlebutt on the sex education curriculum that was trying to be developed for the public school system. It's easier because those people are considered non-sexual in institutions or that are handicapped or have developmental disabilities — then give them the appropriate sex education information to try and make them less sexual.

COMM. PINES: Do you have some specific recommendations for us?

MS. BLOMBERG: My only comment to the Commission is that I would hope they would investigate and also work within the realms of the Legislature in trying to enact some laws to enable continuing sex education for people with developmental disabilities. There is nothing in the Rights that are stated as is, that mandate for a right to a private space or aright to access on sex education. They have a right to access on birth control and we have expanded upon that right as far as we can carry it to include birth control information and all sex education information.

Mr. PINES: Thank you both for joining us and sharing these remarks with us.

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DONNA HITCHENS: I am an Attorney with the Lesbian Rights Project here in San Francisco, and I would like to present testimony on two areas where my clients experience discrimination the most often.

We represent lesbians who have experienced some form of discrimination based upon their sexual orientation. The two areas are family issues and employment discrimination. In the area of employment discrimination, I've had two cases that I think fairly well point up the problems that lesbians and gay men experience.

One was a woman who worked for the Contra Costa County Sheriff's Department for a period of time as a Dispatcher. She applied for a position as a Deputy Sheriff, took her Civil Service Tests and scored very high on the list. The next stage of the employment process was to take a polygraph examination. Now, I certainly have some questions about the use of polygraph examinations for <u>any</u> employment (period!), but it's a regular practice of many law enforcement agencies to give lie detector tests. One of the questions was: "Since the age of fourteen, have you ever had a sexual relationship with a person of the same sex." She groaned and admitted that, in fact, she <u>had</u> and asked the polygraph examiner if that would disqualify her for consideration. He shrugged his shoulders and said, "Oh, well, when was the last time?" She answered, "Last night."

The Sheriff immediately disqualified her from any further consideration, despite her scoring on all other tests and despite an excellent work record with the Contra Costa County Sheriff's Department. That was the initial violation of her personal privacy — it continued in the Administrative Trial when the Contra Costa County Sheriff's department put on psychiatric testimony that my client was a self-destructive personality. Mind you, he had never met my client nor talked to her or exchanged correspondence with her. Part of the evidence was that she was a self-destructive personality was the fact that she had told the truth on the lie detector test! Furthermore, he testified that gay people act out sexually when they're under stress and therefore, should never be allowed to be jail or prison guards, which is one of the duties of a Deputy Sheriff. Because, when they're under stress, they may molest the prisoners and act out sexually in other ways! We were successful in that case eventually, and were aided by the fact that we were dealing with a governmental employer and therefore, she had certain Consitutional rights.

But in a similar case I had, of a woman who had been in a professional supervisory position for twenty years with a Bay Area hospital, called in by her boss one day and told: "It's been reported to me that you're involved in a relationship with another woman who is on the staff, and that interferes with your employment." (He didn't give her an example of any way it had interferred and didn't even ask her if it was true). "And therefore, I want you to fire this other woman immediately."

She refused, based on the other woman's performance and job record as an employee, at which point she was fired. The problem in this case was that we were dealing with a private employer, and therefore she technically had no legal protection at all against being fired by this particular employer because she had no Constitutional rights. She also wouldn't have been covered by the California Supreme Court's holding in Pacific Telephone under the Labor Code, because she hadn't "come out" — she wasn't technically fired for having come-out on the job and expressed her political position. So she was really in kind of a difficult situation, and in fact, lost her job.

What's important, I think, about these two examples is, that people's rights are regularly invaded around the sexual orientation issue in employment, both public and private employment. And their ability to earn a livelihood is very directly affected. Their ability to get jobs afterwards is affected, because often this information then follows them to the next employment situation. In both of these cases, both women had excellent - not average, not good - but excellent work records and there was no showing of any way how their performance was affected.

In the employment arena, I have three recommendations: One, is certainly to continue to look at any Amendment to the Fair Employment Act that would allow coverage for sexual orientation. Another possibility is to look at legislation around the use of lie detector tests in employment situations. A third recommendation I would make is to look at possibly amending the Labor Code to prohibit any employer from requesting that an employee divulge personal information about himself/herself or any other employee that has not been demonstrated to be job-related.

And to follow that up, to also prohibit an employer from using any non-job related information in making any decision around the hiring/firing/promotion or setting of terms and conditions for any employee. This would protect not only lesbians and gay men from those kinds of invasions, but many people who have faced various invasions of their privacy in the employment arena. And it would put the burden on the employer to show the job-relatedness of the situation.

