The Domino Effect

How strategic moves for gay rights, singles' rights, and family diversity have touched the lives of millions.

Memoirs of an Equal Rights Advocate

By Thomas F. Coleman

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With gratitude to my life mate and spouse,
Michael A. Vasquez, for supporting
and helping me over the last three decades
as I have advocated for many of the cases
and causes described in this book

And with appreciation to family members,
friends, and colleagues, who have stood
by me and worked with me since the
early 1970s to achieve equal justice
under law for all segments of society

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Outtakes: Two more chapters and other images and photos are available at www.dominoefffectbook.com

About the Author

Thomas F. Coleman is a conceptual visionary. When I first met Tom in the 1970s, he was already ahead of his time, using his extraordinary legal, political and educational skills along with his amazing perception of how the world should and could be, to help change the way people perceived "sexual minorities." He was an early advocate of a multi-disciplinary approach that included law, education, psychology, medicine and politics.

He helped establish and was a driving force of such a multi-disciplinary organization known as the National Committee for Sexual Civil Liberties, which included scholars in all of those areas, and was the precursor of today's larger nationwide legal organizations. That organization early on strategized the overturning of sodomy laws throughout the nation, and began the process.

He later concluded that education in this area was more appropriate under the nomenclature of privacy rights, and he helped educate elected officials, both in California and nationally, as well as the general public, about the aspect of privacy known as personal autonomy, that is, the right to be free of government interference in certain personal and private decisions about one's life and one's relationships. This shift was nothing less than revolutionary, and the gains made by the LGBT community in recent decades can be traced in large measure to that approach.

To further that shift, he established and was the engine that propelled the California Commission on Personal Privacy under Governor Jerry Brown and Los Angeles City Attorney Burt Pines. On that commission, Tom inspired the participation and hard work of some of the best minds in California, from a large range of professions and communities. When I say "inspired," I mean that he lit fires in the hearts of virtually everyone with whom he came in contact. He believed in the power of coalitions and taught that empathy toward and inclusion of others, especially under-represented minorities (from people of color to people with disabilities), was the key to establishing mutual respect among those communities and the support of the community at large. He advocated a holistic approach long before it was popular to do so.

As a practicing lawyer, especially in the constitutional appellate arena, Tom was also a visionary. He often said that all three branches of government were underutilized in the movement for equal rights, and he engaged them all. For the LGBT community, he saw the first step as decriminalization, citing the difficulty in arguing for equal rights when the defining characteristic of the group is labeled a crime. His landmark constitutional ruling in the California Supreme Court, *Pryor v. Municipal Court*, changed the definition of "lewd conduct" in such a way that helped eliminate the criminal status of same-sex affection in many contexts and paved the way to elimination of lifetime sex-offender registration for much consenting adult behavior.

In a nutshell, Tom engaged government – all three branches – and challenged communities to fashion practical solutions to problems of discrimination of many kinds, including those against families and relationships of diverse definitions, using dialogue and education rather than a stick. The objective was also to bring the law into focus with the reality of people's lives, beyond ideology, to fulfill the promise of the United States Constitution and the constitutions of the states.

This is just a smattering of what can be said about Thomas F. Coleman, his integrity, courage, coalition-building and history-making vision.

Jay M. Kohorn

Attorney at Law

Mr. Kohorn is the Assistant Director of the Los Angeles office of the California Appellate Project.

The Domino Effect

I have known, loved and worked with Tom Coleman for over two decades, particularly during my years as staff attorney/legal director of Lambda Legal, and director of public policy for the National Center for Lesbian Rights.

In my view, Tom's work and analysis of relationship recognition stands as an important, and often ignored, bridge between the women's rights/feminist movement and the emerging LGBT movement. He believed, as many of us did, that all relationships/families have value, and that our job as lawyers representing the LGBT "outsiders" must be dedicated to ensuring that the rights, privileges and respect for families extend not solely to those who are married - whether same-sex or opposite sex - but to all who take on the love and commitment of another person. He contributed to our structuring and understanding of emerging concepts of domestic partnership.

He, in his eloquent and determined way, encouraged us to look at broader social justice goals in crafting hospital visitation policies, workplace benefits, and the full range of policies impacting on families so that the LGBT community's contribution to our social and legal understanding of family structures not be limited to protecting the rights only of those who are married, whether gay or straight.

In an era in which the fight for marriage has become all consuming, it is important to note that regardless of where the marriage movement leads us, there will always be the need to ensure that those LGBT couples who choose not to marry not be left behind.

Paula Ettelbrick

Attorney at Law

Ms. Ettelbrick is the former Legal Director of

the Lambda Legal Defense and Education Fund.

I have had the great privilege and pleasure of working with Tom Coleman since the mid 1980s when domestic partnership was still only a theory. I have argued in print that his amazing and prescient work in California to establish domestic partnership in major cities such as Los Angeles and Long Beach, as well as his dedicated work on cases in the

About the Author

California courts laid the political groundwork that is paying off today across the country and in other parts of the world.

David Link

Attorney at Law

Sacramento, California

I have known Tom Coleman since he was a law student at the dawn of the 1970s, when he evinced an interest in sexual civil liberties and I introduced him to a small, early committee concerned with such issues. I have followed his career through his activism for gay and lesbian rights, through his activism for recognizing diverse family forms, through his activism for the rights of single persons and for sex-neutral domestic-partnership regimes, and beyond. He has made important legal and public policy accomplishments and has heightened public attention to inequitably preferential treatment of traditional nuclear-family households.

William B. Kelley

Attorney at Law

Chicago, Illinois

Tom Coleman has spent almost four decades fighting for and helping to secure the rights of single (unmarried) persons, and advocating for family diversity, fighting against religious, ethnic and minority violence, marital status discrimination, and discrimination based on sexual orientation. His writings, participation and active leadership in these issues have been unwavering.

Lester M. Pincu, D. Crim.

Professor Emeritus of Criminology

California State University

Fresno, California

Acknowledgments

The "domino effect" of the social, political, and legal changes described in this book would not have occurred without the cooperation and collaboration of many pioneering individuals and several key organizations. Though I played a pivotal role in the cases and projects I discuss, my abilities as a creative strategist were supported and enhanced by others.

While some of them are highlighted within the stories and narratives in this book, they, and some others who are not otherwise noted, deserve special recognition and thanks. It is only fitting that I mention these individuals and organizations by name and acknowledge my gratitude to them for their participation and help in creating change for gay rights, singles' rights, and family diversity.

Attorneys Albert Gordon and Barry Copilow were right there with me, in the trenches, as we fought against police harassment and political oppression of gays and lesbians in Los Angeles in the early 1970s. Without them, some of my early endeavors to protect personal privacy and defend freedom of speech would not have prevailed.

The scope of my advocacy was expanded to a national level when William B. Kelley introduced me to Arthur C. Warner and the National Committee for Sexual Civil Liberties in 1972. As a result of my involvement with the National Committee, I met and worked with a broad array of advocates and scholars and learned to use a multi-disciplinary

approach in the creation of political and legal change. Among these colleagues were: Professor Walter Barnett, author of *Sexual Freedom and the Constitution*; Dr. Michael F. Valente, author of *Sex: The Radical View of a Catholic Theologian*; William Reynard, former member of the national board of directors of the American Civil Liberties Union; and William H. Gardner, an attorney in Buffalo, New York, and with whom I have been privileged to work as co-counsel on some major test cases.

Much of my advocacy work in the late 1970s and throughout the 1980s was enhanced and improved by the collaboration of my friend and fellow attorney Jay M. Kohorn. He jumped into the fray by becoming lead editor of the *Sexual Law Reporter*, a periodical which I published in order to keep the national legal community advised and informed of major developments in sexual civil liberties. Jay and I collaborated in filing *amicus curiae* briefs in major cases before the United States Supreme Court and the New York Court of Appeals. He wrote the executive summary for the "Final Report of the California Commission on Personal Privacy," a blue ribbon committee which I directed. He also edited the "Final Report of the Los Angeles City Task Force on Family Diversity," a report which I drafted and which he skillfully enhanced. Jay also gave expert counsel to a national group of lawyers, known as the Lambda Lawyers Roundtable, as its members developed strategies to create change for the gay and lesbian community through litigation and legislation. To be sure, Jay had a hand in tilting some of the dominos mentioned in this book.

Professor Arthur Leonard of the New York Law School deserves credit for monitoring and reporting significant legal developments for many years after I stopped publishing the *Sexual Law Reporter*. His reports have been relied on by scholars and advocates studying and promoting change for the gay and lesbian and HIV communities. He also worked closely with the Association of American Law Schools to insure that school policies and curricula included issues and concerns relevant to those communities.

Dr. Nora J. Baladerian gained my respect and admiration for the work she did with the California Commission on Personal Privacy on behalf of people with disabilities. She and I became immediate friends and co-creators of change. We worked together on many projects from 1981 to the present day. Along with Christopher McCauley, she co-chaired the Los Angeles City Task Force on Family Diversity, a study group through which she opened my eyes even wider to the needs of people with disabilities. She joined the board of directors of Spectrum Institute, working with Jay Kohorn and me to develop a variety of projects designed to promote respect

for human diversity through research, education, and litigation. Under the umbrella of Spectrum Institute, Nora founded the Disability, Abuse, and Personal Rights Project, and convened many national conferences designed to educate government agencies and private professionals about the lack of protection and lack of appropriate societal response to the abuse of people with disabilities. She later helped me to develop the American Association for Single People, a membership group promoting equal rights for unmarried individuals, couples, and families. She also helped me to create the Emancipation Project in response to our learning of systematic abuse of troubled teenagers by so-called boarding schools and boot camps. I have truly been blessed to have had such a good friend and skilled professional working with me on these projects for so many years.

There are also a few organizations which deserve special mention for the critical roles they have played in the quest for equal rights of sexual minorities and unmarried Americans. The American Civil Liberties Union takes center stage in my opinion, with Ramona Ripston, Matt Coles, John O'Loughlin, and Dick Caudillo as key players whom I remember. The ACLU formed a Sexual Privacy Project to stimulate challenges to laws criminalizing private sexual conduct between consenting adults. The ACLU has been at the forefront of litigation in several states to challenge laws against sodomy, fornication, or cohabitation. It has fought for the rights of unmarried individuals and couples in a variety of contexts, including employment, housing, and professional licensing. The ACLU probably helped to tilt more human rights dominos than any other single organization in the United States.

The National Gay and Lesbian Task Force also deserves high praise for its ongoing activities for more than 30 years to promote civil liberties, not only for gays and lesbians, but for racial and ethnic minorities and unmarried couples regardless of sexual orientation. Its annual conference, titled "Creating Change," has helped to educate, train, and stimulate thousands of activists into action on a variety of issues affecting these constituencies. Among the NGLTF leaders over the years whom I have admired for their tireless efforts are Urvashi Vaid, Sue Hyde, Virginia Apuzzo, Kevin Berril, Sally Kohn, and Dr. John D'Emilio.

Lambda Legal Defense and Education Fund also deserves recognition for the excellent work it has done to promote equal rights for domestic partners and for pressuring the government to remove gender restrictions from marriage licensing laws. I have admired many of the Lambda Legal lawyers for years.

Acknowledgments

E. Carrington Boggan, a founding member of Lambda Legal when it incorporated in 1973, was one of the few lawyers with enough courage to be openly gay in an era when doing so carried serious professional risks. "Carrie" was an educator as well as an advocate. He was co-author along with Marilyn Haft of *The Rights of Gay People* which was published by the American Civil Liberties Union. As chair of the Section of Individual Rights and Responsibilities, Carrie also worked diligently to get the American Bar Association to support the right of sexual privacy for consenting adults and to adopt rules protecting the rights of gay and lesbian legal professionals to practice law without discrimination.

Jon Davidson, when he was with the ACLU and later as a staff lawyer and now the legal director of Lambda Legal, has been a colleague with unmatched intellectual abilities and excellent strategic instincts. I am proud to have worked with him. I was also inspired by the vision and dedication of Paula Ettelbrick when she was working with Lambda Legal. I was especially gratified by her attempts to convince the gay and lesbian community to broaden its priorities beyond the right to marry and to include family diversity rights as well.

I am pleased to mention the excellent work of the Alternatives to Marriage Project (AtMP), a nonprofit advocacy group founded more than 10 years ago by Dorian Solot and Marshall Miller. The organization is now headed by Nicky Grist, a tireless and talented advocate for unmarried and single people everywhere. This organization, and these individuals, have done so much to educate the general public about the needs and concerns of unmarried Americans, especially through their work with the media. Single people are indeed fortunate to have an organization such as AtMP to advocate on their behalf.

I would also like to express my appreciation to several other individuals who have provided financial assistance and moral support for my work. I am grateful to Burt Pines, former city attorney for the City of Los Angeles, for introducing me to Lloyd E. Rigler. As a result of that introduction, Lloyd and I discovered that we shared a vision of securing human rights through the advocacy of broad and inclusive issues and by creating coalitions with diverse segments of society. I would not have been able to achieve many of the victories described in this book without the financial backing of Lloyd Rigler and his LEDLER Foundation.

After Lloyd died in December 2003, I was surprised to learn of a bequest to Spectrum Institute from Wally Larson, a gentleman whom I had

briefly met years earlier and who obviously was impressed with my work. As a result of this bequest, I was able to continue my education and advocacy efforts for a few more years.

I have been blessed with the friendship of, and financial assistance from, Professor Richard W. Smith of California State University at Northridge. Dick has made significant donations to Spectrum Institute, the most recent of which helped to support me in the writing of this book.

I am indebted to my life mate and spouse, Michael A. Vasquez, for his continuing support over the years. His logistical, administrative, and artistic skills have played a part in many activities and projects with which I have been involved. My gratitude also is extended to him, and to my friends, Paula Davis and Mary Crotty, for proofreading this book.

I would like to express appreciation for the support of my family members, especially my sisters Cathy Coleman, Diane Coleman Rogers, and Carolyn Skalnek. Not only have they provided me with ongoing emotional support and encouragement, but on many occasions they have lent their time and talents to participate directly in some of my projects.

Diane helped design the graphics for the Web site and stationery of the American Association for Single People, as well as designing promotional materials for Unmarried America. Her most recent contribution was consulting on the graphics for this book. Carolyn served for several years as a board member for AASP. Cathy accompanied me to the Statehouse in Lansing, Michigan, where we successfully fought to defeat a bill that would have stripped unmarried couples of existing civil rights protections. I am grateful for their support.

My thanks to Michael Pinter for using his artistic skills to develop the cover of this book and to enhance the quality of the internal graphics. It is quite fine with me if potential readers do judge this book by its cover. My appreciation is also extended to Bill Kelley for volunteering his time and services as a copy editor. His keen eye and good judgment greatly improved the quality of this book.

Finally, I am grateful to George Phillips who facilitated the Estate of Arthur C. Warner to make a financial contribution to Spectrum Institute which will help underwrite the cost of producing and promoting this book. The donation is very appropriate since the dissemination of *The Domino Effect* will further advance the cause of sexual civil liberties – a cause near and dear to Arthur's heart and for which he labored most of his life.

Preface

The changes discussed in this book each began with the tilting of a single domino, one strategic move that caused a shift in society. Many of those initial dominos created a rippling effect which created similar changes elsewhere. This book is about the domino effect of small and sometimes large victories that I have played a part in creating. These victories established precedents which led to similar victories by others. Thus we see the law of cause and effect in action. Millions of people have been touched. Our culture has been changed forever.

American society has gone through major transformations in the last four decades. For those of us who were teenagers in the 1960s, life today is much different from how it was back then. When I was growing up, most children lived in a nuclear family with Mom as a homemaker and Dad as a breadwinner. Divorce was uncommon. Unmarried cohabitation was rare. It was assumed that everyone would marry. Law and religion both made sexual relations a practice that was allowed for married couples only. Homosexuality was a taboo topic.

We now live in a very different world. Many young people are delaying or deferring marriage until they graduate from college or establish a career. A growing number of men and women never marry. Among those who do marry, about half of the relationships end in divorce. Most people are sexually active by the time they graduate from high school. Unmarried cohabitation has risen about 1,200 percent since 1960. Most American households are now headed by unmarried adults. Gay marriage

has become legal in a few states.

These changes did not happen by accident, nor did they happen overnight. They form part of a social evolution, spurred on by political activism, legal advocacy, and intellectual debate. The political movements for civil rights, women's rights, and gay rights, all contributed to an evolution of public opinion on which political and legal reforms were based.

When I entered high school in 1962, the United States Supreme Court had not yet declared that married couples had a right to sexual privacy. All but one state had criminal laws prohibiting private sexual relations between consenting adults. Divorces could be granted only if one or both spouses were at fault for abuse or adultery. A husband could not be prosecuted for raping his wife. Discrimination on the basis of sex was legal. There were no laws against marital status discrimination. Gay rights was a contradiction in terms.

The forces of change began to emerge in a visible way during the next decade. Congress outlawed discrimination on the bases of race and sex in 1964. The Supreme Court "discovered" a constitutional right to privacy for married couples in 1965. The National Organization for Women was founded in 1966. California passed the nation's first "no fault" divorce law in 1970. Connecticut became the second state to pass a "consenting adult" law in 1971. The right to use birth control was extended to single people by the Supreme Court in 1972. The abortion ruling in *Roe v. Wade* was decided the following year. Congress outlawed marital status discrimination in credit transactions in 1974. South Dakota became the first state to outlaw marital rape in 1975. The California Supreme Court gave unmarried couples "palimony" rights in 1976.

I witnessed these political and legal changes occurring while I was in transition from teenager to young adult. I also observed riots and violent political protests, as segments of society were no longer willing to accept "business as usual." I had empathy for the reasons underlying this social unrest, but could not and would not embrace violence as a method for change. I entered law school in 1969 and was determined to develop skills that I could use as an advocate for reform through lobbying, litigating, and public education. I decided to build on the changes that I saw occurring around me, but I wanted to push the envelope even further.

This book is a documentary of my role as an equal rights advocate, a defender of liberty, and a minister of justice over the last four decades.

It focuses on the issues and causes that have been near and dear to me. It is a personal account of my victories and defeats as I tried to help individuals who needed a strong advocate to defend against oppression or to advance personal freedom. In effect, this book shares a slice of history through the personal perspective of an agent of change. Through these memoirs, or tales from the trenches, I hope to pay tribute to the many men and women for whose cases and causes I have advocated.

My advocacy began with a narrow focus on gay rights, but soon I realized that the underlying principles I believed in were connected to a broader set of issues and to other segments of society. So my human rights agenda expanded. I found myself promoting personal privacy rights for all consenting adults regardless of sexual orientation. I sought to expand the definition of family and to promote respect for family diversity. I fought for equal rights for unmarried heterosexual couples in employment and housing. I championed the cause of singles' rights. The rights of seniors, people with disabilities, and teenagers also entered my sphere of concern.

By telling these stories, I hope to inspire would-be advocates to believe that one person can make a difference and to know that a few people acting together can create lasting change. This becomes possible with a passion for justice and a determination to persevere.

I also hope the various classes of people who have benefitted from these changes will have a better understanding of how they came about. History is best appreciated when we dig beneath the surface of events to consider the strategy and intent that made them happen.

Although my human rights activities have been broad-based, for the last ten years my focus has been directed primarily to obtaining equal rights for unmarried and single Americans. This population has not received the level of attention that has been given to other segments of society which have experienced systematic and unjust discrimination.

Gays and lesbians, women, racial and ethnic minorities, children, seniors, and people with disabilities, have been the deserving recipients of a growing amount of political attention and legal protection over the years. Unmarried Americans have, so far, only received crumbs from the human rights table.

It is my desire that the issue of marital status discrimination be made more of a priority and that unmarried individuals, couples, and families, be given more legal protections as employees, tenants, consumers, and taxpayers.

The United States is home to more than 100 million unmarried Americans. This book is dedicated to them, with the hope that it will not take forty more years of hard work by a new generation of advocates before they truly achieve equal rights under the law.

Chapter One

Birds of a Feather

Young gay law students
shake up the legal system

I arrived in Los Angeles near the end of January 1971, just in time to begin the spring semester at Loyola Law School. Although it was more than a 2,000-mile trek, my two traveling companions and I managed to cover that distance in about two days. The only time we stopped the car was to buy gas or for a restroom break.

It was fortunate that I was able to stay with a former Michigander who owned a small house on Mt. Washington, a somewhat secluded area that was only a few miles from downtown Los Angeles where the law school was located. Jerry LaBelle was happy to give a helping hand to me, telling me that it was a tradition for former Michigan folks to help people relocating to Southern California. Jerry said that someday I would probably do the same for someone else.

The house was perched on the edge of a cliff overlooking a canyon. My bedroom was resting on stilts anchored into the ground. Space was a little tight, so I was glad to see that my room had a bookcase headboard. It easily accommodated all of the thick lawbooks I used at school.

I was just settling in and getting comfortable with my new surroundings when I found out the hard way that Los Angeles, although beautiful and mostly sunny, had its downsides too.

At 6:01 a.m. on Tuesday, February 9, 1971, I was startled when the house began to shake. The fact that my room was on stilts probably amplified the feeling. As I opened my eyes, I began to see, and feel, my

law books tumbling onto the bed. I covered my head with my hands to protect myself. "What the hell is happening?" I wondered.

I looked outside through my bedroom window and saw flashes of light everywhere. There was no rain and no thunder, so what were these bursts of light? Power lines, of course. I ran to the other bedroom, repeatedly asking Jerry what was happening. I had no frame of reference for this. The idea that an earthquake could occur had never crossed my mind.

We later learned that the epicenter of this 6.6 quake was in the San Fernando Valley probably about 25 miles from Jerry's house. Needless to say, there was no school that day. The quake caused more than $500 million worth of property damage, which was a lot of money in those days. Some 65 people were killed.

Despite the possibility of future earthquakes, I was determined to graduate from Loyola Law School and to practice law in Los Angeles. I felt intuitively that I was destined to do great things in Southern California, a place that would become my new home.

For the next few months, my life was routine. I drove to school, went to classes, came home, and studied my law books. Day after day, it was the same scenario. Because I was new to Los Angeles, I did not have any friends here other than Jerry. Since Loyola was a commuter school, students did not hang around the school too much. Plus I felt a little awkward and socially isolated because I was gay. I was not able to identify any other gay or lesbian students at school.

Around May 1971, I was reading *The Advocate*, a gay newspaper. Stretched out on the living room sofa, I wondered if I would ever meet another gay law student. Wouldn't it be nice to make friends with someone who had something in common with me on a social and personal level, someone with whom I could really be myself?

The thought left my mind and I turned my eyes to the personals in the classified ad section of the paper. There were dozens of ads placed by gay men who were seeking lovers. That I did not need since I already had a lover who was still living in Michigan. But then I saw an ad that really caught my eye. A gay law student seeking a lover. There it was. Another gay law student. Forget the lover part of the ad, I thought. I decided to write to him to invite him to meet with me sometime, just for the possibility of making a new friend. I put Jerry's phone number in the letter and asked the student to contact me.

The call came about a week later. "Some guy named David is asking for you," Jerry told me. I took the phone and then David Rosenbaum and I talked, and talked, and talked. We soon became friends. Unfortunately, the friendship was interrupted when the semester ended in June. I had run out of money and needed to return to Michigan to work so that I could save up enough to return to Los Angeles. When September came around I was terribly disappointed since I still did not have enough money for tuition, rent, and living expenses in Los Angeles. So I stayed in Detroit and continued to work and save money.

I was finally able to return to Loyola in January 1972. Jerry let me move back into his home. But since he had moved about 25 miles away from downtown Los Angeles, the daily commute was not so pleasant. David and I reunited and saw each other on a social basis every two weeks or so. He went to a different law school.

I began to wonder how I could find another gay law student at my own school. I was not openly gay at school, nor was anyone else as far as I could tell. There was a lot of social pressure on people to keep their homosexual orientation secret, or at least hidden from the public.

After all, gays were not accepted by society. The churches considered us sinful. The psychiatric profession labeled us as mentally ill. And the law branded us as criminals. Consenting homosexual conduct, even between adults in private, was a felony in California, as it was in all but a few states.

Then came a glimmer of hope. I was reading notices posted by students on the school's bulletin board when I saw the word "gay" in a posting. The notice said that gay law students would meet at an address in Hollywood on the following Saturday at 7 p.m. At first I was excited about the prospect of meeting others like me. But then the fear factor set in. What if this is a trap? What if this is someone's private home and they know nothing about this ad? What if someone is just trying to "out" some homosexuals? I decided not to go.

But then, a week later, the notice was up on the bulletin board again. Except this time it was more reassuring. The place of the gathering was set for "Dude City"– a local gay bar. The notice instructed gay law students to meet in the music room of the bar at 7 p.m. on a specific day. I could do that. Meeting at a gay bar was not threatening.

I showed up and ordered a drink. I walked around the bar for a few minutes to kill time. When 7 p.m. arrived, I walked into the area designated

as the music room. No one was there. Then someone entered. I recognized him as someone from school. "Are you from Loyola?" I asked. Yes, he was a gay law student.

Apparently hearing our conversation from a distance, another man entered the music room. Then another. And another. Within five minutes there were six or seven of us there. Birds of a feather flock together. Finally, it had happened. We had a small flock of gay law students. Over the course of the next few weeks, our group slowly grew. There were about ten of us from several law schools in the area: Loyola, USC, UCLA, Southwestern, and Whittier.

Though socializing with fellow gay law students was fun, some of us wanted to get involved politically and legally. We wanted to work on cases by helping supportive lawyers challenge the system of oppression experienced by so many gay people. We wanted to use our writing and speaking skills to lodge political protests against the police and City Council.

Meeting at a gay bar was not conducive to serious discussions and strategic planning. So one of our group, Jerry Gordon, offered to hold the next meeting at his house. When the day of that meeting arrived, I was surprised to see Jerry's dad, Al Gordon, at the meeting. What was his father doing there?

It turned out that Al and his wife Lorraine had two children, both boys, and both gay. Jerry's brother had been arrested by an undercover vice officer a few years back and was immediately fired from his job as a teacher. This event prompted Al to go to law school and become a lawyer. At the age of 50 or so, Al quit his janitorial business and started practicing law. He advertised in some of the local gay papers and was developing a gay clientele. Many of his clients were men who, like his son, had been arrested, and some were threatened with loss of their jobs.

Al and I took a liking to each other. I was looking for political-legal projects involving gay rights. Al needed help and was delighted at the prospect of mentoring a protégé. We soon became friends.

Another member of our group, Rand Schrader, was affiliated with a new nonprofit community organization known as the Gay Community Services Center. It was housed in an old Victorian mansion on Wilshire Boulevard, just a few blocks away from Loyola Law School. Rand suggested that we hold our gay law student meetings at "The Center." We needed a regular place to meet and they had the space.

After a few more meetings, we decided to call our group the "Gay Law Students Association." Those of us at Loyola asked the dean to recognize us officially as a student group. He agreed. We then started to hold meetings of the Loyola Chapter of the Gay Law Students Association. We even applied for funding for our group – and the student body council approved it!

The larger group continued to meet at The Center. It was through the folks at The Center that I soon met attorney Steve Lachs. Steve was gay. He was the supervising public defender at the arraignment court that processed arrests from downtown, Hollywood, and several other large sections of Los Angeles. Hundreds of gay men were processed through that court each year. Although Steve was gay, people who worked at that court house were not aware of the fact. But he was open with us law students and that's all that mattered to us. Steve met weekly with us at The Center.

Marshall Jacobson, another student from Loyola, periodically showed up at our meetings. He and I would often meet at school and sometimes go out for coffee to discuss gay politics.

Marshall, who was the school's representative to the Law Student Division of the American Bar Association, was scheduled to graduate in June 1972. He wanted to groom me to be his replacement. What an opportunity! I would become involved with the ABA and could use that forum to press for changes in the legal system.

I joined the ABA and signed up as a member of the Law Student Division. Marshall pulled some strings and arranged for me to become designated as the alternate representative from Loyola. I started hanging around Marshall more often and we went together to some of the regional meetings of the Law Student Division.

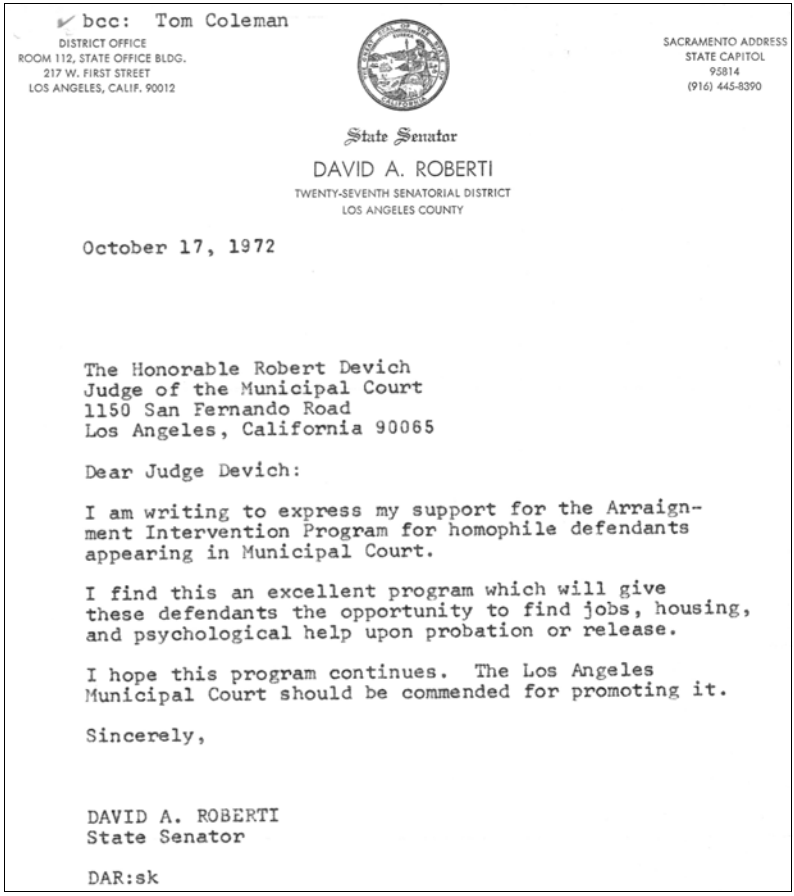
Another Loyola student, Rick Angel, expressed an interest in doing a research project with me that could help the gay community. We lined up a professor to sponsor our independent research and were assured of getting credit as long as we wrote a paper about the project.

What would the project be? We turned to Steve Lachs for suggestions. He offered to allow us to work as student interns with the public defender's office. We would interview gay men in custody at the arraignment court – guys who had been arrested by vice cops for solicitation or so-called "lewd conduct." Our real motive was to gather statistics to prove that these laws were enforced in a discriminatory manner against gay men. These statutes were not used to arrest and prosecute

heterosexuals.

But how could we get permission from the supervising judge at the arraignment court? Gathering statistics to challenge the legal system would not be the way to attract his support. There was another angle we could use – something nonthreatening that we could do to help defendants, which the court would approve (as we surreptitiously gathered data at the same time).

The Arraignment Intervention Project was launched. Rick and I would go to court several times a week – as members of the Gay Law Student Association – to provide gay defendants with information about services offered at The Center: housing, job counseling, group therapy sessions, etc. Steve Lachs introduced us to the supervising judge at the



bcc: Tom Coleman

DISTRICT OFFICE
ROOM 112, STATE OFFICE BLDG.
217 W. FIRST STREET
LOS ANGELES, CALIF. 90012

SACRAMENTO ADDRESS
STATE CAPITOL
95814
(916) 445-8390

State Senator

DAVID A. ROBERTI

TWENTY-SEVENTH SENATORIAL DISTRICT
LOS ANGELES COUNTY

October 17, 1972

The Honorable Robert Devich
Judge of the Municipal Court
1150 San Fernando Road
Los Angeles, California 90065

Dear Judge Devich:

I am writing to express my support for the Arraign-
ment Intervention Program for homophile defendants
appearing in Municipal Court.

I find this an excellent program which will give
these defendants the opportunity to find jobs, housing,
and psychological help upon probation or release.

I hope this program continues. The Los Angeles
Municipal Court should be commended for promoting it.

Sincerely,

DAVID A. ROBERTI
State Senator

DAR:sk

We received political support for the arraignment project.

arraignment court and explained the project to him. It sounded so bland that the judge couldn't say no. We followed up by getting state Senator David Roberti to write a letter to the judge praising him for allowing this project to proceed.

We were in. We had our first project. We would get academic credit. And most importantly, we would gather data to support our theory on discriminatory enforcement of the law. This could later be used by defense attorneys who could file a motion to dismiss based on discriminatory enforcement.

The summer of 1972 became even more interesting when I formally participated in my first meeting with the Ninth Circuit of the Law Student Division of the ABA. The Ninth Circuit was a regional section of the national student group, composed of representatives from all law schools in California, Nevada, Oregon, Washington, Alaska, and Hawaii. Each summer the Ninth Circuit held a major meeting at which students could introduce resolutions on various legal and political topics, debate them, and then vote on them. Resolutions which passed the Ninth Circuit would then move on to consideration by the full Law Student Division at its annual meeting in August.

Marshall Jacobson and I had several conversations to discuss what type of resolution I should introduce in the Ninth Circuit. We decided that, rather than start off with a gay rights proposal, I should broaden the issue and introduce a "Single Persons Bill of Rights." The proposal called on the ABA to support the enactment of laws that would prohibit marital status discrimination in employment, housing, and taxation.

The resolution was scheduled to be debated and voted on at a meeting on a Saturday. The night before, there would be a social event – a dinner and dance – for students and their wives or dates at the downtown Hilton hotel.

All week I had an internal debate with myself. Should I be discreet and keep the gay issue low key in order to not ruffle feathers prior to the vote on my resolution? Or should I participate fully in the social as well as the political events of this group?

I decided to be myself and to participate fully at the dinner/dance on Friday, even if it risked a defeat of the resolution on Saturday. I asked my friend David, the first gay law student I had ever met, to accompany me to the social event. He agreed.

We sat at one of the dinner tables with a group of other students. There had to be 100 or so people in the banquet room. As the dinner ended and the music started to play for the dancing segment, my heart started to pound. Did we have the nerve? How would people react? Could we really go through with it?

And then David and I got up and walked to the dance floor where dozens of other couples were dancing to a fast song. We started to dance. We did it. We demonstrated that we were full social participants in the Law Student Division. Heads turned. There were smiles and a few snickers. When the song ended, David and I sat down.

A short while later, a slow song was played. Male-female couples danced slowly, holding each other and enjoying the intimacy. I'm sure everyone was wondering – would David and I dare to slow dance with each other?

"We have come this far, David," I said. "Let's do it."

Apparently some of the hotel staff had spread the word, because when we started to dance this time, we noticed that a dozen staff members were standing by the door to the banquet room gawking at us.

The next day I attended the meeting of the group to consider resolutions. Were the students upset with me? Would they retaliate by voting down my resolution on singles' rights?

To my surprise, my resolution passed by a wide margin in favor. This was proof that younger members of the legal profession were ready to accept gay people as full participants in life. I had made the right decision to test the waters. I gained a lot more self respect that weekend.

The summer of 1972 was certainly shaping up. The Gay Law Student Association had been formed and the Loyola Chapter was officially approved. The Arraignment Intervention Project was operating at the courthouse and we were confidentially gathering our data to prove discriminatory enforcement of the law. I was now the representative of Loyola Law School to the American Bar Association. My "Single Person's Bill of Rights" resolution had gained preliminary approval. And most amazing of all, I was an openly gay person who was fully participating in social events.

I knew that the annual meeting of the American Bar Association would be held in San Francisco at the end of August. The entire Law Student Division would be meeting there too.

I decided to have the Gay Law Student Association sponsor a forum on gay rights. I asked Walter Barnett, a professor from Hastings Law School in San Francisco, to be the keynote speaker. I had heard that Professor Barnett was writing a book, *Sexual Freedom and the Constitution*.

After arranging for a meeting room and sending out notices to law schools throughout the nation, the stage was set. The ABA was about to have its first educational forum on gay rights. We were making history. The ABA's silence on gay issues would be broken.

Several dozen people attended this educational event. Professor Barnett spoke eloquently about constitutional protections that could be raised in challenges to criminal laws targeting consenting adults. I spoke about our efforts to organize gay law students and urged the audience to support the "Single Persons Bill of Rights" which would be considered by the Law Student Division the next day.

Bill Kelley was one of the people attending the seminar. Although not then a lawyer or a law student, Bill had a keen interest in and knowledge of the law. He was involved in gay rights in Chicago. He was also a member of a group known as the National Committee for Sexual Civil Liberties – an association of twenty or so professionals and scholars interested in sexual law reform. The members of this elite group included lawyers, historians, law professors, sociologists, psychologists, and theologians.

Apparently Bill was impressed with me. He wrote a letter to Dr. Arthur C. Warner, who, along with Professor Walter Barnett, co-chaired the National Committee. Bill suggested that Arthur should consider making me a member of the group.

Soon after returning to Los Angeles, I discovered the police had raided a gay bar in August and had arrested 22 gay men for lewd conduct. The bar, known as the Black Pipe, was not open to the public on the day of the arrests. It was sponsoring a fundraising event for an organization that helped gay men if they were arrested by undercover vice cops. The group was known as HELP – Homophile Effort for Legal Protection. It would help arrested men get bail and find an attorney.

This time HELP needed help. So Barry Copilow and I decided to get involved. Barry was a gay law student from the University of Southern California. We decided to align ourselves with Al Gordon, since he was the local attorney most interested in challenging the legal system and was

a radical activist.

On our own time, Barry and I had been discussing various legal challenges that could be made to section 647(a) of the California Penal Code – a statute which made it a crime to solicit or engage in lewd and dissolute conduct. We felt that the solicitation portion of the statute could be challenged as a violation of the First Amendment. We would argue that private sexual conduct between consenting adults was protected by the right of privacy. If private sexual conduct could not be a crime, then freedom of speech should protect the right of one adult to ask another adult to engage in constitutionally protected conduct.

The portion of the statute prohibiting "lewd and dissolute" conduct was also subject to challenge. We felt that the definition of the crime was unconstitutionally vague and subject to attack on that basis. In fact, a judge in Washington D.C. had written a lengthy decision invalidating a similar statute in that jurisdiction. We could make his decision the focal point of our brief.

We decided to work with Al Gordon because he was not like the other local defense attorneys. Although Al was not gay, he had fire in his belly and wanted to stop others from being oppressed as his son had been. There were several local gay attorneys, but they mostly made money on these arrests by participating in a plea bargain machine. They advised their clients not to go to trial and suggested they plead guilty to a reduced charge that was not a sex offense – something like disturbing the peace or trespassing. Fearful of publicity and possible conviction at trial of a crime that would require them to register as a sex offender, these clients would almost always plea-bargain. And their attorneys would make a few thousand dollars a case for a few hours of work at the most. Many of the plea bargains were appropriate, considering the fear of publicity and possible loss of a job, but the problem was that none of the attorneys was offering clients the option to challenge the constitutional of this law.

So Barry and I talked to Al about taking a different approach with the "Black Pipe 22". We would get local attorneys to represent these clients without a fee. We would have them work together to challenge the law collectively as a group. We even suggested the procedural method by which the law could be challenged: file what is called a demurrer.

When a defendant first appears in court for arraignment, the judge asks the accused to enter a plea. Most people are not aware of the fact that, at least in California, there are options other than pleading guilty or not

guilty. A third plea is to say "I demur." The written plea is called a demurrer.

A demurrer is a way of saying, "So what, even if everything stated in the complaint is true, it does not amount to a crime." In this case, under our theory, the complaint would not state a crime because section 647(a) was unconstitutional. A court does not have jurisdiction to enforce an unconstitutional statute. Filing a demurrer to a charge based on section 647(a) would require the court to read briefs and hear arguments and then decide if the statute was unconstitutional. If so, then the cases would have to be dismissed. If the argument was rejected, we could appeal the decision to a higher court.

Barry, Al and I convinced several other attorneys to participate in this group challenge to the law. Barry and I started to work on the legal brief.

By the time the case was scheduled for arraignment, one of the defendants had broken away from the group and had plea bargained. He was a deputy attorney general and was afraid of losing his job if convicted. He pleaded guilty to a reduced charge of trespassing and was placed on probation. So now we had the "Black Pipe 21."

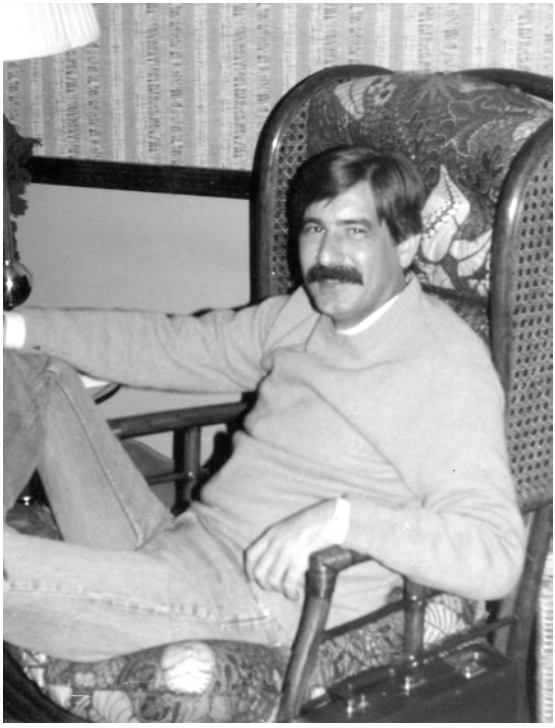
I was so proud when I witnessed the arraignment proceedings. A dozen lawyers represented the 21 defendants. Barry and I could not sit up there with the lawyers since we were still law students, so we sat in the first row on the public side of the bar. But we were calling the shots and coaching the lawyers. From time to time we would catch the attention of Al Gordon and whisper strategic suggestions in his ear.

The judge was amazed. This was the first time in local history that gay defendants fought back as a group. This was the first time that a demurrer had been filed to challenge the constitutionality of section 647(a). History was in the making.

The case dragged on for several months. Then Burt Pines was elected as the city attorney and ultra conservative Roger Arnebergh left office. Pines then had to make a decision about the "Black Pipe 21" case. He took a close look at the facts and decided to dismiss all the charges. Our constitutional challenge would have to wait for another case at a later time.

In October 1972, I was contacted by Arthur Warner. He wanted the members of his National Committee for Sexual Civil Liberties to meet me.

I told him that I would be attending a wedding in Detroit in November. Arthur scheduled a meeting in Buffalo, New York, convening it the day after the wedding. He offered to pay my airfare from Detroit to Buffalo.



Craig W. Patton

Craig Patton was one of the committee members I met in Buffalo. He was a newly admitted attorney who lived in Columbus, Ohio. The story of how he came to join the National Committee both fascinated and scared me. Two years earlier, Craig and his lover had separated. This was at a time that Craig had passed the bar exam but had not yet been licensed to practice law by the Ohio Supreme Court. Licensing requires a two-step process. Step one is passing the bar exam. Step two requires that the local bar association certify that the law school graduate has good moral character.

The lover (I'll call him John) was so upset with Craig that he contacted the Columbus Bar Association and told them that Craig was a homosexual. This raised a red flag for the lawyers group since homosexual conduct was considered a felony in Ohio, as it was in most other states. Ohio had statutes on the books that made it a crime to engage in oral or anal sex, even if the conduct was in private between consenting adults.

The local bar association decided to certify that Craig had good moral character anyway, but it also informed the Ohio Supreme Court about the accusation that Craig was a homosexual. The Supreme Court did not accept the moral character certification. Instead, it took the unusual step of convening a 25-member statewide committee on character and fitness – an agency which did not previously exist.

The Committee on Character and Fitness decided to hold hearings to determine whether Craig had good moral character. Craig reached out for help and somehow found his way to Arthur Warner and the National Committee for Sexual Civil Liberties. Arthur looked closely at Ohio's criminal laws and discovered that mutual masturbation was not a crime. So if Craig and his former lover both testified that they did not engage in oral and anal sex, but only kissing and mutual masturbation, Craig would not be a criminal. The Character and Fitness Committee would have no grounds to conclude that Craig lacked good moral character.

Fortunately for Craig, his ex-lover John was sorry for what he had done. He was willing to cooperate with Craig's lawyers. John's testimony would mirror Craig's, if the committee were to get into these intimate sexual details. On the day of the hearing, Craig was called in to testify before this 25-member committee. John was excluded from the room in order to prevent him from hearing Craig's testimony. Craig was asked if he were a homosexual. He replied that he was. He was then asked a series of questions about his sexual relationship with John. "And where was your mouth when your partner ejaculated?" one member asked. Craig stuck to the script. They only engaged in mutual masturbation. No oral sex. No anal sex.

After further questioning, Craig was excluded from the hearing room and John was called in. One of Craig's lawyers had slipped out of the room just prior to Craig finishing his testimony and the lawyer filled John in on the details of what had been asked. John's testimony closely matched that of Craig. No oral sex. No anal sex. Just masturbation.

Whether members of the committee believed them or not, there was no evidence in the record to support a conclusion that Craig had committed sexual crimes. The chairman of the committee adjourned the meeting and advised Craig's lawyers that a written decision would be issued in the near future.

Craig anxiously awaited the decision for several weeks. Finally it arrived in the mail. The committee had voted 12 to 11, with two abstentions, to certify that Craig had good moral character. Craig was soon admitted to the bar in Ohio. He was forever grateful to Arthur Warner and as a result Craig became a member of the National Committee for Sexual Civil Liberties.

Hearing Craig's story sent shivers down my spine. Oral and anal sex were felonies in California. I was not only openly gay but was

becoming a thorn in the side of the police and anti-gay public officials. I wondered whether I would have to go through an ordeal similar to what Craig had experienced.

I approached the dean of Loyola Law School. I asked for his opinion. Dean Leo O'Brien was very supportive and understanding, but he had no idea of what the Committee of Bar Examiners would do if they discovered that I was gay. I thought long and hard about Craig's experience and my own situation. I was in uncharted waters. The Committee of Bar Examiners had never before dealt with openly gay law students. We were a new breed of students. I finally decided that I would continue with my activism for gay rights and let the chips fall where they might.

In February 1973, I met up with Craig, Arthur, and other members of the National Committee at a meeting in Cleveland, Ohio. The group had decided to meet there during the mid-year meeting of the American Bar Association. We would lobby various committees of the ABA for passage of a resolution calling for the repeal of all state criminal laws against private sexual behavior between consenting adults. We made progress. Two committees supported the resolution. I also presented my resolution on gays in the legal profession to a committee of the national Law Student Division and got the committee to support it.

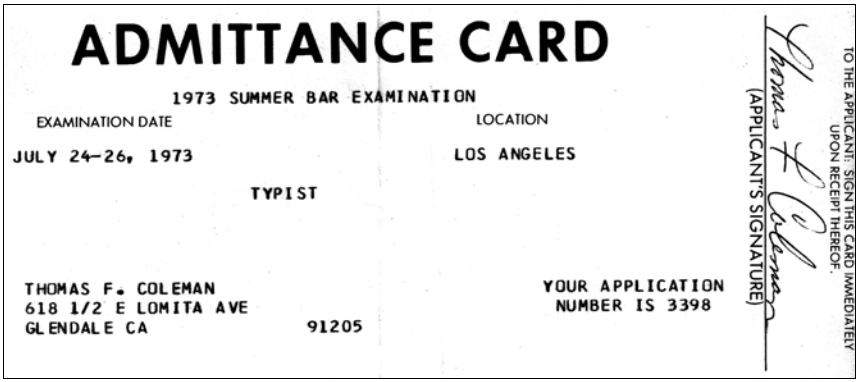
I continued my gay rights activities in Los Angeles throughout the rest of 1973. Some of my fellow activists and I would show up at City Council meetings and at the Police Commission to demand an end to police harassment. City Hall was not accustomed to dealing with openly gay political activists.

I took the bar exam in July 1973. The results would not be released until November. I did not sit idle while I waited to find out if I had passed. I continued my political activities. I also continued to work with the National Committee in our quest to get the policy-making body of the American Bar Association to go on record supporting a repeal of the so-called "sodomy" laws which criminalized private conduct of consenting adults.

Members of our group went to Washington for the ABA's annual meeting. I also attended the annual meeting of the Law Student Division. Although I was affiliated with a few gay rights lawyers now, I was still the only openly gay representative to the Law Student Division. There were a few other gay students representing their schools, but none of them was

open about it. They would quietly come up to me to thank me for what I was doing, but they said they could not afford to be open themselves.

We accomplished our mission in Washington. When we left D.C. we had convinced the House of Delegates of the ABA to call on the states to repeal the sodomy laws insofar as they criminalized private conduct of



ADMITTANCE CARD

1973 SUMMER BAR EXAMINATION

EXAMINATION DATE: JULY 24-26, 1973

LOCATION: LOS ANGELES

TYPIST

THOMAS F. COLEMAN
618 1/2 E LOMITA AVE
GLENDALE CA 91205

YOUR APPLICATION NUMBER IS 3398

(APPLICANT'S SIGNATURE) Thomas F. Coleman

TO THE APPLICANT: SIGN THIS CARD IMMEDIATELY UPON RECEIPT THEREOF.

consenting adults. I was also able to get the national student body to approve a resolution calling for an end to investigation, denial of admission, and discipline against lawyers or law students because of their sexual orientation or private sexual behavior.

I had graduated from Loyola with honors. I had taken the bar exam. All that was left was to learn the results. Two days before Thanksgiving, when I learned that the results were released, I rushed down to the offices of the legal newspaper. The names of students who passed the exam were posted on the front window. My heart raced as I worked my way to the front of the line to look for my name. There it was! I passed! I was going to be a lawyer.

Hundreds of successful candidates were sworn in at a ceremony in downtown Los Angeles in December 1973. I had my license to practice law. Now I would no longer have to sit on the audience side of the bar in a courtroom, whispering my advice to lawyers on the other side of the bar. I would be one of those lawyers.

I would dedicate my legal practice and political instincts to ending police harassment, securing the right of privacy, defending freedom of speech, and gaining legal protections prohibiting discrimination on the basis of sexual orientation and marital status.

Chapter Two

From Defensive to Offensive

Ending judicial bias and police harassment are not easy tasks

The statistics I had gathered with fellow law student Rick Angel in the spring of 1972 at the arraignment court prompted me to do an even larger study with my law student friend Barry Copilow later that year. The preliminary data showed a definite pattern of discriminatory enforcement of the lewd conduct law by the Los Angeles Police Department.

The legal paper I wrote for academic credit in 1972 was soon transformed into a legal brief arguing that discriminatory enforcement of the law was grounds to dismiss a criminal complaint. There were two requirements in order for a judge to grant such a motion. First, there had to be a definite pattern of selective enforcement of the law against a specific and identifiable minority. Second, the pattern of discrimination had to be intentional.

Barry and I set out to broaden the data to include an analysis of a larger number of arrests under section 647(a). We went to the court clerk's office in downtown Los Angeles and started pulling the files on all of the 647(a) cases we could find. Fortunately, at the time we did the study, police reports were part of the files available to the public.

We decided to focus on the months of June through September of 1972. We examined reports in 663 cases – 118 were unavailable. We took notes of as many details as possible: date and time of offense, arresting officer, location of offense, sex of defendant, whether the conduct was

heterosexual or homosexual, etc. We began to notice that the descriptions of the crimes given by the arresting officers were almost identical. The same language was used over and over. It was almost as though they were copying the description of the defendant's conduct from a boilerplate form.

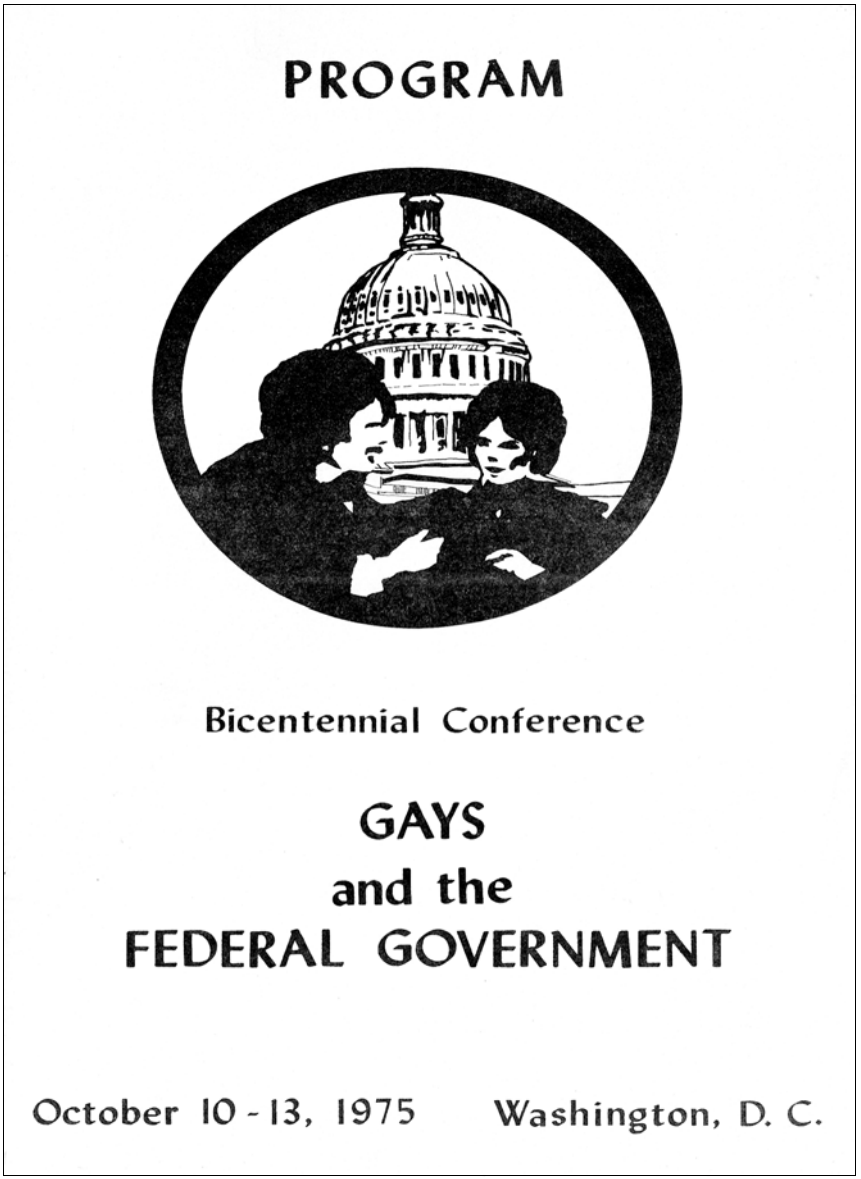
The pattern also showed that these arrests were generated by the police, not the result of citizen complaints. Only five of the 663 cases were based on complaints from private citizens. The lewd conduct arrests resulted from the efforts of plainclothes vice officers who went to places frequented by gay men. The Police Department had a budget of more than $2 million for the vice squad.

The undercover cops would try to blend into a scene and would give indications to the men that a sexual advance was welcomed. The men would do something sexual out of the view or hearing of ordinary citizens and only in view of the vice officer. They would touch themselves in a sexual way or make a verbal invitation to the officer. Then they were arrested.

We definitely found selective enforcement. Although society is probably 95 percent heterosexual, only 17 of the 663 cases were heterosexual, and those involved prostitutes. The next question was whether the police were intentionally targeting homosexual men, or whether the slanted statistics were happenstance. Barry and I gathered evidence to show that the Police Department was intentionally biased against gay men. We found documents in which a police spokesman had referred to the vice squad as the "fruit detail." We also found written testimony submitted by the Police Department to a legislative hearing which stated that homosexuals were prone to "the seduction and molestation of adolescents and children." In fact, however, studies showed the overwhelming majority of child molestation cases were committed by heterosexual men.

We used the words of Ed Davis, the chief of police, to help bolster our case of intentional bias by the police. Davis had written a letter to a member of the City Council in 1971 in which Davis, referring to homosexuals, stated: "It's one thing to be a leper and it's another thing to be spreading the disease." Davis also had lobbied the Legislature, opposing a bill to decriminalize private sexual conduct between consenting adults. In his letter opposing this measure, Davis stated that "adult homosexuals attempt to seduce young boys" and suggested that passing a consenting adult bill would be tantamount to endorsing child molestation.

Barry and I issued the "Coleman and Copilow Report" at the end of 1972, making it available to defense attorneys who wanted to use it in a motion to dismiss. The report showed selective enforcement and a biased



Coleman was a panelist at the first major gay federal conference.

intent on the part of the Police Department. We also made the legal memo available so the attorneys would not have to reinvent the wheel. The memo had all of the judicial precedents and other legal authorities needed to support a motion to dismiss.

The "Coleman and Copilow Report" gained widespread attention in 1974 when the *Los Angeles Times* discussed it at some length in a story titled "Gays Fight Discrimination, Uncertain Laws." The story also focused on the "Black Pipe 21" case and mentioned that the gay community had found a new political friend when Burt Pines became the city attorney in 1973.

When Barry Copilow and I were sworn in as attorneys in December 1973, we each decided to start our own law practice. Attorney Al Gordon would have two more colleagues to join the fight against police harassment.

I opened my law office in 1974 in a posh and exquisitely decorated suite for lawyers in the Ahmanson Building on Wilshire Boulevard. I had toyed with the idea of starting a storefront office in a poor part of town, but when I got the deal of a lifetime at this suite of offices, I could not resist. The landlord was trying to fill up the space so he agreed to charge me only $300 per month to start. I took the deal, deciding that a newly admitted attorney would inspire more client confidence in a luxury office building than in a space on rundown Hollywood Boulevard. I soon convinced Al Gordon to move into an office down the hall from me. Our proximity to each other gave us more opportunities to dream up schemes to challenge the police.

These challenges occurred on both the legal and the political front. We decided to move beyond the defensive posture of merely representing defendants who had been arrested, and instead go on the offense.

In May 1974, Al and I filed a taxpayers' suit against the chief of police, arguing that the lewd conduct law was unconstitutional and therefore any expenditure of tax funds to enforce the law was illegal. We asked the court to issue an injunction to stop the police from enforcing the law since it was unconstitutionally vague and also violated freedom of speech. We knew that if we lost the case, we would have the right to appeal to the California Court of Appeal – a forum that was not available as a matter of right to defendants who were convicted in Municipal Court. Getting a case into the Court of Appeal would put us one step closer to getting the law reviewed by the California Supreme Court.

That same month, I appeared with several other gay rights activists

before the Los Angeles City Council. We asked the council to slash the budget for the vice squad by $2 million. Get them where it hurts, we thought. Hit them in the pocketbook. The next day, the *Los Angeles Times* reported: "Attorney Thomas F. Coleman, a self-acknowledged member of the gay community, charged that Los Angeles Police Chief Edward M. Davis was using 150 to 200 officers to 'incite and harass' homosexual men and women." The story explained that we were challenging a proposed increase in the police budget.

The local newspaper for the legal community also carried a story on our visit to the City Council. That story explained that I had asked the council "to cut the police department's $160 million budget to eliminate the expenditure of monies 'for the sole purpose of generating arrests, and not preventing crime'." No doubt, Ed Davis must have been furious. He had been used to getting his way without sophisticated opposition from the gay community. Times had changed. We were putting Davis on the defensive.

Al and I decided we needed to expand our outreach beyond judges and elected officials. We knew we had a major educational challenge in terms of shifting the attitudes of fellow lawyers. So we arranged to speak on the "Problems and Rights of Gay Persons" at the Los Angeles County Bar Association. No one had ever spoken to that group about gay people.

The forum was small – only about 25 lawyers attended – but the impact was large. One of the people in attendance was Wilbur F. Littlefield, one of the highest ranking lawyers in the Los Angeles County public defender's office. He invited us to speak at two public defender seminars. This would help us put more pressure on the legal system. Imagine having dozens of public defenders whom we could educate about the legal issues involved in challenging section 647(a).

Another opportunity to enlist more comrades-in-arms happened in 1974 when People's College of Law opened its doors in Los Angeles. The school was established by the National Lawyers Guild – an association of progressive, liberal attorneys which had fought for the rights of women and racial minorities.

Several openly gay men and women enrolled in the school. One of them was Ron Grayson, an African American man whom I first met when he was hired by me to install wallpaper in my first law office. I became close with Ron and when I saw how passionate he was for civil rights, including gay rights, I encouraged him to attend law school. Ron did enroll in law school and I was named to the college's advisory board as a

representative of the gay community.

Once my name spread throughout the gay community as an intelligent attorney and a passionate advocate for gay rights, the number of clients calling my office increased. I soon had a caseload of section 647(a) cases in Los Angeles, Long Beach, Orange County, and even up in Santa Barbara. Although many of the clients were afraid of publicity and therefore wanted to plea bargain rather than go to trial or challenge the law, there was an increasing number of them who did allow me to challenge the law as being unconstitutional.

My legal briefs on the subject began to circulate to more defense attorneys who also filed constitutional challenges to section 647(a).

But the issue of police harassment was not just based on an unconstitutional statute; the underlying problem was the prejudice and anti-gay bias of Ed Davis, our chief of police. If left unchecked and unchallenged, his attitudes filtered down to the officer on the street and fanned out to the entire political establishment in Los Angeles. Davis was so powerful that there were very few lawyers, and even fewer politicians, who were willing to cross his path. But I was determined to be a thorn in his side and to expose his bigotry whenever possible.

I took advantage of a few opportunities to do so in 1975. Looking for some leverage, I decided to shift my focus to the Los Angeles Police Commission. Although the Police Department is headed by the chief of police, the chief reports to the Police Commission. The Police Department enforces the law, but the Police Commission establishes policy for the department. It was time for the Police Commission to assert its authority over Davis and to rein him in – gag him if necessary.

In April 1975, I went to a meeting of the Police Commission to complain about Davis. I focused on statements made by Davis on a local television show. Davis had said that homosexuality is a felony. It is not. Homosexuality is a status. Homosexual conduct may or may not be a crime depending on the circumstances.

Davis told the television show host that he would not allow homosexuals to be police officers because they are criminals – another exaggeration and distortion. He also said that the city attorney should not allow homosexuals to be prosecutors because they would be biased and could not objectively prosecute homosexual defendants. I took exception to that statement too. Heterosexual prosecutors prosecute heterosexual defendants every day. Why do they not have a conflict of interest?

The Police Commission was reminded of its supervisory authority over Davis. "The chief of police should not make legally incorrect statements," I said. "It is improper to use his official position like this. He has prejudiced the Police Department against gays."

My statements were reported the next day in the *Los Angeles Daily Journal*, the local paper serving the legal community. The story apparently caused one reader to contact the editor in anger since the paper soon ran a story titled "At Least Two Thomas Colemans Are L.A. Lawyers."

The story, which ran on the front page of the paper, explained that I, Thomas Frank Coleman, was not the same person as Thomas Henry Coleman, a member of a reputable law firm in the city. The story ended by saying: "William Shakespeare said, 'A rose by any other name would smell as sweet.' But William Shakespeare was not an editor in today's world, dealing with the rights of homosexuals in a heterosexual world."

I contacted the other attorney and told him that I would use my middle initial when I made public appearances and spoke to the media. He still was not happy with the situation, but what could he do?

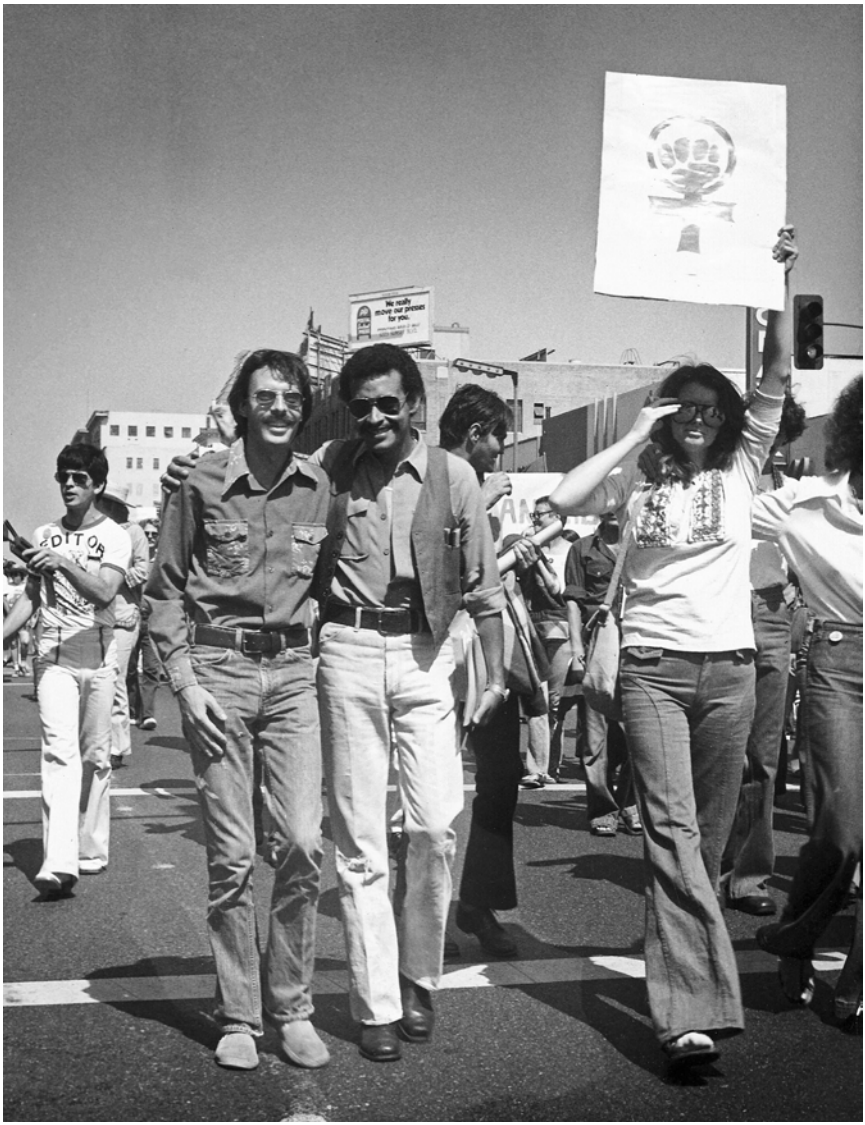
During the summer of 1975, Al Gordon and I were the supervising attorneys for the Gay Rights Summer Project of the National Lawyers Guild. Al and I knew that if the gay community were going to make headway in the courts and with the law, more lawyers would have to be trained in the field of gay rights. Perhaps the best place to start the process would be for us to become mentors who would teach, train, and inspire law students who were interested in the cause.

The National Lawyers Guild is an association of progressive attorneys with a history of fighting for economic justice and civil rights for people of color, women, workers, and immigrants. The Guild began to explore the issue of gay rights for the first time in 1974. At its annual convention in Minneapolis that year, a resolution supporting the gay movement was adopted by acclamation.

As an extension of that resolution, the Guild decided to sponsor a Gay Rights Summer Project for law students during the summer of 1975. But there was a problem. The association could not find any of its lawyer members to supervise the students. So they turned to Al and me for help.

Four students were selected to work on the project, which would do its work in Los Angeles. Marilyn Hedges was a student at Hastings College of the Law in San Francisco. Darryl Kitagawa lived in Los

Angeles and would be enrolling at People's College of Law in the fall of 1975. John Sanchez was a student at the University of California in Berkeley. Claudio Frias attended Rutgers Law School in Newark, New Jersey.



Tom Coleman and Claudio Frias at a 1975 protest in Hollywood

The students worked on a variety of challenging assignments. One student focused on the Work Furlough Program operated by the sheriff's department, a program that allowed misdemeanor defendants to go to their jobs during the day and go back to jail at night. This helped many people to keep their jobs even though they had some jail time to serve. The problem was that the sheriff would not allow gay defendants to participate. So the student developed legal arguments and garnered support from community leaders to prod the sheriff into removing that restriction. Another student wrote a paper on the legal issues involved in artificial insemination of lesbians as a way for them to become parents. This was a touchy issue and one in which the law was not clear or settled.

A third student worked on something more academic but nonetheless crucial to the advancement of gay rights law. It was called the Certification for Publication Project. In California, when a panel of appellate judges decides a case, the panel can certify its opinion "for publication" or certify it "not for publication." Cases which are published create binding precedents. Cases which are not published have no precedential value and may not even be mentioned by attorneys in future litigation. We had more than a hunch that decisions which were helpful to the gay community were being certified "not for publication" while those which were harmful were being certified "for publication." We wanted to expose this form of judicial bias, and with the help of a law student who would search for the unpublished cases, we could expose the unfairness of how these judges were stacking the deck against us.

The fourth student looked into bias within the gay community itself. Some gay bars had been engaging in racial and gender bias in their admission policies. They did not want too many people of color or too many women in these mostly white gay male establishments. This student researched ways in which victims of discrimination and leaders in the gay community could put legal pressure on the bar owners to stop this pattern of discrimination.

By the end of the summer, and with supervision and encouragement by Al and me, the students completed the Summer Project. We set the stage for future summer projects sponsored by the National Lawyers Guild and paved the way for other groups, such as the American Civil Liberties Union, to offer summer internships to law students who were interested in developing practical skills in the area of gay rights.

From Defensive to Offensive

At the end of the summer of 1975, I learned the hard way that while anti-gay police were a major problem for the gay community, homophobic judges were a problem too. One day I appeared with a client in the arraignment court. It was supposed to be a garden variety plea bargain. My client entered a guilty plea to trespass. In exchange for his plea, the prosecutor agreed to dismiss the lewd conduct charge.

There we were in open court, with about 50 defendants and a dozen attorneys waiting their turn. Commissioner Harold Crowder looked down from the bench and stated he was placing my client on summary probation for two years. OK. That was standard procedure. But Crowder then stated he was imposing the following conditions of probation on my client: "(1) do not publicly associate with known homosexuals; and (2) stay out of places and areas where homosexuals congregate."

I exploded. "Your Honor, I am a known homosexual," I shouted. "I object to these conditions."

"Your objection is noted for the record," Crowder stated.

I took my client by the arm and stated quite loudly: "Come with me in violation of your probation." We walked out of the courtroom and went down the hall to the chambers of the supervising judge. I told his clerk that I wanted to see the judge and I wanted to see him right now. I was furious.

Judge Eric Younger was in his late 30s. Although he was probably a Republican like his father Evelle, who was the attorney general of California, Eric was a new breed of judge. He was moderate in temperament and had a reputation for being fair in his decisions.

I had to wait for about 20 minutes, which was OK since it gave me a little time to cool down. My client waited outside with the clerk as I was invited into the judge's chambers.

I explained to him what had happened and insisted that things had to change. These conditions of probation are not only unfair to the defendants, they are downright insulting to gay defense attorneys, I explained. "I want you to issue an order to inform the court commissioners not to impose these conditions of probation anymore."

Younger agreed. It was time for a change. He advised me that he would send a memo to the commissioners the next day. He kept his word and issued a memo on August 29, 1975.

Things went smoothly for a while. Then Younger was transferred

and a new supervising judge took over the arraignment courts. Judge Jack Tso was now in charge.

One day I appeared in Tso's courtroom with my client, Ed Womble, who was charged with lewd conduct. I had worked out a plea bargain with the deputy city attorney assigned to that courtroom. Womble agreed to plead guilty to "trespassing" and would be placed on two years summary probation.

Tso accepted the plea and imposed sentence, which included a fine and probation. Tso then picked up an old rubber stamp from the clerk's desk, put it on an inkpad, and then stamped the imprint on the docket sheet. He then started to read from the form.

"You are placed on two years' summary probation, which will include the following terms and conditions: (1) do not publicly associate with known homosexuals; and (2) stay out of places and areas where homosexuals congregate," Tso said. My mouth dropped.

I had been through this before. I thought this problem was handled. I politely asked the judge if the city attorney and I could approach the bench. "Come forward," Tso replied. When I got to the bench, I informed Tso that I was objecting to these conditions of probation. "I am a known homosexual," I advised him. "Under these terms, my client could not even go to my office or my home."

"Maybe he shouldn't go to your office or home," Tso shot back. "Your objection is noted for the record," he added.

I was angry. I felt humiliated and demeaned. My client was surprised. We left the courtroom and went out into the hall to discuss what to do.

I told my client I would challenge these conditions of probation in a higher court and I would not charge him any fees for this. But it would have to wait awhile until I could find time to do it. I was extremely busy, not only with fee-paying clients but also with more than a dozen "pro bono" projects. I added Tso to the bottom of my list of projects, knowing that one day it would reach its way to the top and I would see to it that justice was done.

That day arrived some 18 months later. It was going to be *Ed Womble v. Jack Tso* and I was going to make Tso eat crow.

By this time, I had a law partner. Steven T. Kelber mostly did the

civil and business law for our firm. I handled the criminal and constitutional cases. I told Steve that I had a strategy and asked if he would cooperate with me in a payback to Judge Tso. He agreed.

I prepared a lawsuit to file in Superior Court, one level higher than the Municipal Court where Tso presided. Steve was named as the attorney of record. I was going to be an "observer" so to speak, even though I was really calling the shots on this one.

Steve filed a petition for a writ of habeas corpus, which we filed after I had alerted a reporter for the *Los Angeles Times* about what Tso had done and how we were going to expose his bigotry. The petition was filed on Thursday, October 6, 1977. The next morning, I picked up my newspaper only to find a front page story about the lawsuit challenging Judge Tso's unconstitutional conditions of probation.

That same morning, Steve received a phone call from the county counsel's office – the law office that represented judges and other county officials when they had legal problems. The county attorney wanted Steve to come to Judge Tso's courtroom that afternoon because Tso wanted to eliminate those conditions of probation. I asked Steve to set it up for Monday since that would give us time to alert the media to the judicial "crow-eating" event that would occur. It was all set. Steve and the client would be there on Monday morning at 9 a.m.

I went into action, prepared a press release and faxed it to several media outlets. This was going to be interesting. I would be there, but only as an observer.

Monday morning arrived and when we got to Tso's courtroom we saw reporters from three newspapers, two radio stations, and even some television stations. I sat up front with the lawyers who were waiting for their cases to be called. When Tso entered the courtroom, he called the case of *People v. Womble*. Tso looked surprised when I did not budge. It was Steve who went to the counsel table.

"Steven T. Kelber appearing for the defendant, Your Honor," Steve declared. Tso fumbled a bit with some paperwork and then asked Steve: "Counsel, do you have a motion to make?"

Steve turned and looked at me for a cue. I shook my head back and forth to indicate "no." Steve looked back at the judge and replied: "No Your Honor, I have no motion. It was my understanding that you requested our presence in court because you wanted to do something."

Tso was visibly upset. He fumbled with more papers. Then he finally ate the crow. "On the court's own motion, the following terms and conditions of probation are lifted," Tso said. "Condition one and condition two are removed, the other conditions remain."

Steve thanked the judge and we both got up to leave. "Wait just a minute, Mr. Coleman," Tso ordered. "Come forward."

Tso then explained that he thought it was wrong for me to have waited 18 months to object to these conditions of probation. "It could have been done in a more timely manner," Tso added.

Now it was my turn to speak. I reminded Tso that I had approached the bench and quietly asked him not to impose those conditions when Womble was first sentenced. I also reminded him of his insulting remarks to me that maybe my client should not be allowed to go to my home or office. Tso said that he did not recall any of this. I assured him it had in fact happened just as I had described it.

Tso then asked why it had taken me so long to file the lawsuit challenging the conditions. That was my opening to lecture the court and educate the media. "I had 25 injustices on my list of things to correct," I explained. "When your unjust actions came to the top of the list, I filed the lawsuit." I then started to name some of the other injustices on the list. He stopped me midway and told me I could leave. "That is all, Mr. Coleman, you are free to leave."

The point was made. My honor was restored. Womble regained a bit of his dignity. And Judge Tso was put in his place. Thanks to the media, other judges were warned that it was no longer "business as usual" in terms of mistreating gay defendants and gay defense attorneys.

Unfortunately, judges in some outlying courts apparently did not get the word or were too set in their ways to change. It was not until 1982 that I was able to obtain a published appellate decision declaring these homophobic conditions of probation to be invalid. A three-judge panel, in *People v. Rylaarsdam*, reversed a judge in Pasadena who had imposed such conditions on a 647(a) defendant. Finally, a silver bullet had killed this judicially-created monster.

But it was still business as usual for the vice cops and the enforcement of section 647(a). More than 2,000 men were arrested each year in Los Angeles alone. Add Long Beach and Ventura and Santa Barbara and dozens of other cities throughout the state and we are probably

talking about 8,000 to 10,000 arrests per year in California. All for consenting adult behavior.

Police Chief Ed Davis was not content with using the lewd conduct law to harass gay men. He would use any available opportunity to use the troops to round up and arrest homosexuals. Such an opportunity arose on April 10, 1976. The Leather Fraternity, an association of gay men who liked to wear leather clothing, held a "slave auction" charity fundraiser that night at a bathhouse known as the Mark IV in Hollywood. Proceeds would go to local nonprofit organizations, such as the Gay Community Services Center.

Tickets were sold "through the grapevine" and the location of the event was not publicized. Only ticket holders were supposed to know that it would be at the Mark IV. Attendance was limited to 250 men. Some signed up to be "slaves," which meant they would perform free services for the highest bidder for the next 24 hours. No one ever specified what those services would be. That would be up to the "slave" and the winning bidder to determine.

Unfortunately, the vice squad found out about the event. One undercover officer infiltrated the event and gave a winning bid for a slave. At that moment, the officer signaled the rest of the troops. There were 120 police officers surrounding the Mark IV, including three helicopters. In order to totally embarrass the participants in the event, the police had given advance notice to several television stations. So there were plenty of television cameras rolling when the men were hauled out of the establishment. Some 80 men were detained on the scene, but only 40 were arrested. What was the charge? Slavery, of course.

These 40 men were taken downtown to police headquarters where they were booked on the felony charge of involuntary servitude. When the men were finally allowed to make a phone call, some of them called a gay legal help group which in turn called a service known as Marshall's Bail Bonds. The owner, Marshall, soon arrived at the jail and began gathering information from the men in order to prepare release bonds for each of them. This was going to be an expensive night for the defendants and a lucrative night for Marshall. The bail schedule set a bond for the felony of involuntary servitude at $20,000. The fee of the bondsman was 10 percent, nonrefundable. Marshall was going to make $80,000 for a few hours of work – at least it looked that way.

Al Gordon, Barry Copilow, and I each received phone calls at our

homes at about 6:15 a.m. from the legal help organization asking us to go to the police station. We were given the Penal Code number of the offense for which the men had been arrested. I met Al at his office so we could look at the Penal Code section which we had never heard of before. Involuntary servitude. We were shocked and offended. Shocked at the amount of money these men would have to pay for their release. Offended that the police would take a "slave game" and arrest the participants in the game as though they had really been holding people against their will and forcing them into involuntary servitude. But this was Ed Davis land, so should we really be surprised?

The three of us lawyers decided we needed to find these guys a get-out-of-jail-free card. So we went to the police station and interviewed each defendant to get the personal and financial information necessary for a judge to review for a possible release without bond. We tracked down the judge who was on duty that Sunday and went to his home. We were able to convince him to release all but four men on their promise to appear and without the need for a bail bond. Needless to say, Marshall was not very happy about our intervention. Eventually, the city attorney determined that this was not really slavery and the charges were dropped. When all was said and done, this stupid police raid had cost the city $150,000.

The whole slave auction raid made us even more determined to fight back against police harassment. Part of the strategy would be to turn the tables on the police, and to go on the offensive by challenging the constitutionality of section 647(a). Fortunately, there was a growing number of attorneys willing to shift from a defensive approach to an offensive one.

In addition to the usual suspects – Barry Copilow, Al Gordon and me – Jay Kohorn started filing these constitutional challenges. I believe I met Jay in 1976 when I had a case in Long Beach. When I saw him in action I was very impressed. He was polite and yet insistent. He was eloquent and yet direct. I was pleased we had another colleague of this caliber on our side.

Jay and I worked together on some 647(a) cases. One day we found ourselves in the courtroom of Judge Arthur Gilbert. Not only was Gilbert smart and witty, he was also personable and handsome. Judge Gilbert took our arguments seriously, more seriously than any other judge had ever done before. He eventually agreed with us that the solicitation portion of the lewd conduct statute was unconstitutional in violation of the

First Amendment. But since he was only a Municipal Court judge, the ruling would only apply to his courtroom. It was a small victory, but a victory nonetheless.

We did not have such success in other courtrooms. These judges were waiting for a higher court to take the lead. None of the judges wanted to stick his neck out or ruffle the feathers of the police. But I knew that one day, some day, the right case would come along and this dastardly statute would be declared invalid.

Then, one day in 1976, a client came into my office and told me his story. Don Pryor was his name. After hearing the facts of his case, my intuition told me loud and clear that his would be the case to change history. "Don, we are going to use your case to put an end to all of this police harassment," I told him. "This case is going to the California Supreme Court."

Don lived in San Francisco. He wanted to visit a friend who lived in Los Angeles. His friend was deaf, so he could not call him on the phone. As a result, Don decided to take a bus to Los Angeles and to surprise his friend when he arrived. Unfortunately, the friend was not at home when Don went to his apartment. So Don decided to go to Hollywood to kill some time.

Don was walking down the street on Selma Avenue when he noticed an attractive man in a car pull alongside him and stop the car. The guy looked at Don with the look of someone who is sexually interested. In other words, they flirted with each other for a moment. The guy asked Don to get into his car.

Once in the passenger seat, the two began to chat. The guy finally got to the point. "Would you like to come to my apartment?" he asked. "Sure, I have some time to kill," Don responded.

"Well, when we get there, what would we do?" the guy inquired. "We could have some wine, maybe smoke some grass, do a little necking, and maybe . . . a little cocksucking," Don answered. Bingo! The magic words. "You're under arrest," the guy blurted out.

The guy, of course, turned out to be an undercover vice officer. Don was shocked. What did he do? What was the crime? Don knew that since January 1, 1976, private homosexual conduct between consenting adults was no longer a crime. Surely it could not be a crime to talk about having legal sex. This was Los Angeles – the hometown of Ed Davis – not

San Francisco. Yes, he was being arrested for solicitation in violation of section 647(a). The cop searched Don's backpack and found half an ounce of marijuana. So he was also booked for that infraction.

I filed a constitutional challenge to the statute, but the judge denied the motion to dismiss. The case was then scheduled for a jury trial.

When we arrived in the courtroom of the trial judge, an unhappy looking man took the bench. He also looked angry. "Mr. Coleman," he said, "I want to get a few things clear about how things will be handled in this courtroom." "You will not use the words 'gay' or 'homosexual' in my court," he ordered.

"Well what am I supposed to say?" I asked. "You can use the words 'sexual deviant' or 'sexual pervert,'" he replied. "Your Honor, I am a gay man," I shot back. "You might be able to prohibit me from using certain words, but you will never get me to use the words 'sexual deviant or pervert,'" I said.

We were off to a great start! What the hell? "This is bizarre," I thought. I guess we're in for a bumpy ride, I told my client.

After the jury heard testimony from the vice cop and the defendant, I discussed jury instructions with the judge and the prosecutor. I asked the judge to instruct the jury that if they believed that Pryor had intended for the sexual conduct to occur in private, jurors should find him not guilty. After all, private sex was now legal. How could anyone be convicted of discussing the commission of a lawful act?

The judge refused. He would tell the jury that it was irrelevant as to where the sex act was intended to occur. If the defendant solicited such an act, then they should find him guilty. He would also instruct the jury that homosexual conduct is "lewd and dissolute" as a matter of law. The judge was practically telling the jury to convict my client.

I had to think fast. What would our defense be if the judge would not allow us to rely on our "lawful act" theory? I went over the facts again in my mind. Where was the loophole? Then it came to me. Pryor was a respondent, not a solicitor. The law prohibited soliciting, not responding. So I argued to the jury that Pryor raised the issue of sex in response to the vice cop's question about what they would do when they got to his home. Pryor had answered a question. That is not soliciting, I argued. That is responding.

After several hours of deliberation, the jury returned to the

courtroom and announced that they were hopelessly deadlocked. They could not reach a verdict. The judge asked how they were split and the foreman replied that seven of them had voted for not guilty and five of them for guilty. The judge declared a mistrial and immediately scheduled the case for a new trial in 30 days. I argued that the case should be dismissed, but no, this homophobic judge was going to put us all through another trial, come hell or high water. I was furious.

I was fed up. The law was rigged and the judges were turning a blind eye to the injustice of it all. We had to end this "Catch-22." The Legislature had voted to make consenting sex in private a legal act. But gay people were being arrested by the police when they had a conversation designed to elicit consent from a prospective sex partner. What a trap. What a violation of free speech.

I decided to turn the tables and go on the offensive against this spiteful judge and against this unconstitutional law. I filed a lawsuit directly in the California Supreme Court. Forget the intermediate appellate courts. Most of those judges were part of the anti-gay legal system. The only hope was to get the attention of the Supreme Court which had a few liberal judges.

The case was titled *Pryor v. Municipal Court*. I asked the Supreme Court to issue an injunction to stop the upcoming trial and to grant a full hearing into the constitutionality of section 647(a). To my utter delight, the court granted my request. Briefs were filed in the Supreme Court by both sides in 1977. Several civil liberties groups also filed legal briefs in support of Pryor's arguments. Then we waited for a few months and were eventually summoned to appear for oral argument before the Supreme Court in San Francisco.

That was an amazing experience. It was very humbling to stand up before seven justices and be peppered with questions. But I did my best. At the end of the hearing, Chief Justice Rose Bird advised the parties that the court would take the case under submission.

Would a majority of them side with us? What role would Justice Mathew Tobriner have? He was the jurist who asked the most questions. Would he write the majority opinion or a dissent? Only time would tell.

So we waited, and waited, and waited. Months would pass and still no word from the Court. Section 647(a) was so much on my mind that over the course of those many months I would often wake up at 6:47 a.m. This happened on dozens of occasions. I would look at the clock and wonder,

"Will I hear something from the Supreme Court today?"

Then finally it happened. On September 6, 1979, I got word from a news reporter that the court would issue its ruling the next day. I immediately flew up to San Francisco so I could pick up the decision as soon as it was released.

When I went to the California Supreme Court the next day, I waited until the decision reached the clerk's office. When the clerk put the opinion on the counter, I saw that it was thick. Someone certainly had a lot to say. At first glance, I thought that we had lost the case. The petition to permanently halt the retrial was denied. But then I saw who wrote the lead opinion, Justice Tobriner, and he was joined by three other liberal justices. There was a clear majority. But how could they rule against us? I was confused.

I became a speed reader that day, skimming over dozens of pages in no time flat. Finally, I realized how clever Justice Tobriner was. He wrote the decision in a manner to make it appear that I lost. He and the other three justices refused to invalidate section 647(a) as unconstitutional. Instead, they took a "conservative" approach and looked for ways to uphold the constitutionality of the statute. They reinterpreted the law to make it valid. How brilliant. The media would think that the gay community lost and that the police won.

But legal insiders would soon become aware of the fact that just the opposite was true. The reinterpreted law would be a vice cop's worst nightmare. Some prosecutions could no longer occur. Others would be much more difficult due to the hoops and hurdles put in the prosecutorial path by these four jurists.

As for freedom of speech, the police could no longer arrest anyone for asking another adult to engage in consenting sex in private, even if the conversation occurred in a public place. So the trial judge would not be able to instruct the jury in Pryor's retrial that it was immaterial as to where the sex act was intended to occur.

As for the definition of "lewd and dissolute" conduct, the court did find those words to be unconstitutionally vague. But it reinterpreted that phrase in a manner which would make lewd conduct prosecutions much more difficult for the police and district attorney. As reinterpreted, the trial judge would not be allowed to tell Pryor's jury on retrial that "oral copulation" was "lewd and dissolute" as a matter of law. The days of homophobic or biased judges steering the jury toward a conviction were

over.

Even footnotes in the *Pryor* decision contained some golden nuggets. For example, the court observed that the vagueness of the statute created a real danger of discriminatory enforcement by the police. In footnote 8, the court referred to three studies which showed that section 647(a) was being systematically used to target homosexual men.

One was a study done by students at UCLA in 1966. The second was the "Coleman and Copilow Report" done in 1972. The third was an update of the 1972 report which was done in 1974. The new data was contained in a computerized report. This was made possible through volunteer data entry by my friend Marty Butel. The data was then processed by the sophisticated computers at UCLA Our hard work as law students and young lawyers to document this pattern of harassment by the police ultimately was used by the Supreme Court to justify its decision in the *Pryor* case. Our work was not done in vain.

As a result of the *Pryor* decision, sexual conduct in a place that was technically "public" would no longer be automatically illegal. The prosecution would have to prove, beyond a reasonable doubt, not only that the defendant touched his or someone else's genitals or buttocks, but that the defendant knew or reasonably should have known that someone was present who might be offended by such conduct.

This was going to frustrate the police. If there were only gay men around, in a gay bar or other gathering spot for gay men, and if an undercover vice officer made it appear that he would be a willing viewer, there could probably be no conviction. This was a major change in the law, since gay men were usually very careful not to expose themselves or touch another person unless it appeared safe to do so.

It took a few more years of litigation in the Municipal Court and the appellate department of the Superior Court to iron out the details, but the *Pryor* case did turn out to be a landmark ruling that significantly reduced police harassment of gay men in California.

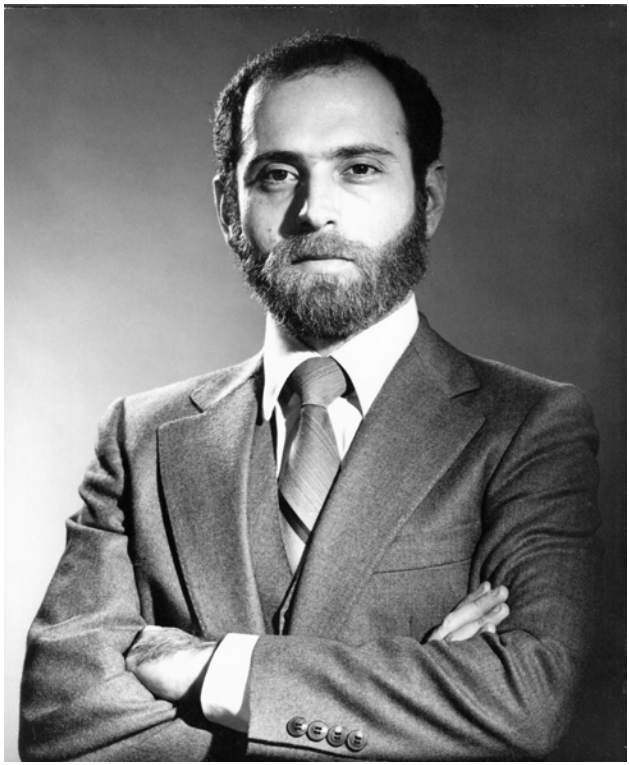
The ensuing years saw openly gay lawyers becoming prosecutors and judges. Their daily interactions with their colleagues helped to change attitudes. Judges would no longer utter anti-gay slurs from the bench. The police could not argue it was impossible to have gay lawyers prosecuting gay defendants.

It was exciting to have been a part of the attitudinal transformation

of the legal profession and the judicial establishment. But as other portions of this book demonstrate, the decriminalization of consenting adult sex, the reform of the lewd conduct law, and the reshaping of the criminal justice system in California were just the beginning of what needed to change.

There was much more to do in California. Work with the executive and judicial branches of government needed to occur. Changes had to be made in family law and probate law. Employees, tenants, and consumers needed protection from sexual orientation and marital status discrimination. Hate crime laws needed to be passed.

Since my work was national in its reach, there was much to be done in the other 49 states and with the federal government as well. Although we had experienced some important victories in the field of criminal law in California, and it had taken years to accomplish them, the hard truth was that our work had just begun.



Jay Kohorn (above) and Tom Coleman worked together in the 1970s and 1980s tilting dominos with the executive and judicial branches.

Chapter Three

Working with Governors

Refocusing attention to the executive branch of government pays off

Ronald Reagan was governor of California from 1966 to 1974. Although Reagan considered homosexuality "an abomination" on moral grounds, he did not take affirmative steps to level political attacks against gay people.

During the Reagan gubernatorial administration, most gays and lesbians were "in the closet" and for good reason. Some public officials in California referred to homosexuals as "lepers." Consenting adult sex, even in private, was a felony. The psychiatric profession believed that homosexuality was a mental illness and that homosexuals were psychologically disordered. Organized religion labeled gays as sinners who would go to hell unless they repented and changed their ways. This was the social, legal, and political context in which millions of Californians lived their lives.

It was not until Reagan's second term as governor that the gay rights movement in California began to pick up steam. Some activists started to lobby the California Legislature, while others began to look to the courts for legal protection. But, with Reagan's attitude about homosexuality, no one bothered to look to him for assistance in reforming anti-gay laws or passing laws prohibiting sexual orientation discrimination.

Assemblyman Willie Brown first introduced his "consenting adults" bill in 1969. Brown never expected it to pass the Legislature that year, and even if it did pass, people expected that Reagan would veto it. Each year, Brown would reintroduce his bill and each year it would fail. But each year, due to increased lobbying by the gay and lesbian community, there would be more votes in favor of the bill than there had been in previous years.

Because of term limits, it was not possible for Reagan to run again for governor in 1974. It would be Secretary of State Jerry Brown for the Democrats versus Controller Houston Flournoy for the Republicans. This was expected to be a close race, with a lot depending on it for the gay and lesbian community. It was essential to have a politician as governor who would have the guts to stand up to the religious right – someone who would sign Willie Brown's consenting-adults bill should it pass the Legislature and land on the governor's desk.

This was why Lloyd Rigler, a wealthy but "closeted" gay man, decided to get involved in the governor's race. Lloyd had made millions of dollars by inventing and selling a product known as Adolph's Meat Tenderizer. He was also a liberal Democrat. His political ambition was to secure the right of personal privacy for homosexuals.

Through his connections with the California Democratic Party, Lloyd was able to become the campaign treasurer for Jerry Brown. Jerry won the race and in 1974 he became governor.

Willie Brown kept reintroducing his consenting adults bill. Things heated up politically when in March 1975, it passed the state Assembly by a vote of 45 to 26, four votes more than necessary for passage. But could he get the votes in the more conservative Senate? It passed the first Senate committee. Then the next committee. Finally, it was on the floor of the Senate on May 1. Things were tense. The bill was amended in the Senate to keep consenting sex by prisoners a crime. With that amendment in place, the bill was called for a vote. When the votes were finally tallied, it was a tie. This was becoming a real nail biter.

Mervyn Dymally, an African American politician, was lieutenant governor. He could break the tie. But Dymally was at a meeting in Denver. The Republican caucus of the Senate was threatening to walk out of the legislative session which would prevent the Senate from taking any further action and the bill would not pass. To prevent that from happening, the president pro tem of the Senate had the sergeant-at-arms lock the doors

to the Senate chamber so no one could leave. The Republicans lacked sufficient votes to override the order to seal the chamber. So there was a standoff.

When Dymally was alerted, he jumped onto a plane and flew back to Sacramento that evening. A few hours later, he walked onto the Senate floor and cast his vote in favor of Willie Brown's bill. Supporters exploded in cheers and shed tears.

I remember listening to this dramatic moment on an all-news radio station. My heart pounded and my eyes welled up. This was a historical moment which would change my life and the lives of millions of others. Part of the foundation for anti-gay bigotry – the sick-sinful-criminal stigmas – was about to lose one of its underpinnings.

I was no stranger to the sexual privacy movement. I had been going to Sacramento, lobbying for reform, and testifying before the Joint Legislative Committee for Revision of the Penal Code. I had convinced its chairman to delete criminal penalties from consenting adult sex in private. But that small victory was surpassed when Willie Brown's bill moved forward and obtained approval by both houses of the Legislature. The passage of the Willie Brown bill gave me a degree of professional satisfaction too since one of my political goals was achieved, even if through a different legislative vehicle.

The Willie Brown bill went back to the Assembly for a vote on the amendment added in the Senate. By the time the Assembly reconsidered the measure on May 8, dozens of churchgoers were parading on the steps of the Capitol. A dozen children, watched by their mothers, played violins and sang "My Country 'Tis of Thee" and other patriotic songs. But despite the theatrical pressure, the Assembly again passed the bill, 45 to 25. The bill would move to the desk of the governor.

All eyes turned to Jerry Brown. During the first 10 days in May, Brown's office received 14 letters in favor of the bill and 2,591 demanding that he veto it. His staff got 14 telephone calls for it and 470 against it.

Without any fanfare or public ceremony, Jerry Brown signed the consenting adults bill on May 12, 1975. It would become effective on January 1, 1976 – unless there were a voter referendum to overturn the new law.

On May 19, 1975, the Coalition of Concerned Christians held a press conference at the Capitol, announcing that it was collecting signatures

for a referendum to repeal the Willie Brown bill. The group's task was to collect 312,000 signatures by August 11. A major media battle over the referendum erupted. But when the dust settled and the deadline arrived, the sexual privacy opponents failed to gain sufficient signatures. A new era would begin on January 1, 1976.

Many activists wondered what the next political steps should be for the gay and lesbian community in California. I was one of them. After giving the matter considerable thought, I developed an "action plan" which I distributed to gay rights organizations and gay newspapers throughout California. It was published by a gay newspaper in Los Angeles in November 1975.

With our experience in California of judges not being very sympathetic to our case, and with the Legislature reluctant to pass any more gay rights laws in the foreseeable future, my attention turned to the executive branch of government in general, and to the governor's office in particular.

My "action plan" proposed that "the next major move for reform in California should be an executive order issued by Governor Brown which would prohibit all discrimination on the basis of affectional or sexual orientation or preference throughout state government."

Through my affiliation with the National Committee for Sexual Civil Liberties, I came to meet Anthony Silvestre, a political activist in Pennsylvania. He became a member of the National Committee and was successfully interacting with the governor's office in his state.

Milton J. Shapp was first elected governor of Pennsylvania in 1970. He was reelected in 1974. It was in his second term that Shapp used his executive powers to help the gay community.

On April 23, 1975, Shapp issued Executive Order 1975-5. In furtherance of his commitment to obtain equal rights for everyone, Shapp stated he was "committing this administration to work towards ending discrimination against persons solely because of their affectional or sexual preference." A representative from the governor's office, Terry Dellmuth, and a representative from the attorney general's office, Barry Kohn, were designated as the team leaders to "work with state agencies and private groups to further define the problem and make recommendations for further action."

Terry and Barry identified several leaders of the gay and lesbian

community throughout the state and invited them to attend a meeting in the governor's conference room. Tony Silvestre was one of those leaders. The group made plans to establish some type of ongoing committee or commission to address issues of concern to the gay and lesbian community.

A formal "meeting on homosexual rights" was convened on September 11, 1975. Representatives from several state agencies were also invited to attend. These included the Department of Justice, Human Relations Commission, Department of Education, Bureau of Corrections, Department of Health, Office of Mental Health, Department of Public Welfare, Department of Insurance, and the State Police.

At this meeting, state representatives made reports on various issues. The State Police discussed issues regarding entrapment by undercover police and employment of gays and lesbians in the department. The Department of Health focused on the issue of venereal disease. The Insurance Department indicated that it was interested in receiving information about discrimination within the insurance industry. Other agencies made their reports.

The lesbian and gay leaders and state representatives discussed the need for a more permanent structure. There was discussion of calling the group the Commission for Sexual Minorities. They decided to ask the governor to authorize a commission composed of 26 members, some from state government and some from the community.

When I learned about this newly established commission, I was amazed. There was nothing else like it in the nation. No other governor had ever issued an executive order to help fight discrimination on the basis of sexual orientation. I knew I had to see the commission in action – firsthand.

I attended its next meeting, which occurred on October 17, 1975, in Harrisburg in the governor's conference room. I read the minutes from the September meeting and saw with my own eyes how responsive government agencies could be if they were ordered by the governor to cooperate. Lesbian and gay leaders were questioning government employees and the employees were being directed to find answers. This was in a state that still had a sodomy law on the books and no protective decisions from the courts. It was all happening because a governor decided to use his authority to shake up the executive branch of government.

Conservative forces soon filed a lawsuit to invalidate the governor's executive order. An appellate court ruled that Shapp was within his

authority, but was skating on thin ice. The court pointed out that sexual conduct between homosexuals, even in private and even with consent, was a crime in Pennsylvania. But the executive order remained in place.

Tired of relying on gay newspapers as a way to reach law students, lawyers, and political activists on issues of mutual concern, I decided to launch my own publication in 1975. I called it the *Sexual Law Reporter*. It would focus on legal and political issues beyond gay rights and would

Sexual Law Reporter editorial team (from left): Wade Agurcia, Paula Davis, Don Gaudard, Tom Coleman, Susan Bonine, Tim Sullivan, Michael Wetherbee, and Dean Blake

include a wide range of issues involving human sexuality. Topics would include prostitution, rape, transsexuals, singles' rights, obscenity, cohabitation, birth control, and sterilization. It would discuss the right of privacy, equal protection, and discrimination on the basis of sexual orientation and marital status. It would be distributed to law schools, libraries, attorneys and judges. It was the only publication of its kind in the United States.

I became publisher and lined up volunteers to help with writing, editing, and distribution. A new legal periodical was launched. It was purely a labor of love, although the subscription price paid by readers helped to defray some of the production and distribution costs.

I used the March/April 1976 cover story to highlight the Governor's Council on Sexual Minorities in Pennsylvania. The headline read:

"Governor's leadership brings gains to gays in Pennsylvania." The group had been renamed the "Governor's Council" when Shapp amended his executive order in February 1976.

Shapp decided to run for the Democratic nomination for president in 1976. I found an opportunity to meet with him personally when he was raising funds and meeting people in California. At that meeting, I asked Shapp to write a letter to Jerry Brown and to share information about his executive order in Pennsylvania and how well it was helping to eliminate discrimination against gays and lesbians.

Shapp agreed and sent a letter to Governor Brown on February 17, 1976. He advised Brown that he was sending the letter "at the request of Thomas F. Coleman, Coordinator of the California Committee for Executive Implementation of Gay Rights." I felt gratified that my idea of

Rusty Morris and others assembling the Sexual Law Reporter.

executive action was getting attention at such a high level.

Looking more closely at the executive branch of government, I wrote to Governor Brown about another area where he could use his authority to help the gay and lesbian community: the power of appointment. Now that the consenting adults bill was enacted, one of the biggest issues for the gay community was that of employment discrimination. The agency charged with enforcing the state's employment nondiscrimination law was the Fair Employment and Housing Commission. There were four vacancies about to occur on that commission. I asked Brown to make appointments "of persons who are sensitive to the special problems faced by the gay community."

Based on a recent opinion of the California attorney general, I explained how the employment commission could rule that gays and lesbians were protected from discrimination under current law. If it ruled in such a manner, we would not need new legislation to accomplish this result. This was another example of the power of the executive branch of government.

I enlisted Dick Caudillo in this effort to impact the governor's appointment process. Dick was the president of the Gay Rights Chapter of the American Civil Liberties Union of Southern California. We contacted Carlotta Mellon, the governor's appointments secretary, and soon had a promise that she would screen applicants to boards and commissions for homophobic bias. Dr. Wayne Plasek, a sociology professor at the Northridge Campus of California State University, developed a screening mechanism the governor's office could use to spot homophobic tendencies.

But that victory ultimately did not help us to gain a victory with the Fair Employment Practices Commission. Despite pestering from the National Committee for Sexual Civil Liberties, and political pressure from our allies, the commission voted 5 to 2, in late 1976, that it did not have jurisdiction over sexual orientation discrimination. The commission concluded it would take an act of the Legislature to protect gays and lesbians from job discrimination.

In 1977 and 1978, I devoted most of my time to publishing the *Sexual Law Reporter* to educate the legal community, to working with the National Committee toward law reform in other states, to representing defendants in court who were charged with lewd conduct or solicitation, and to challenging the constitutionality of those laws.

In the summer of 1978, I returned my attention to the issue of

gaining gay rights through executive action. I wrote a lengthy and detailed article in the *Sexual Law Reporter* titled: "The Executive Branch of Government – an untapped source of power for gay rights."

"Gay people seem to be preoccupied with the legislative and judicial branches of government," I wrote. "The executive branch of government, whether at the federal, state, or local level, will ultimately prove to be a most important source for securing gay rights," I predicted.