The next area I would like to talk about just briefly are family issues, and I understand Judge Morgan testified about lesbian mother and gay father custody and visitation problems, so I won't repeat that, but I would like to mention some other kinds of problems that my clients experience on a regular basis every day — most of which are connected with the fact that their family units are not legally recognized. That marriage is not an option for lesbian and gay couples. It's been estimated that at least one-third of all lesbians are also mothers and have children living in their home. So their family units are units involving both adult couples and children. Some of the regular problems involved the lack of any legal protection to the biological mother's lover or her rights in her parenting relationship with the children. She may

have co-parented those children for ten years and if that relationship dissolves or the biological mother dies, she has no legal protection to continue in that parenting relationship. The law, for example, recognizes step-parent adoption, but since lesbian couples cannot marry, the partner does not have that status of being a step-parent. Another problem that's regularly encountered is around medical insurance. The California Insurance Code prohibits discrimination on the basis of sexual orientation in the provision of insurance with one exception, which is medical insurance: family policies. So that if you have a couple where the partner is employed and has some kind of medical coverage, she cannot cover the children of that family, even if they're economically dependant on her. They cannot be covered as family members for medical insurance purposes.

Taxes, such as Inheritance Tax and Income Tax and Dependence Exemptions under taxation, affect lesbian and gay families regularly. Consents to medical treatment and visitation are often conditional upon a blood or marriage relationship and therefore, if the children are in the hospital, the lover may have no power or authority to either visit those children or to in any way consent to their medical treatment or get information from medical personnel. The same goes between the two adults of that relationship -- they may have been together fifteen years, but if one of those people is in intensive care, his or her lover of fifteen years, will be denied the right to even visit with her, much less make medical decisions that she might be incapable of making.

Another one, which I understand you've had testimony on, is the adoption of children. Lesbians and gay men and couples who want to adopt children are regularly denied that opportunity through the system that now exists. The availability of low-income housing -- lesbian and gay families don't constitute a legally recognized family for the purposes of subsidized housing, and are regularly encountering problems in regular renting kinds of situations.

And the last one I'd like to mention concerns the problems of lesbian and gay teenagers in terms of their attempts, for example, to get foster care placements with lesbians and gay men as their foster parents, or even in a heterosexual home that is sympathetic to their sexual orientation. The regular approach is, if we put them in a home that frowns on that, we will be able to discourage that behavior and maybe make them straight! The attitude around young people and people's objections and invasions of their privacy, I think, is being covered by some other testimony, but I would like to mention one recent incident that occurred in Ohio that involved de-programmers from the State of California who were brought into Ohio by the parents of a lesbian young woman. She was kidnapped by the deprogrammers and taken out of the State.

Part of the "deprogramming" was to rape her every day for five days. The deprogrammers have been arrested and are being prosecuted, but there is some question about whether rape charges are geing brought against them or lessor sex offense charges. But this was done by the parents of a teenager, and I think that we have to protect against this kind of behavior as best we can through our legal system and our social service agencies.

COMM. LORCH: In the sucessful defense of the woman in Contra Costa, what were the telling arguments, that's one question, and are there enough telling arguments involved to win those kinds of cases at this point? Is the Governor's Executive Order, which applied specifically to the Executive Branch, filtering down into county level and is it solid and will it work again?

MS. HITCHINS: Well, the latter question is easier to answer and the answer is no. That, for the most part, it is not filtering down to county employees. In terms of governmental employment, lesbians and gay men do have protection under the Constitution of the State of California, of Equal Protection and Due Process. In fact, the result of that case, turned on Equal Protection, and the court held that she had been denied equal protection of the law because she had been treated differently. And clearly, what turned that case, I think partly, was the testimony of the psychiatrist who ended up being (I think) more helpful to us because his testimony was so ridiculous, but also the fact that the Sheriff presented no job-related reason, except his own personal stereotypes about lesbians and gay men, for refusing her employment. And I think that the use of the Constitution is an effective tool in government employment. However, it doesn't protect the thousands of lesbians and gay men who work for private employers in cities and towns that do not have local ordinances.

COMM. GILLETTE: Ms. Hitchins, do you have any statistics on how common these horror stories are?

MS. HITCHENS: No. And in fact, I don't think anyone does. It's been very difficult to ascertain that kind of information. First of all, because so many people assume they have no legal protection, so it's never reported anywhere, and secondly, because to report it, is to "come-out", and for many people, the repercussions of that are very difficult, and it's easier to walk quietly away.

COMM. GILLETTE: My other question has to do with housing, since you referred to that in terms of public housing. Is there a problem with two people of the same sex receiving public housing benefits?

MS. HITCHENS: Yes. The last time I looked at the regulations around Federally subsidized housing, they read that only members related by marriage or blood were eligible to be a family unit for subsidized housing.

COMM. ESKIN: Commissioner Albertson, in the Hearing at Los Angeles was soliciting new definitions of the word "family" and you've touched on that subject in various areas of the law and problems that you've described here today. Are you aware of any other states which have enacted legislation in these specific areas where "family" is defined to include designated partners or any other similar language?

MS. HITCHENS: No, I am not. I have never seen such legislation.

COMM. ESKIN: If we were to develop something like that, whether it's in the tax area, the housing area, the employment area or the insurance area, it would be innovative. It would be a first? We have no other models to look to?

MS. HITCHENS: No, not that I'm familiar with.

COMM. PINES: Any other questions? Thank you very much, and glad to have you with us.

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ROBERT FORMICHI: I'm Robert Formichi, the Reporter of Decisions, with the State Supreme Court and I am an employee of the Court and I have to preface my remarks with the caveat that I'm here at the request of Mr. Coleman to recite what the practices are of the Appellate Courts relative to disclosure and the non-disclosure of the names of individuals in those cases.

The Court, from time to time, must act in these areas with regard to litigation that is either before the Courts or may be before the Courts, and the interpretation of legislation, and for that reason, anything I may say has application only to past circumstances and I can't foreshadow or predict anything the Court would do or speak for them in any regard.

However, I can give you an impression of the practices in the historical development of them with regard to reporting of cases. Decisions are reported in the official reports and are there in perpetuity, so there, as a result, is a danger that an individual whose name appears in the reports will be harassed throughout their lifetimes because of that particular entry in a report.

For example, in the early days of the reports, it was quite common to name a rape victim, or someone who had been assaulted or some minor or individual who was innocently embarrassed by some facts beyond his or her control. That was done, I think, accidently in the sense that the Courts were intent upon disposing of the issues before them, and these concepts about privacy and the dangers that can result from the reports being in the public domain weren't considered. In 1969, I believe, the Court took cognizance that the Juvenile Court Laws were designed primarily to permit the rehabilitation of youths that had gone awry and it was felt that to name the individuals in the reports would be counter-productive to the objective of those statutes that had been designed to foster rehabilitation. So the Court developed a policy of not naming the minor individuals. And what it does, it names individuals indirectly by giving his or her first name and then an initial. The reason for that is the reports really don't have a purpose of punishment, they are designed to assist and benefit the practicing bar, the courts and the public to identify litigation issues in the courts and the disposition of those issues. And for that reason, the names are not disclosed in Juvenile Court matters.

Then it became clear, as the Court became involved in that concept, that others ought not to be named when the remarks in the opinion could be damaging or the disclosure could be damaging. And the Court now uses non-disclosure identifications with regard to victims of crimes. They use such non-disclosure internal identifications with regard to adoption proceedings, proceedings concerning the family, where there's a dispute between parents with regard to the placement of the child. Issues along that

line are as a matter of Court policy, concealed as to identity only. And the California Style Manual, of which I am the author, which is a collection of policies relative to the identification of individuals, has a number of sections which have these protective types of identification.

I suppose there are areas where protection has not been extended. For example, if a minor is bound over to the Criminal Courts, there the identification is made. If he or she is tried under the criminal law apart from that law that is applicable to the placement of the juvenile in a sheltered situation, the minor who is treated as an adult is identified. In civil matters, to this point, the courts have generally not concealed the name of the individual. There have been rare instances where the court has, and I can just mention one of those instances. A school teacher was accused of a crime involving sexuality and the school teacher had the crime dismissed and the Board of Education brought an action against the individual seeking to have him dismissed because of the incident. The issue developed that "was he or was he not fit" to hold the job which he held, teaching children. And the Court, on appeal, affirming the court below, said that the individual's fitness had been established and accordingly, he should not be dismissed from his job and be restored to the pay which he had lost by virtue of these proceedings. The Court, in that instance, which was a civil case, used a non-disclosure title. The courts generally do not generally conceal names in similar situations in civil matters. In criminal matters, it's a rare instance in which a court will use a concealed name with regard to the title or the body of the opinion. There have been rare cases when the court has done that. One of those happens to be People vs. Steve P., I believe, a recent case in which the individual had been charged with loitering in a public toilet area and had been accused of soliciting sexual acts. The individual challenged the validity of the statutes under which he was accused on a Constitutional ground, and the trial court agreed with the individual. The People took an appeal to the Apellate Courts and as a result of that appeal, there was a reversal and the matter was sent back so that the individual was to be tried on the basis of the charges against him. In that instance, the Appellate Court, sending the case back, used a non-disclosure title at the behest of the attorneys. But customarily, persons charged with crimes are identified, regardless of the outcome of the case.

And that's basically the history I have, unless there are any questions.

COMM. PINES: Do you have any recommendations?

MR. Formichi: I cannot make any recommendations because of my association with the Court — I'm here only as an informational agent.

COMM. PINES: Have there been any States that have adopted a procedure allowing initials to be utilized in these other areas?

MR. FORMICHI: Generally speaking, my experience is that California seems to be a forerunner — they are less generous with regard to non-disclosures than we are — than the State of California is.

COMM. PINES: How difficult would it be to have a system where the litigants were given that option?

MR. FORMICHI: Well, there's a problem with regard to classifying cases, if you have a lot of people being "Fred S." for example — that's one problem, but I don't think that's a major predicament, because the cases are identified by volume and page and the mechanics of it would not be a difficult problem.

COMM. PINES: If you were trying to locate — I guess you could use the citations instead of the case names.

MR. FORMICHI: Yes, it would be more difficult, and less desirable in abeyance, but you'd have to consider that as opposed to the damage that would be done to individuals relative to rehabilitation and those other factors that this Commission is considering.