Not only can a governor issue executive orders and affect the actions of dozens of state agencies – a governor also appoints judges and judges rule on gay and lesbian cases. The executive branch also has tremendous influence on the legislative. Priority is often given to bills which have the support of the administration. Also, the executive branch hires and supervises the employees who implement laws passed by the Legislature.

"There is something missing in the current strategies of the gay rights movement," I concluded. "A key factor could well be the pursuit of reform through executive action."

Prior to leaving office at the end of his second term in 1978, Governor Shapp pushed his executive power one step further. He amended his 1975 executive order to specifically prohibit any state agency from discriminating on the basis of sexual orientation in any manner – including employment, housing, credit, contracting, or the delivery of services.

To the delight of activists in Pennsylvania, when Republican Richard Thornburgh became the new governor of Pennsylvania in January 1979, he pledged to support the Council on Sexual Minorities. Thornburgh said that he would not rescind Shapp's broad executive order on discrimination.

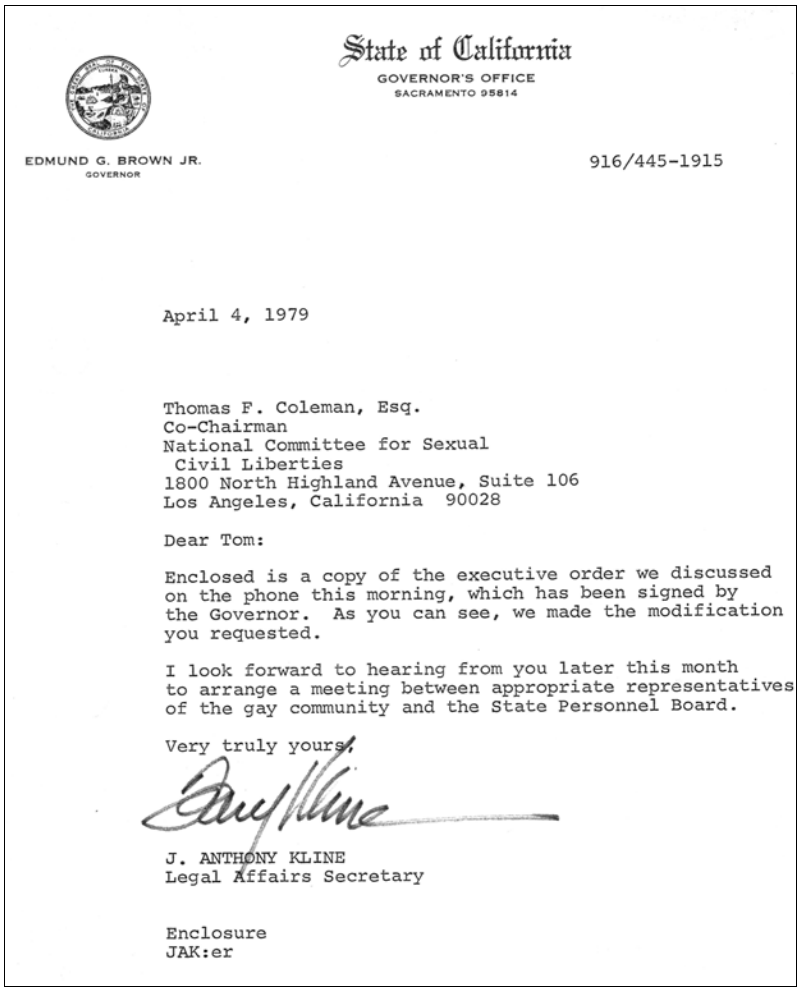
This was good news to my ears. I continued to spread the gospel of executive action to anyone who would listen in California. Fortunately, some political activists were beginning to give serious consideration to my suggestions. The idea of an executive order by Governor Brown was being discussed in gay and lesbian political circles.

In March 1979, I attended a fundraiser for the Municipal Elections Committee of Los Angeles. MECLA was a gay rights political action committee that made donations to friendly politicians. The main speaker that night was Assemblyman Leo McCarthy, speaker of the California Assembly. When I heard him mention the need for the governor to issue

an executive order, I nearly fell off my chair. As soon as he finished his speech, I left the event and went directly to my law office.

I wrote a letter that night to Jerry Brown, urging him to issue an executive order prohibiting sexual orientation discrimination in state government. I mentioned Leo McCarthy's speech and I enclosed my article from the *Sexual Law Reporter* on the executive branch of government. The time to act is now, I advised Brown. The time has come.

On April 4, 1979, I received a phone call from the governor's office. On the line was J. Anthony Kline, the governor's legal affairs secretary. He advised me that the governor had decided to issue an



State of California
GOVERNOR'S OFFICE
SACRAMENTO 95814

EDMUND G. BROWN JR.
GOVERNOR

916/445-1915

April 4, 1979

Thomas F. Coleman, Esq.
Co-Chairman
National Committee for Sexual
Civil Liberties
1800 North Highland Avenue, Suite 106
Los Angeles, California 90028

Dear Tom:

Enclosed is a copy of the executive order we discussed on the phone this morning, which has been signed by the Governor. As you can see, we made the modification you requested.

I look forward to hearing from you later this month to arrange a meeting between appropriate representatives of the gay community and the State Personnel Board.

Very truly yours,

J. ANTHONY KLINE
Legal Affairs Secretary

Enclosure
JAK:er

executive order. Kline wanted to go over the wording of the order with me. I suggested a change. Later that day, I received word that the executive order had been signed, but there was not one word in the media that day or in the following days. The governor was cleverly hiding in public.

There was lots of media coverage about Jerry Brown on April 4, 1979. Newspapers, radio stations, and television reporters were all focused on the fact that Jerry Brown and Linda Ronstadt were flying off to Africa together. I suspected the timing of the executive order and the Africa trip was the brainchild of Brown's chief of staff, Gray Davis. Despite the lack of publicity, I was delighted. All of my hard work and persistence had paid off. But I knew the work was just beginning. Without proper implementation, without proper staffing, and without proper funding, the order would have little value in ending discrimination.

I enlisted support from some lesbian and gay leaders in California, and sought assistance from members of the National Committee for Sexual Civil Liberties. I asked them to join with me in educating the State Personnel Board, the agency charged with enforcement of the order.

At our request, Tony Kline arranged for a meeting with the Personnel Board and its head managers. Several of us made presentations to them about ways in which the order could be effectively enforced. Then we had a meeting with the division managers and their staffs to get down to the next level of detail.

After several months of meetings, we finally convinced the board to create a Sexual Orientation Project and to hire Leroy Walker as its manager. Leroy was a friend and a fellow activist who had worked for several years as a staff attorney for the California Department of Fair Employment and Housing.

Of course, conservative legislators challenged the authority of the governor to issue an order prohibiting sexual orientation discrimination against state employees. They asked Attorney General George Deukmejian for a legal opinion on the issue.

Deukmejian was a conservative Republican. He was a state senator in 1975 when the Willie Brown bill on consenting adults was voted on. He voted against it. So many of us wondered what he would say about the legality of Brown's executive order. Just to make sure that Deukmejian considered arguments in favor of the governor's authority, I wrote a legal memo on the issue and sent it to his office for review.

A month later, I received a copy of the attorney general's opinion. To my delight and somewhat to my surprise, Deukmejian concluded that Jerry Brown acted within his authority in issuing the executive order.

Another major issue arose in 1979 that required me to work with the governor's office to solve a problem with another agency in the executive branch. I was alerted by Susan McGrievy, an attorney with the Gay Community Services Center in Los Angeles, that the state Department of Fair Employment and Housing (DFEH) was refusing to investigate cases involving housing discrimination against gays and lesbians. She asked me to work with her to get to the bottom of this.

The first step was to do some legal research into whether that agency had any jurisdiction to investigate such cases. The authority of the DFEH was based on two statutes. The Fair Employment and Housing Act prohibited discrimination in employment or housing on the basis of race, religion, color, sex, etc. It did not mention sexual orientation. Based on previous interaction with the Fair Employment and Housing Commission, we already knew that by its vote of 5 to 2, the commission would not recognize that it had jurisdiction under that law because the words "sexual orientation" were not included by the Legislature.

But there was a second statute that gave the DFEH jurisdiction in housing cases. It was called the Unruh Civil Rights Act. That statute prohibited discrimination against consumers by business establishments. Courts had ruled that the Unruh Act applied to landlords. The problem was that sexual orientation was not mentioned in that law either.

However, there was a California Supreme Court decision that the categories listed in the Unruh Act were only illustrative and that in fact all arbitrary discrimination was prohibited under that law. The words "race," "religion," "color," etc., were merely illustrations, and other forms of discrimination could fall under the Unruh Act as well. Then there was an appellate court ruling and an attorney general opinion, each of which concluded that sexual orientation discrimination was arbitrary discrimination in the context of housing. So under its Unruh Act jurisdiction, the DFEH had jurisdiction to investigate and remedy complaints of housing discrimination against gays and lesbians. But the department refused to do so. Why?

We probed and probed until we learned that Alice Lytle, an African American lawyer who was the director of the DFEH, had issued a memo on September 15, 1978, declaring that the DFEH would not accept complaints

of "discrimination in housing against gay people." There it was in print.

Early in 1979, Jerry Brown appointed Alice Lytle to serve in a position in his cabinet as the secretary of the State and Consumer Services Agency. Alice left her position as head of the DFEH and was replaced by Joanne Lewis. Alice began to serve as acting secretary of the agency but her new position would not be official unless and until the appointment were confirmed by the Senate Judiciary Committee and the full Senate.

I sensed that Alice was vulnerable. We could use her appointment as leverage to get that departmental directive reversed and to get the DFEH to accept cases of housing discrimination based on sexual orientation. But we would have to apply pressure in the right places.

With the help of some of my colleagues we turned up the heat. Susan McGrievy, Paul Hardman, Dick Caudillo, and I started to write letters and make phone calls. We contacted Tony Kline in the governor's office and alerted him to the problem. We asked him to set up a meeting with Alice Lytle. We contacted the chairman of the Fair Employment and Housing Commission, the policy-making body that supervised the DFEH. We let Joanne Lewis know that we wanted the directive changed and that, as the new director of DFEH, she had the power to reverse Alice Lytle's memo. I contacted Senator David Roberti, a legislator from Los Angeles who was friendly to gay rights. Roberti was an influential member of the Judiciary Committee. I asked him to hold up the confirmation of Alice until we resolved this matter. He agreed.

Paul, Susan, Dick, and I had our face-to-face meeting with Alice. She admitted that there was no legal basis for her decision to exclude gays and lesbians from housing protection. She explained that it was simply a matter of departmental priorities on how to use personnel and resources. We explained that since gays had no other agency to turn to for help, her memo had an adverse effect on the legal rights and economic well being of gay and lesbian renters.

Although we did not discuss it, by this time she knew that her appointment was in jeopardy if she did not do something. We asked her to speak with Joanne Lewis and to suggest to Lewis that she should write a new memo advising staff to accept gay and lesbian housing discrimination cases. Within a few days, we received a letter from Joanne Lewis, dated September 25, 1979, with a copy of a revised policy directive. The agency would begin to accept complaints from gay and lesbian tenants, investigate the cases, and go after landlords who were found to have engaged in

discriminatory practices.

I wrote letters to everyone involved and thanked them for their help. A handful of political comrades working together, with the help of the governor's office and one friendly legislator, was able to secure housing protection for gays and lesbians – without the need for new legislation or further judicial intervention.

This was another example of the importance of working with the executive branch of government and establishing good relations with the governor.

With this housing victory in hand, I decided to push the envelope even further. I arranged for Tony Kline to meet with me and a few other gay lawyers and political leaders (people who had access to money for political campaigns). Jerry Brown was exploring the possibility of running for president in the Democratic primary in 1980. I remembered how supportive Milton Shapp was while he ran for president in 1976. Perhaps we could convince Brown to take further action for our community.

At the meeting with Kline and the gay political money people, my friend and colleague Jay Kohorn and I suggested that the governor should issue an executive order to create a commission to look into a broader range of issues. Perhaps it would be called the Commission on Sexual Orientation Discrimination and the Law.

The commission could hold public hearings, conduct research, and make recommendations on what else the government should do to end sexual orientation discrimination by public agencies and by private businesses. Tony Kline was somewhat receptive to our suggestion, but it was clear that Jay and I would have to enlist the support of other leaders of the gay and lesbian community in California. We had our work cut out for us.

In January 1980, Jay and I and a few others began negotiations with the governor's office about the scope of the proposed executive order. Diana Dooley, the governor's legislative secretary, took the lead on the governor's side of the negotiations.

A planning meeting occurred at my office in Hollywood on February 22, 1980. In addition to Jay and me, two representatives from the governor's office attended, as well as two members of the National Committee for Sexual Civil Liberties, and four leaders from the gay and lesbian community in California.

Two options were given to the governor's office – options which could occur simultaneously or separately. The first option would expand the 1979 executive order on employment discrimination. It would direct state agencies not to engage in sexual orientation discrimination in any manner whatsoever – employment, housing, credit, contracting, etc. It would direct key agencies to designate a representative to serve on an interagency council to monitor and enforce the expanded order.

The second option was less aggressive. It would create a 25-member Commission on Sexual Privacy and Orientation. The commission would study problems of discrimination based on sexual orientation and invasions of sexual privacy in the public and private sectors and make recommendations for legislative, administrative, and other actions to remedy those problems. In addition to looking at the needs of the gay and lesbian community, the commission also would focus on the concerns of people with disabilities, seniors, youth, and unmarried individuals.

In April, Jay and I sent Tony Kline a draft of two possible executive orders, one for each of the two options. By submitting a draft we hoped to expedite the process.

After waiting for a few months, I sent a letter directly to Jerry Brown, urging him to act. Then I asked Leroy Walker to help me develop a strategy to get the governor off the fence. Leroy was the attorney who worked within the State Personnel Board to implement the governor's 1979 executive order.

We knew that the governor was going to be the keynote speaker at a fundraiser for the Gay Community Services Center in Los Angeles in October 1980. So we set that as our target date for the new executive order to be signed.

We also knew that Jerry Brown was in the race for the Democratic nomination for president. From what I was reading in the newspapers, he was focusing his attention on several key states. Pennsylvania, New Jersey, New York, Ohio, and Michigan were among them. Those states happened to coincide with areas in which we had many contacts through the National Committee and other gay and lesbian groups.

Leroy assumed the task of generating a letter-writing campaign by our allies within California. I did the same with respect to allies in the states being targeted by Brown. In early October, the governor's office started receiving letters and phone calls from people urging him to sign the new executive order. The pressure was on. Would the governor announce

the executive order at the fundraiser or would he show up and disappoint many people attending that event?

Just prior to the governor's speech at the fundraiser, I was approached by Burt Pines, who was then Los Angeles city attorney. He told me the governor had signed the order on his way to Los Angeles and that he had asked Burt to be the chairperson of the Commission on Personal Privacy. Jay, Leroy, and I were delighted. We had another victory with the executive branch and an opportunity to build a coalition of various populations with an interest in the right of privacy.

Having gone this far with the project, I decided I wanted to be the executive director of the Privacy Commission. But that would be a full-time job for the next two years; so I asked Jay if he would take over my law practice. He agreed. I approached Burt Pines and the governor's office about my having the job. They agreed.

The following months saw me screening potential commissioners for the 25-member panel. I lined up staff from the People's College of Law in Los Angeles. We set up offices at the State Building in downtown Los Angeles. The first meeting of the commission occurred in June 1981.

For the next 18 months, we held public hearings throughout the state. Three-member committees were formed on a variety of topics. One of them was the Committee on Aging and Disability, which was chaired by Nora J. Baladerian, a therapist who worked with clients who had disabilities, and who was an advocate for the elderly as well. Another was a Committee on Family Relationships, chaired by Wallace Albertson, a member of the California State University Board of Trustees.

The final report of the Commission on Personal Privacy was released in December 1982. We made many recommendations affecting a wide range of special populations. I recall two in particular which were given high priority by the commission. One of them recommended that the Legislature expand California's hate crime laws to include special protection for victims of violence who were targeted because of their sexual orientation or because they were elderly or had disabilities. Freedom from violence, especially for vulnerable populations, was a top priority for the commission.

Another recommended that the Legislature authorize an agency, such as the secretary of state, to establish a registry for "alternate families" so that people who considered themselves a family, but who were not related to each other by blood, marriage, or adoption, could publicly and

officially designate themselves as a family.

This recommendation came at a time when the San Francisco Board of Supervisors had voted to establish a registry for domestic partnerships in that city and give domestic partners all the rights and benefits of married couples under city law. The mayor vetoed the bill on the grounds that the board had acted too hastily and had not identified the cost of such a law. The media ridiculed the law by calling it a "live-in lover" ordinance. Instead of stepping into that media trap and having our recommendation stigmatized and trivialized, we decided to use the term "alternate families" instead.

Jerry Brown left office on December 31, 1982. George Deukmejian, a conservative Republican who had been attorney general and a state senator, took office in January 1983. With such a drastic change in administrations, I knew it was unlikely that we would have much success with a liberal political agenda. After all, when Deukmejian had been a state senator, he had voted against Willie Brown's consenting adults bill. If Deukmejian could not support privacy rights for consenting adults in the bedroom, what would he support?

Early in 1984, I was approached by our new attorney general. John Van de Kamp was a liberal Democrat. He was also a practical politician. John told me he was impressed with the work of the Privacy Commission and was particularly glad to see that the commission had taken a coalition-building approach to its work – focusing on the needs of youth, seniors, gays, and people with disabilities. He noted we had also focused on the need to expand California's hate crime statutes.

John invited me to participate in a new advisory group he was forming. The Attorney General's Commission on Racial, Ethnic, Religious, and Minority Violence was convened in May 1984. It had 16 members from various parts of the state. Some represented the African American, Asian, and Latino communities. Others represented various religious denominations. Someone with a serious disability served as did an older adult advocating for seniors. I represented the interests of the gay and lesbian community.

The issue was right and the approach was perfect. Plus, I was able to work with another high-ranking elected official within the executive branch of government.

My attention had been drawn to the problem of hate crimes in 1982 by my friend Marshall Jacobson. He was a former law school associate

who had moved to Bakersfield where he established a law practice. Marshall had called me for advice when a friend of his, Tony K. Moore, was fired after Tony's employer saw him on television news.

Tony was part of a group of people who picketed the Kern County Courthouse after a jury found William Robert Tyack guilty of just one count of involuntary manslaughter in the shooting deaths of two unarmed gay men. Apparently, the employer either assumed Tony was gay or somehow was upset with Tony's participation in a political protest. Tony worked for a local appliance store.

I urged Marshall to help Tony file a complaint with the state labor commissioner's office in Bakersfield. Cite the case of *Gay Law Students Association v. Pacific Telephone and Telegraph Company*, I suggested. I had filed a brief in that case in the California Supreme Court. In 1979, the court ruled it was illegal for an employer to fire an employee because of his or her political activities. Tony filed the complaint and he was ordered reinstated. He later quit and went to work as a manager in Marshall's law office.

Once my attention was focused on anti-gay violence in Bakersfield, my research turned up about seven such homicides in that area in the early 1980s. But violence against gays was not confined to Bakersfield. It was occurring all across the state. Beatings, aggravated assaults, and bias-related homicides were reported in San Francisco, Los Angeles, San Diego, and many other cities.

In 1984, Assemblyman Tom Bates introduced AB 848 in the California Legislature. I was upset when I read the first draft of the bill. It proposed that "sexual orientation" be added to the Ralph Civil Rights Act – a law that imposed mandatory minimum fines of $10,000 against anyone who committed violence against a victim because of the victim's race, religion, nationality, or ethnicity. While this amendment to the law was necessary, it ignored the Privacy Commission's recommendation that age and disability be added to that law as well as sexual orientation. Bates was only thinking about the gay and lesbian community. I was thinking about the larger coalition of affected minorities.

I contacted Bates' office and recommended his bill be amended to include age and disability. My requests were ignored. So I called on some of my colleagues from the Privacy Commission, such as Nora Baladerian, who had connections with disability groups and seniors organizations throughout the state. We developed a campaign and reached out to those

interest groups, asking them to pressure Bates to include age and disability in his bill. The campaign finally worked and the bill was amended.

There was a political advantage to having AB 848 focus on violence against gays and lesbians, seniors, and people with disabilities. The bill could no longer be viewed as "gay rights" legislation. It was a human-rights bill, a law-and-order bill, one that would affect a broader range of populations. That could make it easier for a conservative Republican law-and-order governor to sign the bill if it passed the Legislature. At my request, Van de Kamp and his Minority Violence Commission endorsed AB 848 as amended.

When the bill was approved by both houses of the Legislature, the big question was whether Deukmejian would veto it or sign it. I wrote an op-ed article for the *Los Angeles Herald Examiner*, the second-largest newspaper in the city. I also contacted Frank Ricchiazzi, a founder of the Log Cabin Republicans and asked him to use his contacts to lobby the governor to sign the bill. Frank was very helpful. He did use his Republican influence with the governor's office.

I then wrote an eight-page memo to the governor explaining the history of the Ralph Civil Rights Act and the need for this amendment to it. I pointed out that when he was a state senator in 1976, he had voted for the Ralph Civil Rights Act when it was first enacted into law. I also underscored that when he first became governor in 1983, he publicly stated that freedom from violence and the fear of violence is a basic human freedom which the government has a responsibility to protect. Finally, I warned that a veto of the bill could set off a new wave of gay bashing and cause public confusion regarding the official policy of the state regarding such violence.

A few days later, Deukmejian signed the measure into law. This was the first time that a California statute specifically provided statewide legal protection on the basis of sexual orientation. And it was enacted with the signature of a conservative Republican governor.

Pete Wilson was sworn in as the 36th governor of California on January 7, 1991. During his first year in office, Wilson was forced to deal with the issue of granting legal protections to gays and lesbians who experienced sexual orientation discrimination in employment. This was an issue that had been brewing in California for 16 years.

Assemblyman John Foran had introduced a bill in the California Legislature on January 1, 1975, to add "sexual orientation" to state statutes

prohibiting discrimination in employment by public and private employers. The bill quickly passed two committees and was sent to the floor of the Assembly. Foran was surprised when, in the last two hours of the legislative session, his bill was defeated by a vote of 22 in favor and 48 against. Liberal and moderate legislators were apparently not willing to stick their necks out any farther. They had voted for the consenting adults bill. Another gay-rights measure was more than they could handle.

Assemblyman Art Agnos picked up the torch for gay employment rights when he introduced AB 1 on December 4, 1978. The bill was narrowly approved by the Assembly's Labor Committee in 1979, but then got stalled in the Ways and Means Committee. Despite this legislative defeat, on May 31, 1979, the California Supreme Court issued a ruling that some forms of employment discrimination against gays and lesbians were illegal under current law.

The landmark decision was in *Gay Law Students Association v. Pacific Telephone and Telegraph Company*, a case in which I had filed a brief with the Supreme Court. The most interesting part of its decision concluded that Labor Code sections 1101 and 1102 prohibited employers, whether public or private, from taking adverse action against an employee who chose to be openly gay.

Those statutes were not a part of the state's civil rights laws, but were found in a more obscure area of the law which dealt with political activities of employees. The Labor Code declared that it was illegal for an employer to interfere with or attempt to interfere with the political activities of an employee. Justice Tobriner, writing for himself and three other members of the Supreme Court, ruled that with pervasive anti-gay attitudes in society, it was a political act for an employee to choose to be openly gay. But the court was silent when it came to employees who were not open about their sexual orientation. Nonetheless, gaining legal protection for openly gay employees was a major victory.

Art Agnos persisted in his attempts to add "sexual orientation" to the usual employment discrimination laws. He wanted all gays and lesbians protected, regardless of whether they were open about their sexuality. He also wanted gays to be part of the normal administrative machinery and procedures that protected women, people with disabilities, and racial and ethnic minorities from job discrimination. He reintroduced AB 1 year after year until it passed both houses of the Legislature in 1984, only to be vetoed by Governor George Deukmejian. The governor felt there was no

evidence that such discrimination was so prevalent as to warrant a state law. But Agnos was not deterred and kept reintroducing his bill each year.

In 1986, Attorney General John Van de Kamp wrote a legal opinion in which he concluded that, because of the right of privacy in the California Constitution, and because of the need for equal protection of the law, all gays and lesbians were protected by Labor Code sections 1101 and 1102. While his opinion did not have the same force of law that a court decision had, it gave the gay community some ammunition to use in pressuring the California labor commissioner to accept complaints involving sexual orientation discrimination regardless of whether an employee was open about his or her sexual orientation.

But in 1987, Labor Commissioner Lloyd Aubrey issued his own ruling that there was no requirement for him to handle complaints from people who were discriminated against but silent about their homosexuality. So Agnos kept introducing his bill each year to close any gap in the law, and each year he gained support from a few more legislators.

Finally, in September 1991, Agnos got his bill, which was now named AB 101, passed by both houses of the Legislature. Pete Wilson was then faced with a decision to sign the bill or veto it.

On September 30, 1991, Wilson vetoed AB 101. The veto triggered public protests for several days by thousands of citizens in Los Angeles and San Francisco. Gays and lesbians were outraged and angry. Many activists felt that more than 15 years of political work went down the drain the day Wilson vetoed AB 101.

I decided to look for the silver lining in the cloud. I studied Wilson's veto message very carefully and concluded that the governor had painted himself into a corner. There was language in the veto message that could be used to insist that the labor commissioner begin processing all sexual orientation discrimination cases, regardless of whether the employee was open or closeted about his or her homosexual status.

Wilson cited several legal bases for his conclusion that there was no need for AB 101 because gays and lesbians were already protected under existing law. He referred to the 1979 gay law student decision of the Supreme Court and the state constitutional right of privacy. He also cited, with approval, the 1986 attorney general's opinion that people who were private about their sexual orientation were protected.

There were two problems with the state labor commissioner's

office. Although that office could process cases administratively as well as file civil and criminal complaints against employers who violated the labor code, the commissioner's office had concluded in 1979 that it could only process gay discrimination cases on a criminal level. That approach would not help victims of discrimination to get damages or to be reinstated. Furthermore, it would be hard to convince a prosecutor to take such a case to court since it would require proof beyond a reasonable doubt and a unanimous decision by all 12 jurors.

There was also the ruling by the labor commissioner in 1987 that only openly gay employees were protected by the law. The office would not accept complaints from employees who were private or discreet about their sexual orientation. I was determined to use the governor's own veto message to get the labor commissioner to rescind both the 1979 and the 1987 rulings. I wanted the labor commissioner to handle all sexual orientation discrimination cases and to process them on an administrative level to get a settlement or to file civil charges to help the employee get damages and reinstatement.

I enlisted the support of Los Angeles City Attorney James Hahn and San Francisco District Attorney Arlo Smith to work with me on a strategy that would virtually force the labor commissioner to change course.

I wrote a nine-page legal memo titled "Governor's Veto of AB 101 Has Criminal Law Consequences." The memo explained how prosecutors, such as Hahn and Smith, had authority under existing law to file criminal charges against employers who discriminated against gays and lesbians.

I convinced Hahn and Smith to issue press releases notifying the media that there would be a press conference in Los Angeles on the morning of October 29, 1991, and in San Francisco on that afternoon. I attended both press conferences which occurred as scheduled. The media were amazed by the fact that instead of there being no legal protection as a result of the veto of AB 101, there would now be criminal prosecutions of offending employers. This was real hardball.

Smith's press release said that Wilson's AB 101 veto "has left D.A.s no choice but to prosecute employers." Hahn's statement underscored the fact that the criminal penalty for violating Labor Code sections 1101 and 1102 is up to one year in jail as well as substantial fines.

Smith and Hahn sent letters to Labor Commissioner Victoria Bradshaw on October 29, advising her of their determination to use the

criminal law to prosecute businesses which discriminated against gay and lesbian employees. I faxed a memo to the labor commissioner on October 30.

It was becoming apparent that Wilson's veto of AB 101, which was largely due to opposition from the business community, had backfired. Rather than leave lesbians and gay men with little or no protection, because of the leadership of the two most prominent prosecutors in the state, the business community would face criminal prosecution if they violated the law. At this point, the use of administrative procedures and civil lawsuits probably started to look rather appealing to the business community as well as to the governor and his administration.

The political pressure, media exposure, and threatened criminal prosecutions of offending employers had their desired effects. On October 31, 1991, I received a letter from the labor commissioner explaining that all sexual orientation discrimination cases would be accepted and investigated by her office. Administrative remedies and civil lawsuits would be applied to offending employers. We finally had statewide protection against all forms of sexual orientation discrimination in employment and a statewide agency to investigate cases and proceed against employers who took adverse action against workers.

My next major interaction with a governor was in 1999 when Gray Davis assumed office. Davis was lieutenant governor from 1995 to 1998. He ran for governor in 1998. During his campaign, I sent Davis a questionnaire. It asked his opinions on a variety of issues. One of them focused on rights for domestic partners.

On September 1, 1998, I received the answers to the questionnaire. The fax cover sheet said "Davis for Governor" and the person sending the fax was Tal Finney. Finney had been general counsel to Davis when he was lieutenant governor and was policy director of his campaign for governor. I was sure that I could rely on these answers as an accurate reflection of the position of Davis on these issues.

Finney, responding for Davis, indicated that Davis supported a domestic partner registry and domestic partner employment benefits. He also indicated that he would not limit domestic partner rights to same-sex couples but would include all unmarried couples regardless of the sex of the partners.

Davis won the election and Finney was appointed as his director of policy on December 22, 1998.

The Domino Effect

The first domestic partnership bills were introduced in the California Legislature in the early 1990s. Over the years, some even passed both houses only to be vetoed by Pete Wilson. All these bills would have applied equally to same-sex and opposite-sex unmarried couples.

Now that Davis was governor, the prospect was good to have a domestic partner registry and a benefits bill signed into law. Then came the flip-flop.

Soon after assuming his role as governor, Davis told Assembly-woman Carol Migden to amend her domestic partnership bill so that it would apply to same-sex couples only. Migden reluctantly agreed. What else could she do?

I was furious. Davis had changed his campaign position. He wanted to turn it into a gay rights issue. I wanted it to be inclusive, as all the legislative proposals had always been.

I discussed the matter with Lloyd Rigler, my financial benefactor. Lloyd had been supporting my human-rights work for several years. He was a staunch supporter of domestic partnership rights for all unmarried couples. He and Gray Davis also had a long history of political work together. Lloyd had been the treasurer of Jerry Brown's first campaign for governor. Davis worked on the campaign and became Brown's chief of staff when Brown won the election in 1974.

Lloyd wrote several letters to Davis but they were all ignored. So Lloyd decided to get his attention through the media. Lloyd purchased quarter-page ads in the *Los Angeles Times* and the *Sacramento Bee*. The ads asked readers to demand that domestic partner rights apply to all unmarried couples, not just same-sex couples.

I reached out to seniors groups throughout the state. Many seniors groups had supported the domestic partner bills in the Legislature during the 1990s. When the bills would come up for a hearing, it was seniors groups, not the gay and lesbian groups, that would testify first. I wondered whether the lesbian and gay groups supporting this bill would really abandon seniors just because the governor wanted a "gay-only" bill. That would have been very callous. Use them when you need them. Dump them when you don't.

After the governor's office started receiving calls and letters from seniors opposing the exclusion of heterosexual couples from domestic partnership laws, Davis decided to modify his position. He would agree to

sign a domestic partnership bill if it were limited to heterosexual couples in which both parties were over 62 years of age and same-sex couples of any adult age. So Migden amended her bill; it passed the Legislature, and it was signed into law by Davis. The first law provided for a registry with the secretary of state and offered a few legal protections.

I was still dissatisfied. Including some heterosexual couples was better than none. But it was unfair to exclude those below the age of 62. It was strange to have a domestic partnership law that excluded the majority of domestic partners.

A few years later, Migden was successful in amending the law to allow heterosexual couples to register if only one of them was 62 or older. Her subsequent attempts to allow all domestic partners to register and gain various rights and benefits had failed. These bills would always be killed by Mark Leno, a gay legislator from San Francisco who chaired a key committee in the Legislature.

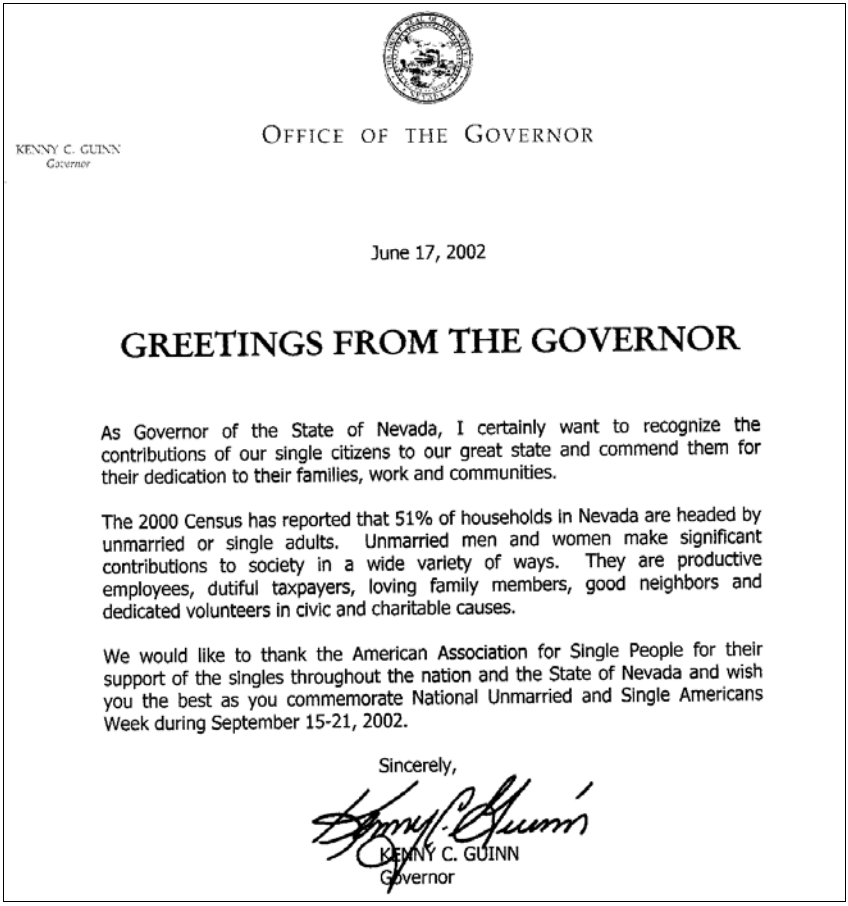
To this day, the statewide domestic partnership registry is unavailable to unmarried heterosexual couples unless one of them is at least 62 years old. Many private employers who now offer domestic partner employment benefits require the employee and partner to register with the state. As a result, thousands of unmarried workers in California are denied equal employment benefits simply because they have an opposite-sex partner rather than a same-sex partner. They have Gray Davis and Mark Leno to thank for this.

The next time I did any work with governors was on a much lighter note and with a much softer tone. I had discovered that an obscure commemoration known as National Singles Week was listed on a few promotional calendars. But virtually no one knew about it. So I decided to breathe life into National Singles Week as a way to call public attention to the existence of single people as a large and growing population and to remind America of the huge role that single people play in society as taxpayers, consumers, employees, neighbors, volunteers, and family members.

One method to get attention would be to obtain official proclamations from governors declaring the third week of September as National Singles Week in their jurisdictions. I could then use the proclamations to send to the media in these states, suggesting that they write stories or devote broadcast time to single people and their issues.

My strategy was a partial success. The governors of eight states –

Delaware, Minnesota, New Jersey, Missouri, Kentucky, Rhode Island, Nebraska, and Nevada – issued proclamations declaring the week of September 16, 2001 as Singles Week. As for the publicity, the best of plans can be shattered by unforseen events. In this case, it was the terrorist attacks of September 11, 2001.



KENNY C. GUINN
Governor

OFFICE OF THE GOVERNOR

June 17, 2002

GREETINGS FROM THE GOVERNOR

As Governor of the State of Nevada, I certainly want to recognize the contributions of our single citizens to our great state and commend them for their dedication to their families, work and communities.

The 2000 Census has reported that 51% of households in Nevada are headed by unmarried or single adults. Unmarried men and women make significant contributions to society in a wide variety of ways. They are productive employees, dutiful taxpayers, loving family members, good neighbors and dedicated volunteers in civic and charitable causes.

We would like to thank the American Association for Single People for their support of the singles throughout the nation and the State of Nevada and wish you the best as you commemorate National Unmarried and Single Americans Week during September 15-21, 2002.

Sincerely,

KENNY C. GUINN
Governor

One of many greetings and proclamations from governors

The following year, we renamed the week Unmarried and Single Americans Week – National USA Week for short – to acknowledge that many people who are legally single prefer to think of themselves as unmarried rather than single. We decided to use both words to describe

this population. The staff at the American Association for Single People worked with me to get more governors to recognize the third week of September as a commemoration for unmarried and single Americans.

The governors of Alaska, Hawaii, Indiana, Iowa, Kansas, Kentucky, Maine, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, North Carolina, Pennsylvania, and Rhode Island responded by issuing proclamations for Unmarried and Single Americans Week in 2002.

These proclamations acknowledged that 86 million Americans were unmarried and although many people are single by choice, the tragic events of September 11, 2001, demonstrate that others are single because of the death of a spouse. But whatever the reason for their unmarried status, unmarried Americans deserve recognition for the many contributions they make to society.

During Unmarried and Single Americans Week in September 2002, the American Association for Single People gave awards to organizations and individuals for actions they had taken which had a positive effect on the lives of single people. One category was for outstanding political leadership. New York Governor George Pataki received an award in this category. We delivered it to his representative at the governor's office in Washington, D.C.

Governor Pataki, a Republican, had taken three actions in 2002 to deserve this recognition. First, he expanded the state subsidized health care program to make single people eligible and he convinced the federal government to allow this to happen. Prior to this, only families and children were eligible. As a result of Pataki's move, thousands of single people who lacked health care would now have basic coverage. He also issued an executive order making surviving domestic partners of 9/11 victims eligible to receive benefits under the state's victim compensation fund. Finally, he signed a law clarifying that New York intended surviving domestic partners to receive money from the 9/11 federal compensation fund established by Congress. Without this legislation, surviving domestic partners would have been excluded from federal assistance.

The following year, two governors received awards during Unmarried and Single Americans Week. Iowa Governor Thomas Vilsack received a Workplace Award for authorizing the state to enter into a collective bargaining agreement with the largest state employee union. The contract called for health benefits to same and opposite sex domestic partners of state employees. Maine Governor John Baldacci received a

Tom Coleman and L. Joan Allen present an award from AASP to Gov. Pataki. The head of Pataki's Washington office accepts it.

Leadership Award. He proposed and won passage of a universal health-care plan which provided health care protection for all adults and children in Maine. The new plan would have an impact on thousands of single people, a population which is uninsured at twice the rate at which married adults are uninsured. It would also help children in single-parent families, a segment of the population which is more likely to lack health insurance than children in married-couple families.

After 2003, the focus of my work shifted and, as a result, I was no longer working on projects which involved me with governors. But the three decades of interaction with chief executives was certainly a political roller coaster ride worth remembering. Sometimes my work with governors was successful, sometimes not. At times, interaction was cooperative, while on other occasions it was combative. But whether I was using a carrot or a stick to convince governors to take action, the results ultimately

had a beneficial effect on the lives of millions of Americans.

I'll never regret shifting a considerable amount of my energy and advocacy to the executive branch of government. This truly was an untapped source of power which I was able to use to help a broad spectrum of populations on a wide range of issues.

Chapter Four

Redefining "Family"

Moving beyond tradition is
necessary in a changing society

Most of my legal and political activities in the 1970s focused on sexual privacy rights, freedom of speech, freedom of association, and fair employment and housing issues. But as that decade was ending and a new one beginning, my attention was directed to another major area of concern. The definition of "family" took center stage in the so-called culture wars that were erupting across the nation.

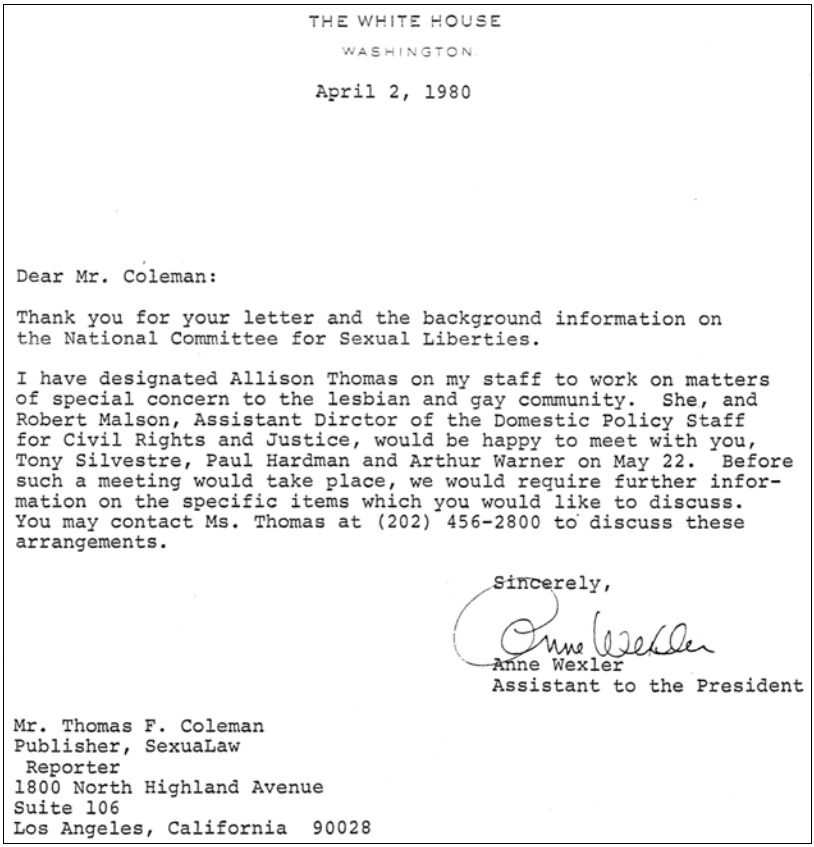
In 1980, the California Supreme Court decided the case of *City of Santa Barbara v. Adamson*. The dispute arose when the city cited Beverly Adamson for violating a zoning law that permitted only single-family dwellings in the area of the city where Adamson lived. The law allowed an unlimited number of people related by blood, marriage, or adoption to live together in an area zoned for use by single-family units, but only a maximum of five unrelated people could live together in such a zone.

Adamson owned a mansion with 24 rooms, including 10 bedrooms and six bathrooms. She shared it with 11 other adults. The group felt they were a family of sorts, since they had developed social, financial, and psychological commitments to each other. They shared expenses, rotated chores, and ate evening meals together.

A bare majority of the California Supreme Court declared that the state constitution's right of privacy protected the freedom of individuals to

form and maintain an "alternate family." The court ruled that the Santa Barbara zoning law's definition of "family" was unconstitutional. Some 37 other cities in California had similar laws.

The decision was a landmark in California, but it was not without precedent. The highest courts of New Jersey and New York had looked to their state constitutions to protect the right of unrelated individuals to live in areas zoned for single-family use – so long as the group functioned as one family unit.



THE WHITE HOUSE

WASHINGTON

April 2, 1980

Dear Mr. Coleman:

Thank you for your letter and the background information on the National Committee for Sexual Liberties.

I have designated Allison Thomas on my staff to work on matters of special concern to the lesbian and gay community. She, and Robert Malson, Assistant Dirctor of the Domestic Policy Staff for Civil Rights and Justice, would be happy to meet with you, Tony Silvestre, Paul Hardman and Arthur Warner on May 22. Before such a meeting would take place, we would require further information on the specific items which you would like to discuss. You may contact Ms. Thomas at (202) 456-2800 to discuss these arrangements.

Sincerely,

Anne Wexler
Assistant to the President

Mr. Thomas F. Coleman
Publisher, SexuaLaw
Reporter
1800 North Highland Avenue
Suite 106
Los Angeles, California 90028

Coleman and National Committee meet with White House staff.

These three precedents started a new trend to identify families by their function rather than define them by their structure.

The definition of "family" became a political tug-of-war on a national scale in 1980 when President Jimmy Carter convened the White House Conference on Families. Political conservatives were disappointed when the diverse group of conference participants, several hundred in all, could not agree on how to define the term "family."

Although I had not been a participant in these court cases or in the White House Conference, I realized that my future, and the future of everyone who was locked out of marriage or who chose not to marry, would be shaped by the outcome of this definitional battle. I knew that I wanted to be a part of this debate and I wanted to help lead the way for an inclusive and realistic definition of "family."

My first opportunity to move forward with this agenda occurred when I became the executive director of the Governor's Commission on Personal Privacy. Among the issue groups we formed was a Committee on Family Relationships. It was chaired by Wallace Albertson, a member of the Board of Trustees of California State University.

After more than one year of study, including several public hearings, the Committee on Family Relationships issued a report which found that a dilemma existed in connection with the meaning of the word "family" in a sociological as well as theoretical context.

The committee concluded that, based on the reality of how Americans live, as evidenced by 1980 census data, society could no longer presume that "family" means a married heterosexual couple with children. It found evidence that people whose family does not fit this presumed model suffer because they are excluded from legal protections and various services.

This exclusion, the committee found, violates the right of privacy which does and should protect the right of individuals to choose intimate and familial associations free from unwarranted discrimination.

Based on these sociological and constitutional considerations, the committee recommended that definitions of "family" should be inclusive, not restrictive. In deciding whether a group of people is or is not a "family," government agencies and businesses should consider several elements: continuity of commitment, mutuality of obligation, economic and/or domestic interdependence, and loving and caring.

The report of the Committee on Family Relationships was considered by the entire 25-member Privacy Commission. The final report

of the full commission found that the term "family" actually encompasses a wide diversity of relationships. Commissioners felt that the legal definition of "family" – and the benefits and protections associated with that status – resembled a wheel.

At the core of the matter was the hub of the wheel – a mechanism for determining which relationships would qualify as a family and which would not. The individual spokes were various obligations, benefits, and protections that the Legislature would confer on those relationships which did qualify.

Commissioners believed it was premature to decide which benefits should apply to the "alternate families" which the Supreme Court had recognized existed in large numbers in California. Those were policy decisions to be made by the Legislature over time.

The first step in the process of bringing more fairness to alternate families was to create a way for those administering government or private sector programs to distinguish families from non-families. Central to such a determination was the intention of the group claiming to be a family.

Two or more people who are domiciled in the same household but are not related by blood, marriage, or adoption, should have a way to identify themselves as a family unit, the final report of the Privacy Commission concluded. The government has authorized birth certificates, marriage certificates, death certificates, and name change decrees to document a status or event that society considers important.

In December 1982, the commission recommended that the Legislature enact a law authorizing people who consider themselves a family and who function as a family to declare their family status. Once such a mechanism was in place, then the debate could focus on which spokes to put in the wheel.

Little did we know that this recommendation would be the precursor to an unofficial family registry with the California secretary of state, domestic partnership registries in dozens of municipalities, and eventually a statewide registry for domestic partnerships. And just as we predicted, once the hub was in place, individual spokes were put into the wheel, as city and state lawmakers incrementally conferred specific benefits and protections on these now-identifiable families.

It was also in 1982 that a specific type of "alternate family" became the focus of a political debate in San Francisco. At one fell swoop,

and without much study regarding the consequences, the city's Board of Supervisors enacted a domestic partnership ordinance. The measure created a city registry through which two unrelated adults could declare their family status and thereby gain all benefits and protections afforded to married couples under city law. The registry would be available to unmarried couples regardless of whether the partners were of the same sex or opposite sexes.

The proposal was swiftly vetoed by then-Mayor Dianne Feinstein. She was miffed that she had not been consulted in advance by the proponents of this major piece of legislation. She was also unwilling to sign a blank check. No one had taken the time to study and itemize the potential fiscal effects of such a new law.

But, vetoed or not, the proposed ordinance got the domestic partnership political movement rolling. Two years later, Berkeley became the first city in the nation to provide health and other benefits to the domestic partners of municipal employees. The *Village Voice* newspaper in New York City became the first private employer to offer domestic partner benefits.

The domestic partner benefits movement soon spread to Southern California when the city of West Hollywood, first incorporated as a city in 1984, enacted a domestic partnership registry the following year. The issue soon found its way into the municipal elections in the city of Los Angeles.

Mike Woo gave the issue considerable public visibility when he challenged incumbent Peggy Stevenson for her seat on the Los Angeles City Council. Both candidates wanted the support of the local gay and lesbian community and they saw domestic partner benefits as one way to garner that support. So both pledged to move the issue forward.

Woo won the election and became the first Asian American member of the City Council. I remember being at City Hall for another reason on the day that Woo was sworn in as councilman for the 13th District. Since I was there, I decided to swing by Woo's new office to see if I could speak to his chief of staff.

When I walked through the door, I saw Larry Kaplan looking irritated and perplexed. As chief of staff, Larry had to organize the office. Unfortunately, there was nothing to organize since Stevenson had totally cleaned out her office and those of the support staff. She had taken all files and records that had been accumulated while she had been in office for several years.

Larry looked over at me and asked what I wanted. "I would like to help Councilman Woo move the domestic partner agenda forward," I replied. "Give me a break," he shot back, "Mike was just sworn into office two hours ago."

I explained that I just happened to be in City Hall on other business and decided to stop by their office to offer my services as a consultant free of charge. I suggested that I could submit a proposal to his boss that would develop a strategy and a process for dealing with the issue of domestic partner benefits. He welcomed the idea.

When I got back to my office, I decided to set up an appointment with Lloyd E. Rigler. Lloyd was very active in local and statewide politics. He was also very wealthy. As mentioned before, I met Lloyd through Burt Pines, the former city attorney for the City of Los Angeles and former Chairperson of the Governor's Commission on Personal Privacy.

Several months after the Privacy Commission ended, Burt called me on the phone. "There's someone I would like you to meet," he said. "Lloyd Rigler and you have a lot in common."

So with Burt's introduction, I met Lloyd in 1983. Lloyd had made his millions as founder and owner of the Adolph's Meat Tenderizer company. Lloyd and his life mate, Larry Deutsch, operated the company until they sold it in 1974. Larry died in 1977, more than 30 years after he and Lloyd became domestic partners.

In the ensuing months after we first met, Lloyd and I had many conversations about the law, politics, and human rights. We agreed on many issues and shared many similarities when it came to strategy. Lloyd's approach was based primarily on the right of privacy. Mine was grounded more in equal rights. But we both agreed that achieving political success around our issues would require that issues be inclusive rather than narrow and self-serving. We also believed that success would come sooner if we developed broad coalitions around these inclusive issues.

I started to approach Lloyd with funding requests for specific cases and projects. His foundation was required to give away about $2 million per year. Why not have some of that money come my way to support my advocacy work?

Lloyd was much interested in obtaining legal protections and equal rights for domestic partners. His interest was as personal as it was political. During one of our early conversations, Lloyd perked up when I mentioned

domestic partner benefits and rights. He explained that when his partner Larry died, Larry had left his entire estate to Lloyd. Had they been married, or had the federal government recognized domestic partners as spousal equivalents for tax purposes, the bequest would have been tax-free. Surviving spouses are exempt from this tax.

However, since he and Larry were considered strangers in the eyes of the law – despite being life mates for more than 30 years – the government wanted to take 50 percent of the estate in taxes. This made Lloyd's blood boil. So he declined to accept the bequest. As a result, the bequest went to the LEDLER Foundation – a nonprofit foundation established by Lloyd and Larry for their philanthropic work. But Lloyd was nonetheless upset and this upset prompted his intense interest in legal reforms to give protections and benefits to domestic partners.

Lloyd's financial means and his passion for domestic partner rights coincided with my passion for an inclusive definition of "family." He had the money and the desire. I had the advocacy skills. We shared a broad vision for legal reform.

When I came to Lloyd to discuss how Mike Woo could help us move the domestic partner agenda forward, he jumped right on it. This discussion happened to coincide with another discussion about the same issue, although that one was in an academic context.