COMM. PINES: Perhaps you could have a classification of certain types of cases, where there would be more privacy concerns than others.

MR. FORMICHI: Yes - and there are a great number of statutes in this area that the Legislature has prescribed — the type of identification that is necessary and so forth, but refinements could easily be made without having a difficult identification problem.

COMM. ESKIN: Does the policy which you describe extend down to the Courts of Appeal and the Appellate Departments of the Superior Court?

MR. FORMICHI: Yes. The policy was proclaimed by the Supreme Court and is applicable to the Courts of Appeal and the Appellate Departments of the Superior Court. It is a policy — it is not a Rule of Court and is selective with the judges although most of them are pleased to comply with it.

COMM. ESKIN: Does the policy extend to the briefs which are submitted on appeal. In other words, are the litigants governed by the policy of non-disclosure in the briefs which are filed?

MR. FORMICHI: No, since the Court has to make the election itself, it would be necessary that the identities be available to the Court -- so they can properly make their election as to whether or not non-disclosure is the appropriate type of situation for the proceeding.

COMM. ESKIN: If a recommendation were to be advanced, that the disclosure of litigant's names should not be limited to juvenile cases, even should not be limited to criminal cases, but perhaps to other kinds of litigation, such as family law matters, or any kind of civil litigation -- where would you anticipate the resistance to such a suggestion to rise?

MR. FORMICHI: First of all, the policy does extend to civil matters, family law matters, and there are non-disclosure practices already established there.

COMM. ESKIN: With respect to the case name?

MR. FORMICHI: Yes, and also internally, the opinion itself does not disclose the individuals where they would be a detriment to the parties in many instances.

COMM. ESKIN: Well, the detriment might be just the facts of the case are articulated and if anybody wants to go down and read about the problems that Mr. and Mrs. Lucas were having, or Mr. and Mrs. Marvin were having, or Mr. and Mrs. Wellingkamp were having -- they are there for everyone to read. And that kind of disclosure is forced by virtue of the fact that they're not referred to as "In re the Marriage of L" or "In re the Marriage of M or W" or whatever.

MR. FORMICHI: Often they do use that non-disclosure title.

COMM. ESKIN: I wasn't aware of that.

MR. FORMICHI: Yeah, they do. As far as degrees, when you get beyond the decision that is so readily available to the public, somebody has to go into a clerk's office and get a record, and those records, because of the business the Court has, are shipped to the archives, they are very difficult to get. If somebody, for example,

wanted to snoop around and then cause some problem for some individual, it'd be rather difficult for them to do it if the opinion had a non-disclosure title and non-disclosure names within its content.

COMM. ESKIN: Well, I'm not tracking . . . because I'm thinking of every Appellate volume that comes out with the name of every litigant — at least, in family law matters as I'm familiar with them, and if anyone wants to go down and read about the history of the marriage, the problems that arose, the financial complications — it's there for the whole world to see!

MR. FORMICHI: What I'm addressing is detrimental situations that are more obvious than the financial predicaments they had — for example, if they were arguing the custody of a minor, and the parents were accusing one another of all sorts of conduct that was detrimental both to the parents and the child when he grew up could refer to the opinion and say "Well, look at what was said against mother, here ..." That type of thing, the Courts are sensitive to. Now, if you're just talking about a monitary situation as to privacy, that would reveal how much money one partner had, or something like that, the Court would not be sensitive (in my experience) to that sort of thing.

TOM COLEMAN: Two questions. One is, do you think the Court would be receptive to reviewing any recommendations that we might make for either changing this from merely being a policy in the Style Manual and instead making it something the Judicial Council would consider in making it actually Court Rules so that there isn't this option - and possibly even expanding in this area, and would the Court be receptive in considering anything if we get into this area, and secondly, what can we do, in your opinion to make attorneys more aware of the options available in the Style Manual so that they would at least consider, along with their substantive issues, the possibility of having the name published with just initials?

MR. FORMICHI: Relative to the Court, I can't speak directly — all I can indicate is that the Courts are protectively inclined. They do not wish to damage people by virtue of reporting the decisions. They wish to get the law before the public and the Bar and the judges, and that's their primary purpose. If they can do that while protecting individuals, or protecting their rehabilitation posture or protecting them into the future, I'm sure the Court would be receptive to anything that would accomplish that while still identifying the cases for the Bar and the public.

TOM COLEMAN: I'm thinking of a kind of "Catch-22" situation where a litigant might wish to bring suit for invasion of privacy, whether the Court would be sensitive to this situation just by bringing the suit — well, you see what I'm about to say — unless the identity of the litigant is concealed, the suit defeats the purpose of the bringing of it.

MR. FORMICHI: Well, I suppose we're getting into the area of what the Legislature has to say about what should and should not be revealed in this area. Traditionally, there have been very few limitations set. The public domain is entered when a suit begins in most instances, with rare exceptions. So I suppose we're talking about the creation of legislation in that area, and in that case, of course, the Court would abide by that legislation obviously or rule with regard to it.

COMM. PINCU: You mentioned that the Court has the desire to get its decisions out to the public so that these initials and so forth and so on, and yet, and I'm not an attorney so that this may be a very naive question, but I've heard that sometimes decisions are published and sometimes they're not, and of course attorney's tear their hair when decisions that they would like to see published are not, and yet the Court seemed to discriminate as to whether or not they want to get certain decisions out or not. Could you enlighten me as to upon what basis they make those decisions?

MR. FORMICHI: I can give you some statistics. About fifteen percent of the decisions are reported. I'm talking about Court of Appeal decisions. Supreme Court decisions, all are published. Court of Appeal, the Appellate Department and the Superior Court, about fifteen percent of the opinions are published, and they result in about fifteen volumes a year, so we're talking about eight-five volumes that go unpublished.

COMM. PINCU: I understand that, obviously, they can't publish everything - that's too much, but is there any standardized criteria upon which they make those decisions? And who makes those decisions?

MR. FORMICHI: Yes, there is a criteria established by the Court itself, which has jurisdiction in this area, and the rule applicable is California Rules of Court, Rule 976 — that defines the criteria that the judges apply to a particular case to determine whether or not it is worthy of publication. And they have this guideline, they have this standard, and they apply it to a case they are preparing for filing and

at that point they determine whether or not it's to be published.

COMM. PINCU: If some of the attorneys who have been working on the case feel that rule was not applied fairly, do they have any recourse?

MR. FORMICHI: Yes, they do. That's Rule 978 — they have an application they can make to the Court to ask the Court to change its mind or re-review its consideration of its publication status.

COMM. PINCU: And what if the Court said that, obviously, I knew what I was doing and I'm not going to change my mind — can they go anywhere else?

MR. FORMICHI: Yes. Having gone to the Court of Appeal and asked there, and been rejected, they are entitled to go to the Supreme Court and renew their request there and state their arguments relative to why they feel the opinion ought to be published and the Supreme Court then acts on that.

MR. PINES: You're getting a lesson on Law here. I'ts illuminating for lawyers as well. Thank you very much, Mr. Formichi, for joining us today.

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JUDY WILLIAMS: My name is Judy Williams, I'm the Education and Rehabilitation Coordinator of the Hearing Impaired Program at Sonoma Developmental Center, formerly known as Sonoma State Hospital (please note the difference). I am also the Chairperson of the Sex Education and Family Life Committee at Sonoma, and a Vice President of the California Committee on Sexuality of the Developmentally Disabled. My remarks will be very brief.

First, on the issue of privacy within State institutions, I'd like to say that it's very unfortunate to me that Sonoma is in the forefront on this issue, and I say unfortunate, because I do not feel that what we're doing anywhere meets the needs of our clients. At this particular time, we have just finished writing a policy on Sex Education which includes a section on privacy. The policy should be approved within three weeks and at that time, the privacy that will be allowed, hopefully, will be one room per unit. A unit holding some 30 or 40 persons. One room for privacy reasons, be they sexual reasons, or simply quiet reasons. The other State hospitals are waiting for our policy to come out and at that time, they have begged me to send it to them.

The second issue I'd like to talk about is an attitudinal issue in terms of privacy and in terms of sexuality. And that is a very long-standing problem in the State hospitals of staff attitudes toward the sexuality of our clients. I think it's been said prior this afternoon, that a lot of people refer to and see developmentally disabled clients as being asexual or non-sexual. This is obviously not true. At present, the policy which, again hopefully, will be approved within three weeks, speaks very clearly to that issue — that is, that our clients have the rights as everyone else does, to sexual expression, and that no longer can staff impose their own religious or moral values on our clients. We also have safeguarded the rights of the staff to have those moral and religious values, but they cannot impose them on our clients. I do not know what your mandate is, or how much power you have, but my only recommendation would be that, if you have some kind of power, you could have it mandated within the Department of Developmental Services that, privacy rooms, and if there's a better term for it, I don't know what it is, that privacy rooms be available on all units at all State hospitals.

COMM. MERTZ: Is there any place for families to input, perhaps young adult kids who are patients, can have sex or not?

MS. WILLIAMS: Yes. As part of the policy we have referred to ... the rights of parents, be it over the age of 21, we have to take a very close look at that. Most parents, and I have just gone before the Parent Hospital Association, most parents are willing to give that up to the inner disciplinary team. And they have suggested to

us that even though they may be Catholic, which is one of the very obvious places where it would become a problem, even though they might be Catholic, they understand that these clients do not understand the concept of Catholicism and therefore do not need to abide by those rights. But yes, we as a committee, and our administration is supporting us in this, will listen to any parental concerns about this.

COMM. MERTZ: Is it to be a team decision about which people can use the room and who they can be in there with?

MS. WILLIAMS: There has to be. By definition of our client population, there would have to be — simply in terms of the consent issue, which was the most difficult part of our policy. It is not clear when you're talking about a non-verbal mentally retarded person, whether consent is actually there or if it's just a passive attitude. And there's some protection that we feel needs to be safeguarded.