In 1985, soon after West Hollywood had created a domestic partnership registry, I was contacted by John Heilman, mayor pro tem of the city of West Hollywood. John asked me to meet with Lee Campbell, dean of the University of Southern California Law Center. He and Lee had apparently been discussing the possibility of the Law Center offering a class on gay rights and my name had come up as a possible adjunct professor to teach the class.

John, Lee, and I had lunch. They invited me to teach a class titled "Gay Rights and the Law." Although I was honored, and although I had the ability to teach such a class, I declined the invitation. They were surprised by my reply.

"I believe in building coalitions and advocating around broad-based issues," I explained. The topic of gay rights – although it is important – is too narrow. The only students who probably would take such a class, I suggested, would be gays and lesbians.

"I have another suggestion," I added. "How about a class on Rights

of Domestic Partners?" That would involve same-sex and opposite-sex unmarried couples and would be inviting to students who are gay or straight. That's what I would like to do.

After thinking it over a bit, the dean agreed. Now would come the challenge of developing a course syllabus, class outline, and reading materials. This would be the first law school class of its kind in the nation.

Since the pay for teaching one class as an adjunct professor was so little, I needed to obtain funding to help me devote the necessary time to develop the course materials. So I went to Lloyd with a suggestion.

I asked him to set money aside for a Domestic Partners Equity Fund. The money would be used to develop the course materials as well as to enable me to work with Mike Woo to move the domestic partnership issue forward at the municipal level. Lloyd agreed. I was assured that I could devote a significant amount of my professional time to this equal rights cause and be paid for it.

I sent a proposal to Larry Kaplan at Mike Woo's office. I suggested that the issue of employee benefits for domestic partners of city employees should emerge from a policy study. It should not be the sole or even primary focus of the study, but it should be one of the recommendations that would be coming out of the study after further research and public hearings.

Perhaps in his role as chair of the Intergovernmental Committee of the City Council, Mike should convene a "Task Force on Family Diversity" to study family demographics and trends as well as issues of need and areas of unfairness. The Task Force would be diverse in its membership, would conduct public hearings, and would issue a report to the mayor and City Council on how the city, both directly and indirectly, could improve the quality of life for all families in the city. One of the recommendations that might come out of the study would be for the city to recognize the diversity of its own workforce and to give equal benefits to employees regardless of marital status or family structure.

Mike Woo liked the idea. His concern, however, was how the Task Force would be staffed. His staff was already spread too thin. I suggested that he appoint me as a special consultant to the Task Force to assist and direct its work. I also promised to assign the students in my law school class to help with the research and to write reports on various issues for the Task Force members to consider.

The remainder of 1985 and the first part of 1986 focused on the development of plans for the Task Force and the selection of potential members. Mike Woo officially convened the 37-member Task Force on Family Diversity on April 9, 1986. Little did we know that the work of the Task Force would continue for two years. The final report was released on May 19, 1988.

The report contained data from the Census Bureau documenting the decline of the traditional nuclear family of breadwinner-husband and homemaker-wife with children – and the corresponding increase in a diverse range of households, including single parents, unmarried couples, and solo singles. The report also showed that public attitudes about the definition of family were changing. A large majority of the public no longer believed that the term "family" should be limited to those who are related by blood, marriage, or adoption. Love and mutual support were more important than legal distinctions.

Recommendations were made on a wide range of issues, including housing, insurance, child care, family violence, education, and employee benefits. Special needs and concerns were noted for families with seniors, families who have members with disabilities, single-parent families, immigrant families, and domestic partners.

Recommendations were directed to the Legislature, insurance commissioner, and department of education, in addition to the City Council, mayor, and city departments and commissions. This was the most comprehensive report on family issues ever conducted by any municipality in the nation. Its work was funded primarily by donations from the private sector, including GTE California, Pacific Bell, MECLA Foundation, and the LEDLER Foundation. The report was released at an evening reception sponsored by GTE and held at the Hollywood Roosevelt Hotel. Task Force Co-chair Christopher McCauley lined up most of the corporate donations.

As for the definition of "family," the Task Force recommended that state and local lawmakers should be sensitive to the fact that the word "family" is capable of many variable definitions. When the term "family" is used in proposed legislation, the Task Force encouraged such officials to consider relevant definitional options and to favor inclusive rather than exclusive terminology.

Among the 110 recommendations made by the Task Force was one that had prompted the creation of the Task Force in the first place and which cried out for immediate attention: benefits for domestic partners of

city employees.

The mayor sent the report to all city departments and commissions, asking them to review it and to suggest ways they could help implement its recommendations. The public was educated about the recommendations through media reports and community meetings.

Mike Woo took the lead on the domestic partnership issue. We tried enlisting the support of the city's many unions – but found that most of them were entrenched in the traditional family definitional model. Many felt that married-couple families would lose benefits if domestic partners gained benefits. It was an uphill battle. And, of course, there was resistance from the religious right. They saw domestic partnership as a step toward gay marriage, even though our plan for domestic partner benefits included unmarried straight couples as well.

I suggested that we use the hub-and-spoke concept as the Privacy Commission had done – create a definition for domestic partnership with a registry for domestic partnerships in the city's personnel department (the hub) and put only two spokes in the wheel to start. The spokes would be high-empathy and low-cost items: sick leave and bereavement leave. Other benefits could be added in future years once workers, unions, and the public became accustomed to the idea.

It took several months of lobbying, but on October 5, 1988, the Los Angeles City Council voted to put "domestic partners" into the "immediate family" category under which city employees are granted sick leave and bereavement leave. Los Angeles became the first major city in the nation to offer benefits to domestic partners. Same-sex and opposite-sex unmarried couples were eligible to participate.

Implementation of the Task Force recommendations was assumed by the Family Diversity Project of Spectrum Institute. The Project consisted of Christopher McCauley and Dr. Nora Baladerian, the co-chairs of the Task Force, along with my colleague Jay Kohorn and me. The work was funded by Lloyd Rigler's foundation and staffed by law student interns from my class at USC Law Center.

One of the first tasks of the Family Diversity Project was to get some of the city unions to accept the city's offer of providing sick leave and bereavement leave to workers with domestic partners. I thought the unions should readily accept the offer since there were no strings attached to the offer. But no, the unions resisted. It took three years of constant prodding before we were able to get two of the unions to agree.

Tom Coleman, Nora Baladerian, Mike Woo, Lynn Sheppod, and Christopher McCauley announce the final report at City Hall.

Councilman Woo then introduced a motion in the City Council to give these benefits to non-union employees of the city. The motion passed.

After Mike Woo was replaced by Councilwoman Jackie Goldberg, Jackie moved the agenda forward even further. She sought council approval for health and dental benefits for domestic partners of city employees. I worked closely with Jackie on the issue, providing information about the experiences of other cities that offered such benefits, including detailed cost projections for the city of Los Angeles. Henry Hurd, head of the benefits section of the personnel department, supported the extension of benefits by quietly lobbying city officials from the inside of city government. The City Council voted to approve the benefits in 1993.

On January 6, 1994, Jackie Goldberg sent a letter to her constituents informing them of her recent victory in getting City Council approval for health and dental benefits for domestic partners of city employees. "I am very grateful to Henry Hurd, of the Personnel Department, and Thomas

Coleman, Executive Director of the Spectrum Institute, for providing invaluable research material and analysis that enabled me to bring forward the legislation much earlier than I thought possible," she said. "Without their assistance, many city employees would still be denied the peace of mind enjoyed by employees whose families have been covered by health insurance all along."

About two years later, Jackie convinced the council to place a measure on the ballot to authorize pension benefits for domestic partners. The voters gave their approval. With this final step, city employees with domestic partners now had the same benefits as those with spouses. It was a long process that took more than 10 years, but it was gratifying to know that all of the hard work had paid off.

Midway through the study by the Task Force on Family Diversity, I received a letter on November 4, 1987, from state Senator David Roberti informing me that I had been appointed to serve as a member of the Legislature's Joint Select Task Force on the Changing Family. The state Task Force was comprised of six legislators and 20 public members. The group was charged with reviewing current social, economic, and demographic trends and assessing their implications for California's families. It was also given the responsibility of defining the basic tenets of a comprehensive family policy and developing legislative recommendations based on its findings.

The Task Force on the Changing Family met monthly throughout 1988. Members were divided into various workgroups focusing on specific topics. Several public hearings were held. A First Year Report was issued in June 1989.

The organizational meeting at which workgroups were formed was quite interesting. Members signed up for workgroups on parenting, education, health care, caring for seniors, etc. "Wait a minute," I chimed in. "What about a workgroup on couples?"

I explained that even with the rising number of single-parent families, couples were still at the core of family relationships. How could a Task Force on the Changing Family conduct a comprehensive study of family trends and issues without focusing on couples – whether married or unmarried?

I offered to chair a workgroup titled "Couples: Recognizing Diversity and Strengthening Fundamental Relationships." At first no one else signed up for this workgroup. I could tell that the people who were

staffing the Task Force were not pleased with what I had done. Their agenda was to focus on "safe" issues that were not as politically volatile as those I cared most about. Everyone knew that my couples workgroup would stray beyond the realm of married couples and would venture into the relatively uncharted and politically explosive area of unmarried couples, same-sex and opposite-sex domestic partners.

However, by the next meeting I had two new workgroup members. Margarita Contreras was a staff member for Senator David Roberti, president pro tem of the California state Senate. He authorized her to attend meetings on his behalf. Margarita was personally interested in the couples workgroup. She and her husband of 25 years did not have children. Their immediate family was the two of them. The other person to sign up was Father William Wood, executive director of the California Catholic Conference, the group of Catholic bishops in California. This was going to be an interesting process.

The couples workgroup issued a report to the full Task Force which included recommendations on a wide range of topics, including: balanced family life education classes that include information on family diversity; premarital counseling or a significant waiting period prior to issuing a marriage license; counseling prior to signing a prenuptial agreement; legalizing common law marriage; removing economic barriers to marriages by seniors and people with disabilities; ending insurance discrimination against unmarried couples; allowing a survivor of an unmarried couple to sue for the wrongful death of a partner; and updating literature of the Fair Employment and Housing Department to clarify that housing discrimination against unmarried couples is illegal.

As the full Task Force was deliberating on the contents and recommendations for its First Year Report, I insisted that additional issues affecting unmarried couples should be included. There was considerable resistance from conservative members, and there was some uneasiness by liberal staff members who wanted to avoid friction over rights for unmarried couples, but in the end I was able to convince a majority to include several of my issues in this groundbreaking report.

The Task Force on the Changing Family issued a report in June 1989, urging lawmakers to recognize domestic partnerships as family relationships. Employee benefits plans were encouraged to define "family" broadly enough to encompass the diversity of today's families regardless of family structure. Public schools were asked to expand curricula to

promote recognition of family diversity. Insurance practices, such as rate discrimination against unmarried couples, should be prohibited. Wrongful death laws should be amended to allow adult dependents to recover damages if a domestic partner is killed by a criminal, drunk driver, or other wrongdoer.

I was pleased. Issues which had surfaced in the Los Angeles study had now been elevated to the statewide level. I also managed to gain national media attention for the work of the Changing Family Task Force when I shared an advance copy of the report with Phil Gutis, a writer with *The New York Times*.

His article, published on May 28, 1989, was aptly titled "Family Redefines Itself, and Now the Law Follows." Phil mentioned a variety of events that were occurring all across the nation, including the domestic partner benefits proposal adopted the previous year by the Los Angeles City Council. He also focused on a case pending before New York's highest court – *Braschi v. Stahl Associates Company* – a case in which I participated and in which the court would have to decide whether to define "family" more broadly than by blood, marriage, or adoption. He also quoted my work with the California Task Force on the Changing Family.

"There is a trend toward defining family by functions rather than by structure," he wrote. He explained that the Task Force on the Changing Family identified those functions as: maintaining physical health and safety of members, providing conditions for emotional growth, helping shape a belief system, and encouraging shared responsibility.

This story in *The New York Times* prompted Lloyd Rigler to fund my work with the media for the next few years around respect for family diversity and the use of inclusive definitions of family in public policies and private sector programs. Lloyd hired a well known publicist who then worked with me on strategies to get me into newspapers, magazines, television programs, and talk radio shows. We had a budget of $100,000 to implement this media project.

When I heard about the *Braschi* case in late 1988, I knew that I wanted to file a brief with the New York Court of Appeals – the highest court in that state. The case involved the definition of the term "family" as used in a rent control statute. The precedent established in the *Braschi* case could have implications for other areas of the law in which the term "family" is used.

Because of the facts involved in the case, I was concerned that the

Court of Appeals would see it strictly as a controversy over "gay rights" when in fact the implications of the court's decision would affect a much larger and broader class of people. I also feared that the court would find that a ruling favoring Mr. Braschi would be a radical departure from current law and prior precedents.

My goal was to file a brief on behalf of religious and social service groups that would serve three objectives. First, the court should become aware that family diversity is the reality of how we now live. In other words, give the court current family and household demographics to place this gay case in the larger context of family diversity. Second, I wanted the court to know that more heterosexuals would benefit from an inclusive definition of family than gays and lesbians. Again, broaden the context of a favorable ruling. Finally, I wanted to present the court with a variety of statutory and judicial precedents, spanning decades, in which the term "family" had been broadly defined to include more than people related by blood, marriage, or adoption. Rather than view a favorable ruling as a radical decision, the court should view such a ruling as a logical extension of established law.

It was only because of financial support from the LEDLER Foundation that I could spend several weeks recruiting individuals and organizations to lend their names to the brief, researching demographics and legal precedents, and writing the brief. Listed on the brief were Family Service America, one of the nation's leading service providers for needy families; the Bar Association for Human Rights of Greater New York; and three religious groups as represented by a rabbi, a bishop, and a minister.

The brief was signed by me, my colleague Jay Kohorn, and New York attorney William Gardner in January 1989. Oral argument occurred in Albany on April 26, 1989.

Two days later, Professor Arthur Leonard sent me a letter and enclosed a copy of a news story which ran in *The New York Times* on April 26. "As you can see, your brief is quoted toward the end of the article," Art wrote. "How does it feel to be the brief writer for 'religious leaders and several other interested organizations?'" he asked.

"Your strategy of getting religious co-sponsorship seems to have worked; the *Times*, at least, pays attention when those names appear on a legal brief," Art observed.

That story in the *Times* explained that the immediate question involved the right of a surviving gay partner to continue to live in a rent

controlled apartment – as a surviving family member – when the person whose name was on the rental agreement died. But beyond the specific facts, the case "revolves around the broader constitutional question of how to define a family," the story continued.

"How to define a family is becoming an increasingly important issue around the country as governments struggle to determine how unrelated people living together – like gay couples, the handicapped, the elderly, or group homes of single people – fit into existing laws and regulations," the story added.

The court's ruling was issued on July 6, 1989. It was a victory not only for Miguel Braschi; it was a victory for family diversity. The court had clearly read my brief. Its opinion summarized the three main points of my brief as follows: (1) New York public policy requires flexibility in defining family; (2) New York City demographics reflect great variety in the personal characteristics of city residents and tremendous diversity in their family relationships; and (3) by defining "family" in an inclusive manner within the rent-control context, the court could further legislative intent, advance public policy, remove constitutional doubts and avoid unjust consequences.

The next day, *The New York Times* published a major story about the case. The story ended with the following quote from me as co-director of the Family Diversity Project. "As the definition of family is litigated across the country, courts are going to be looking for precedents and this case is going to be the landmark relied on as the family diversity movement emerges as a political force."

Within a matter of days, the publicist hired by Lloyd Rigler had me on ABC television's Nightline show. I was debating Gary Bauer of the Family Research Council – a right wing political organization that wanted to stop the advancement of equal rights for anyone who did not resemble the traditional nuclear family. Millions of viewers were educated about the diversity of America's families and their quest for equal rights.

The publicity campaign for family diversity brought me into the public eye in a variety of contexts in the remainder of 1989. The *Los Angeles Times* ran my commentary titled "The Family is Changing and We Should Admit It." *Glamour* magazine ran an editorial which asked: "Who is *your* family? Your roommate? Your live-in lover? Your husband and kids?" Quoting my advocacy for an inclusive definition of family, the editors stated: "We believe in a definition of 'family' broad enough to take

in all the many ways we share our lives with one another – and applaud those communities broad-minded enough to build that definition into law."

Then came a *Time* magazine story quoting my proposal that "live-in couples 'who have assumed mutual obligations of commitment and support for each other' be allowed to apply for a 'certificate of domestic partnership' that would function like a marriage certificate."

U.S. News & World Report quoted me in a story suggesting that the greeting "How's the family?" is giving way to "Who's the family?" The story noted that several cities, including New York, had new laws granting various rights and benefits to unmarried couples.

The year 1989 had clearly been a watershed in the family diversity movement. The report of the Los Angeles City Task Force on Family Diversity was being implemented. The California Task Force on the Changing Family had weighed in on the side of an inclusive definition of family and equal rights for domestic partners. New York's highest court issued its landmark ruling in the *Braschi* case. And, most importantly, millions of Americans were being educated about family diversity by print and broadcast media from coast to coast.

Feeling empowered by these events, I turned my attention to the California secretary of state in 1990. Ever since the Privacy Commission had issued its report in 1982, I had kept thinking about ways to create a statewide registry for "alternate families." I had been sure that we could not get such a law passed by the California Legislature, or signed by the governor, during the administration of George Deukmejian. It was one thing to get a hate crime law signed by him in 1984, but this would have been too much for a conservative Republican governor.

By 1990, most of my professional time was spent as an attorney handling criminal appeals, although about 30 percent of my schedule was devoted to human rights issues and special projects funded by the LEDLER Foundation. I had a full law library in my den at home.

One night, I woke up at about 3 a.m. and my mind kept focusing on the office of the secretary of state. I felt strongly that there was some existing law that could be used to establish a family registry with that agency. Was this just a crazy dream or did my mind stumble across a gem while I had been sleeping? My mind would not turn off, so I got up and went to my library.

I started to review statute after statute dealing with the secretary of

state's office and its duties. This went on for about an hour. Then I hit pay dirt. I found a statute that authorized the secretary of state to register the name or insignia of an unincorporated nonprofit association. It was probably intended for Boy Scout troops or fraternal organizations. But after reading it over and over and thinking about its scope, I became determined that this mechanism could be used to create a family registry.

A family is not a corporation, so it fits the unincorporated requirement. A family is not a business focused on making a profit, so it fits the nonprofit requirement. A family is an association, since an association is a group of people with a common purpose. So a family is one type of unincorporated nonprofit association.

So a family should be able to register its name with the secretary of state. What would the name of a family be? Well, in my case it would be the "Family of Thomas F. Coleman and Michael A. Vasquez." In the case of an unmarried couple with children, it would be the "Family of Susan Ward and John Jones and their children Mary Jones and Jenny Jones."

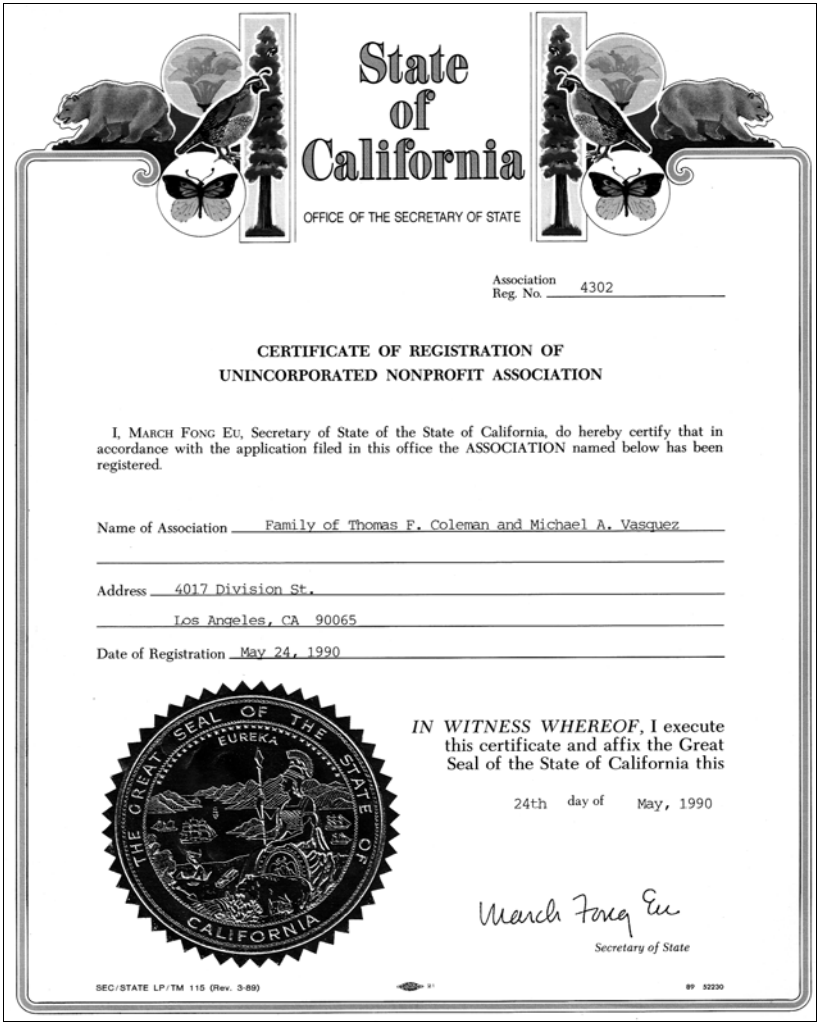
What would be the benefit of registering as a family with the secretary of state? The first benefit would be psychological. Wouldn't it feel good to receive a registration certificate from a state agency that recognized your family? What a sense of empowerment that would create.

Even if you were a married couple with kids, wouldn't it be nice to have an official document that listed all the immediate family members? There are marriage certificates, but they only list the couple. There are birth certificates, but they only list the one child and the parents. This would list everyone in one document.

A family registration certificate could have a powerful political effect as well. Unmarried couples, for example, could take such certificates to their employers and insist that they should receive "family benefits" just as married couples and single parents receive. Flashing an official looking certificate from a state agency would get more attention than a verbal request by an employee seeking equal benefits at work.

I was excited. If this worked, hundreds of couples and so-called non-traditional families could register with the secretary of state. The media would eat this up too. This would be another vehicle for educating the public and enlightening elected officials about the need to respect family diversity and to use an inclusive definition of family in establishing eligibility criteria for public and private benefits programs.

I decided to test out the procedure. My partner and I filled out a registration application. We anxiously waited for several weeks and then,



State of California

OFFICE OF THE SECRETARY OF STATE

Association Reg. No. 4302

CERTIFICATE OF REGISTRATION OF
UNINCORPORATED NONPROFIT ASSOCIATION

I, MARCH FONG EU, Secretary of State of the State of California, do hereby certify that in accordance with the application filed in this office the ASSOCIATION named below has been registered.

Name of Association Family of Thomas F. Coleman and Michael A. Vasquez

Address 4017 Division St.

Los Angeles, CA 90065

Date of Registration May 24, 1990

THE GREAT SEAL OF THE STATE OF CALIFORNIA
EUREKA

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this

24th day of May, 1990

March Fong Eu

Secretary of State

SEC/STATE LP/TM 115 (Rev. 3-89) 89 52230

during the last week of May, we received an envelope from the secretary of state. Inside was an official Certificate of Registration. It was a beautiful document with the golden seal of the State of California affixed to it, bearing the signature of Secretary of State March Fong Eu.

There it was. Name of Association: Family of Thomas F. Coleman

and Michael A. Vasquez. Date of Registration: May 24, 1990. We were the first couple to register ourselves as a family with the secretary of state.

However, before I got too excited about this, I wanted to test the waters again. So I asked a lesbian couple if they would submit an application and they agreed. They soon called me to report the good news. Their beautiful document listed their association as the Family of Rebecca A. Tapia and Jennifer L. Baughman. We were clearly onto something.

I reported the good news to Lloyd Rigler and asked that his foundation fund this family registration project. He agreed. We enlisted a wide variety of family types to participate: a single man who was guardian to three boys, an unmarried heterosexual couple without children, an unmarried heterosexual couple with children, a married couple with children, a gay male couple who had been together 32 years, a married couple with two developmentally disabled adult foster children, and a married couple stepfamily with a child from each prior relationship.

We planned to hold a press conference to announce the new family registry once each of these families received their certificates. After waiting for a few weeks, each family received a letter rejecting their application. What a disappointment. How could this be? The first two were approved. Why were the others rejected?

I contacted Anthony Miller, chief of staff and legal counsel to Secretary of State Eu. Apparently, the clerk who processes applications was caught off guard by this flurry of requests for this esoteric certificate. So she sent it up to his office for review. He could not understand what was happening, so he decided to take a cautious approach and to reject the applications.

After a lengthy conversation, I offered to send Tony a legal memo on why this process was appropriate under existing law. Tony was a gay man and so he implicitly understood the political value of what I was trying to do. He reviewed my memo, shared it with March Fong Eu, and they decided to approve the process. We were back in business.

All of the applications were resubmitted and all were granted. They were so supportive that they even agreed to let us hold the press conference at the State Building in downtown Los Angeles. We arranged for all of the registered families to attend the press conference.

I prepared a press package with demographic data about family diversity. The kit included a statement from Dr. Nora Baladerian, a clinical

psychologist, who attested to the psychological value of a family registration certificate for people whose family forms did not fit the traditional nuclear family model. Also included was a statement from Phil Ansell, a union representative, about how such a certificate would be helpful to workers seeking equal benefits.

I contacted Laurie Becklund, a staff writer with the *Los Angeles Times* and offered her the story in advance of the press conference on condition that she would not publish it until the morning of the press conference. She agreed. I knew that if her story was published on the day of the press conference, it would entice television news media to attend the event.

The morning of the press conference, December 13, 1990, I got out of bed early to get the *Los Angeles Times* paper from my front porch. There it was. On the front page. Headline: "The Word 'Family' Gains New Meaning."

The story spoke of a "novel system that supporters say could benefit thousands of diverse households, including gay couples, foster parents, and stepfamilies." It mentioned how the certificates should "help step-parents in case of medical emergencies involving their children, assist domestic partners in obtaining hospital visiting rights, and serve as a psychological boost to foster children who may feel keenly the lack of family identity." "The certificates may also be shown to health clubs, frequent flier programs, and insurance companies to help qualify for 'family discounts'," it added.

The photo on the front page of the paper showed a unique family who registered with the secretary of state: a married couple, their two biological sons, and their two developmentally disabled adult foster children. The wife was quoted as saying: "We take care of [the women] because their parents can't." At the end of the story was a large photo of Herb King and Stan Mahan, a retired gay couple who had shared their lives together for 32 years.

The story spread to newspapers throughout California. A few days later *The New York Times* ran a story titled: "Nontraditional Families Register in California Bid to Get Benefits." Television news programs carried the story and it got the tongues wagging of many talk radio show hosts.

On Christmas Day, the Orange County edition of the *Los Angeles Times* published a story about two widowed lifelong friends who used the

registry to declare themselves a family. Toby and Anne had known each other since childhood. Then each of them got married and they lost track of each other. After they both were widowed, they eventually found each other and decided to share a household. Toby has paraplegia. They had been in a blood family and a married family. Now they were in a chosen family and they were delighted there was a way for them to officially declare their family relationship to each other.

Despite the broad-based application of this new process, the religious right enlisted the help of conservative Republicans in the California Legislature to fight the family registry. The headline in the newsletter of the Traditional Values Coalition read: "California Certifies Unholy Matrimony." The opening paragraph of the story stated: "The state of California is allowing homosexuals to register their 'unholy matrimony' as a family."

In response to these objections, Senator Newton Russell introduced a bill to outlaw the procedure. When he realized that the bill was not moving, Russell asked the legislative counsel, the attorney who advises the Legislature, to declare the process illegal. In March 1991, the legislative counsel issued an opinion that a family could not register its name as an association with the secretary of state. Tony Miller, legal counsel to the secretary of state reviewed the opinion and concluded it was flawed. As an elected official charged with implementation of the statutes in question, the secretary of state would make her own interpretation of those laws. The office would continue to issue registration certificates despite the contrary opinion of the legislative counsel.

Russell then asked Attorney General Dan Lungren, a darling of the religious right, to issue a formal opinion on the matter. On January 16, 1992, Lungren published an opinion that the secretary of state may not issue a certificate of registration as a "family" to any two or more individuals who share a common residence.

Despite the mounting political pressure, the secretary of state did not back down. On January 31, 1992, Anthony Miller wrote a memo to his boss, Secretary of State March Fong Eu, who had asked Miller for legal advice on the attorney general's opinion. Miller concluded that the attorney general's opinion "may be interesting from an academic point of view but it is entirely irrelevant to the activities of this office."

Noting that the secretary of state is under a mandatory ministerial duty to issue such certificates even if they use the term "family" and a

surname as part of the name of an association, Miller noted, "We have done so as the law requires." In other words, the process would continue and the registrations of the hundreds of families who had already registered would remain intact.

It was amazing that this little process that I discovered in the middle of the night had caused such an uproar. Obviously, the definition of family – and who was in and who was not – pressed hot buttons on both sides of the issue. I knew that the registration process with the secretary of state was not the ultimate solution. But it was a step in the right direction – a step that would stimulate major media attention and political debate, both of which would continue to educate Americans and change public opinion in favor of the use of inclusive definitions of family when decisions were being made about eligibility for benefits.

The visibility of my work with family diversity triggered some additional backlash from conservative Republicans in 1991. Assemblyman Tim Leslie introduced a draconian measure in the Legislature called the "Family Bill of Rights." ACA 28 would have amended the California Constitution to, among other things, require state laws and programs to use a restrictive definition of family. Leslie had been a member of the Task Force on the Changing Family and was quite upset about the liberal direction the Legislature was taking on family issues. This was his attempt to freeze a conservative agenda into the constitution.

Assemblywoman Marguerite Archie Hudson, who chaired the Assembly's panel on constitutional reform, enlisted my support to testify against the measure when it was heard in committee May 8, 1991. "Your organization has extensive expertise in all areas of family issues and understands the potential ramifications of legislation of this magnitude," she wrote. I testified at the hearing and the bill failed to pass.

More work with the media on the issue of family diversity occurred in 1991. I was invited by Trace Percy, a producer with KCET public television in Los Angeles, to assist with the production of a documentary on family diversity. The show was being produced in connection with the station's forward-looking series called "By the Year 2000." This particular episode would be called "We Are Family."

In addition to being interviewed for the show, I suggested particular types of families to highlight in the program. The final product was not exactly what I wanted, but it was close enough. There was a group of seniors living together in a single-family home, a single-parent guardian

who was raising three boys who immigrated from Guatemala, a married couple stepfamily with kids from both prior marriages, a gay male couple who argued for their right to marry, and a lesbian couple who were parenting a baby boy who had been born to one of them.

The story of family diversity was told through the use of a family photo album with one page for each of these families. The camera would focus on a particular page which would then come alive when those depicted in it started talking and moving. Each family told its own personal story. The group of seniors was particularly moving, as the members talked about how their new household had become their new family. The boys from Guatemala were awesome, especially when they became excited as John Brown, their guardian, put a framed copy of their family registration certificate from the secretary of state on the wall in their living room. "Now we are really a family," said one of the boys as the frame was hung.

The final newsletter of the series "By the Year 2000" was devoted entirely to this documentary. "From Ozzie and Harriet to Full House, no other institution in America has changed so much or become more diversified than the American family," the newsletter explained. "BTY 2000 will focus on the social and legal implications of American family diversity in We Are Family, airing June 21." When I finally saw the program on television, I got goose bumps. This show would help pave the way for greater acceptance of family diversity.

While I loved doing research, enjoyed public speaking, and was good at teaching, lobbying and litigating – working with the media was my favorite method of moving the family diversity agenda forward. It was through public education that we would touch hearts and eventually change minds of lawmakers, judges, and corporate executives about the need for more fairness for all families.

It was also in 1991 when Josh Baran, the publicist hired by Lloyd Rigler to work with me, emphasized the importance of a television show to the cause of family diversity. *The Golden Girls* portrayed four women living together in a home in Miami. As time passed, the women – only two of whom were related to each other – formed a functioning family unit. As I periodically watched the show, little did I know that I would participate in a policy study that would use the title of this show as its theme.

In 1994, I was invited by AARP to participate in a "miniconference" it was sponsoring in connection with the White House Conference on Aging. The miniconference involved 20 participants

selected for their work or expertise in the living arrangements of older Americans. It was held at the AARP headquarters in Washington, D.C. I supplied information and recommendations concerning seniors who were living together as domestic partners.

The information gathered during that meeting was incorporated into an AARP report, published in 1995, titled: *The Real Golden Girls: The Prevalence and Policy Treatment of Midlife and Older People Living in Nontraditional Households*. I was excited to have been a part of this project, especially since AARP was such a prestigious and powerful organization. Having its stamp of approval on family diversity was politically significant.

I was especially gratified when I received a letter from Deborah Chalfie, author of the *Golden Girls* report. "I just wanted to thank you once again for sharing your expertise with us," she wrote. "Your organization is the only one we found that has extensively documented the treatment of nontraditional families under public policy," she added. "Please keep up the fine work you do to document and advocate for diversity in family and living arrangements."

My work on domestic partnership issues, the definition of family, and a family registration system merged when I began supporting statewide domestic partnership legislation which started moving through the Legislature in the late 1990s. Two bills were introduced in the California Assembly in 1997. Kevin Murray and Carole Migden each sponsored domestic partnership bills. Both bills would have allowed same-sex and opposite-sex unmarried couples to participate.

Since I had become the domestic partnership legal guru, so to speak, sponsors of these bills would invite me to testify at committee hearings to explain the details of the proposals. For example, Assemblywoman Migden invited me to testify on AB 1059 at a hearing on April 15, 1997. That bill would have required insurance companies to offer health coverage for domestic partners if employers chose to provide these benefits to employees.

"Your expert assistance is needed in responding to technical questions from committee members regarding domestic partnerships," she wrote. "In addition, it would be particularly beneficial for you to outline the legal issues surrounding domestic partnership and health insurance and how AB 1059 would greatly benefit California citizens."

That same month, Assemblyman Kevin Murray asked for my help

in connection with AB 54 – a measure that would have created a domestic partnership registry with the secretary of state and provide a few legal protections to those who registered.

Some of these bills were approved by both houses of the Legislature, only to be vetoed by Governor Pete Wilson. Then in 1999, Gray Davis became governor. He threw a monkey wrench into the process by insisting that the domestic partnership registration system should be limited to same-sex couples only. I led a campaign to fight the governor on this move, enlisting the support of many seniors groups who had specifically lobbied for these bills in order to help many elderly heterosexual couples who could not marry without facing cutbacks in their benefits.

As mentioned before, the governor eventually compromised and allowed the registry to include same-sex couples of any age and opposite-sex couples if both partners were over 62 years old. It was not what I or Carole Migden wanted, and it was not fair to younger heterosexual couples, but it was better than nothing.

Over the next several years, more rights and benefits – spokes – were put into the registration hub, until eventually domestic partners received all of the rights and benefits and obligations afforded to married couples under state law.

Although the days of my court battles and legislative advocacy around the definition of "family" are over, the issue still holds my interest because it affects the rights of millions of Americans. More recently, I wrote several commentaries on various aspects of this subject for my Column One on the Web site of Unmarried America.

"Debates over the definition of family continue to erupt in various American communities," I wrote in a column on October 29, 2007. That commentary focused on the use of $6 million in tax dollars to subsidize a swimming pool at a YMCA even though the facility will charge more money for unmarried families to use it than it charges to married families. That column also discussed political debates over the definition of family in zoning "single family" neighborhoods in cities in New York and Virginia.

On March 26, 2007, I wrote a column about two states that were considering bills to expand the definition of "family" in defining who can take extended family leave when workers have a seriously ill family member they need to care for. A few weeks earlier I wrote about an unmarried police officer in South Bend, Indiana, who was denied leave to

attend the birth of his child simply because he was not married to the child's mother.

A year earlier I wrote about two American cities that wanted to impose a strict and narrow view of family on some of its residents. Black Jack, Missouri wanted to force a stepfamily to move out of the house they owned simply because their family included children from previous marriages. Provo, Utah wanted to pass a law that would outlaw even two unrelated people from living together in areas zoned for "single family" use.

Although I was not directly involved in these more recent battles over the definition of "family," I was able to publicize the cases and lend my commentary to educate readers about the need for vigilance.

The gains made in the 1980s and 1990s do not insure fairness in the future. Some of us in the family diversity movement paved the way. Now it is left to other, perhaps younger, advocates to monitor events and to remain vigilant in the ongoing quest for equal rights.

Chapter Five

Gay Marriage

Matrimony is personally appealing
but politically questionable

The issue of same-sex marriage received national attention during the years I was beginning to grapple with gay rights issues as a young law student at Loyola Law School in Los Angeles. Gay marriage was pushed into the national spotlight by Minnesota law student Jack Baker and his lover, Michael McConnell, when they applied for a marriage license in 1971.

I recall reading about Jack Baker in a gay newspaper that year. Baker ran for student body president at the University of Minnesota's Twin Cities campuses, in 1971. His campaign posters grabbed attention. Baker was dressed in blue jeans and ladies high heel pumps. The poster read: "Put yourself in Jack Baker's shoes." Baker won the election and became the first openly gay student body president in the nation.

The Hennepin County clerk refused to issue Baker and McConnell a marriage license. So they sued the clerk in state court and they lost. The couple then appealed to the Minnesota Supreme Court. On October 15, 1971, the Minnesota Supreme Court issued a ruling denying the appeal. The Court cited the *Bible* as part of its rationale.

The United States Supreme Court would be the only way in which the couple could overturn the decision of the state Supreme Court. There were two ways in which they could seek the intervention of the nation's highest court, though both ways were popularly termed appeals. The first

method would have been to file a "petition for a writ of certiorari," or petition for review. Granting such a petition was a matter of discretion for the court. The second method would have been to file an actual "appeal" with the court. When a state court rejected a federal constitutional claim, the losing party had a right to appeal directly to the United States Supreme Court. The court had to hear such an appeal as a matter of duty, not as a matter of discretion.

Although the rules have changed in recent times, the problem then with using an "appeal" was that if the court rejected the appeal, it was traditionally viewed as creating a binding precedent throughout the nation – a precedent that instructed all other courts that the issue lacked merit. In contrast, the rejection of a petition for certiorari, which is and was a matter of discretion with the court, would not create any legal precedent at all. So filing an appeal with the Supreme Court was a risky proposition in 1971, especially if the issue involved was in the early stages of being developed.

Baker and McConnell were represented by R. Michael Wetherbee of the Minnesota Civil Liberties Union. Wetherbee chose to file an appeal, not a petition for certiorari. He argued that the federal constitutional issues were substantial, claiming that the decision by the state court violated due process, equal protection, and the right of privacy, all of which are applied to the states through the Fourteenth Amendment to the United States Constitution.

The couple and their attorney found out the hard way that you don't try to force the Supreme Court to handle an issue that it does not want to handle or which it and most legal scholars would consider seriously premature. On October 15, 1971, the Supreme Court dismissed the appeal "for want of a substantial federal question." This became, at least technically, a decision on the merits which branded their federal constitutional claims as frivolous and which required all state and federal courts throughout the nation to follow this precedent.

Although I never met Jack Baker or Michael McConnell, I eventually did meet and collaborate with Michael Wetherbee. He became associated with the *Sexual Law Reporter*. For the first few years it was published, Wetherbee was an editor.

Although Wetherbee was intelligent and dedicated, I always questioned his judgment in choosing an appeal rather than a certiorari petition in the *Baker v. Nelson* case. His unilateral decision on this score removed the federal Constitution as a viable issue to be developed in gay

marriage litigation for decades. Whenever any litigant in a gay marriage case cites the federal Constitution as a ground for legal protection, the opposition cites *Baker v. Nelson* and the argument is made more difficult.

As a result, litigants who want any chance of succeeding may have to limit their arguments to various protections under a state constitution. This, in turn, has prompted those opposing gay marriage to amend state constitutions in 29 states to specifically prohibit same-sex marriage.

Throughout my political and legal work over the decades, I never devoted time or energy to the issue of same-sex marriage. I always considered gay marriage to be a "penthouse" issue, explaining to people that the penthouse is not built before you build a solid foundation and construct several sturdy floors first. Then, and only then, in my opinion, was the issue of same-sex marriage politically achievable or legally viable.

The foundation for equal rights is a combination of three constitutional ingredients: the right of personal privacy, the right to equal protection of the law, and the guarantee of liberty as a function of substantive due process of law. That foundation was not completed until 2003 when the United States Supreme Court issued its decision in *Lawrence v. Texas*.

In that case, the Supreme Court ruled that gays and lesbians – and for that matter, all unmarried people – were entitled to the same privacy in the bedroom as married couples take for granted. The court declared the sodomy law of Texas invalid, and by implication invalidated similar laws which were still on the books in a dozen other states. The court reversed its 1986 decision in *Bowers v. Hardwick* in which it had upheld the constitutionality of the sodomy law in Georgia and had dismissed the notion that sexual privacy had any protection in the federal Constitution.

But many gay rights activists did not share my view of a logical and sequential progression for obtaining equal rights. Some believed that every issue should be litigated at every opportunity regardless of the likelihood of a good or bad outcome. Use the courts as a tool to mobilize political activism, some argued. I did not share that view because I knew all too well as a legal strategist, that one bad judicial precedent could haunt the movement for years and tie the hands of lower courts who might otherwise have been sympathetic. Pick your battles. Timing is everything. That's what I believed.

In addition to constructing a solid foundation based on the right of privacy, I believed that fair employment and fair housing rights were some of the lower floors which should be built before moving on to more

politically volatile issues such as marriage. I also saw hate crime legislation, based on freedom from violence, as one of the intermediate stages of the equal rights edifice.

Public opinion polls in the 1980s and 1990s showed that nearly 70 percent of the public at that time opposed the legalization of same-sex marriage. In contrast, about 70 percent of people said they would support an inclusive definition of "family" and some rights and protections for domestic partners. So while some political purists and legal idealists pressed for gay marriage, I put my energy into the "family" approach to equal rights. I believed that small victories and incremental changes would eventually move unmarried couples closer to equality with married couples than the all-or-nothing push to legalize gay marriage would do. I chose to be the tortoise rather than the hare.

But despite my more pragmatic approach to achieving legal and economic reforms, the idea of marriage appealed to me on a personal level – especially after I met the love of my life in 1980.

Michael Andrew Vasquez came to my law office in March 1980, seeking advice on a legal problem. As soon as he sat down across my desk and my eyes met his, I knew it was love at first sight. Literally. A few weeks later, I took a chance and invited him to join me in a weekend trip to Palm Springs. He accepted. As the saying goes: "The rest is history."

We began to date on a regular basis. Michael would drive down to Los Angeles from Oxnard where he lived and spend many weekends with me. Then he would drive up to Camarillo on Monday mornings where he worked at the state hospital. It did not take too long for me to get him involved in political activism. He started a gay employee group at the hospital and eventually became the co-chair of the Gay and Lesbian State Employees Association. He was helping me implement Governor Brown's executive order in a very practical way at the ground level.

Steady dating led to courtship. I knew I was in love, but I was nervous about making a lifetime commitment. I did not want to say "'til death do us part" – even in a legally unrecognized personal commitment ceremony – unless I knew that I could keep that commitment. But after nearly a year of dating and courtship, and after a lot of soul searching, I was ready to take the plunge into marriage. I was committed to him. I just had to put my feelings into words and share those words with him.

I bought a dozen roses and a personal greeting card. Then I wrote down what I felt. I told him that he would make me the happiest man in the

world if he would agree to marry me. When he read the card and smelled the roses, I saw a tear come to his eye. Michael said "yes."

Then we started to talk about how we would marry, where we would marry, whom we would invite, and what type of ceremony we would have. We were going through the same process that our parents had experienced, that our brothers and sisters had gone through, that most people in society eventually deal with. It was exciting and joyful and overwhelming all at once.

The more I thought about a possible venue for our wedding, the more irritated I became. There was no nation on the planet that recognized the legality of a same-sex marriage. Not one nation. No nation. Recognized by no nation. How could we deal with that reality?

"I've got it," I told Michael one day. The lightbulb turned on and I saw the light. We should get married in international waters. The theme of our wedding can be "Recognized by No Nation – Married in International Waters." We would remove ourselves from the jurisdiction of all nations and exercise our basic human right to enter into a marriage contract with the person of our choice. He loved it.

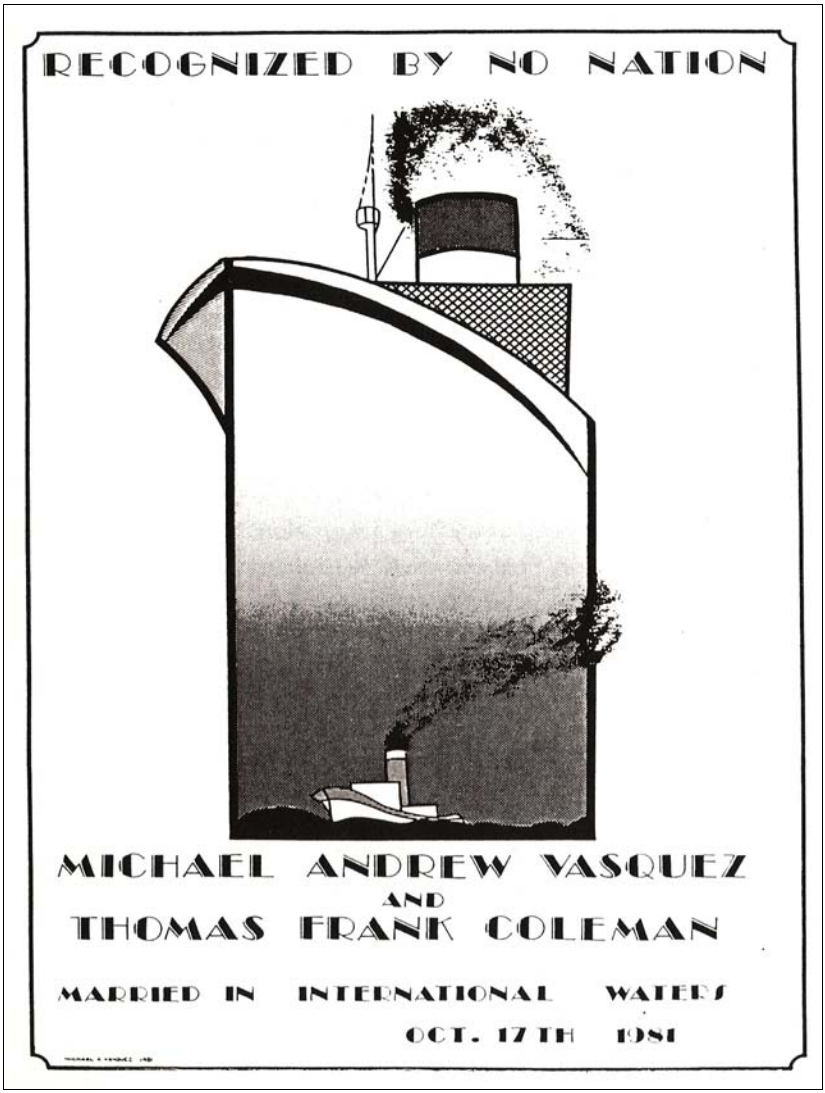
Then I started doing legal research. I wondered how far out into the ocean we would have to travel to be in international waters. Some countries recognized a three-mile limit – others a 12-mile limit. Some claimed national territory out 200 miles from their shorelines. I learned the United States had refused to sign a treaty with most nations claiming a 12-mile limit. And it protested and refused to recognize the 200-mile limit claimed by a few rogue nations. California claimed jurisdiction out three miles from the shoreline. So that would be it. We would go out beyond the three-mile limit claimed by California. That would be international waters for us, especially since the United States refused to specify anything to the contrary.

Now that we had our theme, we needed to create invitations and plan the ceremony. We also had to figure out how we would get ourselves and our guests more than three miles out to sea.

We decided that our invitation would be a poster suitable for framing. This was a historic event and we wanted everyone to be able to have a keepsake. Our friend, Dick Caudillo, offered to help Michael create the poster. They decided on a large cruise ship with a little tugboat in front of it – an art deco style out of the 1930s. The wording read: "Recognized by No Nation – Married in International Waters – Michael Andrew

Vasquez and Thomas Frank Coleman – October 17th, 1981."

We decided to rent one of the triple-deck boats that take people



from the Long Beach harbor to Catalina Island. One of my former clients, James Damiano, offered to be our wedding coordinator. He was a florist with a shop in Long Beach. But what about the music? We knew that our

parents liked 1940s swing music, so we explored that possibility. We discovered that a 40-piece gay band in Los Angeles had a 16-piece segment that played swing music. Perfect. So we hired the 16-piece swing band.

Since this was 1981, I was working for the state of California as the executive director of the Governor's Commission on Personal Privacy. So we invited all 25 commissioners and their guests, as well as key people from the State Personnel Board that was helping to administer the work of the Privacy Commission. Michael invited his parents, siblings, and other relatives, as well as co-workers at Camarillo State Hospital. I invited my family, most of whom were living in Michigan at the time, as well as many friends and colleagues in California and elsewhere.

As for my parents, my mother agreed to come, but my father hesitated. He was a Navy veteran and somewhat conservative. He had always resisted the fact that I was gay. He loved me, but he could not envision what it would be like to play a central role at a gay wedding. At first I was willing to accept his decision not to come, but then I dug deeper and realized that his absence from my wedding was not OK with me. I consulted with our wedding officiator, Michael Valente, and he encouraged me to call my dad and tell him exactly how I felt. So I did.

"Dad, you have nine children and you have been at the wedding of each child who has married and I'm sure you will be at the wedding of the rest when they marry. I am your child, and I want you to be at my wedding. This means a lot to me." There it was. I said it. And to my amazement, he changed his mind and promised to be there for me. Wow! The power of love.

We chose Michael Valente to be our wedding officiant because he was the closest semblance of a Catholic priest we could find. Michael Vasquez and I were both raised Catholic. Our families are Catholic. And yet we knew that it would be impossible to find a Catholic priest to perform our wedding ceremony. So I suggested Michael Valente. He was a Catholic theologian. In fact, for many years he had been the chairman of the department of theology at a Catholic university in New Jersey.

People responded to our wedding invitation in a big way. After all, when was the last time anyone had been invited to take a cruise out to international waters for a marriage ceremony? Some 300 guests attended the event.

We decided to keep the wedding a private matter. No media were invited. It would have been easy to obtain lots of media coverage for this

unusual gathering and to have turned it into a political protest of sorts. But that is not what we wanted. Instead, we decided to make our wedding day a joyous event at a strictly personal level.

There was one media mention of the wedding, however, a few weeks before it occurred. It was when the *Los Angeles Daily Journal* ran a profile of me on the front page of the newspaper. The *Daily Journal* was the official newspaper of the legal community in Southern California. It was read by lawyers, judges, and elected officials throughout the state. They had previously limited their profile stories to judges, but in 1981 they started to profile some attorneys. I was among the first few to be profiled.

The story mentioned that Michael and I would be "married" on October 17, and that we had "planned a wedding ceremony to be conducted on a chartered boat in international waters off Long Beach." "Posters prepared for the event note that the marriage is 'Recognized by No Nation,'" the story noted. In addition to delving into some personal aspects of my life, the main focus of the profile was my legal and political work.

Our wedding was a tremendous success. It set the stage for us to share a wonderful life together as life partners. Perhaps someday same-sex marriage would be legal, we thought, but whether that ever occurred or not, we would make the most of our relationship. Even though we were not considered legal spouses, we had formed a family unit and no one could take that away from us.

The issue of gay marriage arose in a political context the year after our wedding at sea. The work of the Commission on Personal Privacy was coming to an end and I had decided to work at home for a few weeks to write the draft of the commission's final report. As I started the writing process, I received a phone call from Burt Pines, chairperson of the Commission.

Burt told me that he had one, and only one, concern about the report. He did not want to see a recommendation to legalize same-sex marriage. He felt that the issue was too politically charged and about 20 years premature. If the report contained such a recommendation, he said, it would discredit the entire report and undermine all of the hard work we had done for the past two years. I happened to agree with him. After all, I was a political pragmatist and believed in incremental change. I knew that the issue of gay marriage was way too premature. So the report was silent on this issue. Instead, we focused on a broad and inclusive definition of family and a family registration system. We called for a hate crime statute

that would protect gays and seniors and people with disabilities. We recommended that private-sector employers should be prohibited from engaging in sexual orientation discrimination. We pushed the envelope, but not off the political table. There was no mention of gay marriage.