COMM. MERTZ: There's a lot of your own attitude — that the staff would have to be developed here as to what is good judgment.

MS. WILLIAMS: Yes, and I think the most difficult part of that is that you are talking about some staff people who have been there twenty-five or thirty-five years, who still feel that masturbation will cause blindness.

COMM. PINCU: You mean it won't? What about same-sex visitation for the privacy room — that is, homosexual clients.

MS. WILLIAMS: Yes, that is included in the policy that privacy is for heterosexual, homosexual or self-stimulatory behavior.

COMM. PINCU: Is it actually used for homosexual contacts? I mean, it's one thing to have a policy and another thing, if it works, to have the clients free to use it, without repercussions from the staff.

MS. WILLIAMS: Yes. We have just come to the point I think, with the exception of one unit, all of our units are co-ed. I think you probably know that, hisorically, they've all been male, or they've all been female. Homosexuality, and this may seem strange to this group of people, is much more accepted at the State hospitals just by light of the fact that we have had same-sex dormitories for so many years, and it was the only way for our clients . . . and I don't think it was a choice issue for many

of them . . . it was the only way they could express their sexuality. It is also an issue that we bring up to parents who have just gotten very frightened when we talked about co-educational living. We asked them if homosexuality was a preference for them, knowing that anyone who is that up-tight about co-educational living, certainly would be more up-tight about homosexuality.

COMM. BALADERIAN: I have two questions. The first has to do with sexual expression per se and how that's either prohibited or protected as a right. Are you operating under the Welfare and Institutions Code and would that be covered under the activities of Daily Living, or how would that be considered?

MS. WILLIAMS: Oh, dear, I don't know that I can answer your question. I wish Maggie Frazier were still here. I do know this much to tell you — that we address sexual education for anyuone who has shown any sexual awareness at all. We address it both in terms of birth control and just in terms that if a goal, an objective and plan, needs to be developed in order to train that person. The other part of my answer to that would be . . . I forgot . . .

COMM. BALADERIAN: What is the policy which has to do with the training of staff at all levels, meaning from the custodian to the psychologist, administrator, or whatever, in the areas of sexuality and personal privacy protection. What is the extent and level for requirements for programs already in operation?

MS. WILLIAMS: Unfortunately, there is no mandate and this again is something that I would like to address to the Commission. There is no mandate for any kind of training. For my own part, I feel that I have trained the administrators and they have done very, very well in terms of support for us. But again, I'm telling you that Sonoma is in the fore-front, and that is a very sad statement for me to make. Secondly, when this policy is approved, it is the committee's intention — and I'm talking about a committee of some twenty people representing each program: the Chaplain's office, the Client's Rights office, the Citizen Advocate's office, and we also have parents on the committee. It is the intention of that committee that all direct-care employees will be trained in the policy so that they will know what exactly the guidelines are. Beyond that, in terms of the privacy rooms, the committee has requested the administration to talk not only to the clinical side of the house, but also the administrative side of the house: maintenance people who walk on to a unit to fix a toilet and just barge into the bathroomns. This can no longer be tolerated and we are asking that those people be trained in terms of privacy.

COMM. BALADERIAN: Would you be able to send us a copy of that policy?

MS. WILLIAMS: Sure — you'll be about the hundredth person to ask.

COMM. BALADERIAN: Thank you.

COMM. WAXMAN: You talked about providing sex education for the people who live at Sonoma. And you use the word training. Can you define that, and along with that, what are the attitudes of the administration to sexuality training — beyond sex education?

MS. WILLIAMS: First of all sex education runs the gamut — I'm not sure you're familiar with our population — but we're talking about people with I.Q.'s of maybe in the 60's — that would be our very highest functioning clients — to people who are untestable with I.Q.'s of zero to five to ten. In terms of sex education then, you're talking about an ability for some of us to do some direct counselling, you know, to sit down and talk. These are verbal clients, these higher-functioning people, to discuss relationships, to discuss their sexuality, to discuss sexual intercourse and birth control. On the other end of the spectrum, we're talking about people whose only means of sexual expression is through masturbation, who may have very severe problems with that and what we have support on from the administration is that we need, and I don't mean to be facetious, we need hands-on training. We are currently involved in looking at the possibilities for bringing people into the hospital. I'm talking about sex education trainers, professionals in the area of sexual therapy, who could help us with these problems that develop around the inability of some of our people to masturbate appropriately. I'm not talking about asexual people, I'm not talking about who are not sexually aware yet or who will never be, I'm talking about people who have the sexuality, and yet, for whatever reason, because of physical disabilities, are simply just not understanding the process, are becoming horribly frustrated. We're seeing lots of behaviors, aggressive head-banging behaviors, and we're making the assumption that it all goes back to this frustration. We have total support at this point from our administration, albeit they get very scared when they hear I'm coming to San Francisco to testify.

COMM. MERTZ: I wondered if your clients are able to make a choice for pregnancy. Is that allowed, or is birth control required?