My next major project was to get hate crime legislation expanded in California. As most activists in the gay community were focusing on employment nondiscrimination legislation, I put my energy into freedom from violence. I knew that Governor George Deukmejian would not sign into law prohibitions against sexual orientation discrimination in employment. But I knew that we had a fair chance of getting him to sign an expanded hate crime law. My instincts paid off when such a law was enacted and signed in 1984.

As mentioned before, I then shifted my focus to domestic partnership benefits and family diversity recognition. I started teaching a class on "Rights of Domestic Partners" at USC Law Center in 1985 and continued doing so for several years. I directed the work of the Los Angeles City Task Force on Family Diversity from 1985 through 1988. I participated as a member of the Legislature's Joint Select Task Force on the Changing Family from 1987 through 1991. I chaired the City Attorney's Consumer Task Force on Marital Status Discrimination in 1989 and 1990. My emphasis was to promote respect for family diversity and to end discrimination on the basis of marital status.

A shift in the emphasis of gay rights advocates was occurring throughout the nation, and I always seemed to be one or two steps ahead of the pack. I had a knack for creating or sensing trends before they were evident to most other people.

In July 1988, *The Advocate* magazine ran a story titled "Family Matters." It noted that West Hollywood, Berkeley, and Santa Cruz now had domestic partnership laws, and that Madison, Wisconsin, was considering an "alternate family" bill. "Organizers in Los Angeles and Washington, D.C., aware of potential opposition to domestic partnership legislation, are developing consensus-based strategies for attaining equal benefits for gay couples," the story noted. The work of the Family Diversity Task Force was cited as an example.

The story observed that two of the largest gay rights legal organizations in the nation were starting to focus more on gay family issues. "Lesbian and gay family issues are really . . . the next frontier area of focus for this movement," predicted Sue Hyde, a staff member at the

National Gay and Lesbian Task Force.

The following year, *The Advocate* ran a story titled "Wedding Bell Blues: Some Gays Aren't Wedded to the Idea of Same-Sex Marriage." The author, Peter Freiberg, said that many gay activists saw any successful effort to persuade state legislatures to allow gays to marry as "clearly years away." However, a few advocates, such as Tom Stoddard of the Lambda Legal Defense and Education Fund, felt that the legalization of gay marriage was neither "pie in the sky nor hogwash." Stoddard wrote an opinion piece for *The New York Times* giving the idea of gay marriage widespread publicity. His colleague at Lambda Legal Defense, Paula Ettelbrick, felt that the better approach was to "press for legal recognition of all kinds of relationships, whether they involve a gay couple, lifetime friends who share expenses, a disabled person and a companion, or an extended family." Stoddard favored a gay marriage approach and Ettelbrick favored a family diversity approach. Talk about divisions within the gay and lesbian community. Here was a major division within the premier legal rights organization.

Freiberg's story referred to my pragmatic reasons for focusing on family diversity rather than gay marriage. "I think it's inviting a major battle [from religious conservatives] and draining our resources to fight for something that is not likely to occur," I was quoted as saying about making gay marriage a priority. "Why not go for those issues that have consensus within the gay community."

In the fall of 1989, the issue of same-sex marriage got a small boost when the Conference of Delegates at the California State Bar convention adopted a resolution favoring the passage of legislation to legalize gay marriage. A story in the *San Diego Daily Transcript* quoted me as calling the resolution a "nice academic exercise" that was "too far ahead of its time." I coordinated a panel discussion at the convention on family diversity.

The support of the California lawyers group for gay marriage was noted in a story that ran in *The New York Times* the following month. But that little ray of support was overshadowed by a story that ran a few days later in *Time* magazine titled "Should Gays Have Marriage Rights?" A national poll conducted by the magazine the previous month reported that by a margin of 69 percent to 23 percent, an overwhelming majority of Americans were opposed to the legalization of same-sex marriage.

Suzanne Sherman personalized the issue of same-sex marriage

when she published a book in 1992 titled: *Lesbian and Gay Marriage: Private Commitments, Public Ceremonies*. Part One of the book explained the debate between Tom Stoddard and Paula Ettelbrick. Tom's essay was called "Why Gay People Should Seek the Right to Marry." Paula's was called "Since When Is Marriage a Path to Liberation?"

Part Two of the book contained interviews with several same-sex couples who did not believe in the need for a wedding or other public ceremony to solidify or announce their commitment. Part Three was a collection of interviews with long-term couples who have had a public wedding ceremony. An interview with Michael and me was published in Part three of the book.

"Having a ceremony shows the public that two people, regardless of their sexual orientation, can make a life commitment to each other," Michael explained. "I have the same feelings that my siblings have for their spouses," he added. "I felt that committing to this relationship was just as important as a heterosexual marriage."

I shared my philosophical objections to seeking the legalization of gay marriage as a way to get rights and benefits for couples who choose to marry, but denying benefits to people who do not marry, either out of choice or because of financial barriers. I also shared my practical objections about the diversion of political energy to the issue of gay marriage and away from core issues such as decriminalization of private sex between consenting adults, employment rights, and child custody issues. If we continue to gain more rights for domestic partnerships, I explained, then some day the difference between domestic partnership and marriage will be so minimal that the public will more readily accept that small step further to legalizing gay marriage.

Despite the emergence of a growing number of gay-marriage advocates, a few minor advances in support of gay marriage, and an increase in publicity around same-sex marriage, the primary focus of gay legal and political advocacy remained on family diversity until 1993. But that changed in a big way when a ruling that year from the Hawaii Supreme Court gave the gay and lesbian community a glimmer of hope that same-sex marriage might be an option available through a judicial mandate.

On May 5, 1993, a majority of the Hawaii Supreme Court ruled that a statute limiting marriage to a man and a woman, and which excluded same-sex couples, was presumed to violate the equal rights clause of the Hawaii Constitution. A trial judge had summarily ruled in favor of the

state and had rejected the claims of same-sex couples without affording them a trial on the issue. As a result, the majority opinion of the state Supreme Court ruled that the couples were entitled to a trial, and unless the state came up with compelling reasons to deny same-sex marriage, the couples would eventually win the right to marry.

This was startling news. Every gay marriage case for the previous 20 years had been rejected outright by state appellate courts throughout the nation. Now, a state supreme court was saying that the ban on same-sex marriage might, just might, be declared unconstitutional. But not until after there were a full trial on the merits of the issues and both sides could present evidence and legal arguments in support of their views.

The wheels of justice move slowly. The trial did not begin until September 1996. The case had been delayed because of various maneuvers by the Hawaii Legislature.

At its session in 1994, the Legislature passed a new law specifically prohibiting same-sex marriage. But it created a Commission on Sexual Orientation and the Law to study the possibility of passing a domestic partnership law. The commission never really functioned because its specific inclusion of religious groups in the membership was determined to violate the constitutional principle of separation of church and state.

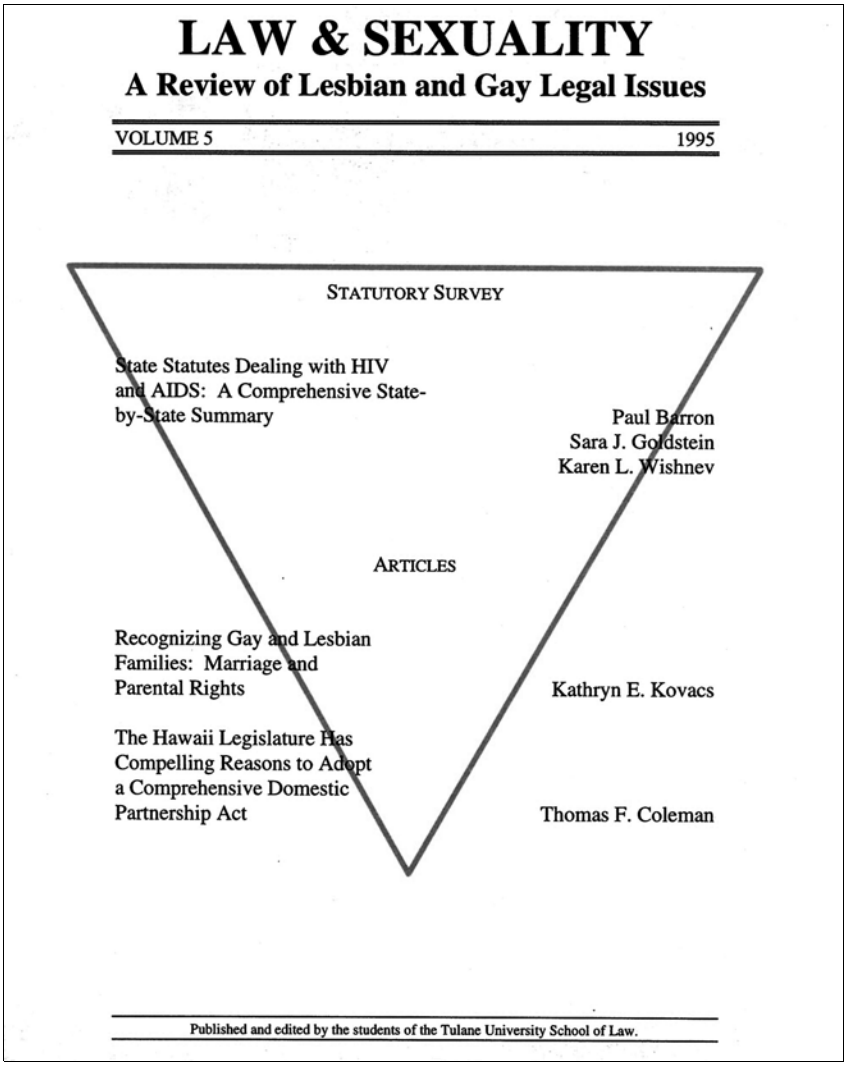
During the following legislative session (January-April1995), the Legislature passed another law limiting marriage to one man and one woman. Another commission was established, this time not specifically mentioning the inclusion of religious groups in the legislative mandate.

The Commission on Sexual Orientation and the Law focused its attention on two questions: (1) Should the Legislature approve same-sex marriage? and (2) Should the Legislature approve a comprehensive domestic partnership law instead? In the fall of 1995, I received a letter from Tom Gill, chairperson of the commission, inviting me to testify before the panel on the issue of domestic partnership. My expertise on economic and legal issues concerning domestic partnership had obviously been noticed. Lloyd Rigler was pleased and offered to fund my trip to Hawaii.

I knew that the Hawaii Legislature was hostile to the idea of gay marriage. After all, after the decision of the Hawaii Supreme Court, the Legislature had twice voted to limit marriage to opposite-sex couples. But by creating the commission, it appeared that the Legislature was at least open to the possibility of passing domestic partnership legislation. So I geared my approach to that possibility. This did not sit well with some of

the local gay rights activists who wanted gay marriage and whose power seemed artificially inflated by the tentative decision of the Supreme Court. They wanted the commission report to recommend only the legalization of gay marriage and not to mention any alternative.

Despite being given the cold shoulder by these local gay activists, my testimony and supporting materials were well received by most of the



LAW & SEXUALITY

A Review of Lesbian and Gay Legal Issues

VOLUME 5 1995

STATUTORY SURVEY

State Statutes Dealing with HIV and AIDS: A Comprehensive State-by-State Summary

Paul Barron
Sara J. Goldstein
Karen L. Wishnev

ARTICLES

Recognizing Gay and Lesbian Families: Marriage and Parental Rights

Kathryn E. Kovacs

The Hawaii Legislature Has Compelling Reasons to Adopt a Comprehensive Domestic Partnership Act

Thomas F. Coleman

Published and edited by the students of the Tulane University School of Law.

Legal debut of the concept of "comprehensive domestic partnership"

commissioners. In December 1995, the commission's report recommended that the Legislature either legalize same-sex marriage or pass a comprehensive domestic partnership law similar to what I had suggested. My proposal and commentary to the Hawaii commission was soon published by *Law and Sexuality*, a law review at the Tulane University School of Law. The article was titled "The Hawaii Legislature Has Compelling Reasons to Adopt a Comprehensive Domestic Partnership Act." Attached to the commentary was the first framework for a comprehensive domestic partnership act ever drafted and distributed nationally. It included proposed legislative findings and a statement of purposes, as well as specific language for a model law.

Lloyd Rigler and I were pleased that my participation at the commission's hearings had helped to shape a recommendation that had at least a slight chance of getting legislative approval. We knew that I would have to spend considerable time in Honolulu in the coming months to nurture this proposal in legislative quarters. The Hawaii Legislature meets only from January through April each year.

When the commission presented its report to a joint session of the House and Senate judiciary committees in January 1996, I was there to testify about the domestic partnership option. The Legislature's auditorium was filled to capacity. Gays and lesbians gravitated toward one section of the room while Catholic and Mormon conservatives and Christian Fundamentalists dominated another area. Prior to my testimony, a few local gay rights activists came up to me to share their displeasure with my presence there. The gay activists wanted gay marriage, the religious right wanted no change in the law, and it seemed that I, and possibly a few legislators, were interested in finding an alternative.

There were so many people who wanted to speak at the hearing that the presiding officer limited testimony to two minutes per person. However, when it was my turn, the legislative committee members did not want me to stop. They were curious about the possible option of domestic partnership. They kept me at the podium for about 15 minutes. I had certainly made an impact.

Apparently my testimony impressed Senator Rey Graulty, the chair of the Senate Judiciary Committee. He invited me to be one of three speakers at a special session of his committee to be held on February 2, 1996. Constitutional law professor John Van Dyke and a representative from the Kaiser Permanente managed-care organization were the two other invited guests. Graulty was a fair-minded man. Although he found

absolutely no support on his committee for legalizing same-sex marriage, he was hoping to gain majority support for a domestic partnership bill. The weekend editions of both Honolulu newspapers focused on the special session of the committee and reported that Graulty would poll his members over the weekend to see if he would hold formal hearings on a domestic partnership proposal.

A few days later, *The Honolulu Advertiser* reported that on February 22, Graulty's Judiciary committee would "consider a bill to give same-sex and opposite-sex couples the benefits and liabilities of marriage" through domestic partnership legislation. But Graulty's counterpart who chaired the House Judiciary Committee gave the idea a thumbs down. Representative Terrance Tom was closely allied with the Mormon Church and shared its view that gay marriage should not be legalized and that absolutely no rights and benefits should be given to unmarried couples. So while I was making headway in the Senate, the prospects for a legislative solution looked slim in the Hawaii House of Representatives.

Graulty placed three issues before his seven-member committee on February 22, 1996. More than 150 people signed up to present their views. Option number one would have legalized same-sex marriage. Option number two would have placed a proposed constitutional amendment on the ballot to prohibit same-sex marriages. Option number three would have established domestic partnership rights for same-sex couples. To my displeasure, the third option had been narrowed to only apply to same-sex couples. However, that option was a positive advancement because it would give registered domestic partners all the benefits and obligations that state law conferred on married couples. It truly was a comprehensive domestic partnership act for same-sex relationships.

The *Honolulu Star-Bulletin* suggested that option number three had the greatest chance of favorably passing out of the Senate Judiciary Committee. It "is an advancement for civil rights," I was quoted as saying. When the dust settled after all of the testimony was heard, the only proposal which received a favorable vote from a majority of committee members was option number three.

The domestic partnership bill then moved to the full Senate for a vote. Despite opposition from the religious right, and despite less than lukewarm support from the local gay community, the Senate approved my comprehensive domestic partnership act, although it was limited to same-sex couples.

Possibly because the gay community put no effort into building support for the bill, there was insufficient support in the House of Representatives to force the bill out of the House Judiciary Committee where it was stalled by Terrance Tom. As a result, the session ended without any action in response to the state Supreme Court's decision.

In September 1996, the trial judge started a trial on the merits as ordered by the Supreme Court. After two months of testimony by various experts and nearly two months of deliberating, the judge issued a ruling in December 1996 that same-sex marriages must be recognized by the state. An appeal was immediately filed by the attorney general with the Hawaii Supreme Court. The trial judge then issued an order staying his decision pending the outcome of the appeal. No marriage licenses would be issued until the appeal was final.

I decided not to return to Honolulu in 1997. I had paved the way and pointed in the direction of domestic partnership, handing that option to the Legislature on a silver platter. My job was done. It would now be a matter of local politics as to what option would be taken.

Unfortunately, some of the liberal legislators were pressured into lending their support to a ballot question on gay marriage for the elections in November 1998. They camouflaged their guilt by linking their support for the ballot question to passage of a bill giving "reciprocal beneficiaries" some rights and benefits. Terrance Tom and his conservative buddies in the House would not even consider "domestic partnership" legislation. They insisted on vague and neutral terminology – reciprocal beneficiaries – that did not imply a family relationship and that did not include any obligations between the parties. They limited participation in this new legislative scheme to blood relatives and same-sex partners. Blood relatives were included to remove any hint that reciprocal beneficiaries were spouse equivalents or that any sexual relationship was included. The reciprocal beneficiary bill would not become law unless a constitutional amendment overturning the Supreme Court decision were placed on the ballot by the 1997 Legislature. A compromise was reached and both bills were passed.

The Supreme Court put the gay-marriage appeal on the back burner, waiting to schedule oral arguments until after the election in November 1998. By an overwhelming margin, voters amended the Hawaii Constitution to remove gay marriage as a constitutional right. The following year, the Hawaii Supreme Court dismissed the appeal because

the issue had been decided by the voters. The court had no jurisdiction to mandate gay marriage.

The prospect that gay marriage might be legalized in Hawaii caused a political backlash throughout the United States in 1996. The "Defense of Marriage Act" was introduced in Congress that year. President Clinton indicated that he would sign the measure if it got to his desk. The bill would mandate no federal recognition of same-sex marriages, even if one or more states were to legalize gay relationships as marriages. The bill also purported to authorize any state in the Union to refuse to recognize a same-sex marriage that might be legalized in another state. The bill passed by a wide margin and was signed into law by Clinton.

A growing number of gay rights activists began to worry about the push for gay marriage by some segments of the gay and lesbian community. "The gay and lesbian movement is marching down the wrong path and running a disastrous course," *The New York Times* quoted the director of the National Black Gay and Lesbian Leadership Forum as saying in a story published on June 7, 1996. Paula Ettelbrick told the *Times* that "it doesn't seem worth it to put all our eggs in the marriage basket." Kate Clinton, a lesbian comedian, described the quest for same-sex marriage as "mad vow disease."

Professor Nancy Polikoff, of the Washington College of Law at American University, complained that the fight for marriage rights had closed off any critique of the institution itself. "One thing our community can stand for," she told the *Times*, "is a principle that expands the definition of family and does not place a monogamous relationship with one partner at the pinnacle of all human relationships." Polikoff shared my preference for promoting respect for family diversity and eliminating marital status discrimination rather than beginning and ending the discussion of equal rights with a push for gay marriage.

The issue of judicially mandated gay marriage again caught the nation's attention when the Vermont Supreme Court ruled on the issue on December 20, 2000. A majority of the justices found that denying same-sex couples the benefits and protections of marriage was a denial of equal protection of the law as guaranteed by the Vermont Constitution. However, the court left it to the Legislature to make a decision as to whether those benefits and protections would apply through existing marriage laws or a parallel domestic partnership system the Legislature might create. The Legislature had a constitutional gun to its head.

I soon received a call from the chairman of the House Judiciary Committee in Montpelier. I was invited to present my views on domestic partnership to that legislative panel as it considered its options. I submitted several reports to the committee members about domestic partnership as an alternative to marriage. After hearing from many legal, sociological, psychological, political, and financial experts, the committee decided to pass a "civil union" bill that would give same-sex couples all the benefits and protections of marriage under state law. The only aspect missing from the bill was the word "marriage." The bill passed through both houses of the Legislature and was signed into law by Governor Howard Dean on April 26, 2001.

For the next several years, overlapping and contradictory political and legal strategies were pursued by the gay and lesbian community and its opponents. Domestic partnership and civil union bills were introduced in several states. Gay marriage litigation was initiated in other states. Various state legislatures enacted laws prohibiting the recognition of same-sex marriages. Constitutional amendments against same-sex marriage were approved by voters in more than half of the states. Some of those amendments overturned domestic partner rights that had been extended by some municipalities. A proposed amendment to the United States Constitution to prohibit any state from legalizing same-sex marriage was introduced into Congress but was unable to gain sufficient support to send the measure to the states for approval.

On February 3, 2004, the Massachusetts Supreme Judicial Court ruled that same-sex marriage was protected as a constitutional right in that jurisdiction. The California Supreme Court issued a similar ruling in June 2008. That was followed by a favorable constitutional ruling on gay marriage by the Connecticut Supreme Court on October 10, 2008. Then a gay marriage domino fell in Iowa on April 3, 2009, when the state Supreme Court issued a unanimous ruling declaring that same-sex couples had a constitutional right to marry. On April 7, 2009, the Vermont Legislature legalized same-sex marriage, overriding the governor's veto. More marriage dominos fell in May and June of 2009, when same-sex marriage was legalized in Maine and New Hampshire.

A civil union law exists in Oregon, while California, Washington, and New Jersey all have enacted comprehensive domestic partnership laws.

As a result, there is a patchwork of affirmative legal protections and legal prohibitions regulating same-sex relationships, varying from state

to state throughout the nation. A couple may be considered married in one state but the partners are considered single in another. They may be required to file a joint tax return in their home state, but must file as single with the federal government. The complexity this patchwork poses for multistate employers is obvious.

A growing number of gay and lesbian activists, leaders, and scholars have distanced themselves from the push for gay marriage and have warmed to the idea of family diversity rights. A Web site – www.beyondmarriage.org – is devoted to the coalition of individuals and organizations supporting this philosophy.

"The current debate over marriage, same-sex and otherwise, ignores the needs and desires of so many in a nation where household diversity is the demographic norm," the Web site states. "The struggle for marriage rights should be part of a larger effort to strengthen the stability and security of diverse households and families," it adds. "Marriage is not the only worthy form of family or relationship, and it should not be legally or economically privileged above all others."

The beyond-marriage coalition calls for the end of marital status discrimination, rather than a slight expansion of those who can become privileged through the status of legal marriage. Professor Nancy Polikoff picked up on this theme in her recent book titled *Beyond (Straight and Gay) Marriage: Valuing All Families Under the Law*.

"Passionate but completely grounded in reality, Polikoff challenges LGBT rights advocates to see beyond gay equality arguments and question the fundamental fairness of limiting family recognition based on marriage, gay or straight," says Nan D. Hunter of the book. Nan is the founder of the American Civil Liberties Union's Lesbian Gay Bisexual Transgender Project and is a professor of law at Brooklyn Law School.

Despite some gains made in the courts, and a growing public acceptance of same-sex relationships, the fight for gay marriage has not monopolized the agenda of gay and lesbian rights advocates. Equal rights for unmarried couples, single people, and blood-related family networks remain a priority for many. From a political and legal perspective, I subscribe to the beyond-marriage philosophy.

Having said that, I continue to find marriage a status that is personally appealing. And while I toil in the field of equal rights advocacy for everyone regardless of marital status, I feel that my long-term relationship with Michael should be entitled to legal recognition as a marriage.

Michael feels the same way.

When we heard about the decision of the California Supreme Court in June 2008, it brought us memories of Michael's statement to author Suzanne Sherman some 16 years ago. "If marriage was legalized, I think we'd probably have another ceremony," Michael had predicted. "Some couples go back and do their vows again," he told her. "I think I'd do something like that."

After mulling it over for a few days, we decided to have a formal ceremony to renew our vows in October 2008. Our 27th anniversary would be on October 17, but that was a Friday. We decided to have a civil marriage ceremony on October 18. A Saturday would be more convenient. The same questions arose now that we had to deal with the first time. Who would officiate at this legal marriage ceremony? Where would it occur? Whom would we invite?

Planning the wedding was fun, but it was also a lot of work. We decided to have our wedding events in Palm Springs. We rented a big private home with a large and beautiful backyard. Our ceremony and reception would occur on Saturday, October 18, and we would have a Sunday brunch the following day. We found someone to cater both events, hired a local DJ for the music, and retained a pastry chef to create the wedding cake.

We selected my sister, Diane Coleman Rogers, to act as wedding coordinator. Another sister, Carolyn Skalnek, was chosen to officiate. She was deputized by the State of California as a deputy marriage commissioner for our wedding. Michael and I worked with Carolyn and Diane to plan all weekend events. I developed a wedding Web site and we sent out invitations.

About 75 people attended our wedding. On a perfect day in Palm Springs, looking out to the nearby mountains, we renewed our original vows. Only this time, the exchange of vows created a legal marriage. The license was witnessed by Michael's sister, Sandra Ramirez, and my brother, Larry Coleman. Once Carolyn signed her name and dated the form, it was official. Our 1981 marriage was renewed and, 27 years later, we became lawful spouses for life.

Of course, there was that little problem called Proposition 8, the proposed amendment to the California Constitution that would prohibit the state from recognizing marriages involving same-sex couples. The voters would decide that issue on Tuesday, November 4.

Michael and I cast our votes through absentee ballots and encouraged everyone to vote no on Proposition 8. The night before the election I sent an e-mail to everyone asking each one to "imagine what it

Carolyn Skalnek officiates at 2008 ceremony in Palm Springs.

would feel like for you and your spouse to sit in your living room on election night, wondering if your marriage will be dissolved by a simple majority vote of the people."

Our friend, Nora Baladerian, e-mailed us back, saying: "Let's use the law of attraction to imagine the joy and excitement of hundreds of couples across the State celebrating on 11/5." My sister Cathy sent us an e-mail on the morning of Election Day, stating: "I will pray for you and hope that people do the right thing today!! Love you both!"

My niece, Stacy Tomezak, wrote: "Congratulations on your wedding! The pictures that Uncle Larry sent were great, the wedding looked awesome. I really hope that the people make the right choice, it will be so ridiculously disgusting if they change the marriage laws that are now in place. I really hope that soon our politicians wake up and do the right thing so that same sex marriage is legal everywhere around the country."

My sister Carolyn had a healthy perspective: "It is very hard to

imagine the feelings that you two must have. Whichever way it goes you will still have each other--legal or not! You two have good health and much happiness. That is more than MANY married couples have..."

Despite these hopes, predictions, and comments of comfort, Michael and I were not able to celebrate the defeat of Proposition 8 on election night. As we checked the vote count on the following morning, the measure was approved by a margin of 52 percent in favor of banning gay marriage and 48 percent opposed to such a ban. This placed a legal cloud over our marriage.

Two other states – Arizona and Florida – passed state constitutional bans prohibiting the legalization of same-sex marriage on November 4, 2008. Now some 29 states have such constitutional restrictions, with all other states except a few having statutory bans against gay marriage. The federal Defense of Marriage Act allows states to refuse to recognize gay marriages from jurisdictions, such as Massachusetts, Connecticut, Vermont, Iowa, New Hampshire, and Maine which do allow them. So there is not a lot of room for proponents of same-sex marriage to maneuver.

Although the passage of these ballot measures is personally disappointing, they reaffirm my assessment that gay marriage is a politically volatile matter now and will be for many years to come.

I am glad to have helped construct an alternative – comprehensive domestic partnership – to serve as a vehicle to give unmarried couples most, if not all, of the same rights as married spouses under state law. The "marriage" label is important, but equally if not more important are the rights and benefits associated with marriage. Thankfully, same-sex couples in California will continue to have this option as the political battles over gay marriage rage on in California and throughout the nation. And the battles will continue.

The decision of the California Supreme Court to uphold the validity of Proposition 8 as an amendment to the state constitution was disappointing but not surprising. A majority of justices simply could not accept the claim that Proposition 8 was a revision of the constitution rather than an amendment. But the justices could not ignore the fact that, prior to passage of the amendment, some 18,000 same-sex couples had obtained marriage licenses, participated in ceremonies, and registered their marriage certificates with the state. The marriages were valid at the time performed, and the justices could not find clear evidence that the voters intended Proposition 8 to invalidate them.

This bittersweet ruling has a silver lining. It can now be argued that Proposition 8 violates the Equal Protection Clause of the United States Constitution. Some 18,000 same-sex couples now have legal marriages. Other couples who want to marry in the future cannot obtain a license to do so in California. Even those who go to Connecticut, Iowa, Massachusetts New Hampshire, or Vermont to marry, will not have these legal marriages recognized in California as valid. And yet, people from other states who came to California in the summer of 2008 to get married, and who then returned to their home states, will have marriages which probably will be legally recognized in California, although that is technically an open question.

California's dual position of recognizing some but not all gay marriages violates equal protection of the law as guaranteed by the United States Constitution. This flaw will probably be litigated in a lawsuit filed in federal court seeking to invalidate Proposition 8 on federal constitutional grounds. If Proposition 8 is found to be constitutional, a measure to repeal it will soon find its way onto the California ballot. With public opinion shifting toward a greater acceptance of same-sex marriage, California voters will eventually legalize marriage for lesbian and gay couples.

As for same-sex marriage becoming legal in California, and elsewhere, the question is not whether this will happen, but when.

Chapter Six

Singles' Rights

Calling attention to the needs of single people yields mixed results

The idea of single people having equal rights came to me in 1972 when I was in law school. I was one of two representatives from Loyola Law School to the Law Student Division of the American Bar Association. The other representative was Marshall Jacobson.

I wanted to introduce a resolution for that national student organization to consider. Although something on gay rights seemed natural to me, since I had just formed a gay law student association at Loyola, Marshall convinced me to propose something broader, something that would help gay people but would also help a larger segment of society.

It was called the "Single Persons Bill of Rights." The resolution called upon lawmakers to pass laws prohibiting marital status discrimination against employees, tenants, and taxpayers. It was approved by the Law Student Division in August 1972 at its annual meeting in San Francisco. There it was, my first political victory for singles' rights.

But the principle of singles' rights had to take a back seat to other, more pressing issues. Criminal laws in California and most other states penalized private sexual relations between consenting adults. Sexual solicitation statutes made it illegal to ask another adult to engage in an intimate sexual act. Lewd conduct laws were enforced in a discriminatory manner against gay men. Lesbians were losing custody of their children and gay men were being denied visitation rights with their kids. Law

enforcement agencies fired cops or firefighters who they suspected were gay or lesbian or who were cohabiting with a consenting adult outside of marriage. Many private employers refused to hire anyone suspected of being a lesbian or a gay man. Gays and lesbians were disproportionately targeted by hate crime perpetrators. Judges showed disrespect to gay attorneys and their clients. The agenda for reform was a long one.

I prioritized my advocacy work in the 1970s and 1980s to many of these other issues. I did not tackle the area of marital status discrimination or focus much of my energy or time on singles' rights until I wrote the final report for the Los Angeles City Task Force on Family Diversity in 1988. I included several recommendations directed to elected officials at the local and state levels of government aimed at ending various forms of marital status discrimination.

For example, the report recommended that insurance discrimination on the basis of marital status be declared illegal. It asked medical and mental health service agencies to adopt regulations prohibiting discrimination against unmarried couples in the delivery of services by public programs and private vendors. It urged the City Council to prohibit marital status discrimination in the city's employee benefit programs. The report concluded that solo singles and employees with domestic partners deserved equal pay for equal work and this included the area of benefits compensation. It also asked the city attorney to render an opinion about the illegality of businesses granting consumer discounts to married couples but withholding such discounts from unmarried couples. This was the first major public policy report in the nation to venture into the issue of discrimination against unmarried employees and consumers.

To move the singles' rights agenda forward, I enlisted the help of Los Angeles City Attorney James Hahn in 1989. It was time to get a major law enforcement official involved in the issue of marital status discrimination. I asked Hahn to convene a Consumer Task Force on Marital Status Discrimination. He agreed.

Hahn sent me a letter, appointing me as chairperson of the Task Force, on October 24, 1989. In the letter, Hahn said: "I look forward to working with you on the project at hand over the next few months, and I have every confidence that our pioneering efforts here in Los Angeles will help set a standard for the rest of the nation."

The formation of the Task Force was announced at a press conference on October 30, 1989, at City Hall. Hahn appointed 20 other

members to the Task Force, which was staffed by me and three law student interns from the class I taught at USC Law Center. Lloyd Rigler agreed to have his foundation pay for the time that I spent on this project

After several months of conducting independent research and holding public hearings, the Consumer Task Force on Marital Status Discrimination issued its groundbreaking report at a press conference on

City Attorney Jim Hahn reviews the Consumer Task Force report with Tom Coleman and Christopher McCauley.

March 29, 1990. I had given an advance copy of the report to Victor Zonana, a writer with the *Los Angeles Times*. He wrote a lengthy story which appeared on the front page of the *Times* on the morning of our press conference. The story caught the attention of the television and radio stations in town, all of which showed up for the press conference.

"Our report represents the emergence of a new dimension of the consumer protection movement," the story quoted me as saying. "Call it singles' rights." "A sleeping giant is awakening, and once it awakens there are going to be major changes in the way businesses and others interact with unmarried consumers," I added.

The report detailed numerous instances of alleged discriminatory practices, the story explained. "Among them: landlords who refuse to rent to single people or unmarried couples; auto insurers who levy higher premiums or will not write policies for singles; credit unions that will not

issue joint loans to members and their fiances; and airlines that restrict the use of frequent-flyer awards to spouses or blood relatives."

The story noted that the Task Force had conducted three public hearings and heard testimony from about 30 witnesses. "Most of the testimony came from individuals who alleged discriminatory practices by landlords, insurers, banks, credit unions, nursing homes, hospitals, health clubs, and frequent-flyer programs," the story observed.

In February 1991, the concept of singles' rights was explored by a story that ran in *The Wall Street Journal*. Titled "Singles' Rights Activists Target Corporations,"the story explained that even though unmarried people were making headway with government officials, private sector businesses were resisting the notion of equal rights for unmarried employees and consumers. "Management lawyers say corporations feel little compulsion to extend benefits to companions of their employees because the law doesn't require them to do so," the story observed. However, it added my prediction that in 15 years, the singles' rights movement will have an impact on corporate America.

The following month, *Business Insurance* magazine ran a story noting that "a very small – but growing – number of employers are opening their health care plans to employees' unmarried 'domestic partners.'" At the time, there were only a handful of West Coast cities and even fewer private employers providing employment benefits to unmarried couples. Today, there are more than 10,000 such employers.

The first publication on the East Coast to run a major story on singles' rights was the *Times Union* in Albany, New York. The story, titled "Feeling Single, Seeing Double," spoke of many social slights and economic disadvantages experienced by single people in America. Single men earn much less than married men, the story explained, and they are usually laid off before married men when a company is downsizing. "Call it singles' rights . . . Most of us aren't living in traditional families anymore and the rights and privileges extended to a few should be extended to everyone," the story quoted me as saying.

The issue of marital status discrimination by the insurance industry was something I had focused on over the years: in 1988 when the Family Diversity Task Force issued its final report, in 1989 when the Legislature's Changing Family Task Force issued its first year report, and again in 1990 when the City Attorney's Consumer Task Force released its findings and recommendations.

Apparently, my concern with this issue had come to the attention of John Garamendi, a politician who was elected as state insurance commissioner in November 1990. In the spring of 1992, I received a phone call from the California Department of Insurance asking if I would be willing to serve on a new anti-discrimination task force being created by Garamendi. I told them I would gladly accept such an appointment.

In July 1992, Garamendi convened an Anti-Discrimination Task Force consisting of 62 members. In addition to several consumer advocates and civil rights leaders, members included dozens of insurance industry representatives. Various subcommittees were formed, including one on "Underwriting Practices and Barriers to Coverage." I was one of 32 Task Force members who joined that subcommittee. I then formed a workgroup on marital status discrimination. Two other workgroups were formed, one on women's issues and one on disability issues. Apparently, the insurance industry members did not take me seriously, as none of them signed up for my workgroup. However, several of the civil rights members did.

In December 1992, I completed a report for the marital status workgroup. It was circulated to all 32 members of the Underwriting Subcommittee in January 1993. A final draft of the report was sent to all 62 members of the Anti-Discrimination Task Force in April 1993. Some eight members dissented from one or more of my recommendations. Otherwise, my report gained approval of the Task Force.

Commissioner Garamendi issued a press release on July 28, 1993, calling the report "a vital blueprint to end unjustified discrimination against the unmarried." Garamendi promised to take action to insure that unmarried individuals are not charged unfairly discriminatory rates. Finally, the press release commended my work for the Task Force, calling the report "by far the most comprehensive analysis and series of recommendations ever developed on this issue."

The *Los Angeles Times* published a story titled "Garamendi Urged to Fight Bias Based on Marital Status," noting the report urged the insurance commissioner "to get tough with insurers who discriminate – in rates and coverage – against unmarried individuals and domestic partners." It observed that while gays and lesbians would be helped by the recommendations, "the vast majority of unmarried people who bear the brunt of discrimination are heterosexual, and that by the year 2000 unmarried people will make up the majority of California's adult population."

The *Sacramento Bee* also ran a story, noting that unmarried consumers are forced to pay higher premiums for all kinds of insurance simply because of their marital status, and that the problem affects singles, divorced people, widows and widowers, and has a particularly harsh and unfair effect on gays and lesbians who are precluded by law from marrying. The story advised that some companies were ahead of the curve, observing that the Automobile Club of Southern California already had stopped using marital status as a factor in setting rates.

John Garamendi (second from far right), Coleman, Matt St. George (far left) and other Insurance Task Force members

Underwriters Report, an insurance industry publication, carried a story quoting Garamendi as saying that the report was "very useful in pointing out issues to be addressed" and promising to instruct staff at the Department of Insurance "to implement them."

With the support of the insurance commissioner, and with the favorable press coverage, I felt a sense of completion. I was able to call public attention to a major area of discrimination that had gone unchallenged for too long. This aspect of singles' rights was finally in the

spotlight.

The next few years saw me fighting for the right of unmarried heterosexual couples to receive employee benefits as domestic partners. These cases, and other marital status housing cases, kept me busy with litigation and lobbying in Alaska, Georgia, Michigan, Illinois, and New York for the remainder of the decade. This work was subsidized by Lloyd Rigler and his LEDLER Foundation.

One day in 1999, Lloyd asked me to come to his office for a meeting to discuss the future of singles' rights. When I arrived, Lloyd told me: "We have to stop putting out brush fires." He was referring to the patchwork of cases and projects involving family diversity and marital status discrimination that I had been devoting so much time to over the years. "We need to do something pro-active," he said.

Lloyd told me he had given the matter a lot of thought and he wanted us to start a new national membership organization for single people – something like what AARP had done for seniors many years ago. He even had thought of a name for the group. AASP. American Association for Single People.

He wanted me to work full time on organizing the group, getting celebrity endorsements, generating publicity, and developing a membership base. I reminded him that I had a full time law practice focusing on criminal appeals and that I would have to replace that income if I was going to be the executive director of AASP. He offered to fund the new group, including a full time salary for me, for the next two years. I agreed and immediately started plans to wind down my law practice. I could use my home office as temporary headquarters for AASP.

I hired someone to build a Web site – www.singlesrights.com – for the organization. AASP's first newsletter, called *Unmarried America*, was published in September 1999. The newsletter informed readers of several new books for single people: *Living Single in a Double World, Joys of Living Alone*; *Chicken Soup for the Single's Soul*; *The Single Woman's Travel Guide*; *Single Mother by Choice*; and *The Other Mother: A Lesbian's Fight for Her Daughter*. It contained national and international news summaries: "Single Workers Sue State Pension Fund in Wisconsin;" "Victim's Compensation Law Is Changed in North Carolina." There were excerpts from three newspapers that had quoted me and mentioned AASP. And there were letters to the editor.

"Finally, a website about singles that doesn't 'help' you become

un-single," a letter from Michigan said. "It's wonderful to find that I have an organization looking out for my concerns." A letter from an attorney in Colorado offered to "donate my time to helping to assert the rights of singles in other areas." A letter from the mayor of Tempe, Arizona, wished us well and expressed appreciation for "the work you do to see that all people are treated equally."

AASP members gather for an event in Long Beach, California.

The newsletter contained a coupon explaining that "any adult can become a member by making a tax-deductible contribution of $10 or more." "Whether you are single, divorced, separated, or widowed – and even if you are married – join AASP to support equal rights for everyone regardless of marital status." I continued to write, edit, and publish a print version of *Unmarried America* until the fall of 2003.

Newsletter issues continued to list new book releases. The second issue, for example, highlighted books for solo singles, single parents, widows, divorcees, and gays: *Joyfully Single in a Couples' World*; *The Single Father: A Dad's Guide to Parenting Without a Partner*; *Getting to the Other Side of Grief: Overcoming the Loss of a Spouse*; *Black Men and Divorce*; and *How to Legally Protect Yourself in a Gay, Lesbian, and Non-Marital Cohabitation*. Singles continued to write to us. "I was talking with a co-worker, also single, about how it was high time that single people

establish a lobby to promote singles' rights," one member wrote. "Glad to see that AASP lives."

Through AASP, I engaged in education and advocacy around singles' rights for the next several years. These projects were sponsored by Spectrum Institute, a nonprofit organization that I co-founded with some colleagues in 1987. AASP's Web site became a national archive for issues, events, cases, and projects involving the rights and concerns of unmarried individuals, couples, and families. It now contains more than 6,500 pages of information relevant to single people as employees, consumers, taxpayers, and voters.

In 2000, we started a "Stop the Stigma Campaign," focusing on two types of stigma reforms. One was to repeal criminal laws in 15 states that stigmatized consenting adults as criminals by penalizing their participation in unmarried cohabitation or consenting sex. Over the next few years, we made progress on this aspect of the campaign, as cohabitation and fornication laws in many of these states were repealed or declared unconstitutional.

The second area of focus of the Stigma Campaign was to repeal laws in 17 states that labeled children born to unmarried parents as "bastards" and to get judges in 37 states to stop referring to such children as "illegitimate." Because of our intervention, some state legislatures such as those in Maine and Delaware removed the word "bastard" from their statute books.

We were fortunate to have support for the Stigma Campaign from some high-profile judges. On July 27, 2000, I received an e-mail message from Iowa's Rosemary Shaw Sackett, chairperson of the Council of Chief Judges of Courts of Appeal. This association consisted of the chief judges of intermediate appellate courts in each state in the nation. She asked me to send her 100 copies of our Stigma Campaign materials so she could distribute them to 100 appellate judges who would be attending their annual meeting in Seattle.

In August 2000, in response to our campaign materials, Judge Ira J. Raab wrote to the *New York Law Journal*, hoping to educate other judges throughout the state of New York. He referred to a recent opinion by a fellow jurist who had called children born to unmarried parents "illegitimate" children. Judge Raab had high profile positions in the New York judiciary as well as the American Judges Association. "There are no 'illegitimate' children, only 'innocent' children," Judge Raab told his

colleagues in a letter to the editor.

Another project was our "Singles Friendly Workplace Campaign." We developed strategies to stimulate new workplace policies that would make working conditions, including benefits packages, more fair to solo singles, single parents, and unmarried couples. We encouraged employers to expand benefits plans to cover domestic partners and extended family members, or to create cafeteria-style benefits plans where workers could pick and choose from a variety of flexible benefits options that would suit their personal or family needs.

"Compared to the current emphasis given to work and family issues, those workers without families can feel left out of the corporate family," explained Dr. Michael Abruzzese, a workplace expert, in a commentary published in our newsletter. "In some cases their contributions can be marginalized by their married counterparts and they can even face discrimination by management."

Our September 2000 newsletter noted that a growing number of elected officials throughout the nation were joining AASP to lend their support. Among our first elected officials to join were: Indiana state Senator Rose Ann Antich, a Democrat who was a widow; Massachusetts state Representative Nancy Caffyn, a Republican who was divorced; New Hampshire state Representative Julie Brown, a Republican who was divorced; and Maryland state Delegate Diane DeCarlo, a Democrat who was widowed. Over the course of the next few years, dozens of local, state, and federal elected officials, from both major parties, joined AASP.

In the spring of 2001, AASP turned its attention to the issue of taxes. The March 2001 issue of *Unmarried America* was devoted almost exclusively to unfair taxation of unmarried Americans. The cover story was titled: "Unmarried Americans Need Tax Relief Too." Other stories focused on unfairness in the death tax (many unmarried people literally cannot afford to die) and in the social security tax (we are forced to pay the same, but get fewer benefits). Another story discussed marital status disparities in federal income tax laws dealing with domestic partner benefits, joint tax returns, child tax credits, and adult dependent deductions.

We announced in that newsletter that I would be traveling to Washington D.C., along with Stephanie Knapik, our director of public affairs, to reach out to members of Congress during the first week of May. This was the first time in many years that congressional offices would be visited by a group advocating for singles' rights. In 1975, an organization

known as COST – the Committee of Single Taxpayers – lobbied Congress to lower income taxes on single people.

Although not a member of COST, Vivien Kellems, an elderly businesswoman, spearheaded the tax reform crusade for singles from 1948 to 1969. She wanted Congress to equalize the tax rate for single people and married people, arguing that it was unfair to tax singles at a rate that could be 40 percent higher than for married people. Sheldon Cohen, a former tax commissioner under President Johnson, said, "I think she's right about single people. She's a Don Quixote in this area." When she died in 1975, America lost its best singles' rights tax advocate. After her death, COST lost its vitality and faded into oblivion. Now it was time for AASP to revive the issue of tax discrimination against single people.

Prior to our trip to Washington, we mailed each member of Congress a packet that contained a letter from me and the March 2001 newsletter which focused on unfair taxation of single people. One week before we arrived, Lloyd Rigler paid for a two-thirds page ad in the *Washington Post* with a headline reading, "Unmarried Americans Deserve to Know Why." The advertisement listed several areas of unfair taxation of singles and announced that AASP would come to Washington the following week.

AASP made history during our trip to Washington. It was the first time that a national group had walked into the offices of all 535 members of Congress representing the interests of unmarried and single Americans. In addition to having help from Stephanie Knapik, our public affairs director, I had help from my partner, Michael Vasquez, and our friend, Michael Patino.

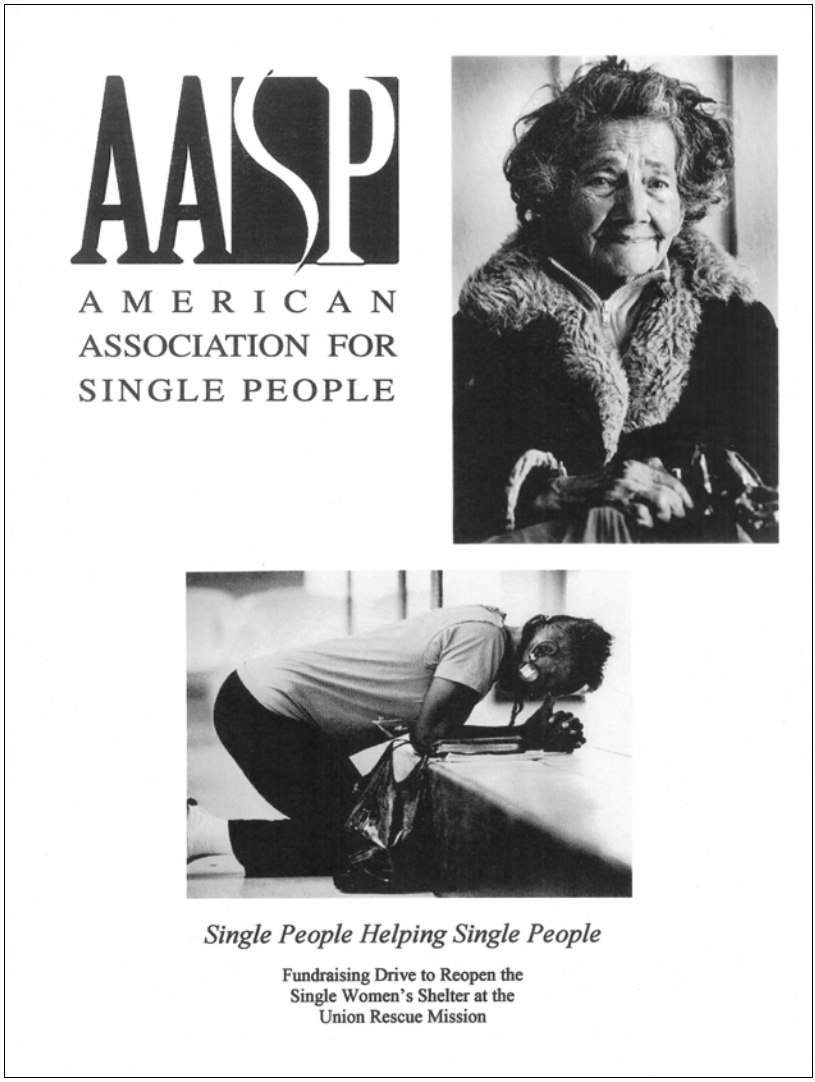
"In 10 percent of the offices, the staff greeted us with enthusiasm," Michael Vasquez said in a follow-up newsletter story. "Another 10 percent were hostile or rude to us, snickering and rolling their eyes as if to say 'What next?" Michael Patino observed. But staffers in most offices were respectful and professional.

I had substantive discussions with the policy staffs of five representatives and five senators, as well as meetings at the offices of the Republican National Committee and the Democratic National Committee. We left no stone unturned.

Our trip to Washington was the focus of an *Associated Press* story released on May 25, 2001. It was carried by dozens of newspapers throughout the nation and caused many single people to contact AASP to

join the cause.

Although the primary mission of AASP was to promote equal rights for single people, our attention was drawn to a relevant humanitarian issue. While my partner Michael was reading the *Los Angeles Times* at our breakfast table on March 21, 2001, he came across a story that caught his eye. "Shelter to Turn Away Single Women," the headline read. The story



Cover of fundraising booklet for single women's shelter

explained that because of lack of funds, the Union Rescue Mission in downtown Los Angeles would be closing its shelter for single women who were homeless. It had been providing food, bathing, and sleeping accommodations for 110 single women each night. As of April 2, that would stop.

Michael brought the story to my attention, which somehow I had not noticed when I skimmed through the paper that morning. "We are an organization for single people and these are single people in need," Michael told me. "We should do something to help out."

I decided to approach our benefactor, Lloyd Rigler, with an idea. I knew that he sometimes gave challenge grants to humanitarian causes. His challenge grants would give one dollar for every three dollars raised from other sources. Perhaps he would give a challenge grant of $80,000 to help the Rescue Mission raise the $320,000 it needed to keep the single women's shelter operating for 12 months.

I pitched the idea to Lloyd from a marketing perspective as well as a humanitarian point of view. We could hold a press conference with the Union Rescue Mission and let the people of Los Angeles know about this problem. In the process, they would also learn about the American Association for Single People. The publicity could help us generate some new members for AASP as well.

Lloyd accepted the proposal and we immediately contacted the Union Rescue Mission. They were amazed by our offer. They enlisted the help of *KRLA* radio, a local station, to help get out the word of the challenge grant. The station devoted air time each day to raise the remaining funds. Some 12 weeks later, we joined *KRLA* executives at the Union Rescue Mission for a press conference announcing the reopening of the single women's shelter. Michael, who is an Avon sales representative, had goodie bags of cosmetics and toiletries on each of the 110 beds for the women who would spend the night. Our "Single People Helping Single People" campaign was a success.

I felt especially gratified that I was able to participate in a direct approach to dealing with the issue of homelessness. I had focused on this issue before, but only from a policy perspective. The final report that I wrote in 1988 for the Los Angeles City Task Force on Family Diversity has a section on "Homelessness." One section addressed the problem of homeless adults, while others dealt with homeless families and homeless teens. Although the report's recommendations to the city to improve

services for homeless people were helpful in developing better public policy on this issue, actually playing a role in getting food and shelter for 110 homeless adults was even more gratifying.

National Singles Week – later changed to Unmarried and Single Americans Week – was my next promotional project. This was a public awareness campaign created by a small group of single people in Ohio in

Greeting card delivered to members of Congress in Sept. 2001. The card was designed by Arnold Navarro.

the early 1980s. Although it found its way onto a few promotional calendars, it was an educational opportunity waiting to be energized. AASP decided to breathe life into *Singles Week* during the third week of September when we planned to return to Washington. We would deliver greeting cards to members of Congress who were unmarried and deliver "unmarried majority" certificates to some 100 representatives and senators who had districts in which the majority of households were unmarried.

Unfortunately, a tragedy occurred on September 11, 2001, putting a damper on our enthusiastic plans. However, we received calls from congressional offices urging us to come to Washington anyway. So we did. Two AASP members from D.C. – Perry Heath and Jane Albrecht – joined me in making the rounds to congressional offices to deliver the greeting cards and certificates. Dozens of congressional staffers and members of Congress had photos taken with us. We were delighted that governors in eight states and mayors in four large cities had issued proclamations for National Singles Week. So despite the setback of 9/11, we were still able to make some progress in educating politicians and the public about the growing number of single people and our desire for political reform.

When we returned to Los Angeles, I received a letter from Arizona Congressman John Shadegg. "The American Association for Single People is to be commended for its advocacy on behalf of your members. I am opposed to unfair treatment of single people whether they are widows/widowers, divorced, or never married." Three other members of Congress became honorary members of our organization.

Our "Singles Friendly Workplace Campaign" continued outreach to corporate America. We published the results of a survey, detailing the workplace demographics and the employment policies of 13 major employers. We later gave awards to six Fortune 500 companies "for their leadership in creating a corporate climate which is more respectful of single and unmarried workers than the work environments at most public agencies and private-sector employers." The awardees were Cendant, Xerox, Fifth Third Bancorp, First Union Bank, Kellogg, and Viacom. The following year, we put eight major corporations on our "Best Practices" list.

We amplified our efforts to make Unmarried and Single Americans Week a success in September 2002. I convinced the Census Bureau to issue a one-minute radio spot about USA Week which would be broadcast by hundreds of radio stations on September 16, 2002. We returned to Washington, again to visit all 535 congressional offices. But this time we

would also present awards to several individuals and businesses: *CBS Radio* (for excellence in broadcast journalism) and New York Governor George Pataki and District of Columbia congressional Delegate Eleanor Holmes Norton, both for political leadership. Governors in eight states and mayors in 30 cities issued proclamations recognizing the contributions that single people make to society.

The following year, we again went to Washington to celebrate Unmarried and Single Americans Week. We held an awards reception attended by members from various parts of the nation. I conducted a Congressional Briefing for elected officials and staff members on "Federal Issues Affecting Unmarried America." The briefing was held in a conference room at the Rayburn House Office Building. We ran promotional ads in newspapers in 26 states.

Although I continued to press the agenda for singles' rights through AASP – whose name was changed to Unmarried America – the year 2003 marked the last big hurrah for this organization. I had temporarily moved from Los Angeles to Hawaii in February 2003 and it was harder to push a national political agenda from that distance. Knowing that our benefactor was growing weary that single people were not joining the group in large

Tom Coleman, Michael Vasquez, and Nora Baladerian in DC

numbers, I concentrated heavily on promoting our issues through the media that year. I anticipated that Lloyd Rigler might soon stop funding my work for singles' rights. My intuition proved to be correct. Lloyd died on December 7, 2003. His successors at the LEDLER Foundation decided to redirect their funding elsewhere.

The year 2003 found me quoted on singles' rights in *The New York Times*, *USA Today*, *The Washington Times*, the *Boston Herald*, and *The Christian Science Monitor*. *American Demographics* magazine carried an in-depth 12-page story analyzing the dynamics of the growth of Unmarried America. These were all welcomed additions to the array of media coverage on single people over the past several years, but my greatest media accomplishment was with *BusinessWeek* magazine.

I was contacted by Michelle Conlin, a writer with *BusinessWeek* in March 2003. She wanted to interview me for a story on singles in the workplace. I told her that workplace issues were only the tip of the iceberg. I suggested that she set her sights higher and do something much broader. "You should do a story on 'Unmarried America' and how we are on the verge of unmarried people's becoming the new majority in the United States," I said. "Why not write a story, an in-depth piece, on the implications this demographic shift has for businesses and politics in America?"

She loved the idea. Michelle pitched it to her editors and they decided to let her develop the story. I helped her with the background research, offering statistics, legal information, financial data, and suggestions of people for her to interview. We spoke at length many times over the next several months. My goal was to have a major story that would capture the attention of corporate executives, investment firms, and elected officials – people who read *BusinessWeek*. I thought the story was going to run in late August, just in time for Unmarried and Single Americans Week and our trip to Washington. But it was delayed.

Then one day I received a call from Michelle. The October 20 issue had gone to press. The cover story was titled *Unmarried America*. The subtitle explained that nearly half of all households are now headed by unmarried people. The story would explain how the new demographics will change business, politics, and society. I was thrilled. I considered this to be my greatest media accomplishment for singles' rights.

The seven-page story focused on same-sex couples, divorced parents, solo singles, and seniors living in unmarried relationships. It contained a sidebar on "The Unmarried Penalty" which explained how

singles get fewer job benefits, have higher unemployment and lower pay, pay higher taxes, receive fewer social security benefits, are denied family discounts, and experience housing discrimination. That alone was an educational victory. The story explained: "As the reality of unmarried America sinks in, CEOs, politicians, and judges will be challenged to design benefits, structure taxes, and develop retirement models that more fairly match the changing population."

The *BusinessWeek* cover story was a morale booster for me, one that kept me going even after Lloyd Rigler died and his funding stopped. In 2004, I continued to promote Unmarried America, gave media interviews, published our on-line newsletter, and maintained our Web site.

Further outreach to corporate CEOs and the business community occurred in 2004 when *The Wall Street Journal* ran a story titled "The Singles Lobby: Unmarried People Seek Economic Perks Enjoyed by Couples." *Current Developments*, a business periodical of the Thompson Publishing Group, published a five-page article on work/life benefits, explaining how employers are facing a backlash from workers without children. *USA Weekend*, a Sunday magazine distributed by hundreds of newspapers, ran a short piece titled "Singles of the World, Unite," showing a graphic that included a young woman carrying a political sign bearing the words "singles' rights."

BusinessWeek magazine did a follow-up analysis in 2004 on "The High Cost of Not Marrying." Throughout the year, I was quoted by more than 150 newspapers and magazines. Millions of viewers and readers were getting a political and economics course in "Singles 101."

The media blitz continued throughout 2005. I appeared on *CNN*'s Anderson Cooper show. *Human Resource* magazine spread the singles' rights message to HR professionals in a story about workplace tensions between employees with children and those without. A publication by the Bureau of National Affairs carried a similar story. The Knight-Ridder newspaper chain explored "The Singles Stigma." *One-2-One*, a magazine for singles, explained that unmarried consumers spend $1.6 trillion annually in the United States.

The media continued to advance the singles' rights message in 2006. CBS television news in Chicago asked: "Do employers take advantage of single workers?" *The Christian Science Monitor* published a story titled "In 'family friendly' workplaces, singles feel overlooked." *USA Today* also focused on workplace issues, noting that less emphasis was

being placed on parents raising children and more emphasis on a diverse range of living arrangements for a wider group of workers. Similar stories were published by *The Washington Post* and *The Philadelphia Inquirer*.

I felt a sense of anticipation when I went to the Web site of the Census Bureau in September 2006, just as I had done in the fall of each year for the past several years. That is the time of year that the Census Bureau releases data from the American Community Survey, a survey of more than 700,000 American households over a 12-month period. Would this be the year of the unmarried majority? I had been watching and reporting on this data for several years, each year noticing how the percentage of unmarried households moved closer to 50 percent.

There it was. This was the year. The 2006 report of the American Community Survey showed that 50.3 percent of American households were headed by unmarried people. Married couple households were now a minority at 49.7 percent.

What started out as a solitary political act by a young and eager law student in 1972 had become a cause affecting a new "unmarried majority." With the media paying attention and educating the public, single people were no longer invisible. My role was complete. The fate of singles' rights was in the hands of 100 million unmarried Americans.

Unmarried employees compose about 44 percent of the American workforce. Surely with those numbers single people can effect changes in the workplace. In 2008, 34 percent of American voters were unmarried. That's more than 41 million single people. They chose Obama over McCain by a 2-1 margin. In New York state, 42 percent of the voters were unmarried and in California it was 38 percent. Unmarried voters should follow up with the Democratic Party by insisting that Congress and the president add "marital status" to civil rights laws prohibiting discrimination in employment and housing.

Even though Unmarried America has been transformed from an advocacy group to an information service, there are still some good people to lead the charge for singles' rights. Nicky Grist, the executive director of the Alternatives to Marriage Project, works every day to promote the singles' rights agenda through her organization and the coalitions it builds. For the past few years, Nicky has advanced the vision of Dorian Solot and Marshall Miller, founders of the Alternatives to Marriage Project and authors of *Unmarried to Each Other: The Essential Guide to Living Together as an Unmarried Couple*.

I was pleased when that organization gave me a Lifetime Achievement Award in 2005 for "decades of leadership and vision regarding the rights of single and unmarried Americans, advocacy for recognition of family diversity, and passionate, effective work for social justice." That occurred at a personal meeting in Albany, New York, when I passed the torch of advocacy to Dorian and Marshall, who two years later passed the leadership of the group on to Nicky.

Another leader whom single people can look to for direction is Professor Bella DePaulo, author of *Singled Out: How Singles Are Stereotyped, Stigmatized and Ignored and Still Live Happily Ever After*. She is a regular contributor to the *Huffington Post* and writes the "Living Single" blog for *Psychology Today*. She has been tremendously helpful in explaining singles' issues to the media and educating the public about the needs and concerns of single people.

Page Gardner, founder of Women's Voices, Women Vote, has shown very commendable leadership on the political front, especially on behalf of single women voters. Although she is married and has children, Page has demonstrated a strong commitment to improving the lives of unmarried women through political action built on solid research. Among her research papers are "Unmarried Women in the Marketplace," and a 300- page report published in 2007 on the "State of Unmarried America."

From an academic perspective, people such as Professor Nancy Polikoff have used their scholarly skills to advance the rights of unmarried individuals and couples. Polikoff is the author of *Beyond (Straight and Gay) Marriage*, a book which argues that economic benefits and legal protections should not be limited to married couples but should be rearranged so they can be shared with unmarried individuals and families.

Although the list of leaders currently in the singles' rights movement is small, a handful of dedicated leaders can help reshape public opinion and create a social climate receptive to political change. Within such an environment, a fair-minded judge or a progressive legislator can create lasting change.

"Never doubt that a small group of thoughtful, committed citizens can change the world," anthropologist Margaret Mead once said. "Indeed, it is the only thing that ever has."

Chapter Seven

Not in My Apartment

Successfully fighting the religious
intolerance of landlords requires perseverance

During the same legislative session in which the consenting adults act was passed in 1975, the California Legislature added the term "marital status" to the state's Fair Employment and Housing Act. The following year, the California Court of Appeal ruled that unmarried couples have a constitutional right to cohabit. That decision was quoted with approval by the California Supreme Court in 1985.

With these types of precedents in place, it was pretty much assumed by civil rights advocates that it was illegal for landlords in California to discriminate against unmarried couples in rental housing. This understanding was reinforced when decisions by the high courts in Alaska and Massachusetts in 1989 concluded that the term "marital status" in their fair housing laws protected unmarried couples from discrimination.

I was concerned when I read a contrary decision by the Minnesota Supreme Court in 1990, a case in which landlords wanted a "religious" exemption from the fair housing laws in that state. Our own state Supreme Court had never directly addressed this issue, so the opinion of another state supreme court excluding unmarried couples from housing protection – despite the term "marital status" in the fair housing law – was troubling.

What I could not have predicted when I read the Minnesota decision was that it would be one of many battles to be waged by the religious right over the next several years in Alaska, Massachusetts, Wisconsin, California, Michigan, and Illinois. Religious conservatives

would use housing discrimination disputes as test cases to seek religious exemptions from civil rights laws generally. I would become involved in these cases, either in California directly representing tenants, or in Alaska and Michigan where I filed friend-of-the-court briefs, or through being consulted by attorneys involved in such litigation as happened in Massachusetts and Illinois.

This unforeseen wave of religious rights versus civil rights test cases stemmed from a decision by the United States Supreme Court in 1990, *Employment Division v. Smith*, in which the court ruled that if a state passed a general law that applied to everyone – a law not specifically targeting religion – then everyone must obey the law even if it has an incidental effect on their religious beliefs or practices. Many religious liberty groups, conservative and liberal alike, joined together to support a bill to overturn this decision and to require a much greater burden on the government to prove that such a law advanced a compelling state interest or else the religious adherent could gain an exemption from the law. The Religious Freedom Restoration Act, or RFRA, was introduced in 1993, passed the Senate by 97-3 and unanimously passed the House. It was signed into law by President Bill Clinton.

What liberal groups, such as the ACLU, did not know at the time was that conservative forces would use this law to seek exemptions from civil rights laws prohibiting marital status and sexual orientation discrimination. In this context, RFRA would be used as a sword to impose religious beliefs on employees and consumers, rather than as a shield to protect religious believers from government oppression. RFRA would play a direct or indirect role in dozens of civil rights cases from 1993, when it was enacted, to 1997 when the United States Supreme Court declared RFRA to be unconstitutional.

I was particularly sensitive to the issue of housing discrimination against unmarried couples after hearing the testimony of Verna Terry and Robert Wilder at a public hearing conducted by the City Attorney's Consumer Task Force in December 1989. Verna and Robert, an unmarried couple, had been denied an apartment in 1987 by a landlady, Agnes Donahue, who claimed that her religious beliefs as a Catholic precluded her from renting to a couple who were "living in sin." The Consumer Task Force was so concerned about this case that, in its final report, we recommended that the city attorney enter the case and file a friend-of-the-court brief in support of the rights of Verna and Robert.

Verna and Robert won the first round of their battle with Agnes Donahue. The Fair Employment and Housing Commission ruled that the landlady had violated state law and ordered her to stop discriminating against unmarried couples. It also awarded damages to the aggrieved tenants. The landlady went to court asking for an order overturning the commission's decision. On May 31, 1990, the Superior Court granted her request. The commission filed an appeal with the Court of Appeal in Los Angeles. The appeal was assigned to a three-judge panel in Division Five of that court.

On January 31, 1991, the Los Angeles city attorney filed a letter with the clerk of Division Five, asking for permission to enter the case and to file a friend-of-the-court brief to bring to the court's attention the perspective of a law enforcement agency, one with a duty to enforce laws against housing discrimination. The request was denied.

The litigation proceeded on appeal with two parties battling it out – the commission on one side and Agnes Donahue on the other. The tenants affected by the decision were never given notice of the appeal or the briefing dates. They had no idea that they had a right to participate in the litigation directly if they wanted to. No one had ever advised them of this. So they waited on the sidelines, wondering when and how the appeal would be decided.

I inquired about the status of the appeal in October 1991. I learned that oral argument in the case had occurred in August. I figured out that the opinion of the Court of Appeal would be filed no later than November 27, 1991. I knew that procedural fact because California has a rule that prohibits judges from getting a paycheck if they have any cases in which the opinion has not been filed within 90 days of oral argument. Paychecks are issued at the end of each month. That meant that in this case, if the opinion was not issued by November 27, the judges on this appeal would not get their end-of-November paycheck in a timely manner. I would call the clerk of the court each week to see if the opinion had been filed yet.

When we entered the last week of November without an opinion's being filed, I figured out what the court was up to. Thee justices did not want their opinion to get publicity. The best way to accomplish that result would be to issue the opinion about 4:45 p.m. on the day before Thanksgiving. Most news reporters and journalists would already have gone home for the four- day weekend. The decision would be old news by Monday. Not a bad strategy for avoiding publicity.

What the court did not count on was my intervention and my monitoring. On Monday of Thanksgiving week, I contacted Henry Weinstein, a writer with the *Los Angeles Times*. I informed him about the case and how I thought the court would try to avoid publicity by filing the opinion on Wednesday afternoon. He was extremely interested in the case – religious landlady versus unmarried couple – and the public policy and constitutional issues involved. He decided to review the case materials and prepare a story to submit to his editors on Wednesday evening in the event that the opinion was in fact filed on Wednesday.

I called the court on Tuesday afternoon and on Wednesday morning. No opinion yet. I asked my partner Michael to go to the courthouse at 3 p.m. and sit there until it closed at 5 p.m. I called the clerk of the court at 3:30 and advised him that I had someone there to pick up a copy so it would be nice if they did not wait until 4:59 to file it. Michael obtained a copy at 4:15 and came right home with it. Henry Weinstein had someone pick up a copy for the *Times* at 4:30.

I read the opinion as fast as I could. The good news was that the court had ruled that the term "marital status" did protect unmarried couples from housing discrimination. The bad news was that by a 2-1decision, the majority ruled that Agnes Donahue was entitled to an exemption from the fair housing law in order to protect her religious beliefs from undue interference by the state. The dissenting judge wrote that Agnes Donahue was engaged in "secular commercial conduct performed for profit." There are no religious motivations for Donahue's conduct, the dissenter concluded.

On Thanksgiving Day, the *Los Angeles Times* ran a story titled "Rental Denial Is Upheld on Religious Basis." That day, a film crew from *ABC News* came to my home to interview me about the case and the story was carried on *ABC World News Tonight*. Although I was saddened by the decision of the court, I was glad that it received widespread public attention.

The next day I called Verna Terry and informed her about the decision. She said that she had learned of it on television. No one from the court had bothered to send her a copy of the decision. No one from the attorney general's office had contacted her either. I was concerned that the attorney general's office was representing the Fair Employment and Housing Commission on appeal. The attorney general was Dan Lungren, a staunch conservative whose most loyal supporters were from the religious

right. I asked Verna if she and Robert would like me to represent them, without charge, to seek a rehearing in the Court of Appeal and then to petition the California Supreme Court to review the case. She told me that she and Robert had separated, but that she would be delighted if I would represent her. I had her send me a letter to that effect and I filed a notice of appearance with the Court of Appeal.

I petitioned the Court of Appeal for a rehearing, noting 19 factual misstatements and numerous omissions in the opinion, as well as pointing out how it violated many established judicial precedents of the California Supreme Court and the United States Supreme Court. I was not surprised when the court denied my petition. So the next step was to petition the California Supreme Court to take the case, which I did on January 6, 1992. The attorney general's office also filed a petition on behalf of the commission.

I was grateful when I received word that on February 27, 1992, the Supreme Court entered an order granting review. I filed my brief on the merits in April and opposing briefs were filed the following month. As we waited for the court to announce a date for oral argument, the case got national media attention. The headline of a *Wall Street Journal* story read "California Top Court to Wrestle with 'Sin' vs. Tenants' Rights." The *Washington Post* story characterized it as "A Case of Rent Bias and Religious Views."

After the Supreme Court took the case, I received a handwritten note from Verna thanking me for representing her. "Without your involvement there would be no case," she said. "When you agreed to act on my behalf, it was the first time I felt there was any chance of getting the facts heard and maybe a fair decision," she added. "Regardless of the outcome, I want you to know how much I appreciate your brilliance."

"Shocked" is the only word to describe my reaction to an order of the Supreme Court in October 1993 in which it dismissed the Donahue case as one in which review had been "improvidently granted." At first, I could not figure it out. They took the case and now they are dumping it? Why? At the time, I did not know that Justice Edward Panelli had decided to retire in December 1993. He may have been pivotal to the outcome of the case and his absence might have left the court evenly split. Panelli's vacancy was filled by Justice Kathryn Werdegar on May 3, 1994.

Soon after the Donahue appeal was dismissed, I heard of a similar case in Northern California. *Smith v. Fair Employment and Housing*

Commission involved a Presbyterian landlady, Evelyn Smith, who had refused to rent to an unmarried couple because she believed she would be facilitating the sin of fornication if she allowed them to live in the house she had advertised for rent. The couple, Ken Phillips and Gail Randall, filed a complaint and was awarded damages by the Fair Employment and Housing Commission. The commission ruled in their favor and Smith filed a lawsuit which eventually wound up before a conservative panel of judges in the Court of Appeal in Sacramento.

While Agnes Donahue had been represented in court by her son, a semi-retired attorney with no experience in constitutional law, Smith's case drew support from the religious right who retained religious freedom lawyer Jordan Lorence to represent Smith. Lorence worked for evangelist Pat Robertson's American Center for Law and Justice.

I contacted the Fair Employment and Housing Commission and found out that neither tenant was represented by an attorney in the appeal. It was arranged for me to serve as their attorney, without cost. They were excited at the prospect of having participation in the appeal rather than merely witnessing the proceedings. Since there were two tenants, I asked my colleague David Link if he would like to represent Gail and I would represent Ken. That way we could file two briefs instead of one. He agreed.

David and I flew to Sacramento and participated in oral argument before the Court of Appeal on January 25, 1994.

On May 27, 1994, the Court of Appeal ruled in favor of Evelyn Smith. David and I immediately filed a petition for rehearing on behalf of the tenants. The *Daily Journal*, a major legal newspaper in California, ran a story about the decision and about our petition for rehearing. The granting of a religious exemption from civil rights laws would not be limited to housing discrimination, I predicted.

"In the wake of this opinion, it is not hard to imagine a restaurant ejecting a gay couple who shows affection, an employer refusing to promote a qualified employee because he is cohabiting with an unmarried partner, or a hotel manager refusing to rent a room to persons he suspects might fornicate in the room – each claiming the right to discriminate in the name of religion," I said. "The ramifications of the opinion are very broad."

David and I held discussions with the deputy attorney general representing the commission about our plans to petition the California

Supreme Court to review the case. She, in turn, discussed the matter with her supervisors. We were surprised, but not totally shocked, to learn that Attorney General Dan Lungren had decided that his office would no longer represent the commission on appeal. The commission would have to hire a private attorney.

We immediately contacted Halle Jordan, a staff writer for the *Daily Journal*. She wrote a story titled "AG Bows Out of Rental Discrimination Case." The story quoted me as saying that "I was wondering when the ax would fall and he would let politics interfere with client representation." Lungren was up for re-election in November. "I think it looks like a political decision by Lungren to appease the religious right," I added.

Through his spokesperson, David Puglia, Lungren denied my charges. David is the son of Robert Puglia, the judge who wrote the appellate decision favoring Evelyn Smith. A story in *The Orange County Register* said that since Lungren became attorney general in 1990, he had never once withdrawn from a case in which his office was representing a state agency in court.

My client, Ken Phillips, was livid when he heard that the state's top law enforcement officer had thrown in the towel and had given up on defending the rights of unmarried couples. Ken filed a complaint against Lungren with the California Bar Association. He argued that it was a violation of ethical rules for Lungren to make public statements damaging to his client's case. Lungren had told the media he was withdrawing from the case because he thought the Court of Appeal was correct in its ruling.

"It is like stabbing your client in the back," I told *The Orange County Register*. While Lungren had the authority to withdraw from the case, it was ethically questionable to declare that the former client's position was wrong, I explained.

On June 27, 1994, David and I filed petitions for review with the California Supreme Court. We were able to cite a new precedent in our brief, an opinion by the Alaska Supreme Court that had been issued on May 14, 1994. In *Swanner v. City of Anchorage*, the court ruled that unmarried couples are protected from housing discrimination by the term "marital status" in civil rights laws, and that landlords are not entitled to a "religious" exemption from such laws. Businesses, including landlords, must obey the law and may not hide behind their religious beliefs to discriminate against consumers.

Within days of Lungren's decision, Jordan Lorence filed a pleading

with the California Supreme Court asking it to deny our petition for review. In that pleading, Lorence quoted David Puglia's comments to the press that Lungren withdrew because he felt that the decision of the Court of Appeal was "correct as a matter of law." The *Daily Journal* wrote another story titled "AG Criticized for Dropping Case." The final paragraph of the story quoted me as saying that "Lungren is stabbing the Commission in the back, but the knife is so long it is affecting my client as well." I wanted the Supreme Court to understand the politics behind Lungren's decision and I knew that the justices and their staff members read the *Daily Journal*.

Now that the side battle with Lungren was over, we all waited to hear what the Supreme Court would do. We got our answer on September 8, 1994, when the justices voted 6-1 to take the case. "I guess we are going into the next round of the never-ending battle," I told the *Daily Journal*. This case, like the *Donahue* case, involved acts of discrimination that occurred in 1987 and here we were in 1994 and the issue still had not been resolved.

"The case, which has attracted nationwide attention from conservative religious organizations, has the potential to create a broad religious exemption from California's anti-discrimination laws," the *Los Angeles Times* reported. I theorized that with such a broad religious exemption, "If a single woman who lives alone in an apartment gets pregnant, eviction could be right around the corner."

A subsequent story in the *Times* said the case "is considered the most important constitutional test on the issue [of religious exemptions to civil rights laws] because most other state high courts have avoided ruling directly on the religious freedom issue."

As we awaited oral argument in the *Smith* case, I was keeping track of the status of the *Swanner* decision in Alaska. I discovered that the landlord had filed a petition for *certiorari* (review) with the United States Supreme Court. I further discovered that the tenants in the case were not represented by counsel. The Anchorage Equal Rights Commission was indirectly arguing for the tenants. I contacted Conni Livesey, the attorney for the commission, and offered to represent one or more of the tenants without charge. Joseph Bowles, one of the tenants, took me up on the offer. So I filed a notice of appearance with the clerk of the United States Supreme Court. I officially became an attorney of record in the case, which would entitle me to file briefs and to participate in oral argument should the Supreme Court grant the petition. That became unnecessary, since on

October 31, 1994, the court denied the petition. Justice Clarence Thomas, a sure bet for the religious right, filed a dissenting opinion.

Oral argument in California's *Smith* case was held on January 10, 1996. "She's not being a landlady out of religious conviction, she's doing it for money," the commission's attorney told the seven justices on the California Supreme Court. Justice Stanley Mosk noted during argument that a restaurant owner could rely on Smith's argument and refuse service to an unmarried couple. Some of the justices were understanding the implications of granting a religious exemption from civil rights laws and were concerned that such an exemption could undercut the effectiveness of such laws.

We waited for the court's ruling, wondering who would win this constitutional battle. We got our answer when the decision was filed on April 9, 1996. Four members of the court – a majority – sided with the tenants and rejected Smith's claim for a religious exemption from the fair housing law. One dissenter, Justice Kennard, completely rejected our arguments. Two other justices seemed to side with Smith, but they felt further evidentiary hearings were necessary to make a final ruling. We won! The rights of unmarried couples to be free from marital status discrimination in housing prevailed.

But it's not over until it's over. Jordan Lorence vowed to appeal to the United States Supreme Court. How long would this dispute, which began in 1987, continue? We found out on June 27, 1997, when the nation's highest court refused to hear Smith's case. We finally won, really won. What had clinched the victory for us was that two days earlier, the Supreme Court had declared the Religious Freedom Restoration Act to be unconstitutional. Without RFRA, there seemed to be no way that landlords would be able to gain exemptions from fair housing laws seeking to protect unmarried couples and other minorities from discrimination.

The California Supreme Court's decision in *Smith* "means if you start a for-profit business and advertise it to the public, you have to obey the civil rights laws," I told the *San Francisco Chronicle* in a story published the following day. "You can't impose your religious beliefs on your customers or your tenants."

Then came a similar case in Michigan, the state in which I was born and raised. I immediately got in touch with Rudy Serra, a gay rights attorney in Detroit with whom I had worked before on an appeal challenging the constitutionality of Michigan laws criminalizing private sexual

conduct of consenting adults. I learned about the *Hoffius* case when I read news of the decision of the Court of Appeals. The Court had ruled that "marital status" did not protect unmarried couples. Since Michigan had a criminal law against unmarried cohabitation between a man and a woman, the court concluded that the Legislature could not have intended to punish such couples for their unlawful cohabitation and also protect them from housing discrimination by a landlord who disapproved of such cohabitation on religious grounds. Rudy and I filed a brief with the Michigan Supreme Court urging it to reverse the decision of the Court of Appeals. We knew it was a long shot, but worth the effort anyway.

We were amazed when we read the decision of the Michigan Supreme Court which was filed on December 22, 1998. A majority opinion signed by four members of the court ruled that unmarried couples were protected by the law and that landlords could not use their religious beliefs to avoid obeying the state's civil rights laws. We could not believe it. What a Christmas present.

But the victory was short lived. Two of the justices who ruled for the tenants retired on December 31. Much as it seemed impossible, the fact was that they were replaced by two of the judges from the Court of Appeal who had earlier ruled against the tenants. In January 1999, the landlord asked the court for a rehearing. With these two new justices now on the court, they and two others voted to grant the rehearing.

Then came the political backlash from that portion of the ruling that said "marital status" protected unmarried couples in the Civil Rights Act. That statute was not limited to housing, but prohibited discrimination by employers against employees and by businesses against consumers in any type of business transaction. It was a very broad law and conservative political forces in Michigan did not want unmarried couples to have such legal protections.

In response to pressure from conservative forces, including newspaper editors, HB 4258 was introduced by Representative Clark Bisbee, a Republican from Jackson, Michigan, the city in which the landlord in the *Hoffius* case lived. The purpose of the bill was to specify that the term "marital status" did not include unmarried cohabiting couples. This would effectively remove all civil rights protections for people in such relationships.

I decided to jump into the battle, and flew to Michigan. I would represent the Singles' Rights Lobby, an organization affiliated with the

American Association for Single People. I enlisted the help of some AASP members in Michigan, including my sister Cathy Coleman. I found out that the bill would be heard in the Constitutional Law and Ethics Committee of the House of Representatives which was chaired by Representative Michael Bishop. I contacted one of the Democrats on the Committee and soon received a letter inviting me to testify at the hearing. So my sister Cathy and I drove from Oakland County where she lived to the state Capitol in Lansing for the hearing.

I told the committee that the proposed changes in the civil rights law would affect about 3 million unmarried people in Michigan. It would strip them of protections in their jobs, in schools, and in access to public services. I reminded the legislators that one of the judicial precedents under the current law made it illegal for a hospital to refuse to allow an unmarried father to be present with the birth mother during delivery of their baby.

"Do you really want to be so punitive?" I asked. I also advised the lawmakers that the bill would eliminate civil rights protections for common-law couples who are considered legally married by the state but who have no marriage certificate. "Do you really want to strip married couples of their rights too?" I questioned.

"This is the worst assault on the rights of single people I have seen in the entire United States," the *Detroit Free Press* quoted me as saying. "It is using a meat cleaver to perform constitutional surgery." The author of the bill, Clark Bisbee, told the *Free Press*: "We kind of got beat up in there," referring to the hearing. "We've got another week to look at it to see what we need to do next."

The chair of the committee, Michael Bishop, lived in Rochester, Michigan, a city close to where my mother and some of my siblings lived. They all knew people who lived in Bishop's district. I urged my family to contact coworkers and friends to write to Bishop expressing their opposition to the Bisbee bill. Either Bishop was contacted by a lot of opponents of the bill or he had second thoughts about it for other reasons. In any event, he decided not to call up the Bisbee bill for a vote. So the bill died in the committee.

On April 12, 1999, Representative Elizabeth Bater, a Democratic member of the Constitutional Law Committee, wrote to me. "AASP played a pivotal role in defeating, at least temporarily, this draconian bill," she said. "On behalf of the millions of unmarried Michigan residents who

would have been adversely affected by House Bill 4258, as well as married people who support equal rights for everyone regardless of marital status, I would like to express our gratitude to you for traveling to Michigan to help preserve the integrity of our Elliott Larsen Civil Rights Act."

A few days later, the newly constituted Michigan Supreme Court filed its modified opinion in the *Hoffius* case. The court continued to agree that the "marital status" provisions of the Elliott Larsen Civil Rights Act protected unmarried couples from discrimination. However, the court vacated that part of the previous decision which ruled that landlords were not entitled to a religious exemption from the law. Instead, it ruled that the case would have to go back to the trial court for an evidentiary hearing on this matter. The joy of a victory turned into exhaustion from endless rulings which kept the issue alive for what seemed like an eternity.

Eventually, after another round of legal battles in federal courts over the Alaska decision to deny religious exemptions to landlords who wanted to refuse housing to unmarried couples, the matter was laid to rest when an 11-member panel of the 9th Circuit United States Court of Appeals filed an opinion against landlords on August 4, 2000. The United States Supreme Court refused to hear the case a few months later.

Another aspect of this battle of people seeking religious exemptions from generally applicable laws prohibiting discrimination occurred in response to the United States Supreme Court decision to invalidate the Religious Freedom Restoration Act in 1997. The following year, mini-RFRA laws were introduced in state legislatures, including California's, to give religious believers the right to disobey state laws that offended their religious beliefs. One such law was passed by the California Legislature, only to be vetoed by Republican Governor Pete Wilson. Wilson could see that such a religious exemption would throw a monkey wrench into the machinery of state government and make it very difficult to enforce a wide variety of laws that some segments of society found religiously offensive.

Due to the demise of RFRA at the federal level and the reluctance of governors to sign mini-RFRA laws, and thanks to several favorable appellate court rulings, the religiously based landlord-tenant cases seemed to disappear. The rule of law prevailed. I was proud to have played a significant role in this difficult chapter of constitutional law.

Chapter Eight

In Sickness and in Death

Protecting the rights of surviving partners is emotional and challenging

I met Claudio Pastor Frias during the summer of 1975. That was a summer I clearly remember for a variety of reasons, both personal and political.

Claudio was born in Cuba. He and his mother left the island when he was 11 years old and moved to New Jersey. When I met him, he was attending Rutgers Law School. Claudio and three other law students came to Los Angeles to participate in the Gay Rights Summer Project of the National Lawyers Guild. Al Gordon and I were supervising attorneys for the project.

Claudio, who was then in his early 20s, was struggling financially, so Al arranged for him to stay at the home of a friend for the summer. He would have free accommodations, would have to take the bus for transportation, and would have to provide for his own meals. It was a great opportunity for Claudio and the other students to get some practical legal experience in a politically charged environment.

I became very close to Claudio that summer. In addition to working on the legal project together, we also developed a social relationship. We would often go out to Ken's River Club for cocktails and dancing. Most of the gay bars were in Hollywood and West Hollywood. Unfortunately, many of them discriminated against people of color. But the River Club was a place where Latinos and Asians were predominant.

Disco had just become extremely popular. I recall dancing to songs such as "Love to Love You Baby" by Donna Summer, "Walking in Rhythm" by the Blackbyrds, and "The Hustle" by Van McCoy. But the dance bars were only part of the social scene. Quite often we would go to Levi's-leather bars such as the Detour in Silver Lake or the Stud in Hollywood. Claudio liked the leather scene.

In August 1975, Claudio and I marched down Hollywood Boulevard for the annual protest march during Gay Pride Week. That year, Chief of Police Ed Davis was invited to participate. The organizers knew he would decline the invitation but they wanted to tease him. He replied in writing. "I would much rather celebrate Gay Conversion Week," he said, "which I will gladly sponsor when medical practitioners find a way to convert gays to heterosexuals."

After Claudio returned to New Jersey, I remained in contact with him. I visited his home and met his mother the following year. Arthur Warner, who co-chaired the National Committee for Sexual Civil Liberties, lived in Princeton, New Jersey. Every year or so I would visit Arthur in New Jersey and would make it a point to meet with Claudio.

Sometime around 1980, Claudio informed me that he had fallen in love and was living with his partner Bob in Jersey City. Bob was the vice principal of a local elementary school and owned a home in the community. Although Claudio had graduated from law school, he had not yet passed the bar exam. While he was studying for it, he taught school to earn some money.

In 1986, Bob and Claudio traveled across the country in a van and visited with my partner, Michael, and me at our home in Los Angeles. The four of us drove down to Mexico for two days. I remember them treating us to a lobster dinner at a little town called Puerto Nuevo, just south of Rosarito Beach in Baja. The following year, Michael and I flew to Jersey City and the four of us rented a limousine which took us to Times Square for New Year's Eve.

Our lives got busy and we were not in communication with Bob and Claudio for a year or so. Between my law practice and my work with the Family Diversity Task Force, some social contacts fell between the cracks. Then one day in 1988, I received an unexpected phone call from Claudio. Bob had just died.

Apparently Bob had been in a hospital in New York City for a few weeks. Bob had AIDS. While he was hospitalized, a New York attorney

whom I knew, Jim Levin, was summoned to Bob's hospital bed. Jim prepared a Durable Power of Attorney for Health Care and a Last Will and Testament for Bob. The documents were duly witnessed and notarized. That was about all that a gay couple could do back then to legally protect themselves and to guarantee that a surviving partner would have authority when one partner died. Gay marriage was not allowed and there was no domestic partnership registry in New York or New Jersey.

Claudio's phone call to me had a sense of urgency. The home they lived in was owned by Bob. Bob had eleven brothers and sisters, most of whom lived in Jersey City or nearby. Bob's parents lived across the street from the house where Bob and Claudio lived. The parents had a lot of clout in the area since they owned a neighborhood tavern where local police officers hung out when they were off duty. There were two immediate issues that needed attention. The first was Bob's funeral service and burial. The second was the need to probate Bob's will, which left the house and all assets to Claudio.

Claudio sensed that he was going to have a major problem with Bob's family on both issues. He was frightened that they would use their local political connections, including their police buddies, to force Claudio out of the house where he had been living with Bob for several years. Claudio asked if I could come to New Jersey to help him sort this mess out. I agreed. I advised Claudio not to allow anyone into the house and under no circumstances should Claudio leave the house until I got there. I could envision a scenario where the family would seize the house, force Claudio out, and change the locks. "There is an old saying that 'possession is 90 percent of the law' and there is a grain of truth to that saying," I advised Claudio. "Make sure you remain in possession of the house until I arrive."

The next morning I flew into the Newark airport and took a cab to Jersey City. Claudio greeted me at the door and invited me into the house. Apparently, one of Bob's brothers had already tried to force his way into the house but Claudio would not let him in. The brother had returned to the house with a police officer. I had feared that such a confrontation might occur so I had given Claudio instructions on what to do.

"Stand at the door and speak with the police at the entry if they come," I had advised. "Show the police the will, which leaves the house to you as beneficiary, and also show them a utility bill or something else to prove that you are currently in lawful possession of the house." Even a tenant must be given a 30-day notice and an opportunity to contest an

eviction at a court hearing. The law does not allow the police or the family to summarily eject you from the house.

"First things first," I told Claudio when I arrived at his house. Let's go to the mortuary where Bob's body is and speak with the director of the funeral home. "After all, you were designated by Bob as the person who should handle funeral arrangements." Both the will and the Durable Power of Attorney specified this. So we locked up the house and drove to the nearby funeral home.

The director of the funeral home was polite but insistent that it would be Bob's parents who would make the arrangements, not Claudio. We showed him both documents, but they did not mean a thing to him. "The will cannot be filed with the probate court for 13 days," he said. "And the power of attorney was signed in New York City and we do not have to honor that document," he added. There was no way this man was going to side with a surviving gay partner, no matter what documents he had in his possession.

We asked the funeral director about the paid obituary and whether Claudio could be mentioned in it. "The family will control the content of the obituary and they have made it clear that you will not be mentioned," he insisted. Claudio did find out the name of the minister who would conduct the funeral services, so we went back to the house to call her. The minister told us to come by in the morning and she would speak with us.

The obituary notice really bothered me. How mean for the family to omit mention of Bob's surviving partner. I sensed that this was only the tip of the iceberg and that there would be more mean-spirited things to come. I was right. About two hours later, when we tried to call the editor of the local newspaper, we discovered that the phone was dead. How could that happen? We went outside to investigate and I noticed that the phone line to the house had been cut. That was no accident.

Claudio and I left the house again and found a pay phone. We called the local newspaper and asked to speak with the person who writes obituary stories. I suspected that since Bob was vice principal of a school, the paper might write a story about his death. This would be in addition to any paid obituary notice the family would put in the paper. I explained the situation to the writer and then put Claudio on the phone. The writer spoke with Claudio for a few minutes and said that he would try to mention Claudio in the story.

We went to see the minister the next day. She was very sympa-

thetic and promised to be as kind and polite to Claudio as she could be during the funeral services which were scheduled to occur two days later. I had Claudio call an attorney to make an appointment regarding the house and Bob's will. The meeting was scheduled a few days later. Hopefully, the attorney could file the will in the probate court and get an order to prevent Bob's family from harassing Claudio.

The next evening Claudio and I went to the funeral home. It was a closed casket situation, but there was a nice photo of Bob on display. Much to our horror, there was also a stack of flyers for everyone to take. The flyer stated that Bob had died of AIDS and that he had caught the disease from Claudio.

The church service and burial were scheduled for the following morning. I had to get back to Los Angeles, so I was not able to stay any longer. I left that morning. I advised Claudio to take a friend with him to the services, for moral support and for a sense of protection. After I arrived home later that day, I received a phone call from Claudio describing the church services. I could hardly believe what I heard. During the service, one of Bob's brothers, who was intoxicated, got up in front of everyone and pointed at Claudio. "That man killed my brother," he shouted. "That man is a murderer."

Claudio feared for his life. When the church cleared out and everyone got into their cars to go to the cemetery, Claudio and his friend got into Claudio's car and drove home. He was afraid of what might happen when the casket was lowered into the ground. He would have to visit the grave site some other time.

The one good thing that did happen was that the obituary story published in the newspaper the day before the funeral service did mention Claudio as Bob's longtime friend and surviving partner. I'll bet that story infuriated Bob's family.

The lawyer soon filed Bob's Last Will and Testament with the probate court. The family filed a challenge to the will, claiming that it was signed under duress and that Claudio had used undue influence to get Bob to leave everything to him. I knew this claim was untrue and I hoped that the judge would see through it. Bob and Claudio had been together for several years. They loved each other and took care of each other in illness and in death. They retained a lawyer and Bob executed the necessary legal documents to ensure that Claudio would be treated like a surviving spouse. Bob's family, which had been nice to Claudio on the surface for all these

years, was now motivated by homophobia and greed. Hopefully, Claudio would win this case.

For the remainder of the year, I continued my work to implement the final report of the Los Angeles City Task Force on Family Diversity. I would get reports from Claudio, from time to time, about the progress of the probate case. Things were dragging on and it looked like the case would not conclude until sometime in 1989. Perhaps there would be a settlement with Bob's family, just to bring things to a close. Or if they were unreasonable, the matter would have to go to trial.

In December 1988, the co-chairs of the Task Force and I received an invitation to speak about our family diversity report to the New York City Bar Association in January 1989. Professor Arthur Leonard had arranged for the presentation. We were also invited to speak to the Breakfast Forum, a gathering of gay and lesbian leaders who would meet periodically to discuss public policy issues affecting that community.

I called Claudio and told him about these events. He suggested that we should stay at his house in Jersey City. We could fly to Newark and spend the night with him and then spend the next day in New York City, with the forum in the morning and the bar association in the evening. Chris McCauley, co-chair of the Task Force decided to stay at a hotel in Manhattan. This turned out to be a very good decision on his part. My partner Michael and I, and our friend Dr. Nora Baladerian, co-chair of the Task Force, decided to take Claudio up on his offer.

Nora, Michael and I flew to Newark on January 11, 1989. When we arrived at Claudio's house, it was already dark. We took our suitcases and briefcases into his house and then we all left for dinner. We returned to his place about 9 p.m. We wanted to get to bed early since we had the breakfast meeting in Manhattan at 8 a.m. the next day.

When we returned to Claudio's house we were shocked. Two of Bob's brothers were sitting on the steps to the side door. One was holding a rifle in his hand. While we were gone they must have had a locksmith come to the house to change the locks. They told Claudio that the house did not belong to him and that we could not stay there. Claudio tried to reason with them but they would not listen. There we were, standing out in the snow in the freezing cold.

We went to a pay phone to call the police but no one came. We waited for about a half-hour, then we decided to drive to the police station. They made us wait for a half-hour before anyone would speak with us. It

was obvious that the local police were in cahoots with Bob's family. Finally, the watch commander spoke with us and agreed to send a patrol car to the house. We drove back. There were three patrol cars there.

The lead officer asked Claudio to supply proof that he had a right to go into the house. "My proof is inside the house," he told the officer. "But the locks have been changed and we can't get in."

I demanded action. I was furious. I informed the officers about the reason we had come to the area. We were there to speak to the New York City Bar Association about family diversity and discrimination against unmarried couples. "My business suit and all of my paperwork are in the house," I informed them. "If I show up dressed like this, and without any notes, you can be sure that you and your Police Department will be the focal point of my speech," I warned.

I could tell that the officers were starting to get a little nervous. They spoke with Bob's brothers, but the brothers did not want to let us spend the night in that house. Rather than stand there arguing all night, I made a suggestion. "At least allow us to go into the house to retrieve our belongings," I said. "We can stay at a hotel tonight and argue about this in court later."

I had finally broken through the communication barrier. "OK, you can go in for just five minutes and then you must leave," the lead officer responded. Since the locks had been changed and the brothers would not produce a key, the police sent one of the officers up on a ledge to check to see if one of the second-story windows was open. They found an open window, entered the house, and then let us in. We got our belongings and then found a nearby motel to spend the night. We hardly slept a wink and in no time it was 6 a.m. – time to get up and leave for the Big Apple.

Needless to say, our experience with the Jersey City Police Department became a major focus of my opening remarks, both to the Breakfast Forum and to the bar association on January 12, 1989. This type of lawless behavior was only possible because of homophobia by the police, I told both gatherings. Having legal documents and having an ongoing court proceeding often means nothing, especially if blood relatives enlist the support of biased police to help them take law into their own hands. Gay marriage or domestic partnership laws would be needed if law and order would rule. Merely having a will or a durable power of attorney would not be sufficient – not if a surviving gay partner is challenged by blood relatives who are backed up by local law enforcement officials.

The day after our presentations at the New York City Bar Association, we went with Claudio to the probate court. His attorney had filed a motion seeking a restraining order to keep Bob's family members from coming onto the property where Claudio lived. His case was the last one on the docket, so we sat there all day listening to the other cases. We were impressed with how fair and impartial this judge was. After Claudio's case was heard, I asked the judge if I could say something. I told him that I was an attorney and had seen many judges in my day, but he was by far the best judicial officer I had ever seen. The judge thanked me for sharing my opinion with him.

The following day, Nora, Michael and I went with Claudio to the cemetery where Bob was buried. With us at his side, he felt safe enough to go there for the first time. Later that day, the three of us flew back to Los Angeles.

Eventually, a few months later, Claudio prevailed in court. He got the house and then sold it. Claudio moved to New York City so he could be closer to his mother's Manhattan apartment.

Within a few months, I would be drawn into another dramatic situation involving a gay couple who lived in Long Beach, California. Juan Navarrete and Leroy Tranton were lovers and had been living together for several years in a home owned by Leroy. They lived a simple life, often entertaining their friends at their home. Once, at a birthday party for Leroy, they had a conversation about what would happen to Juan if Leroy ever died. What would happen to the house and the possessions? Leroy's parents were deceased, he had no children, and only had one sibling – a brother who lived in Maine and who did not approve of Leroy's homosexuality. Leroy considered Juan to be his immediate family.

Leroy told several people at the party that he wanted Juan to have the house and all his possessions. Leroy grabbed a piece of paper and did a handwritten will right there on the spot, indicating his intentions. Leroy signed it. Juan put the paper away for safekeeping. He felt somewhat reassured by Leroy's gesture. But nothing was going to happen to Leroy so there was no sense in worrying.

In March 1989, Leroy and Juan were building a gazebo in their back yard. Leroy was on a ladder and Juan was handing him slats of wood for the ceiling. They only had a few pieces left to go, but Juan told Leroy to get down from the ladder since it was starting to get dark and Juan had to go to the store to buy food for dinner. Leroy got down and Juan left.

But while Juan was gone, Leroy decided he was going to finish the job. After he got back on the ladder, Leroy had an asthma attack. He fell off the ladder and hit his head on the cement floor below.

When Juan returned home, he found Leroy unconscious. Juan called 911 and an ambulance took Leroy to the nearest hospital. Leroy remained in a coma for three days. Juan stayed by his side, wondering if Leroy were going to live or die. Leroy finally regained consciousness, but it appeared that he had suffered permanent brain damage. Leroy was then transferred to another hospital for rehabilitation where he remained for the next several months.

The nurses at the new hospital welcomed Juan with open arms when he would arrive to visit with Leroy. Juan came to the hospital every day for many months, sometimes twice a day. Leroy could be a difficult patient, so the nurses were happy to see Juan since he had an ability to get Leroy to be more cooperative. Juan could see Leroy slowly improving and had hopes that in the not too distant future Leroy might be able to return home.

One day while Juan was visiting Leroy, he noticed some legal paperwork by the night stand next to Leroy's bed. They were papers for a conservatorship hearing that was scheduled for the following week. It looked as if Leroy's brother wanted the court to give him control over Leroy's life and his assets. Apparently, the paperwork had been served on Leroy at the hospital.

Juan showed up at the hearing to find out what was happening. When the judge called the case, an attorney for Leroy's brother got up and asked the judge to enter an order making the brother the conservator of the person and the estate of Leroy Tranton. The judge asked if anyone in the courtroom wanted to be heard. Juan got up and said that he objected. The judge asked about Juan's relationship with Leroy. "We have lived together for eight years, Your Honor," Juan explained. "I am his friend and partner." The judge stated that Juan did not have any legal relationship with Leroy and therefore had no standing to object. The judge then entered an order making the brother the conservator of Leroy.

Nothing much seemed to change for the next few weeks. Juan would go to the hospital each day and would help Leroy with physical and speech therapy. Then one day, Juan walked over to Leroy's hospital room and it was empty. So Juan went from nurse to nurse, asking where Leroy was. "Leroy's brother had him transferred," a nurse explained. "Well tell

me where he is," Juan begged. The nurses explained that they were sorry, but as a matter of privacy law, they could not give Juan any information. After all, Juan and Leroy were strangers to each other in the eyes of the law.

Juan did not know what to do. His lover, his partner of eight years, had disappeared. Eventually, Juan called the Gay and Lesbian Center in Los Angeles and asked them for a referral to an attorney who could help him. I was one of the three names they gave him.

When Juan called me, I could tell that he was in great emotional distress. He had not seen Leroy for more than a week. Juan had called Leroy's brother who was back in Maine, but the brother would not give Juan any information. How cold. How cruel.

Juan told me that he thought he knew where Leroy might be. An ambulance bill had come to the house addressed to Leroy. Juan had opened it up and there was the name and address of a nursing home specified as the point of delivery. The nursing home was in the San Fernando Valley, about 40 miles from Long Beach. Juan was concerned that Leroy might feel that Juan had abandoned him. Leroy was accustomed to daily visits from Juan but those stopped when Leroy was transferred from the hospital. What was Leroy thinking now? And this was happening during the Christmas holidays. What a time to feel you have been abandoned.

I advised Juan to call the nursing home to verify if Leroy was a resident there and to call me back with the information he received. A few minutes later, Juan called me back. Yes, Leroy was there. I told Juan to drive to the nursing home with a friend who could be a witness to what would happen. That afternoon Juan drove to the Valley.

Juan entered the facility and started walking down a hallway. I had advised Juan not to check in with the front desk, just in case Leroy's brother had given them instructions to block visitation by Juan. While he was walking down the hallway, he could see Leroy through a door down the hall. Juan's eyes lit up and his hopes were high. But then one of the security personnel came up to Juan and ordered him to leave.

Apparently, the brother had given the staff a photo of Juan and he was recognized by a staff member as he walked down the hall toward Leroy's room. Juan was forced to leave the nursing facility. Leroy did not see Juan coming his way. How long would it take for Leroy to learn that Juan had not abandoned him but was trying to find a way to get to see him?

Juan called me back and explained what had happened. I told Juan that I would represent him. We would file a motion with the Probate Court, asking the judge for an order to require the brother to allow Juan to visit with Leroy. We could deal with larger issues later, and try to get Juan appointed to be Leroy's conservator. But for now the most important issue was getting Juan to have personal contact with Leroy. I prepared the paperwork and the next day we filed it with the court in Long Beach. The matter was set for a hearing at 1:30 p.m. three days later.

On the day of the hearing, I called Juan about 9 a.m. and told him to meet me at the courthouse at 1 p.m. Then at 10 a.m., I received a call from the secretary of the attorney for Leroy's brother. "I'm sorry to inform you that Leroy Tranton has died," I was told. "What, how can that be, when did he die?" I asked. I was informed that Leroy had died three days earlier. "Where is the body?" I asked. It was flown back to Maine by the brother and the burial was this morning, the secretary advised me.