MS. WILLIAMS: Again, that would depend upon the client, on an individual client and the inner-disciplinary team somehow deciding that that could be like an informed consent issue. I have a deaf client who thinks it's just very wonderful that her teacher has a stomach out to here, and she wants to have a baby herself. Her functioning level is around a three-year level, so for someone like that to say: "I want a baby", I'd have to question that. I'd have to question what she means by that — what that means to her and how far beyond the actual looking at the baby she can see. As far back as I can remember, and I've been there eight years, there has been one pregnancy at the hospital. That was one of my clients who was home with her mother for an extended leave of a year. Her mother thought the world was going to end and took her home, and apparently, her father impregnated her and the mother got freaked-out and brought her back. The pregnancy ended in a stillborn birth. Yes, I think there would be. Hopefully, that person would be placed in the community by now, who would really want that and could really do something about it.

COMM. PINES: Thank you, Ms. Williams . . .

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CAROL MIGDEN: Thank you, I'll be brief because I wangled myself in on somebody else's time slot . . .

My name is Carol Migden, I'm the Executive Director of Operation Concern of Pacific Medical Center — that's an out-patient psychiatric clinic for lesbians and gay men here in San Francisco, and also for their families.

From a psychological perspective, the issue is not that, as lesbians and gay men, our privacy has been invaded, rather that privacy has been used against us to suppress or inhibit healthy psychological development. Often emotional stability for gay people hinges upon our willingness to be private. From early age, progressing through adulthood, people are inculturated with a similar set of social values. The messages are clear. We learn that homosexuality is taboo, we know that it is perceived as evil, as decadent and immoral and yet, it is also mysterious, it is strangely intriguing and it is cloaked in a veil of secrecy. If lesbians and gay men agree to sexual identity in order to hide, then they are protected. But, if we choose to live as free and open lesbians and gay men, then we are penalized as the Family Protection Act and the McDonald Amendment reveal. We've been targeted for legal discrimination, so in other words, we are penalized for not being private, which is an interesting use of "private". Coming-out, a process which promotes disclosure and not secrecy, has always been psychologically traumatic for gay people, because of internalized feelings of self-hatred, of guilt, of shame, which result from a steady barrage of social intolerance. Those who remain in the closet or remain private suffer extreme lifelong adverse psychological effects. They suffer impairment in terms of ego development, they're plagued throughout their lives by problems related to self-esteem, ego development and negative image-building.

At Operation Concern in recent years, we've see a steady increase in the numbers of acute disturbances and suicide ideation, which we believe, is resultant from an escalating sense of social intolerance. In closing, what I want to suggest is not that the issues of privacy are not important to us — but just that we have to consider the complexities of the situation and not be imprisoned by our efforts to free ourselves. Because the message for gay people is to live privately and that is contrary often to our effort to live healthy adjusted lives.

COMM. PINES: Thank you, Ms. Migden . . .

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PAT NORMAN: Good afternoon, Commissioners, my name is Pat Norman. I appear today as Coordinator of Gay and Lesbian Health Services for the Department of Public Health and Community Mental Health Services here in San Francisco. I'm also the Chairperson for the Mental Wellness Campaign that is being sponsored by the Department of Mental Health for the State of California.

I'm going to be taking your definition of Personal Privacy, which is freedom of intimate association, freedom from discrimination, the right to receive mental and medical services by competent, sensitive and knowledgeable health providers as a focus that I'd like to say today. San Francisco, at this point, is one of the few cities in the United States (in fact I believe it's the only city in the United States), that has an on-going health program for the Lesbian and Gay Community that is actually paid for by City and County funds. That was accomplished by no stretch of the imagination easily. About four years ago, there was a public outcry by the Gay and Lesbian Community that there were inadequate, incompetent services and homophobic services that were provided by the on-going community mental health agencies. After listening, the Program Chief then decided that, along with the other ethnic and special minority task forces that were then forming, that there would also be a gay task force. That gay task force did community need assessments, did community involvement by calling hearings and other kinds of public meetings and came to the decision that there needed to be a series of meetings and on-going conversations with the administration of San Francisco to get services in place that would speak to the needs of the Lesbian and Gay Community.

I'd like to follow-up what Carol said. Actually, we don't need special therapies or special medical services or treatment, what we need are people who are sensitive and non-homophobic. Actually, what we've set up here are like 24-hour conselling services, through Suicide Prevention. How we've done that is to go into agencies like Suicide Prevention, like the District Mental Health Centers, and have done, with the approval of the Director of Public Health, actual trainings on human sexuality and sensitivity to the needs of the Lesbian and Gay Community, so at this point, in San Francisco, what we are doing is training and have trained over 700 mental health professionals and approximately 250-300 public health professionals who are providing services to the Lesbian and Gay Community. That is a possibility throughout the State of California, if it were not that there are such imbedded negative response to people's sexual orientation.

Most of the time, when I talk to people, the issues have something to do with myths, illogical kinds of images of who lesbian and gay people are. I think that actually people get confused with emotional life-style and connect to what they perceive as "dirty sexuality", which is an unfortunate myth and misunderstanding.

Most unfortunate, I think, to the lesbian and Gay Community because it affects the kinds of services that we are able to receive. We also note that, and I'll go into talking very briefly with you about the Mental Wellness that's being sponsored by the State Department of Mental Health. And we look at that issue as an issue of misunderstanding again and myths that are created out of — well, "misinformation" is the nicest word I can think of.

Actually what happens is, again, because of political fears or distortions of like who it is that lesbians and gay people are, we get not to have adequate or competent or meaningful services in order to prevent mental illness and promote, in fact, mental wellness. So what happens, as I see it, is that people get very confused with what it is we're asking for when we ask for services that would be given to anyone else — what we get is that we're "asking for advocacy of a lifestyle" instead of acknowledgment that we exist. And which is a total lack of appreciation for us as human beings — not only human beings, but as the sentence goes "the taxpayers don't want to provide you with what it is that you're asking for" without any understanding that we are the taxpayers asking for services that we're paying for!

At any rate, at this point, and I'll go back to what's possible to do, in San Francisco we are capable and are — I don't want to mislead you — San Francisco certainly is one of the places that is progressive in the United States and certainly in the world, but it's not without its homophobic responses and people, it is not the only (hopefully) not the only place for gay and lesbian people to be and to receive the kind of human caring and contact and concern that we deserve, but at this point, it's about the only place we're going to actually get services that are done and created by people who actually care. We do have services from crisis, to in-patient, to residential treatment facilities in mental health, we have full services in physical health and that includes in fact, working on this point, on services to families and medical services like looking at the differences and again, re-defining family and what it means to be able to provide a child at a health center with services when they have two mothers. Or two fathers, which is not unusual and not to totally freak-out about all that.

COMM. PINCU: What about services for the elderly?

MS. NORMAN: We are working on services to the elderly and the way that we're doing that, as well as working towards services to a lot of other people, is through training those people we already have working. San Francisco Mental Health and Public Health are staffed by Civil Service employees. We don't just sort of have enough money to hire everybody that we choose to hire, so basically we have to train those people who are already in those positions.

COMM. LORCH: As a Commissioner from San Francisco, it's rather nice to know we're so far in the forefront. Perhaps the Commissioners from other parts of the State will take back our enlightened. I didn't know it was that far-reaching. But coming back to the Commission as regards to personal privacy, can you give me any specific tie-in to what we as a group might want to say or write in or include?

MS. NORMAN: When I spoke to your staff, they spoke about the need to have examples of services that can be provided. I have copies of the services that can be provided with training. It's not like we can say "here's the outline of the program"; it does take someone to actually go in and train those people who are already in the position. The other things is we have here what is called "The Gay Clients Bill of Rights". It seems like to me that at the beginning, by letting people, both the staffs as well as clients know that, in fact, they have a right to ask for certain things — they have a right to ask for sensitive therapists, they have a right to ask for confidentiality like everyone else — they have all of those particular rights.

We've gotten into some difficulty because people go on saying "Well, why should gay people have a Gay People's Bill of Rights, they're like everybody else, it should be Patient's Rights — that's true, and if gay people were treated like everyone else, that would be very true. We do have a special bill of rights for gay people and we can certainly share that with anybody we'd like to have it as well.

COMM. LORCH: Could you see that we have a copy of that, please?

COMM. MERTZ: I would like to request that the Commission get the Gay Bill of Rights, the description of your program and the syllabus you have for training if that's available, that you've been doing for these various workers. I understand that the Public Service Announcements made about gays for this promotion of wellness are being held up.

MS. NORMAN: They are expensive, yes.

COMM. MERTZ: Do you think they'll be used someplace?

MS. NORMAN: I just had a meeting today Secretary Oblado and Mr. Flagstaff and Miss Terry Thomas and my alternate, Jim Long, who is also here, and I think you met him last week in Los Angeles. We're just all over the place. Basically, we're in negotiation still. We had asked for a certain group of PSA's to be allowed to continue and we're waiting for a response.

COMM. MERTZ: Would you think it advisable to have special programs for gay people in mental health and health areas in other cities?

MS. NORMAN: Special programs . . . I mean, every time somebody puts "special" on it, it takes on a whole other meaning and gets very confused, and I imagine that the only way people are going to get served is saying we have services here to be provided by people who meet certain criteria.

One of the other things we're doing here in San Francisco (and we're going up for it to be approved by the Civil Service Commission on December 7th), is a Gay Health Services Specialist position. That position will require meeting certain criteria like: they will have to go through a certain number of hours of basic training — they will have to go through five hundred hours of supervision while working with gay and lesbian people. They will have to be knowledgeable of the community and familiar with the literature — the criteria having been met, that giver them the category of Specialist to work with those people who need and request gay or lesbian therapists or medical professionals.

I don't know if I've answered your question. I guess it's unfortunate, but yes, I think we do need specialists, until that time when everyone gets trained and is willing to become less judgmental around sexuality so that there would be free non-judgmental services to everyone.

MR. PINES: Any other questions? Thank you very much, Ms. Norman.

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