I was stunned. Leroy had probably given up on life. He was transferred to a nursing facility and did not have even one visitor for a few weeks. Leroy probably thought that Juan had abandoned him. How nasty and mean spirited of the brother. He did not even have the common decency to allow Juan to pay his last respects before flying the body back to Maine.

The next phone call I made was difficult. Juan could not believe what he was hearing. How could this be? This was an unnecessary death. The brother had pulled all emotional life support from Leroy and that probably caused Leroy to give up on life itself.

Now it was time for Juan to hire a probate attorney to file the handwritten will with the court. I referred Juan to attorney Jan Stone, a lesbian lawyer who specialized in probate cases. She filed the will. Of course, the brother objected. The case dragged on for a few months. Juan was emotionally drained and financially fragile. He decided to settle the case in order to move on with his life. The house would be sold and the brother would get a portion of the proceeds.

A few weeks later, Juan called me with some news. "You are not going to believe this," he said. "Leroy's brother had a car accident and is now quadriplegic." "Karma got him," I thought.

Juan and Leroy's situation was not all in vain. Juan testified before the Los Angeles City Attorney's Consumer Task Force on January 29, 1990. The following year, he also testified before the Family Diversity

Project of the Long Beach Human Relations Commission. Both agencies were looking into ways to help promote respect for family diversity and to get legal protections for unmarried couples.

The story of Juan and Leroy was also included in materials submitted to the California Legislature in 1997 and 1998, as bills on domestic partnership were moving through the Assembly and the Senate. One of the bills would create a domestic partnership registry with the California secretary of state. Registered partners would have the right to visit each other in hospitals and nursing homes.

AB 1059 passed the legislature in 1998 only to be vetoed by Governor Pete Wilson. In 1999, another bill, AB 26, again passed both houses of the Legislature. But this time it was signed into law by Governor Gray Davis. The story of Juan and Leroy was used by proponents of the measure to provide evidence of the need for this type of law.

Claudio and Bob and Juan and Leroy did not represent isolated incidents of society's intolerance of same-sex couples or the failure of the legal system to deliver justice. Other gay and lesbian couples also faced legal challenges in times of sickness and death.

In 1990, *The New York Times* ran a story titled: "Suit Over Death Benefits Asks, What Is a Family?" The story focused on Sandra Rovira, surviving life partner of Marjorie Forlini, a phone company manager who died two years earlier of breast cancer. Although they were not legally married, the couple had a formal ceremony in 1977, where their exchange of vows and rings was witnessed by family and friends. The phone company refused to provide death benefits to Sandra, on the ground that she was not a legal spouse of Marjorie.

"She died in my arms," Sandra told the writer for *The New York Times*. "But when I called AT&T, they treated me as if I was nothing and our whole relationship was nothing," she explained. "We were a family like any other family, and we deserved to be treated like one."

Fast-forward to 2009. Six states – Massachusetts, Connecticut, Iowa, Vermont, Maine, and New Hampshire – allow same-sex marriage. California and Washington provide same-sex couples with spousal rights under a comprehensive domestic partnership law. Nevada has enacted a comprehensive domestic partnership law, available to same-sex and opposite-sex couples. California also recognizes the marriages of 18,000 same-sex couples who were married prior to the passage of Proposition 8. New Jersey and Oregon have civil unions or domestic partnerships which

grant registered couples many of the rights and benefits of marriage.

Elsewhere, same-sex couples risk the same treatment that Juan, Claudio, and Sandra experienced. That is a shame, especially in a society which pledges "liberty and justice" for all, where family diversity is now the norm, and in which a majority of the nation's households are headed by unmarried adults.

But times are changing. More states are beginning to enact laws recognizing the right of unmarried partners to make decisions for each other in illness or at the time of death. More cities are creating domestic partner registries which afford registered couples various rights, including hospital visitation rights in emergency rooms and critical care units. Many employers are extending pension survivor benefits to domestic partners of their employees.

Unfortunately, for Bob and Claudio, New Jersey's domestic partnership law was not in place when they needed it. And for Leroy and Juan, when Leroy was in the hospital and later the nursing home, the city of Long Beach had not yet created a domestic partner registry which protected a partner's right to have access to a patient. And for Sandra Rovira, companies such as AT&T had not yet expanded their pension plan rules.

But the good news is that the tide has turned and it now appears that state and local laws throughout the nation will someday, in the not too distant future, provide these basic protections to long-term couples in times of illness and death. Whether they are legal spouses or registered domestic partners, it is imperative that such legal protections be available to all committed partners.

Chapter Nine

Employee Benefits

Helping unmarried heterosexuals gain equal rights meets resistance

The term "domestic partnership" was first used in the context of employee benefits in 1979, when Tom Brougham sought to obtain health and dental benefits for his life-partner, Barry Warren. Tom was employed by the city of Berkeley. The city had adopted a sexual orientation nondiscrimination ordinance the prior year and Tom felt it was inconsistent for the city to deny employment benefits to employees with a same-sex partner if the city gave such benefits to employees who were married.

On August 21, 1979, Tom sent a letter to the city personnel department suggesting that the city should give benefits to domestic partners as another category of "eligible family dependent." For the next few years, Tom and Barry continued to press their case for domestic partner benefits, speaking to politicians and making presentations at gay organizations.

In early 1982, San Francisco Supervisor Harry Britt was inspired by a presentation he heard Tom make at a meeting of California gay student unions. Britt decided to introduce a domestic partnership measure before the San Francisco Board of Supervisors. Under the proposal, the city would treat registered domestic partners the same as married spouses. A domestic partnership could be formed by any two unmarried adults, regardless of gender, so long as they were not close blood relatives, and so long as they shared the common necessities of life, and agreed to be

responsible for each other's common welfare. The measure was quickly adopted by a majority of the board.

It was also swiftly vetoed by Mayor Dianne Feinstein. She voiced three objections. First, she felt that she should have been consulted before such a major piece of legislation was introduced much less passed by the Board of Supervisors. Second, she said that she did not understand why blood relatives were excluded. Finally, and most importantly, there was no analysis of the potential financial impact on the city and she said that she was not about to sign a blank check. It would take several more years of political and legal battles in San Francisco, including ballot measures voted on by city residents, before San Francisco would have a domestic partnership registry and offer benefits to city employees who had domestic partners.

Larry Brinkin introduced the term "domestic partnership" into the judicial system in 1982 when he filed a lawsuit in federal court against his employer, the Southern Pacific railway company. Larry argued that the railroad had unjustly denied him bereavement leave when his domestic partner died. The following year, the court dismissed the case on the ground that there was no way to determine if his relationship was legitimate. This was the first time that any judge in the nation had been asked to rule on the issue of employment benefits for domestic partners.

Despite these initial setbacks, a domestic partnership benefits movement would soon emerge, first in California and then throughout the nation. The *Village Voice* newspaper in New York City gave the movement a boost when it signed a union contract in July 1982 which included health and dental benefits to "spousal equivalents" of union members who worked for the paper.

Two years later, the city of Berkeley would become the first municipality in the nation to adopt a formal policy authorizing benefits for domestic partners of its employees. The City Council debated whether to limit such benefits to same-sex couples or to include unmarried opposite-sex couples as well. The council decided to adopt an inclusive policy that would apply to all domestic partners, regardless of gender. The policy was implemented in 1985 when city employees were finally able to enroll their domestic partners in the city's health and dental plan. That was the same year that the city of West Hollywood passed a domestic partnership ordinance which created a registry where same-sex and opposite-sex unmarried couples could formally acknowledge their relationships. The

city also began offering domestic partner benefits to employees.

These few victories, and the entire concept of domestic partnership as a legally viable relationship, rested on several legal and political events which occurred in the 1970s.

On the political front, the passage of the 1975 consenting adults act in California, and the enactment of similar laws in other states, moved unmarried intimate relationships from the status of criminal to the status of lawful. That was an essential step before courts would be inclined to enforce agreements between intimate partners. Since most domestic partnership laws and benefits programs exclude close blood relatives from participation, it is assumed, although not required, that domestic partners have an intimate sexual relationship. If these relationships were deemed criminal by the Legislature, it is possible, if not probable, that judges would be reluctant to enforce agreements intertwined with criminal conduct.

The *Marvin v. Marvin* decision of the California Supreme Court in 1976 also had an impact on the legality of domestic partnership agreements. That case was filed by Michelle Triola (who then called herself Michelle Marvin) against actor Lee Marvin, seeking to enforce a cohabitation agreement between them. In that case, the Supreme Court made a fine legal distinction which paved the way for courts in California to enforce agreements between cohabiting adults, as long as an agreement to perform sexual services was not integral to the overall agreement. If the sexual component was tangential or could be separated from the other agreements, then courts were given permission to enforce the nonsexual parts. This landmark ruling was partially based on the Supreme Court's awareness of the dramatic rise in the number of cohabiting couples. The decision was later adopted by most other states. It was also applied to homosexual relationships.

A third precursor to the viability of domestic partnership laws was the growing acceptance of inclusive definitions of "family" in public policy. The 1980 decision of the California Supreme Court in *City of Santa Barbara v. Adamson*, put the court's stamp of approval on the notion that people who live together can be a "family" even though they are not related by blood, marriage, or adoption. Although the case involved a zoning dispute, the broader principle was that unmarried adults have a constitutional right to form an "alternate" family.

By the time Harry Britt had introduced the first domestic partnership proposal to be considered by any municipal body in the nation in 1982,

the legal and political groundwork had been laid to make such a gesture plausible.

By 1985, I could sense that the movement seeking economic benefits and legal protections for domestic partners would eventually catch on. I intuitively knew that within 10 years there would be dozens of municipalities with domestic partnership registries and hundreds of employers offering domestic partner benefits to their workers. But I also knew from a legal perspective, that the subject of domestic partnership rights and responsibilities was uncharted territory. I wanted to help shape this area of law.

That year, I asked Lloyd Rigler to contribute money to a "Domestic Partners Equity Fund" to support my work around this set of issues. He agreed. So I embarked on a journey which would eventually cause me to be known as a domestic partnership expert or guru of sorts. I kept track of the demographic trends involving unmarried couples, researched the economic implications of employers offering benefits to domestic partners, and explored the constitutional and theoretical underpinnings of this developing area of law.

I started teaching a class on "Rights of Domestic Partners" at the University of Southern California Law Center in 1985 and did so each year for the next several years. I had to develop my own course materials and syllabus since this was the first time that such a class had been taught at any law school in the nation. I had students from my classes get practical experience as they helped to staff public policy studies that I would do. First was the Los Angeles City Task Force on Family Diversity (1986-1988), then the California Legislature's Joint Select Task Force on the Changing Family (1987-1991), and then the Los Angeles City Attorney's Consumer Task Force on Marital Status Discrimination (1989-1990). In 1993, I expanded the focus to include discrimination by the insurance industry when I wrote a report on the subject for the California insurance commissioner. The materials generated by these studies would be shared with domestic partnership benefits advocates throughout the nation.

The increasing number of unmarried-couple households was so dramatic, and so likely to become a permanent part of a mosaic of family diversity, that the Census Bureau began to count "unmarried partners" for the first time in 1990. Two unmarried residents had an option to identify themselves as "housemates / roommates" or as "unmarried partners."

In nearly 3.2 million American households, respondents checked

off the "unmarried partner" category. About 95 percent of these households involved male-female couples. Clearly, the Census Bureau confirmed that the overwhelming majority of people willing to identify as domestic partners was heterosexual.

But what would the statistics be for employers offering domestic partner benefits? Would most of them be gay or would the majority be heterosexual couples? The first nationwide data to answer this question came in a report published in 1994 by Hewitt Associates, an international employee benefits consulting group. The firm determined that when companies offer such benefits, only about 2 to 3 percent of the workforce sign up, and of those who do enroll, about 67 percent are opposite-sex couples.

Although the concept of domestic partnership benefits originally included same and opposite-sex couples, and most proposals in the 1980s were gender-neutral, I became concerned when a small but growing number of proposals introduced in the early 1990s were limited to same-sex couples. The emergence of "gay only" domestic partnership measures seemed to coincide with gay marriage being made a priority by many gay and lesbian organizations. The idea of building coalitions around the use of inclusive definitions of family was being rejected by some advocates who seemed to prefer a strictly gay-rights approach to legal and political reform. Some of these folks wanted domestic partnership to be a stepping stone to the legalization of gay marriage. Others, including me, saw domestic partnership as an option that would be open to all consenting adults and that would remain an alternative to marriage even when same-sex marriage was legalized someday.

My work in this area of law continued through September 1995, when I wrote a special report for Spectrum Institute titled "Domestic Partners: Couples Are Gaining Recognition from Government and Equal Benefits at Work." Spectrum Institute is the nonprofit corporation that sponsored my family diversity and marital status projects and cases. The report contained sections on demographics, the definition of family, the cost to employers who offer domestic partner benefits, a list of government-sponsored domestic partnership registries, a list of public and private employers offering such benefits, and a model domestic partnership benefits law. Matt Coles, a staff attorney with the ACLU of Northern California, worked with me in developing the model law. It was available to same-sex and opposite-sex couples and was a way in which they could declare to the world that the partners considered themselves to be members

of each other's immediate family.

The report showed that since the time West Hollywood had become the first city in the nation to create a domestic partnership registry, there were 14 more such cities in 1993, including Atlanta, New York, and Washington, D.C. Since the time Berkeley started offering benefits to domestic partners of municipal employees in 1984, 23 more municipalities offered such benefits by 1993. Unfortunately, a few of them, such as Ann Arbor, East Lansing, and Baltimore, limited the benefits to same-sex couples.

There was a higher percentage of same-sex-only benefits plans in the private sector than among government employers. I found this troubling. Of the 24 corporations identified in the report as offering domestic partner benefits as of 1993, seven of them, or nearly 30 percent, maintained plans that were limited to same-sex couples. These were mostly high-tech employers, with some in the entertainment industry and a few in the medical field. I could see a growing trend for more companies to expand benefits only to those who were complaining the loudest and clearly same-sex couples were in the forefront of the demand for "equal pay for equal work."

But despite the increase in "gay only" domestic partner benefits programs, I continued to press forward with a call for inclusive and gender-neutral registries and benefits plans. Do we really want to make domestic partnership a sexist institution as a response to marriage's being a sexist institution? Do we really want to tell people that you must marry, if you can marry, in order to get equal rights in the workplace? Are we going to work to protect everyone from marital status discrimination or simply try to get equal rights for gays and lesbians? Are we trying to expand the definition of family by building coalitions with others in the family diversity movement, or is the real goal simply to legalize same-sex marriage? I would ask these questions of politicians, unions, civil rights groups, and equal rights advocates.

In 1994, I got involved in the first state supreme court case in the nation involving the legality of a city's domestic partnership registry. The prior year, the Atlanta City Council passed two ordinances on this issue. One created a registry where residents could register as domestic partners. The other authorized the city personnel department to provide health and dental benefits to the domestic partners of city employees just as the city provided such benefits to the spouses of employees.

Religious and conservative political forces filed a lawsuit to challenge both laws. They won the first round when a local judge declared these ordinances to be contrary to state law. When the city appealed, I reached out to Robin Shahar, the deputy city attorney who was representing the city on appeal. I offered my services and began to collaborate with her on issues, precedents, and strategies. Soon I was filing a brief with the Georgia Supreme Court on behalf of the Atlanta chapter of the American Federation of State, County, and Municipal Employees.

While we were awaiting a ruling from the Supreme Court, I received a letter from Robin. "While I do not know how the Court will rule, I can say without a doubt that your participation greatly enhanced our chances of victory," she wrote. "I believe that your brief will be an invaluable resource for the Court in determining the outcome of the case."

On March 14, 1995, the Georgia Supreme Court issued its decision in *City of Atlanta v. McKinney*. By a vote of 5 to 3, the majority upheld the ordinance which created the registry and which entitled registrants to visitation privileges in hospitals and jail facilities. But the court voided the law which offered health and dental benefits to domestic partners of city employees. Despite this seeming setback, when I read the court's opinion on the matter, I was relieved. I could see that the problem the court found with the law was easily correctable.

I contacted Robin Shahar and suggested that the city accept the court's decision without seeking any rehearing. The city would not have to pass a new benefits law. It would just have to delete the terms "family" and "spouse" from the law and instead use the term "dependent" as the criterion for eligibility. The city could specify that an employee would qualify for domestic partner benefits if the partner was at least partially dependent on the employee or if the employee and partner were financially interdependent on each other. The city followed my advice and eventually the Supreme Court gave its approval to the amended law.

A few months after the Georgia Supreme Court issued its ruling in the *McKinney* case, the focus of my legal efforts for domestic partner rights shifted to Alaska. On October 10, 1995, I filed an *amicus curiae* (friend-of-the-court) brief in the case of *University of Alaska v. Mark Tumeo and Kate Wattum*. Mark and Kate were employees of the university. Each had requested health benefits for a same-sex domestic partner. When the university refused to provide the benefits, they filed a lawsuit. The lower court judge ruled that by giving benefits to spouses of employees but not

to domestic partners who are dependent on employees, the university violated a state law prohibiting "marital status" discrimination in employment decisions.

Although the plaintiffs in the case were same-sex couples, the legal theory of marital status discrimination also would apply to opposite-sex couples who wanted state employee benefits. I then contacted the attorney representing the plaintiffs and offered to help out.

Attorney William Schendel asked for my assistance on an issue that he did not have time to research. The attorney general of Alaska had argued that the Legislature had not intended to include benefits discrimination when it passed the law prohibiting marital status discrimination. He cited precedents from other states in support of his argument.

I researched the law in every state which prohibited marital status discrimination in employment and wrote a brief to show the court that the attorney general's argument was not valid. Some 21 states had such laws. The pattern I found was that when a state legislature intended to exclude benefits from the scope of such legal protection, it specifically created an exemption for benefits plans. Since the Alaska Legislature had not done so, it could be inferred that it intended to protect employees from all forms of employment discrimination, including discrimination in benefits plans.

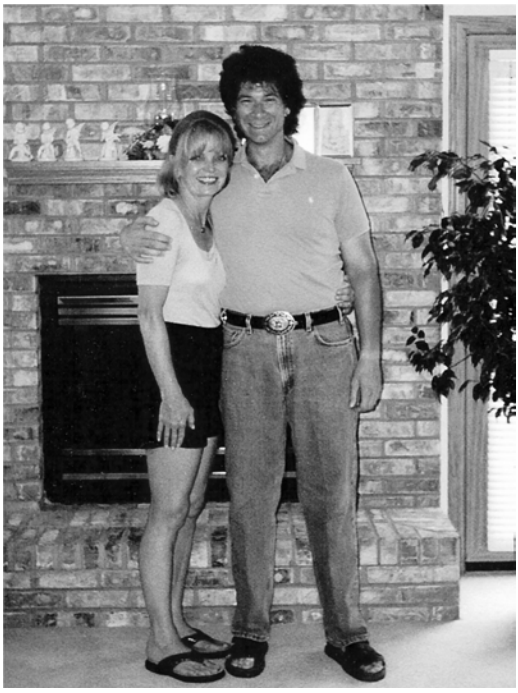
On March 14, 1997, exactly two years from the filing of the decision by the Georgia Supreme Court, the Alaska Supreme Court issued its ruling in the *Tumeo and Wattum* case. In a unanimous opinion, the court ruled that the denial of domestic partner benefits constituted illegal marital status discrimination.

A few days later, I received a letter from the plaintiffs' attorney, thanking me for participating in what he called "the first published appellate court victory for domestic partner benefits, without regard to the sex of the partners." Mr. Schendel found that the participation of my nonprofit, Spectrum Institute, helped to "round out" the viewpoints of other briefs which were filed by gay rights organizations. "Spectrum's brief, focusing as it did on extending benefits to unmarried opposite-sex couples as well as same-sex couples, gave the Court some assurance that it had the benefit of a full spectrum on reasoned public policy."

For the next several years, I sought out opportunities to prevent the increasingly popular concept of domestic partner benefits from being distorted into a legal institution available only to same-sex couples. Whether it would be in a political arena, such as a city council meeting, or

a labor union issue, such as a collective bargaining process, or a court case involving the denial of benefits to a specific couple, I would preach the philosophy of inclusiveness and would criticize gender restrictions as a form of illegal discrimination.

The first specific heterosexual case I participated in involved Majid "Mickey" Ayyoub, an employee with the city of Oakland, California.



Sandra Washburn and Mickey Ayyoub

Oakland started to offer domestic partner benefits to city employees in February 1993. The first benefits were limited to dental and vision. The plan was open to all domestic partners regardless of gender. Mickey Ayyoub signed up his domestic partner, Sandra Washburn, for these benefits. Then in October 1996, Oakland created a public registry for domestic partners. Again, it was open to all partners regardless of gender.

But when the city decided to extend medical benefits to domestic partners, effective January 1, 1997, the City Council decided to limit these new benefits to same-sex domestic partners. A personnel memo stated "This new plan is not available to enroll opposite-sex domestic partners."

Mickey submitted an application to have Sandra get these medical benefits but his application was rejected. So Mickey filed a complaint with the California labor commissioner's office, alleging that Oakland's extension of benefits to same-sex partners but not to opposite-sex partners was illegal "sexual orientation" discrimination in violation of California state law. Labor Commissioner Jose Millan agreed. He issued an order on October 27, 1997, directing the city to comply with his ruling within 10 days or he would file a lawsuit to enforce his decision.

The city filed an administrative appeal, asking Millan's boss, John Duncan, to reverse the ruling. Duncan was the acting director of the state Department of Industrial Relations. Duncan upheld Millan.

I then received a phone call from Wendy Rouder, a deputy city attorney who headed the labor law unit of the Oakland city attorney's office. She knew of my reputation as a legal expert in domestic partnership issues. Apparently she was not aware of how strongly opposed I was to same-sex-only domestic partnership programs.

She wanted to know my opinion about Millan's ruling and how the city might respond. I asked her to fax me a copy of the decision so I could review it. A few minutes later, there it was – the first legal ruling in California that condemned same-sex-only government benefit programs as illegal. I called Wendy back and advised her that I thought the ruling was correct. She was not pleased. Of the several cities in California with domestic partner benefits programs, Oakland was the first one to limit the benefits to gay and lesbian couples. The experiment had backfired and now Oakland was threatened with a lawsuit from the labor commissioner if it did not comply with his order.

Although I was pleased with the ruling, I was not sure how the issue would be decided if it wound up in court. The last thing I wanted was to have a judge rule that same-sex-only programs were legal. I wondered how to get Oakland to comply without the necessity of a court case being filed. I decided to contact the labor commissioner. I asked him to pass my name and contact information on to Mickey Ayyoub, along with my offer of free legal representation. Apparently he did, since about two days later I received a call from Mickey.

I explained who I was and how my organization supported gender-neutral domestic partner laws and benefits programs. We wanted to help him convince Oakland to change its policy and to extend medical benefits to Sandra and to the partners of all heterosexual employees of the city. Sandra got on the phone and I spoke with her too. "Right now, I am covered from the neck up," she joked. "I would like full body protection." Sandra was referring to the fact that she was granted vision and dental benefits but denied medical coverage. Mickey had to spend $70 per month to get the least expensive individual medical plan for Sandra which had nowhere near the benefits she would get in the city's group medical plan.

I advised Mickey and Sandra about my concerns if their case wound up in court. Not only could they lose the case, but if it went on

appeal, it could create a negative precedent that would adversely affect all heterosexual domestic partners throughout the state. Such a bad precedent could encourage other cities and counties to follow Oakland's example. I offered to represent them in the battle for medical benefits, but my goal was to use political pressure and media exposure to get Oakland to voluntarily comply with the commissioner's order so that litigation would not be necessary. They agreed to my suggestion.

I then called the labor commissioner to explain our strategy to him. I asked him to hold off for a few months before going to court. I wanted a chance to turn the screws slowly until city officials could not stand the pressure any longer. I knew it was not going to be easy, but it was worth a try. The labor commissioner accepted my proposal.

No one likes to be accused of discrimination, and media attention is especially unwanted by those who are accused of wrongdoing. So the main thrust of my approach would be to generate as much negative publicity for Oakland as possible on this issue.

The *San Francisco Chronicle* ran a story on Mickey's case on December 3, 1997. Oakland officials told the writer that they had no intention of changing their policy. Referring to Oakland as the only city in the state with such a discriminatory domestic partner benefit program, I said that "Oakland sticks out like a sore thumb."

The following week, the *Chronicle* published my commentary titled "Unequal Rights for Many Oakland Couples." In this opinion piece, I asked the question, "Who is promoting the politics of division in Oakland?" Someone convinced the City Council to change course from a gender-neutral approach to a gay-only approach. No one wanted to publicly take credit for this diversion from equal opportunity. I pointed out that a gay-only approach was suggested by some businesses in San Francisco as a way to save money, but it was rejected by the Board of Supervisors there. Why would Oakland, just across the bay, favor a discriminatory approach?

Prudential Health Care Plan of California was administering the domestic partner benefits program adopted by Oakland. I decided this would be a great pressure point. So I wrote to Prudential and sent a copy to the Department of Corporations, the agency that regulates HMOs in California. I pointed out that state law prohibits HMOs from engaging in discrimination on the bases of sex, sexual orientation, and marital status. So why would Prudential operate a discriminatory plan? On January 29,

1998, Mickey received a letter from Prudential, stating that nothing in its contract with Oakland limits medical coverage to same-sex partners. According to Cora Tellez, president of Prudential, Sandra should not be ineligible for the plan. And yet, Oakland refused to allow her to enroll.

While all of this was happening with the city of Oakland, I read a news article about a situation which occurred in Santa Barbara in January 1998. The City Council there had passed and the mayor had signed a measure granting benefits to same-sex domestic partners of city employees. Was this same-sex-only idea going to be adopted by other cities? Would Oakland, if left unchecked, start a new trend? I hoped not. But I did not leave matters to hope.

I grabbed the labor commissioner's ruling in the Ayyoub case, wrote a cover letter to the Mayor of Santa Barbara, and faxed both to city officials there. I wanted them to know that their action was illegal. In about three weeks, on advice from the city attorney, the City Council amended the plan to include opposite-sex domestic partners as well. The quick action in Santa Barbara made me wonder who was pushing the same-sex only plan in Oakland. Someone on the City Council? Someone in the city attorney's office?

The publicity in Northern California surrounding Mickey's case caused another heterosexual employee of the city of Oakland to contact me. Al Edwards was a firefighter with the city. He had tried to enroll his female partner of 26 years in the medical plan but the request was denied. After I spoke with Al, he agreed that I would be his attorney too. So I enlisted the support of his union, Local 55 of the International Association of Firefighters, and the union agreed to cooperate.

I helped Al file his own complaint with the labor commissioner. Then we held a press conference in San Francisco on February 13, 1998 and invited all Bay Area media to attend. Local 55 issued a press release supporting the labor commissioner's decision. The next day, the *San Francisco Chronicle* published a story and local television news ran a segment on the controversy. From various quotes in the *Chronicle's* story, I could tell that we were starting to make progress.

First, a quote from the labor commissioner indicated that he was fed up with Oakland's refusal to obey his order. "The whole situation is really tragic and I don't understand why Oakland insists on adhering to the policy," he told the *Chronicle*. "It's really stupid that we have to go through this yet again," he said referring to the new complaint by Al

Edwards. A quote from Councilman Dick Spees made me believe that we had made a chink in the city's armor. "We will certainly look at it again and consider it, given this (latest) filing," he said.

We added more political pressure to the mix by having seniors groups, human rights organizations, and state politicians send letters to the Oakland City Council, all supporting a medical plan for all domestic partners regardless of sexual orientation. One of the politicians was Assemblywoman Barbara Lee, a state legislator representing Oakland in the California Legislature. A letter from Patricia Ireland, president of the National Organization for Women also arrived in their mailboxes, advising them that NOW supports fair domestic partnership laws that do not discriminate based on sex.

With adverse publicity against the city mounting, letters from influential people and important groups being sent to city officials, and a second complaint being filed, someone in city hall finally saw the light. A suburban newspaper carried a story on April 17, 1998, indicating that the following week the City Council would consider a proposal to open up the medical plan to include domestic partners of the opposite sex. Staff advised the council that the expansion of benefits would not involve a significant cost.

Another quote from that story added a new piece to the puzzle of who was causing the resistance to a gender-neutral plan. A staff attorney for the ACLU of Northern California told the newspaper that the ACLU felt that the city's decision to limit benefits to same-sex couples was legally sound. Because gays could not marry, the city was within its authority to adopt a program that "is simply trying to remedy the discrimination of the state's marriage laws," Kelli Evans told *The Montclarion.*

I informed Mickey and Al and their domestic partners that the issue would be on the council's agenda for April 21. I flew up to Oakland and joined both couples at City Hall. Our item was near the end of the agenda. I signed up to speak on the issue. When I got up to the podium, one member of the council advised me that it was unnecessary for me to speak. I insisted on making a short statement, considering the amount of time and resources that had gone into this battle. When the matter was finally voted on, all members voted in favor, with one exception. He was the one who did not want me to speak.

A few weeks later, my partner Michael and I flew up to the Bay Area for a weekend celebration. We went to Sausalito, a small city across

the Golden Gate Bridge, where Mickey and Sandra lived. We socialized at their home and broke open a bottle of champagne for a toast, after which they took us out to dinner. The following day we went to Oakland where we dined with Al and his partner. Al was so grateful that he gave us a trip for two to Hawaii to show his appreciation.

Soon after I had become involved in Mickey's case in Oakland, I read a newspaper story in the *Philadelphia Daily News* about a lawsuit that had been filed against Bell Atlantic in New York City. Paul Foray, a cable splicer with the phone company, had been denied health benefits for his domestic partner, Jeanine Muntzner. Foray's lawsuit, filed in state court in Manhattan, claimed that the company's same-sex-only domestic partner benefits program violated New York City law prohibiting sexual orientation discrimination and New York state law against marital status discrimination in employment. "He's being penalized for being heterosexual," his attorney, Linda Cronin, told the newspaper.

The story concerned me. The way the lawyers were proceeding was legally and procedurally wrong. The lawsuit was destined to fail. I sent a fax to Cronin to advise her that she was in the wrong court and was basing her case on the wrong law. I offered my services, as a consultant, without cost to the client. I just wanted to make sure that they relied on the right law and sued in the right court. When I did not receive a reply after several days, I faxed a memo to the main partners in the law firm, advising them that they were heading down a course that could lead to a malpractice suit. I knew they did not want that to happen. I soon got a reply.

I advised them that the health benefits plans of private employers are governed differently than those of government employers. Benefits programs of cities and counties can be challenged as violating state and local laws against sexual orientation and marital status discrimination. Suits can be filed in state court. But the plans of private employers are governed by a federal law known as ERISA. ERISA suits must be filed in federal court and ERISA does not prohibit marital status or sexual orientation discrimination. Sex discrimination is the key. That is covered by ERISA. They should dismiss the state lawsuit and refile one in federal court. They took my advice.

On my advice, the law firm held a press conference on the courthouse steps on May 18, 1998, the day the lawsuit was filed in federal district court. I prepared a press kit and flew to New York to participate in the event. I also invited several gay rights activists and human rights

advocates in the New York–New Jersey area to supply written statements in support of Paul's case and to attend the press conference in person. The press conference generated a considerable amount of publicity from both print and broadcast media. The story was carried by several New York City television stations that night. The next day, it appeared in newspapers throughout the nation. Whether he ultimately won or lost, employers were going to know that if they adopted a domestic partner benefits plan that excluded heterosexuals, they too might wind up in court.

The publicity caught the attention of conservative political groups. A few days later, a right-wing organization, known as Concerned Women for America, called the lawsuit a threat to the institution of marriage. "If Mr. Foray wins his lawsuit," the Web-site story said, "he will create a precedent which legally legitimizes live-in partnership as a form of marriage."

We waited nearly a year before Judge Robert Patterson issued a ruling. On June 7, 1999, he filed his decision dismissing Paul's complaint against Bell Atlantic. The judge refused to even analyze the argument that granting benefits to an unmarried female employee who has a female partner, but denying such benefits to an unmarried male employee with a female partner, is sex discrimination. Instead, the judge ruled that those two types of couples are not similarly situated because the same-sex couple cannot legally marry while the opposite-sex couple can. That was enough for the judge to conclude that the company's benefits plan was not discriminatory.

Paul and I and his attorneys talked it over, and Paul decided it would be best not to appeal the ruling. This ruling only affected the courtroom of one judge. An unsuccessful appeal would tie the hands of dozens of federal judges in this region of the country. Paul did not want to risk such a result, so he accepted his personal loss and dropped the lawsuit.

A few months later, I received a letter from Paul, along with a membership donation to the American Association for Single People. He and Jeanine had married on December 26, 1999. "Although we are no longer single, we both support all you are doing," he wrote. "Thank you Tom and keep up the good work."

After Paul had filed his federal lawsuit, but before the decision was rendered, I learned of another heterosexual domestic partner lawsuit in federal court. The case involved Byron Cleaves, a cadet employed by the Chicago Police Training Department who was enrolled in the Police

Academy. On May 7, 1997, Byron advised his supervisor that he would not be coming to work because his "father in law" had just died and he needed to attend the funeral. Byron and his female partner were engaged, but not yet married. She was the mother of his 3-year-old child. When the supervisor later learned that Byron was not married, Byron was fired. He did not think this was fair, considering that the city offered bereavement leave for gay employees when the parent of their partner dies. If an unmarried gay employee can get such leave, Byron felt it was discriminatory to deny him the same benefit.

Due to his meager financial means, Byron could not afford an attorney. So on his own he filed a lawsuit against the city in federal district court in Chicago. He argued that the city had violated Title VII of the federal Civil Rights Act. On October 14, 1998, the judge issued a decision. She noted that Byron had not alleged discrimination due to his sex. Instead, she felt that his complaint rested solely on marital status and sexual orientation discrimination, categories not covered under federal law.

When I learned of the case, I contacted the court clerk's office to get the address and phone number of Bryon. I called him and we spoke at some length. I told him that I would be willing to prepare a motion for reconsideration and a request to amend his complaint to allege sex discrimination in violation of Title VII. I promised to help him find a local attorney who would technically be his lawyer and sign the papers, but that I would do the research and prepare the paperwork. He agreed with my recommendation.

I found a Chicago attorney who was sympathetic to the cause. I drafted the papers, he signed them, and they were filed with the federal court. The city responded, and the judge took the issue under consideration for several months. On September 17, 1999, the judge issued her decision. She rejected the sex discrimination argument, ruling that the dispute really involved sexual orientation and marital status, which both were matters not covered under federal law.

Byron and I had the same heart-to-heart talk that Paul and I had done with his lawyers. To appeal or not to appeal – that was the question. Not wanting to risk an adverse appellate decision, Byron decided not to appeal.

I soon learned the hard way that, no matter how hard you may try, there are circumstances which are beyond your control. A case that I was not involved in is one such example.

On October 26, 1999, Milagros Irizarry filed a lawsuit in federal court against the Chicago school district. She alleged that the school system had engaged in marital status discrimination in violation of the federal Constitution by refusing to grant health benefits to her male domestic partner. She and her partner of 27 years were the biological parents of two grown children. The school district had a domestic partner benefits program but it was limited to same-sex couples.

When the district court dismissed her complaint for failure to state a valid cause of action, Milagros appealed. On May 15, 2001, a panel of three judges concluded that the lower court judge was correct. Writing for the court, Judge Richard Posner found that the school district had a rational basis for its decision to grant partner benefits to same-sex but not to opposite-sex couples. The opinion is filled with language showing that Posner seemed to dislike unmarried heterosexual cohabitation as much as he was irked by a policy granting benefits to homosexual couples. It was obvious that Posner was holding his nose as he ruled for the school district.

But what Posner was truly irritated by was the fact that a gay rights legal organization had filed a brief in the case asking the court to rule in favor of the heterosexual couple and to find that the exclusion of heterosexual couples from a government-sponsored domestic partner benefits program was unconstitutional

Posner gave Lambda Legal a good dressing-down for having the nerve to make such an argument in his court. He suggested that Lambda Legal ignored the fact that "the benefits are quite likely to be terminated for everyone lest the extension to heterosexual cohabitors impose excessive costs and invite criticism as encouraging heterosexual cohabitation and illegitimate births and discouraging marriage and legitimacy." Posner surmised that "Lambda wants to knock marriage off its perch by requiring the board of education to treat unmarried heterosexual couples as well as it treats married ones, so that marriage will lose some of its luster."

Little did Posner know that it had taken me several years of dialogue with Lambda's lawyers to convince the group to adopt a position against sexist domestic partnership laws and programs. I had worked tirelessly for several years to obtain statements from several civil rights organizations to favor inclusive domestic partner programs and to oppose those which exclude opposite-sex couples. In addition to Lambda Legal, I had lobbied the American Civil Liberties Union, the National Organization for Women, the National Gay and Lesbian Task Force, and the Human

Rights Campaign, among others.

The Human Rights Campaign is the largest gay rights lobbying organization in the nation, with a multimillion-dollar annual budget to support its work. The leaders of the organization seemed to be firmly entrenched in a gay rights approach, so I was unable to convince them to take a position promoting inclusive domestic partnership programs. They apparently did not want to broaden the focus of their lobbying and advocacy efforts.

The National Gay and Lesbian Task Force is another national lobbying group for gay and lesbian individuals, couples, and families. Although it has a smaller budget than the Human Rights Campaign, it has been around much longer and represents more of a grassroots movement. The Task Force was founded in 1975.

In the mid-1990s, the Task Force established a "think tank," known as the Policy Institute. It conducted studies and issued reports on issues affecting gays and lesbians in all aspects of life. One such report, "The Domestic Partnership Organizing Manual," was published on June 1, 1999. The manual has been distributed to hundreds of people over the years, giving them tools to advance domestic partnership rights and benefits, especially in the workplace.

The manual has a specific section on "same-sex-only policies." It says that employers that adopt a same-sex-only benefits program, on the theory that same-sex couples cannot marry, are using "flawed logic" which has the effect of discriminating against employees on the basis of marital status. "Whether or not the courts deem such policies to be discriminatory in the legal sense, same-sex-only policies are clearly exclusionary."

Sally Kohn, author of the report, wrote to me on June 2, 1999, to thank me for the assistance I provided in helping her create the manual. "Your vast expertise in the area of domestic partnership policy was tremendously useful in crafting this key resource for the lesbian, gay, bisexual, and transgender (GLBT) community," she wrote. "I am particularly appreciative of the perspective you lent with regard to domestic partnership benefits and their importance to unmarried, heterosexual couples."

"Your advocacy on behalf of these constituents was one of the driving forces behind the manual's strong stance favoring domestic partnership benefits for all, rather than solely GLBT couples," she added.

I felt that it was a major accomplishment that I was able to convince two of the largest three national gay and lesbian rights organizations to take a stand in favor of inclusive domestic partnership benefits programs and to discourage same-sex-only plans. I also felt gratified that my outreach to some of the most prominent leaders in the gay and lesbian rights movement yielded similar results.

I was reminded that the issue of domestic partnership benefits was a concern to retirees, not just current employees, when I was contacted by Vic Pelton in 2001. Vic had worked for Lawrence Livermore National Laboratory from 1966 until 1990 when he retired. The lab is operated by the University of California. Vic complained that even though he and his partner Jean were registered with the California secretary of state as domestic partners, the University of California refused to allow him to put Jean on its health benefits plan for retirees because they were an opposite-sex couple. They were able to register with the state as domestic partners because one or both of them were over the age of 62. But they could not get benefits from the University of California. Vic thought this was very unfair.

He and Jean joined the American Association for Single People – now Unmarried America – and asked for my help to convince the university to broaden its benefits plan. Vic had come to the right place for help. I had been lobbying the Board of Regents and President of the University of California since 1997 to include unmarried heterosexual couples in its domestic partnership benefits program. My efforts were supported by Lloyd Rigler, a long-time major benefactor of the university.

On August 13, 1997, I had written a letter, signed by Lloyd, to Charles E. Young, Chancellor of the University. It expressed concern that, at a meeting of the regents the previous month, they had discussed the possibility of extending benefits to domestic partners. Some of the regents suggested limiting the benefits to same-sex couples. The matter was referred to President Richard Atkinson for review. "Reform of benefits programs should not utilize sex discrimination as part of the remedy," Lloyd advised Chancellor Young.

When Lloyd and I found out a few weeks later that President Atkinson would recommend a same-sex-only benefits program, Lloyd was furious. Lloyd wrote a letter to Lieutenant Governor Gray Davis, who was a member of the Board of Regents, to complain about the gender restriction. He also wrote to Governor Pete Wilson, also a regent, encouraging

him to support a more inclusive approach to benefits, perhaps one that would include same-sex and opposite-sex unmarried couples, as well as dependent blood relatives, an approach that had been used by Bank of America, Xerox, and Catholic Charities in San Francisco.

On November 3, 1997, soon after I learned of the labor commissioner's ruling that Oakland's same-sex-only program was illegal, I sent a copy of the decision to President Atkinson. I advised him that, in view of this recent ruling, the University would be acting illegally if it adopted a same-sex-only benefits plan. A copy of the letter and the ruling were sent to Governor Pete Wilson.

Two weeks later, Wilson sent a letter to all of the regents. He mentioned the labor commissioner's ruling and quoted from my letter to President Atkinson. Wilson's strategy was not to get gender-neutral domestic partnership benefits for university employees, but to get the Regents to reaffirm that benefits are limited to legally married couples.

"If you wish to spotlight the University of California as a role model for undermining marriage and destabilizing families, adopting a policy that treats unmarried domestic partnerships as the equivalent of marriage is the way to do it," Wilson wrote. "In a nutshell, it appears the Board can either uphold marriage and reserve benefits to married partners, or run the substantial and very grave risk that if it gives them to any unmarried partners, it must extend them to all unmarried partners – doing serious damage to the institutions of marriage and the family."

Realizing that his proposal was legally suspect, President Atkinson responded by amending it – not to include unmarried heterosexual couples, but to include blood relatives of employees. Under the new plan, people who are legally unable to marry could sign up for benefits. Two people of the same sex cannot marry. Close blood relatives cannot marry. Male-female couples can marry. By adding blood relatives to the eligibility list, the plan would not constitute sexual orientation discrimination. It was a clever proposal. I did not like the exclusion of heterosexual couples, but at least it was somewhat broader than the original "gay only" proposal.

The revised plan was narrowly adopted by the Board of Regents on a vote of 13 to 12. Wilson had made two last-minute appointments to the Board of Regents and thought he could count on those votes to defeat the revised proposal. But what he did not know was that another regent whom he had appointed in 1994 would abstain. Had Velma Montoya voted with Wilson, the measure would have been defeated on a tie vote of 13 to 13.

Instead, it passed on a vote of 13 to 12.

One year later, some 701 employees and retirees had added domestic partners to their health coverage, costing the university about $1.8 million per year. That was a far cry from the predicted cost of $5.6 million annually. Unfortunately for Vic Pelton, he was not one of the beneficiaries of this expanded benefits plan because he and his partner were not a same-sex couple nor were they blood related.

In January 2001, the Board of Regents held a meeting to address the possible expansion of retirement benefits to all retirees regardless of marital status. The matter was later taken up for further discussion by its committee on finance in January 2002. It was then forwarded to the full complement of regents who met as a committee of the whole to receive public testimony on the issue. The primary focus of the proposal was to extend the survivor benefits program so that survivors of domestic partners would receive the same benefits as survivors of spouses. Among those testifying at the hearing were several gay and lesbian employees who thought it was only fair that their surviving partners should receive benefits when the time comes.

On May 16, 2002, the Board of Regents considered three proposals prepared by President Atkinson. Item 503 recommended that same-sex partners receive survivor benefits regardless of whether the death of the employee occurred pre-retirement or post-retirement. Item 504 would extend the same benefits to opposite-sex domestic partners of employees. Item 505 would have allowed employees without a spouse or domestic partner to name a designated survivor at the time of retirement to receive post-retirement survivor benefits. Also presented for discussion, but not for a vote, was the possibility of adding opposite-sex domestic partners to the university's health benefits plan.

I went to the hearing. Lloyd Rigler thought that the issue was important enough that he hired a professional video company to film my presentation. In my written presentation and verbal testimony I urged the regents to adopt all three proposals, arguing that as a matter of basic fairness "equal benefits should not depend on marital status, gender, or sexual orientation."

I was pleased, although a little surprised by the vote. Apparently, the many years of badgering the Board of Regents about using an inclusive definition of domestic partnership had paid off. They voted to approve items 503 and 504, thus ensuring that surviving domestic partners,

regardless of gender, would receive survivor benefits. Item 505 was deferred for further study.

On June 3, 2002, I wrote to President Atkinson, thanking him for his leadership on the retirement benefits issue. I urged him to move forward with the issue of medical benefits for opposite-sex partners. "Let's keep the issue alive," I wrote to Vic. "It may take several more months, perhaps even a year or two for a health benefits victory, but it can be done."

About a year later, I received an e-mail message from Vic. He informed me that the university had finally extended medical benefits to domestic partners of all retirees, regardless of gender. He would now be able to add Jean to his plan.

I continue to receive letters of complaint from unmarried heterosexual couples about their exclusion from domestic partnership benefits programs. A letter I received from an employee of the University of California on September 5, 2008, complains that he cannot put his female partner on his benefits plan. Heterosexual retirees get benefits, but not current employees unless they have a gay relationship. An e-mail I received two months earlier from an employee of Eisenhower Medical Center in Palm Springs had a similar theme. This employer requires workers to register with the state of California in order to get benefits for a domestic partner. The problem is that the state will not allow heterosexual domestic partners under the age of 62 to register. So despite this couple's preference to be domestic partners, the employer would force them to marry to get equal benefits. Clearly, more work needs to be done to remove marital status from the principle of equal pay for equal work.

My civil rights work on behalf of unmarried heterosexual couples has not been limited to employee benefits. As I mention elsewhere in this book, I have fought hard to secure fair housing rights for unmarried couples. I also worked to protect the rights of cohabiting adults to be free from criminal sanctions and to obtain and maintain professional licensing.

I jumped into the fray when, in 2001, I read about the case of Darlene Day. Darlene and her male domestic partner lived together in Virginia. The two would have preferred marriage rather than unmarried cohabitation, but if they were to marry, Darlene would stop receiving pension survivor benefits from her deceased husband's pension plan. For more than 16 years, Darlene ran a daycare business out of her home, taking care of children whose parents had to work during the day. She was good at it. The parents loved her.

But one day, a state inspector came to the home because her license was up for renewal. In the course of casual conversation, the inspector learned that a man was living with Darlene and had been for several years. The inspector passed the information up the chain of command and soon Darlene received a letter informing her that unless her partner moved out of the house, the state would refuse to renew her license. Part of the rationale of the government was that Darlene and her partner were violating a criminal law against unmarried cohabitation. Darlene was distraught. This was not only her chosen vocation, it was a major part of her financial survival.

After reading the news story, I decided to track Darlene down and to offer to help her. She joined the American Association for Single People and wrote me a letter asking for assistance. I did some research, and on June 21, 2001, I wrote a letter to the Department of Social Services in Virginia. The ACLU of Virginia also got involved.

I advised the Department of Social Services that Virginia's law criminalizing cohabitation by persons of opposite-sexes was unconstitutional. I also pulled out of my bag of legal tricks a Virginia Supreme Court decision on which I had written a story for the *Sexual Law Reporter* when the decision was handed down in 1979.

That case involved Bonnie Cord, a woman who lived in Virginia and who wanted to be a lawyer. She passed the bar exam, but a local judge refused to certify that she had good moral character, a prerequisite to state licensing, based on the fact that she and her boyfriend were cohabiting out of wedlock. The Virginia Supreme Court ordered the state to issue her the license anyway.

"While Cord's living arrangement may be unorthodox and unacceptable to some segments of society, this conduct bears no rational connection to her fitness to practice law," the Supreme Court had written. "It cannot, therefore, serve to deny her the certificate." I pointed out that the anti-cohabitation law existed in 1979. Therefore, cohabitation, in and of itself, should not be grounds to deny someone a business or professional license. Furthermore, in view of public opinion on the subject of cohabitation, there is no consensus that it is immoral for an unmarried man and woman to live together, I told the Social Services Department.

I was pleased to hear from Darlene about two months later that her day care license was renewed.

Then there is the situation of Debbie Deem and her partner Jim.

Debbie and Jim moved from Alaska to Arizona in the late 1980s. Debbie applied for a position with Maricopa County as a juvenile probation officer. She was well qualified and had glowing letters of recommendation from her previous position with the Alaska Department of Justice. But there was a snag. As a condition of being interviewed for the job, Debbie would have to certify under penalty of perjury that she was not cohabiting with a person of the opposite sex. Arizona, like Virginia and several other states, had a criminal law against heterosexual cohabitation. So she did not get the job.

I learned of Debbie's case in 1990 when I was chairperson of the Los Angeles City Attorney's Consumer Task Force on Marital Status Discrimination. Debbie wrote to me and shared information about her case. Eventually, Debbie and Jim moved to California. The bumper sticker on their car read "Refugee from Arizona Laws."

Debbie and I stayed in contact with each other. From time to time, I would invite Debbie and Jim to participate in a project dealing with marital status discrimination or family diversity. Debbie and Jim registered as a family with the California secretary of state in 1990 after I developed a family registration system within that agency. I would also put writers and reporters in touch with her when they were doing a story on unmarried couples or singles' rights.

I also kept a watch on the political situation in Arizona. I convinced a few legislators there to join the American Association for Single People to show their support for the cause. They would be my eyes and ears when the rights of unmarried people in Arizona were in jeopardy. Working together, we were able to defeat several attempts by ultraconservative legislators to enact a law that would have prohibited cities and counties from providing benefits to domestic partners.

But our efforts were not merely on the defensive. Eventually, a bill was introduced in 2001 to repeal the Arizona sodomy and cohabitation laws. I distributed a memo to all members of the Legislature, pointing out that not only were these laws unconstitutional, but they also were being used to deny people jobs. I called Debbie and she wrote a letter to the legislators telling her story and how she was denied a job because the government labeled her a criminal due to her unmarried cohabitation. Much to our delight, the Legislature repealed both of these antiquated laws. The bill was signed into law by Arizona Governor Jane Hull on May 8, 2001.

But there were still 16 states with criminal laws against same-sex

sodomy and a dozen states criminalizing unmarried heterosexual sexual conduct or cohabitation. The battle to repeal these laws or to have them invalidated by the courts began long before I devoted my professional life to personal privacy and equal rights. Some advocates, such as my late colleague, Arthur Warner, worked behind the scenes during the 1960s and 1970s to get these laws repealed. After I became a member and eventually co-chair of Arthur's National Committee for Sexual Civil Liberties, I devoted time and energy to the fight for personal privacy rights.

When the United States Supreme Court issued its ruling in *Lawrence v. Texas* in 2003, those of us who had toiled in the field of constitutional advocacy felt a sense of accomplishment and relief. In that case, the court declared the Texas sodomy law unconstitutional.

Even though the Texas case involved a same-sex couple, the language of the court's decision applied equally to all consenting adult relations, whether heterosexual or homosexual. The court ruled that the protection of "liberty" under the Fourteenth Amendment meant that sexual privacy rights would apply to unmarried adults just as it did to married couples.

My hope is that in the future, not only will all unmarried couples have their privacy rights protected, and their right to fair housing respected, but they will have equal employment rights regardless of sex, sexual orientation, or marital status.

We seem to be moving in that direction. There are now more than 10,000 employers offering domestic partner benefits. More than 70 percent of these programs apply equally to all unmarried employees regardless of their sexual orientation. I envision a society someday in which 100 percent of employers offer equal job rights, including equal pay in the area of benefits compensation to all employees, whether they are single or married, gay or straight.

Chapter Ten

Blood Relatives

Seeking equal rights for people with biological ties is harder than expected

The most recent report from the Census Bureau documents that as of 2007 there were 100 million unmarried adults living in the United States. Most of them have probably experienced a form of marital status discrimination at some point in their lives.

Perhaps they were denied an apartment because the landlord did not want to rent to single people or to an unmarried couple. Maybe they paid higher auto insurance rates because of their unmarried status. Possibly they paid higher income taxes because they could not file a joint return with an unmarried partner. Or, even more likely, they did not get pay equal to that of their married coworkers when benefits compensation is included in the calculation.

When the average person hears about equal rights for single people, or ending marital status discrimination against unmarried Americans, he or she probably thinks of solo singles or unmarried couples as the intended beneficiaries of this civil rights cause. It would never dawn on most Americans that blood relatives would be on the political radar screen of advocates for singles' rights. But the truth is that unmarried adult blood relatives who live together are the largest segment of the unmarried population in the mosaic of household diversity in the United States.

Of the 100 million unmarried adults in the nation, 30.6 million live alone. About 12.4 million live with an unmarried partner of the same or opposite sex. There are 3 million single dads with kids at home and 9.7

million single moms. Most of the remaining 44 million single people are unmarried adults who are living with blood relatives. Some of them are adults living with one or both parents. Others are siblings who are sharing living quarters.

Whatever the variety of blood relationships may be, millions of American households contain unmarried adults who are blood-related. These living arrangements do not include a married couple or a child under 18. The occupants of these unmarried households are adult blood relatives.

So for the cause of singles' rights to be inclusive, or the battle to end marital status discrimination to have integrity, the issue of equal rights for unmarried blood relatives must be addressed. This segment of Unmarried America should not be ignored, nor should its entitlement to equal rights be summarily dismissed as it sometimes is.

The first time I can recall thinking about the exclusion of blood relatives from legal reform efforts was in 1982 when Mayor Dianne Feinstein vetoed a domestic partnership bill that had been passed by the San Francisco Board of Supervisors. The bill would have established a registry for domestic partners and would have given them many of the same economic benefits and legal protections that the city gave to married couples. Apparently, because proponents of the measure wanted domestic partnership to mimic marriage, they made close blood relatives ineligible to participate. That exclusion was one of the reasons Feinstein vetoed the bill.

But the die was cast. The criteria used in the San Francisco proposal became a template that would be used when reform advocates, mostly gay and lesbian activists, had domestic partnership measures introduced in other cities throughout the nation. The exclusion was also written into the first private sector benefits plan for unmarried couples, which was adopted by *The Village Voice* newspaper in New York City in 1982. The paper and its largest union signed a collective bargaining agreement providing benefits for "spousal equivalents." Since blood relatives could not be spouses, by definition they could not be spousal equivalents either. As a result of these earliest "models" for reform, the movement for domestic partner benefits focused on the romantic relationships of unmarried adults.

It was not until 1987 that the issue of equal rights for unmarried blood relatives again caught my attention. I was at the annual shareholder meeting of the Automobile Club of Southern California. I had gone to the

meeting specifically for the purpose of requesting that the bylaws be amended to create a new class of membership for "household associates." The rules of the Auto Club provided for a discounted second membership for the spouse of a member. I argued that providing the discount to a spouse but not for an unmarried adult who lives with the primary member was marital status discrimination. This could be corrected by giving a similarly discounted membership to an unmarried household associate.

Just as I finished my presentation to the Board of Trustees, I noticed two elderly women in the front row of the audience. They seemed a bit agitated. One of them raised her hand and asked to speak. As she got up, I wondered if she were going to quote the *Bible* or somehow criticize my proposal for other reasons. I was totally surprised when the first words out of her mouth were "That man is right." She explained that the spouse discount had bothered her for years. She and her sister live together. Each has a membership with the Auto Club. Each has to pay the full membership price. "That's not fair," she told the board. "One of us should be able to have a discounted membership too." I immediately realized that unmarried blood relatives faced marital status discrimination too.

Although it took a few more years for my request to be approved, the Auto Club eventually created a "household associate" membership that would get the same discount as a "spouse associate" membership. Gay or straight, married or unmarried, blood related or not, the discount would be available for a second adult who lived with a primary member.

The issue of blood relatives came up again, this time in a big way, in 1992. The District of Columbia was considering a bill to create a domestic partnership registry and to extend some benefits and protections to those who registered. A majority of residents of the district are African Americans. Most of them are unmarried, many of whom live with blood relatives. The idea of excluding blood relatives from the domestic partnership proposal did not sit well with many council members. The end result was the passage of a domestic partnership law that allowed any two unmarried adults to register, regardless of gender and regardless of whether they were blood-related.

Unfortunately, implementation of the law was blocked for many years. Congress has oversight of the budget of the District of Columbia and can vote to override or veto any spending measures of the district. A Republican-controlled Congress voted year after year to prohibit the district from using any of its funds to establish the registry or to implement the

benefits program.

It was not until 2001, when the political makeup of Congress changed, that the restriction on the use of funds for this purpose was lifted. However, it still took some Republican support to get the bill through Congress. The fact that blood relatives were included in the law made it easier for some moderate Republicans to support it. Domestic partnership, as defined in the District of Columbia, did not include an assumption that the relationship of the partners was sexual. This law was more family oriented. In floor arguments, one congressman pointed out that the law "would help a single grandmother caring for her grandchild, or two elderly sisters," as well as providing some protection for "two elderly people who can't get married for economic reasons." President George Bush signed the appropriations bill, of which this was a line item, into law.

"The fact that the district's law is grounded in household-family relationships, rather than in sexual intimacy, probably made it easier for the President and moderate Republicans to support it," I wrote in a story published in the spring 2002 issue of *Unmarried America*, the newsletter of the American Association for Single People.

The concept of allowing an unmarried employee to put a blood relative on a workplace health-benefits plan came to the forefront in California in 1997. That was the year that the City of San Francisco adopted an Equal Benefits Ordinance. It was also the year that the regents of the University of California voted to expand its health benefits plan beyond spousal relationships. The inclusion of blood relatives in benefits plans was raised as an issue in both of these situations.

The Equal Benefits Ordinance was passed by the San Francisco Board of Supervisors and signed into law by the mayor in 1997. It is probably the single piece of legislation anywhere in the nation that had the most impact on the expansion of domestic partner benefits by private-sector employers. The idea was for the city to put its money where its mouth was.

The city decided not to use its funds to purchase goods or services from companies if a company did not give equal benefits to domestic partners. Nor would the city give grants to organizations with discriminatory employee benefits programs. Businesses or nonprofits that wanted to contract with the city would have to sign an affidavit attesting that they provided the same benefits to domestic partners as they do to spouses of their employees. If they give no benefits to spouses, then no benefits are necessary for domestic partners. If they give some benefits to spouses, then

the same amount and kind of benefits must be given to domestic partners.

This put pressure on hundreds of employers, making them review their benefits plans and at least consider giving equal benefits. Their choice. But if they chose not to, then don't expect the city to purchase your goods or services.

The city used Bank of America for many of its financial transactions. The bank was among the first companies to respond to the Equal Benefits Ordinance. The bank made a decision to go beyond what the city had demanded. Rather than institute a domestic partner benefits program, the bank created "extended family" benefits for employees. Under the new plan, employees could choose to enroll a spouse, a domestic partner of the same or opposite sex, or a dependent blood relative who lived with them. No one could fault Bank of America for creating equal benefits for a larger class of people than the city demanded.

The Catholic Church in San Francisco was not directly affected by the Equal Benefits Ordinance in its religious capacity. But Catholic Charities, its nonprofit social service provider, was a recipient of more than $4 million in city funds each year. William J. Levada, archbishop of San Francisco, had a decision to make. Would Catholic Charities comply or would it give up its funding?

At first, the archbishop threatened to sue the city on the ground that the ordinance interfered with religious freedom. Then he sought an exemption for charitable organizations affiliated with religious denominations. The city refused to grant exemptions. Mayor Willie Brown then called a meeting to resolve the issue. He and four supervisors met with Archbishop Levada. The outcome later came to be known by Levada as "The San Francisco Solution."

Under the compromise, the city would consider the Equal Benefits Ordinance satisfied if an employer allowed employees to designate a bona fide member of his or her household to receive benefits. This was a win-win situation. Religiously affiliated nonprofits would not have to explicitly recognize domestic partners as an equivalent to spouses. And yet, under the "household" benefits plan, domestic partners or blood relatives or roommates of employees would get equal benefits.

Some Catholics objected that it was still immoral to do this. Some gay rights activists complained that it was not enough, that only explicit recognition of domestic partnerships would suffice for equal rights. But Archbishop Levada stood his ground and the controversy soon faded away.

In the end, domestic partners got their benefits, but so did blood relatives.

Activists in other parts of the nation looked to the San Francisco Equal Benefits Ordinance as a model. They wanted similar laws adopted in their communities. So it was not too long before bills were introduced in city councils in other major cities. Eventually, similar laws were enacted in Los Angeles, Seattle, New York, and Portland, Maine. This put pressure on more employers to adopt domestic partner benefits programs. Eventually, the California Legislature passed a similar law at the state level.

The Bank of America approach to expanding benefits also caught on with other financial services companies. Benefits for "household" or "extended family" members were adopted by Fleet Bank, BankBoston, Prudential, American Century Investments, Merrill Lynch, and Nationwide Insurance.

The same year that San Francisco adopted its Equal Benefits Ordinance, the Board of Regents of the University of California was considering a proposal to extend health benefits to the same-sex domestic partners of university employees. I threw a monkey wrench into the debate which ultimately caused blood relatives to get equal benefits too. Although this was not my intended result, I was happy to see more people getting health benefits.

Soon after the president of the University of California proposed extending benefits to same-sex couples, I became aware of a new ruling by the California labor commissioner that put a legal cloud over same-sex-only benefits by government employers. The commissioner had ruled that under state law prohibiting sexual orientation discrimination in employment, the city of Oakland acted illegally when it decided to offer medical benefits to the same-sex partners of city employees but to exclude unmarried opposite-sex partners from the new program.

I sent the decision to Governor Pete Wilson who was a member of the Board of Regents and to President Atkinson. Legal counsel to the regents advised them that a same-sex only plan was legally questionable in view of the labor commissioner's ruling. So it was decided to remove sexual orientation as the linchpin of the new plan and instead to offer the benefits to employees and household members who are ineligible to marry; which would include blood relatives as well as same-sex partners. That proposal was eventually adopted by the regents, on a vote of 13 to 12, with one abstention. A year later, the personnel office reported that about 1 percent of employees had enrolled a same-sex partner and another 0.4

percent had signed up a blood relative.

The issue of blood relatives also came to the forefront in Hawaii in 1997, when the issue of gay marriage and domestic partnership was being debated in the Legislature. I had spent a considerable amount of time in Hawaii the prior year, testifying before legislative committees and meeting in private with legislators from both parties. The issue of blood relatives had only come up once in 1996, when it was raised by Representative Quentin Kawananakoa. Quentin was a young, articulate, and handsome Republican whose district included parts of Honolulu.

I met with Quentin in January 1996 to seek his support for a comprehensive domestic partnership act. He questioned why blood relatives were excluded from measures introduced into the state Senate by Democrats. I told him that many people see domestic partnership as a new legal institution that is parallel to marriage. I was not one of those people, I explained, since I envision domestic partnership as a new way of formalizing a family relationship. Sexual intimacy should not be required and need not be assumed to exist in this type of relationship.

Quentin has native Hawaiian ancestry. His family is part of Hawaiian royalty. Among Hawaiians, it is not uncommon for unmarried blood relatives to live together. Sometimes, an unmarried son or daughter will live with a surviving parent for many years, helping to take care of the parent and running the family home. Why shouldn't adult blood relatives, whether they are siblings or parent and adult child, be entitled to register with the state and receive benefits and legal protections similar to those of same-sex couples? I could not argue with him on that issue.

I suggested that Quentin introduce his own domestic partnership bill. But to broaden its scope, it could be called a Comprehensive Family Partnership Act, making such partnerships available to any two unmarried adults who lived together, who were financially interdependent, and who considered themselves to be in an immediate family relationship. He introduced the bill into the Hawaii House of Representatives. This was the first legislation of its kind in the nation. But it went nowhere. Conservative Democratic leaders of the House did not want any domestic partnership legislation. They wanted the Legislature to place a constitutional amendment on the ballot to authorize the Legislature to define marriage, thus removing the authority of the courts to declare the "one man and one woman" definition of marriage as unconstitutional. The 1996 legislative session ended in a stalemate. No ballot measure. No domestic partnership.

The following year, more pressure was placed on Democrats in the Hawaii Legislature to cast a vote in favor of a ballot measure on the definition of marriage. Conservative politicians did not want to give an inch on domestic partnership. So a handful of House Democrats, with support from some Republicans, crafted a bill to provide some benefits to "reciprocal beneficiaries." They did not want to recognize domestic partnerships. They did not want to acknowledge that the participants had any obligations to each other. They did not want sexual intimacy to play any part in the bill. So they crafted a new name, without requiring the parties to assume obligations to each other, and limited participation to two adults who cannot legally marry. That, of course, included only blood relatives and same-sex couples. The bill passed and was signed into law.

Two years later, when a domestic partnership bill was winding its way through the California Legislature, I decided to make a bold move by suggesting that the blood-relative exclusion be eliminated from eligibility criteria. Let any two adults who are living together, who are financially interdependent, and who consider themselves to be a family to register with the state and obtain the benefits associated with the proposed law. I was assured by the head of the California Catholic Conference, the association of Catholic bishops, that they would support such a bill if it included blood relatives and were not limited to presumed sexual relationships.

Antonio Villaraigosa was speaker of the Assembly at the time. He was planning to run for mayor of Los Angeles and so he was making many public appearances in the city that year. I attended one of those events and was able to speak with him for a few minutes. I explained that the exclusion of blood relatives from the state domestic partnership proposal was unfair. I also explained how opposition from the Catholic Church would dissolve if blood relatives were included. Villaraigosa seemed to support my suggestion, but that support evaporated when he was told that Life Lobby, the gay rights group sponsoring the pending domestic partnership bill, would not agree to removing the blood relative exclusion.

The issue of blood relatives was raised by some legislators in Vermont in 2000. The state Supreme Court had declared that the exclusion of same-sex couples from marriage rights was unconstitutional. The court gave the Legislature time to decide how to respond. Lawmakers could remove the gender restriction from marriage, or they could create a new institution parallel to marriage with the same benefits and obligations. Those were the two options the court suggested. There was not sufficient support in the Legislature to legalize gay marriage. So the focus shifted to

domestic partnership.

I was invited by the chairman of the House Judiciary Committee to spend a day with committee members to discuss the nuances of domestic partnership law. While I was there, I began to hear some rumblings about blood relatives. Some legislators were unwilling to support domestic partnership unless blood relatives were included or unless they received some form of legislative acknowledgment and some legal protections. Eventually, a compromise was reached. The Legislature enacted a "civil union" law which gave same-sex partners all of the rights and obligations that Vermont law gives to spouses. A second measure, or "reciprocal beneficiary" bill was also passed and signed into law. It allowed blood relatives to register with the state and in return receive a few legal protections, such as the right of visitation in hospitals, medical decision-making authority, and the right to dispose of remains after a death.

By this time, I was working full time as the executive director of the American Association for Single People, a membership group devoted to obtaining equal rights for unmarried individuals, couples, and families. Unmarried Americans are a very diverse group, including solo singles who live alone, unmarried heterosexual couples, unmarried same-sex couples, unmarried adults living with blood relatives, people who had never married, those who were divorced, and people who were widows or widowers. AASP sought ways to improve the quality of life for each of these constituencies, blood relatives included.

As I started to receive letters and e-mails from members and potential members, I began to realize just how many types of discrimination single people were experiencing. Many of these communications came from single people with blood relative situations which needed attention.

One woman who joined AASP was a flight attendant with American Airlines. April had worked for the company about 10 years and during that time her retirement account had grown. She was single. No partner. No kids. April contacted the personnel department one day to find out about naming her sister as the beneficiary on her retirement account. Her sister was a single parent who was struggling financially, so this would really help her out if April died.

The benefits manager told her it was no problem. She could add her sister as a beneficiary. But he wanted to warn April that her sister would only get benefits if April died after retiring. If she died prior to retirement, April's sister would get nothing. April asked if surviving

spouses get nothing if an employee dies prior to retiring. No, there are different rules for surviving spouses. They can collect even if the employee dies prior to retirement. "That's not fair," April shot back. "Why should I be treated differently just because I am not married?"

Another woman who joined the organization complained that the federal Family and Medical Leave Act was unfair. Jennifer is single. Her parents are deceased. She has no children. She does not have a domestic partner. Her only close relative is her sister, who is dying of cancer. Jennifer approached her employer about taking an extended leave under the Family and Medical Leave Act so that she could provide care to her sister. Siblings are not included in that law. She was denied leave. Jennifer thought it was unfair that she could not assist her only living family member who was terminally ill. Talk about lack of respect for family diversity. What type of "family values" does this law promote when it denies leave in this type of situation?

Ray, another member of AASP, wrote to me to complain about his employer. Ray worked for a loan servicing company. For many years, the company has allowed married employees to bring their spouses and as many children as they have to company events, such as the annual company picnic. "But when a single employee, like myself, wants to bring his dependents, which in this case are my 60-year-old mother and 18-year-old sister, the company refuses to treat them as my family and refuses to pay for any participation in company functions, including the Christmas party," he wrote.

Kate wrote to me, complaining that her employer is flexible when it comes to employees taking time off to care for the needs of minor children, but in her situation – needing to care for her elderly father – there is no flexibility at all. Kate, 53, is single and has no children. "Employees with children were allowed to use their sick time to take them to appointments and to stay with them if they were sick," she wrote. But when Kate needed time off to care for her father, she was not allowed to use her sick days. Instead, they made her use up vacation days or to be docked for pay.

Kay, an employee of the federal government, had two complaints she shared with me. The first is with the Social Security Administration, which pays a death benefit of $250 to a surviving spouse to help pay for burial of the deceased spouse. "However, no help is given to bury or cremate a single person," she wrote. Kay has two grown sons. She has paid into Social Security for more than 30 years. "Yet, when I die, there will be

no death benefit payable because I lack a spouse," she explained. So a death benefit is paid when a married person dies with a surviving spouse, but when a single person dies with a surviving adult child, no money is given to the survivor to help with burial expenses.

But Kay had another gripe. "If I were to die today, while actively employed by the federal government, my spouse would receive a lump sum payment in the neighborhood of $70,000 as well as a monthly allotment of about $600 payable for life so long as he did not remarry," she said. "Since I am lacking a spouse, the payment to my sons is exactly zero!"

Over the years, I have heard from single parents who have an adult child at home. Some never left home, while others later returned to the nest. Some of these parents thought it was unfair for a married worker to put a spouse on the company's health plan while they, who have no spouse, are not allowed to enroll one adult child into the plan. A married employee gets subsidized benefits for one adult – his or her spouse – but an unmarried employee with one adult child must purchase medical benefits for the child from a private vendor.

These stories, and others, caused me to rethink how to deal with the issue of blood relatives in a strategy to eliminate marital status discrimination. Gay marriage will someday be legal in all 50 states. It may take many years, but it will eventually happen. But close blood relatives will never be allowed to legally wed, nor would they want to. The taboo of incest is too strong in our society and marriage implies a sexual relationship between the spouses. So legalizing marriage will not be a way to gain equal rights for blood relatives. A more generic approach must be used.

Perhaps domestic partnership or even an expanded version of the reciprocal beneficiary approach would work. But maybe rights and benefits for marriage should be eliminated entirely, so that all Americans are treated equally regardless of their marital status or family structure.

If we had universal health care, then we would not need health care for spouses of employees or domestic partners of employees. Everyone would have health care. Family and medical leave should be available for a wider range of relatives and certainly for someone who has lived on a long-term basis in the employee's household. Pension plans should allow for a designated beneficiary or they should be transformed into 401(k) plans which do allow for such. Flexible benefits plans for a wide range of benefits should allow workers to pick and choose what meets their personal or family needs, with each worker getting an equal number of credits to

purchase the ones they want. Some may want child care, while others may want elder care, and yet others may prefer to put more money into their retirement account.

Perhaps a designated-beneficiary approach to social security survivor benefits would help eliminate the disparity there. Why should marital status cause a decrease or an increase in income taxes? There must be ways to restructure our public benefits systems so that all Americans are treated fairly, regardless of whether they are blood related or whether they have a long-term relationship with a romantic partner.

A few years ago, the federal government in Canada was debating whether to give same-sex couples the same rights and benefits as the law afforded to heterosexual common law spouses. Some members of Parliament wondered why such reform should occur for gay couples but not unmarried blood relatives. The number of politicians asking this question was large enough that it caused newspapers to run editorials on the issue.

The proposal under discussion, Bill C-23, was wending its way through Parliament in 2000. It would have amended 68 statutes, affecting 20 federal agencies, in order to ensure that legal protections given to heterosexual common law spouses would also apply to same-sex couples. Justice Minister Anne McLellan said the legislation was all about “fairness.”

“She’s only half right,” the *Montreal Gazette* editorial observed. "While the bill would end the kind of legal discrimination against gay and lesbian couples that has already been struck down by the courts, it would deny the same kind of benefits to other relationships of dependency that are not sexual in nature: a pair of sisters living together or an unmarried son supporting his mother at home, " the editorial explained.

The newspaper recommended that the government "take sex out of the calculation of benefits.” “It's time to acknowledge the diversity of Canadian households and to make clear that a commitment to live together in economic interdependence is what counts, not the fact of a sexual relationship.”

The paper’s editorial position was consistent with Canadian public opinion on the matter. A public opinion survey showed that Canadians strongly support protections for same-sex couples, but even more of them want a broader bill that includes nonsexual relationships as well. The poll, which was conducted in September 1998, surveyed 1,515 Canadians aged 18 or older.

More than two-thirds of respondents wanted current laws protecting unmarried heterosexual couples to include same-sex couples too. However, some 71 percent believed benefits and obligations should not depend on spouse-like relationships but should apply to any relationship of economic dependency.

The issue of rights and benefits for all relationships of economic dependency, including blood relatives, was taken up by the Law Commission of Canada, which issued a report in 2001 titled "Beyond Conjugality: Recognizing and Supporting Close Personal Adult Relationships."

The report was the result of two years of study, during which time the Commission solicited research papers, convened panels of experts for discussions, and held conferences and meetings with interested parties. The underlying question was how well Canadian law was dealing with the reality of family diversity and whether changes should be made to treat more equitably a wide range of relationships, both sexual and nonsexual.

The report found that current legal distinctions between sexual and nonsexual family relationships were not fair or rational. Although it recommended that same-sex couples should be allowed to marry, it also made recommendations concerning unmarried blood relatives who need and deserve legal protections and benefits too. It suggested that federal and provincial laws be enacted that would allow nonsexual family relationships to register with the government and thereby gain rights and assume obligations.

The Commission's recommendation was not without precedent. In 1999, Belgium enacted a new law authorizing any two unmarried adults, including blood relatives, to bind themselves by a statutory cohabitation contract. Other than rights to support from each other, this law did not give the parties any rights or benefits with respect to the government or third parties. Nonetheless, it was a step in the direction of removing the sexual component from laws granting rights to unmarried partners.

Some small steps have been taken in the past few years in the United States to put blood relatives on a par with domestic partners. A bill was introduced in Florida, for example, to provide various rights and benefits for domestic partners. Blood relatives would have been allowed to register as domestic partners, just as unrelated same-sex and opposite-sex couples would.

State Senator Tom Hayden introduced a bill to expand the list of relationships eligible under California's Family and Medical Leave Act.

The term "domestic partners," as used in the bill, did not exclude blood relatives. Although it passed both houses of the Legislature, it was vetoed by Governor Gray Davis as being too broad. "Davis agrees with family leave for husbands and wives and children, but he does not want it extended to grandparents, siblings, and domestic partners," Hayden said in response to the veto.

There is growing support among gay rights activists to broaden the agenda of reform to include a wider variety of relationships, whether they are sexual or not. The issue came up at a "Creating Change" conference in Oakland. Hundreds of political activists were assembled at the conference on November 12, 2005, when someone got up and had the nerve to suggest that the legalization of same-sex marriage should not be the highest priority of the gay rights movement. Half of the people in the room stood up and cheered while the other half sat silent, apparently stunned by the outburst.

Those criticizing gay marriage as a priority believe that making the legalization of same-sex marriage the ultimate goal of the gay and lesbian rights movement will leave too many people on the sidelines, without legal benefits and protections because they cannot marry or do not want to marry. They feel that health care and economic security should not be tied to marriage, and that doing so leaves behind a host of other relationships which are not romantic in nature, such as platonic friends or blood relatives.

The issue of equal rights for unmarried blood relatives received international attention in 2007 when the Burden sisters took their cause to the European Court of Human Rights. They wanted the same tax exemption that Britain gives to married couples and registered same-sex couples.

Under United Kingdom tax codes, when either Joyce (90) or Sybil Burden (82) dies, the surviving sister will face a large inheritance tax bill on their jointly owned property which will require the survivor to sell the house in order to pay the tax bill.

In 2004, the United Kingdom passed a Civil Partnership Act in which it extended to gays and lesbians the same exemption from inheritance tax that married couples have. When the Civil Partnership Bill was passing through the British Parliament, an amendment to it was passed in the House of Lords by 148 votes to 130. That version of the proposed law would have extended the availability of civil partnership, and the associated inheritance tax concession, to blood relatives if they were over 30 years of age, had cohabited for at least 12 years, and were not already married or in

a civil partnership. That amendment was later rejected by the House of Commons.

Joyce and Sybil Burden advocated equal rights for blood relatives.

The sisters asked officials for an exemption anyway, but it was denied. They then sent a letter to the European Court, arguing that British authorities had violated their rights under Europe's human rights laws.

Four of the seven judges accepted the United Kingdom's argument that the inheritance tax exemption for married and civil partnership couples was not a form of illegal discrimination since the exemption law had a legitimate aim, namely, "to promote stable, committed heterosexual and homosexual relationships by providing the survivor with a measure of financial security after the death of the spouse or partner."

In the view of the dissenting judges, "the situation of permanently cohabiting siblings is in many respects -- emotional as well as economical -- not entirely different from the situation of other unions, particularly as regards old or very old people." "It is very important to protect such unions, like any other union of two persons, from financial disaster resulting from the death of one of the partners," the dissenters wrote.

The three dissenters emphasized that the government had specifically precluded blood relatives from forming a civil partnership, thereby prohibiting siblings such as these sisters from establishing a statutory claim for an exemption. "In other words, they have been deprived of the possibility of choice offered to other couples," they observed.

One of the three dissenters, Judge Stanislav Pavlovschi of Moldova, wrote a separate dissent in which he found it "absolutely awful that, once one of the two sisters dies, the surviving sister's sufferings on account of her closest relative's death should be multiplied by the risk of losing her family home because she cannot afford to pay inheritance tax in respect of the deceased sister's share of it."

Reacting to the decision, Joyce Burden told a British newspaper, "If we were lesbians, we would have all the rights in the world. But we are sisters, and it seems we have no rights at all."

British author Patricia Morgan, an expert on family issues, criticized the court's ruling and told the British press, "I do not see any reason why one type of relationship should qualify, and another should not. It is direct discrimination."

The sisters appealed the decision to a 17-member panel of judges who ruled against them on April 29, 2008. The absence of “a legally binding agreement between the applicants renders their relationship of cohabitation, despite its long duration, fundamentally different to that of a married or civil partnership couple," said the written judgment.

The court seemed to have missed the point. They were not allowed to register under the Civil Partnership Law. It was not that the sisters had chosen cohabitation rather than a registered partnership; they were precluded from the latter.

The sisters expressed their disappointment at the decision. "We are still struggling to understand why two single sisters in their old age, whose only crime was to choose to stay single and look after their parents and two aunts to the end, should find themselves in such a position in the UK in the 21st century," they said in a statement.

"We are, of course, bitterly disappointed. This is a day we hoped, as British citizens, we would never see."

Despite the dashed hopes of these elderly sisters, someday they may be viewed as pioneers in the movement for equal rights for unmarried blood relatives. They are not alone in this battle. There is a growing

number of scholars and advocates, in Canada, the United States, and other parts of the world, who agree with them.

Nancy Polikoff, a law professor at American University Washington College of Law, and author of *Beyond (Straight and Gay) Marriage,* is one of the most vocal supporters of inclusiveness when it comes to legal and economic reforms.

“Marriage is the wrong dividing line for these benefits," Polikoff argues. "A young man caring for the woman who raised him should be able to cover her on his health insurance; two older sisters who pool their economic resources should not fear that the death of one will require the other to sell their home to pay estate taxes.”

Given the reality of family diversity in American households, and that most Americans will spend more years in their adult lives being unmarried than married, it is time to rethink who is included and who is excluded from the equal rights agenda. Political reformers would better serve the American public by adopting multiple and overlapping approaches to gain equal rights for individuals, couples, and families, regardless of their sexual orientation, marital status, or household structure.

It's time that we all acknowledge what those who stood in applause at the “Creating Change” conference in Oakland seemed to instinctively know. There are many paths to creating change.

Chapter Eleven

People with Disabilities

The privacy rights umbrella includes
people with special challenges

A major part of my early advocacy focused on the right of privacy, specifically the right of consenting adults to have sexual relationships in private. Today, most people would assume that such intimate behavior would be constitutionally protected. And rightfully so.

But it was not until 2003 that the United States Supreme Court ruled that the federal Constitution prohibits the states from enforcing criminal laws against private sexual conduct between consenting adults. When that ruling was issued, about 16 states had criminal laws against oral sex and anal sex. Some of these statutes were limited to same-sex behavior, but many applied equally to "deviant" heterosexual conduct. A few states even criminalized ordinary sexual intercourse or cohabitation by unmarried heterosexual partners.

When my legal and political advocacy began in the 1970s, all but about four states had such laws on the books. When I was attending law school, the California Penal Code authorized judges to impose life imprisonment on anyone convicted of anal sex, whether consensual or not. Oral sex was a felony punishable by up to 15 years in prison. It was not until 1975 that the California Legislature revised these antiquated laws and got the government out of the bedrooms of consenting adults.

The reform in California, however, did not end my interest in sexual privacy rights. I was part of a national movement to repeal laws that intruded on the privacy rights of men and women, whether gay or straight.

I joined the National Committee for Sexual Civil Liberties in 1972 and by 1975 I was co-chair of this organization. Our primary goal was to get such privacy-invading laws repealed by legislatures or invalidated by courts.

The only form of sexual conduct that was legal in most states in the 1970s was heterosexual intercourse. Not only did criminal laws against oral and anal sex affect gays and lesbians, they impinged on the rights of heterosexuals as well. At least the laws in most states gave unmarried heterosexuals one option of legal sex, namely, sexual intercourse. But not all heterosexuals could engage in such sexual behavior. Many people with serious physical disabilities, such as those with spinal cord injuries, could not maintain the position necessary for intercourse, but they could engage in oral sex. The problem was that oral sex was a crime.

I recall in the late 1970s trying to instigate a court challenge to the sodomy law in Virginia. I contacted a therapist at a veterans hospital who specialized in patients with spinal cord injuries. Some of the injured patients were married, while others were single. Most had been sexually active prior to acquiring this serious physical disability. The therapist would suggest that the patients now engage in oral sex with a spouse or partner. This advice was given secretly because the therapist feared reprisals if anyone in authority learned that he was recommending that patients engage in a felony.

I wanted to enlist the therapist as a plaintiff in a lawsuit against the commonwealth of Virginia, seeking a court order invalidating the sodomy law on constitutional grounds. Through this criminal statute, the state was denying some of these injured veterans the only form of sexual conduct they could engage in. It was also interfering in the doctor-patient relationship. Unfortunately, but understandably, the therapist was unwilling to risk the loss of his job if he stuck his neck out to challenge the law. I thought about finding another suitable plaintiff but realized that it would be extremely difficult, if not impossible, to find a professional person who would risk loss of his or her license or job. So I dropped the idea and resorted to other methods for challenging these laws. But I knew that, one way or another, people with disabilities should be part of the privacy rights coalition that some of us wanted to build.

A great opportunity for such coalition-building came my way when California Governor Jerry Brown issued an executive order in October 1980 creating a Commission on Personal Privacy. That same month, I made a presentation to the Westside Center for Independent Living on

"Sexual Privacy and Equality for Disabled People." Even before commissioners were appointed or the work of the commission had began, I intuitively knew that people with disabilities would be a part of the commission's focus, at least if I had a say. All I had to do was to get appointed to be its executive director. That happened a few weeks later.

My first task as executive director was to help recruit and nominate people to serve as commissioners. I wanted the 25-member panel to be as diverse as possible so it would reflect the make up of the state: geographical diversity; racial and ethnic diversity; professional and occupational diversity; men and women; gays and lesbians and heterosexuals. I also wanted the privacy rights of people with disabilities to be included in the scope of our work.

Arthur Warner (left) and Burt Pines at a planning meeting in Detroit, Michigan

Prior to the first meeting of the Privacy Commission, a session was held in Detroit, with members of the National Committee for Sexual Civil Liberties. Several commissioners, including the commission's chairperson, Burt Pines, attended. We spent two days discussing a wide range of legal and political issues involving sexual privacy rights. There was no self censorship. We put all the cards on the table.

Burt Pines was caught off guard when some of the conversations seemed to stray too far from the mainstream. We discussed the right of people with medical or psychological impairments of sexual functioning to have a therapist prescribe a sex surrogate to assist them in regaining sexual abilities. We also discussed the predicament of people with paraplegia or quadriplegia and their need to utilize mechanical devices for sexual stimulation. Burt probably blushed a few times as conference participants would chime in with their thoughts on these sensitive topics.

Three of the people who were appointed to the Privacy Commission had experience in issues affecting people with disabilities.

Barbara Waxman was the director of the Disability Project at Planned Parenthood in Los Angeles. She had a serious physical disability and used a wheelchair to get around. Nora J. Baladerian was a mental health consultant who specialized in sexuality and disability, especially for people with developmental disabilities. Stanley Fleishman was a noted First Amendment lawyer. He specialized in cases involving sexuality in the media, winning several key cases in the United States Supreme Court. Because Stan had a physical disability from polio, he brought personal experience to his advocacy for the legal rights of people with disabilities.

These three commissioners formed the Committee on Aging and Disability to study invasions of privacy rights of these two segments of the population. Privacy was defined as a broad concept that included freedom of choice in personal matters and freedom of intimate association, as well as informational privacy concerns.

The commission held two public hearings at which several witnesses testified on issues affecting the privacy rights of older adults and people with disabilities, especially those who live in licensed group homes, or licensed medical, nursing, or community care facilities. One of the major issues raised at these hearings involved the sexual privacy rights of residents of these facilities which, in effect, had become their temporary or long-term home. Some of the residents had serious physical disabilities while others had intellectual disabilities. Many experienced both.

Anne Bersinger, an official with the state Department of Social Services, explained to the commission that licensing regulations did not regulate the "permissive sexual conduct between consenting adults or the cohabitation of unmarried adults in licensed facilities." These facilities had the option to establish a program of sexuality for consenting adults, or to allow such behavior, although we were unable to identify any which had done so.

The Committee on Aging and Disability found that "the absence of an express right to engage in legal consensual sexual conduct for facility residents" had led to four problems. Facility operators feared if they did permit residents to engage in lawful sexual conduct, community outrage might put them out of business. Residents were being denied a right of sexual privacy in their own homes (home being the place of residence of the individual). Facility operators were confused as to how to handle

sexual activity of residents. Finally, most facilities suppressed or punished those engaging in sexual conduct.

The committee gave two specific examples of a "sexophobic" attitude by facility operators. In one situation, a staff member held a knife to the head of a resident and threatened to cut a "Z" on his penis if he did not stop masturbating. In another facility, male residents were forced to wear athletic supporters in order to discourage them from masturbating.

The committee found that California law protects the right of adults to engage in sexual conduct either alone or with another consenting adult. The consenting adult law passed in 1975 removed criminal penalties from such conduct. Furthermore, the right of privacy in the California Constitution protects personal choices and intimate behavior. "The right to full human expression exists in the law, but not in practice," the committee concluded. Therefore, the committee recommended that the Administrative Code should specify that residents have a right to sexual expression in private, unless the conduct is found harmful to the patient's health or unless the patient is placed under a conservatorship restricting sexual expression. The full commission approved this recommendation in its final report.

The other area of intimacy which the committee, and the full commission, found inadequate had to do with regulations pertaining to cohabitation within these facilities. The code required that the facility must provide a bed for each resident, "except that married couples may be provided with one appropriate size bed." The commission recommended that marital status discrimination should be eliminated from bed-size selection, so the regulation should state that "consenting adult couples shall be provided with one appropriate size bed, regardless of the marital status or gender of the individuals."

These recommendations were an amazing departure from the usual situation of governmental avoidance of sexual matters. They advanced work that had been done in 1975 by the California Committee on the Sexuality of the Developmentally Disabled, a coalition of individuals, nonprofit organizations, and state agencies. That committee had questioned the "overprotective concern for the sexual development of such persons, uneasiness and fear regarding their sexuality, and administrative reluctance to develop sex education programs." It called on the government to protect the right of people with developmental disabilities to obtain sex education, to have sexual relations with other consenting adults, to have their privacy respected, and to have the right to choose marriage.

With respect to the right to choose marriage, the Privacy Commission learned of government penalties which prevent or create disincentives to marriage for many people with serious disabilities. In addition to hearing from experts on this issue, the commission heard testimony from two adults with developmental disabilities. Betty and Jimmy each received Supplemental Security Income benefits as their means of financial survival. They were also in love. The couple would not consider living together as an unmarried couple because that would violate their religious beliefs. But marriage was impossible because, if they wed, each of their benefits would be reduced by about 25 percent. They were barely able to survive as it was, and this type of reduction would be a disaster. So they had to live separately as boyfriend and girlfriend. Their testimony was heartbreaking. But what hurt even more was to hear that two months after the hearing, Betty died without having had the opportunity (at age 27) to experience marriage "like other people."

Daniel Brzovic, senior attorney for the Western Law Center for the Handicapped, explained to the Privacy Commission that the situation of Betty and Jimmy was not uncommon. "Unfortunately, there are many programs which penalize married individuals unfairly," the attorney wrote. "In many cases individuals are discouraged from marrying or are encouraged to separate."

The Privacy Commission recommended that "economic disincentives which penalize persons for becoming married be eliminated from health and welfare benefits programs operated by the federal government, such as Social Security, Supplemental Security, In-Home Supportive Services, Medicaid, and Medi-Care."

A few months after the Privacy Commission issued its report, the Court of Appeal in California issued a decision in *Foy v. Greenblott* which underscored the right of sexual privacy of patients in licensed mental health facilities. The principles announced in the decision were broad enough to apply to people with disabilities in any type of supervised living arrangement licensed by the state. The court said that institutions should minimize interference with a patient's individual autonomy and social interaction. In this case, the court concluded that the hospital could not prohibit sexual activity completely because patients have a right to engage in consenting sexual relations with other adults. There could be limitations, but only to ensure consent and to avoid coercion. The burden would be on the facility to show good cause to restrict sexual activity in any given case.

I discussed the *Foy* decision in a presentation I made in April 1983 to a group of disability service providers which included social workers and group home operators. In October of that year, I made a similar presentation on "Law, Sex, and Disability." Two years later, I repeated the same presentation at a conference on the Northridge campus of California State University. In each of these situations, I was a co-presenter with Nora Baladerian. She focused on the right of people with disabilities to be free from abuse, including sexual abuse. I focused on the flip side of the issue, the right to have consenting sex. Between the two of us, service providers and agency staff had a better understanding of both aspects of the law. We wanted them to have a balanced approach in dealing with the sexuality of people who were living in supervised settings. "Just say no" to sex will not work. Pretending that people with disabilities do not have sexual needs and desires will not work either. A multi-faceted approach requires comprehensive sex education, making sure that both parties have a capacity to consent, and then insuring privacy for any intimate association which may occur.

Disability issues were included in my next major project. In 1985, I was appointed to serve as principal consultant to the Los Angeles City Task Force on Family Diversity. Three people who worked for disability rights were appointed as Task Force members. Nora Baladerian, who now had her doctorate in clinical psychology, became co-chair of the 37-member group. Dr. Carol Gill, from the Los Angeles County Commission on Disabilities, took the lead in writing a special report on families with members who have disabilities. Sandra Dyson, from the city's Department of Rehabilitation, also joined the team.

Several witnesses testified at public hearings about disability issues affecting individuals and families. Ann Finger, of the California Association of the Physically Handicapped, advised Task Force members of problems impeding people with disabilities in family living. Sue Ridenour, chairperson of the county Commission on Disabilities, spoke of needed improvements in public transportation. Richard Smith, president of the Mayor's Advisory Council on Disability, pointed out areas for improvement in the city's response to disability issues.

When I wrote the final report of the Family Diversity Task Force, I included a section on "Families with Disabled Members." It noted that perhaps up to 15 percent of the population has some form of disability. More recently, I discovered data from the Centers for Disease Control, suggesting that the figure may be as high as 19 percent.

The report found that "prejudice against people with disabilities abounds." Sometimes it is manifest in negative language. It is also exemplified in serious under representation in positions of leadership in government and social institutions. Exclusion from social functions is another way that some people either intentionally or negligently display their bias. "Because such prejudice is so rampant, much of the disability experience involves frustration, anger, and fear," the report noted.

The Disability Team Report observed that people with disabilities have a variety of family roles and experiences. Some live in traditional nuclear families. Others leave their families of origin in adulthood to live independently or in a setting that provides assistance or supervision. It is common for many people with disabilities to live with an attendant or aide. "While the last decade has been marked by the growth of the independent living movement for people with disabilities, many still live in institutions, particularly those with severe disabilities or extremely devalued disabilities, such as cerebral palsy," the Team Report pointed out.

In its final report released in 1988, the Task Force made eight specific recommendations on how the City of Los Angeles, either directly or indirectly, could help people with disabilities and their families. It asked the Police Department to collect data on the disability status of crime victims. It suggested that the city attorney conduct trainings for prosecutors and support staff on disability and its relationship to criminal investigation and prosecution.

The Task Force also recommended that the Board of Education require that a strong teaching component on the nature and culture of disability be included in the K-12 mandatory cultural curriculum. This recommendation was endorsed by the Special Education Commission of the Los Angeles Unified School District in December 1988 which, in turn, placed the issue before the Board of Education for approval.

The Task Force also proposed that the city create a permanent Commission on Disability to address issues of concern to people with disabilities. This suggestion was the most important of all the disability recommendations since it would ensure that such issues would be addressed on an ongoing basis. This recommendation was approved in 1989 when the City Council and the mayor enacted legislation creating the city's Commission on Disability.

In 1990, Dr. Nora Baladerian approached me with a suggestion that the research and educational work she was doing regarding abuse of people

with disabilities might be conducted under the auspices of Spectrum Institute, a nonprofit organization I formed with her and a few other colleagues in 1987. Although my work with Spectrum Institute focused mostly on family diversity and marital status discrimination, the organization's mission was broad enough to include Nora's projects. My only concern was that both sides of the sexuality issue be included – freedom from abuse as well as the right to sexual expression. Nora agreed. And so the Disability, Abuse, and Personal Rights Project (DAPR) was formed.

One of Nora's projects was to convene an annual national Conference on Abuse of People with Developmental Disabilities. Over the years, hundreds of people attended these conferences, including law enforcement personnel, educators, researchers, social service providers, and advocates. When she was planning for the eighth annual conference, scheduled to occur in 1997, I suggested that she do something different – limit the number of participants and convene a "think tank" of key people in the field throughout the state of California, including the heads of government agencies, advocacy organizations, and service providers. The think tank would develop an action plan on changing the system's response to abused and neglected children and adults with disabilities. I helped Nora obtain a $5,000 grant to fund the videotaping of the think tank and to distribute the video to people throughout the country who were interested in this topic and this approach to problem solving.

DAPR operated as a project of Spectrum Institute until 2000, when the American Association for Single People was formed. I knew that I would have to devote my full attention to developing this organization and would not be able to oversee the financial and legal aspects of DAPR. Nora understood my predicament. She moved DAPR to another nonprofit agency which dealt solely with services to people with disabilities.

Nora and I operated on parallel tracks for the next several years. She was advancing the agenda for disability and abuse issues. I was pressing forward on issues affecting Unmarried America. We would occasionally support each other's work, but did not work regularly together until 2007 when we reunited around her DAPR project.

My work with Unmarried America was winding down. She needed help to coordinate her busy schedule and complex finances. I assumed a part-time role as her business manager. DAPR again became a project of Spectrum Institute. As a result of these changes, I have been able to devote time to helping Nora continue and advance the disability rights agenda.

Chapter Twelve

Teenagers

The focus shifts from policy reform
to battles with institutional bullies

My advocacy in the 1970s was directed toward securing liberty and justice for consenting adults. I sought such reform through legislation, litigation, and administrative action. Some significant victories specifically helped lesbians and gay men.

The California Legislature recognized the right of sexual privacy for consenting adults. The governor of California ordered the state government to stop discriminating against gays and lesbians in employment. The California Supreme Court reinterpreted criminal laws used by undercover police officers, thus making it more difficult for them to harass gay men seeking consensual encounters with other gay men. The court also put private employers on notice that employment discrimination against openly gay workers would no longer be tolerated. State agencies began to accept gay housing discrimination cases for the first time.

Then Governor Jerry Brown issued an executive order in 1980 which created the Commission on Personal Privacy. My role as executive director of the Privacy Commission prompted me to expand the scope of my advocacy. Seniors, people with disabilities, and children became a part of my human rights agenda.

The right of personal privacy has several manifestations. One of them is freedom of choice in highly personal matters. The California Constitution states that privacy is a fundamental right for every individual.

This includes adults as well as minors. Part of the work of the Privacy Commission was to explore ways in which the right of privacy of children and teenagers could be protected and enhanced.

With respect to human sexual behavior, freedom of choice is undermined if decisions are being made without informed consent. Many adolescents are sexually active by the time they reach the age of 16. The ability of these youngsters to make informed decisions about sexual relationships depends in large measure on whether they have been thoroughly educated about human sexuality. Since many parents are reluctant to discuss sexuality with their children in any detail, guaranteeing that children are properly educated in such matters becomes the responsibility of the schools. For this reason, the Privacy Commission decided to focus some of its time and resources on the issue of sex education.

The Reverend Robert Iles testified at a public hearing conducted by the Commission. In addition to being a minister, he was a psychotherapist and an instructor in human sexuality. Iles said he was appalled at the level of ignorance among teens when it comes to sexuality. He is an ardent supporter of age-appropriate comprehensive sex education in the school systems. Iles explained that when he was in the seminary he would pass through a door to the library, above which was carved in stone "Seek the truth, lead where it may, cost what it will." Iles asked our Commission to speak out against the "conspiracy to prevent people from having information about sexuality."

David Hall, a community health educator in Los Angeles, testified that the State of California is itself contributing to a "conspiracy of silence" by having a law on the books which limits sex education and virtually intimidates people, both in the school system and in counseling settings, making them afraid to deal with human sexuality in a meaningful way. He urged a repeal of "the Schmitz Act" – a restrictive law enacted in the late 1960s and named after John G. Schmitz, an ultra-conservative California state senator who strenuously opposed sex education in public schools.

When I wrote the final report of the Privacy Commission, recommendations on sex education were included. The report recommended that comprehensive sex education should be mandated by the state Department of Education. The right of students to receive information about human sexuality, disease, pregnancy, and family planning was too important to leave to local school districts to decide, often in a politically charged atmosphere created by conservative religious forces. It also

recommended that parents should not have a right to prevent teenagers in public schools from obtaining accurate information about human sexuality. The right of students to learn and their freedom of academic choice should be paramount, especially considering the consequences of ignorance about human sexuality, such as HIV transmission, sexually transmitted diseases, and unwanted pregnancies.

The commission also learned of a federal regulation prohibiting any federally funded programs from providing family planning information or services to teenagers without advance parental notification. It concluded that this regulation of the federal Health and Human Services Department was "incompatible with the broad privacy protections that teenagers enjoy under California's constitutional right to privacy." It recommended that this regulation should be eliminated.

The commission also took testimony and conducted extensive research into the issue of sexual orientation discrimination. It was convinced that the primary cause of such discrimination is "homophobia" which is an irrational fear of homosexuality. That fear is nurtured by myths and stereotypes about homosexuals and homosexuality and is perpetuated by ineffectual communication and education. As one way to help educate young people about homosexuality, the commission recommended that the state Department of Education prepare and distribute a booklet entitled "Myths and Stereotypes about Homosexuality," similar to what had been done in Pennsylvania.

These recommendations of the Privacy Commission were intended to advance the rights of teenagers in California. Some gained traction. Others did not. The federal regulation requiring parental notification for information or services dealing with family planning was eventually eliminated. In the last few years, California voters have twice defeated initiatives to require parental notification prior to teens obtaining an abortion.

In 2007, legislation was passed which prohibits sexual orientation discrimination in any aspect of the school systems in California. The effective implementation of this new law will require some form of educational materials to help eliminate myths and stereotypes about homosexuality. What form this literature takes and how it will be disseminated throughout California's school system remains to be determined. Perhaps the Department of Education will heed the suggestion of another public policy report which was issued in 1986. The Attorney

General's Commission on Racial, Ethnic, Religious, and Minority Violence – a group of which I was a member – reiterated the Privacy Commission's recommendation that a handbook be developed to counter myths and stereotypes about gays and lesbians.

Unfortunately, state law still does not mandate sex education in local schools.

Some 37 members of the Los Angeles City Task Force on Family Diversity studied family life and family issues from 1986 to 1988 when the panel issued its recommendations to the mayor and the City Council. I was privileged to coordinate the work of the Task Force as a special consultant and to write the final report. This study included a broader array of issues involving and affecting teenagers than any project in which I had previously participated.

Homeless teenagers, youth gangs, teen pregnancy and parenting, suicide prevention, family life education, and gay and lesbian youth were all part of the study. College interns did research papers to assist the Task Force members. One student wrote a paper on "Runaway and Homeless Youth." Another student focused on "Family Life Education". Yet another student paper zeroed in on "Teen Pregnancy and Teen Parents" and the gaps in services in Los Angeles County. These papers were used by teams of Task Force members who were responsible for developing policy recommendations on these issues.

Several public hearing witnesses addressed issues affecting young people. A professor at the UCLA School of Social Welfare spoke about Latina teen sexuality and pregnancy. A prosecutor suggested ways to control youth gangs. A family planning expert told us what works in teen pregnancy-prevention programs. A member of Parents and Friends of Lesbians and Gays focused on the needs of gay and lesbian youth. A specialist with Children's Hospital's High Risk Youth Program addressed the issue of runaways and homeless youth. Through this testimony, Task Force members and participants gained valuable insights into a wide range of issues affecting young people in Los Angeles. The testimony, student research papers, and team reports formed the basis for recommendations set forth in the final report.

The Task Force made recommendations to the Los Angeles Unified School District on a wide range of issues affecting school curricula and school programs. After reviewing the district's family life education curriculum, the Task Force commended the district for its revised

curriculum which was adopted in 1986, with two exceptions: First, too little was said about homosexuality and it came too late. The issue should be addressed in an age-appropriate way before junior high school since attitudes and prejudices are formed much earlier in life. Second, consequences of sexual activity – such as pregnancy and sexually transmitted diseases – were not stressed enough.

The Task Force was concerned that more than 40 percent of students in California had reported knowing someone in school who had contemplated suicide. To deal with this problem, the Task Force recommended that the Los Angeles Unified School District implement a model curriculum on suicide prevention which was approved by the state Department of Education in 1987. The state was commended for recognizing that gay and lesbian youth are a segment of the student population at higher risk for suicide or attempted suicide.

Education on the subjects of prejudice, violence, and human rights was also the focal point of Task Force recommendations. The State Board of Education had approved a Model Curriculum on Human Rights and Genocide in 1987. Beginning in 1988, school districts were required to add "human rights" to the regular social studies classes in grades 7 through 12. What the Task Force report did not mention was the fact that I had led a protest in 1987 which resulted in the Model Curriculum including mention of people with disabilities and gays and lesbians as targets of human rights violations, and as classes of people subject to genocide attempts in the past. But since those omissions had been corrected, the Task Force could recommend that the Los Angeles school district incorporate the Model Curriculum into its history and social studies classes.

These and other recommendations on youth gangs and teen pregnancy and parenting were brought to the attention of the Board of Education and Superintendent of the Los Angeles Unified School District as part of disseminating the final report of the Task Force. Even though the Task Force had officially disbanded in the fall of 1988, a few of us pressed forward with implementation plans. Dr. Nora Baladerian and Christopher McCauley, co-chairs of the Task Force, and I and a few others reached out to the school district to call attention to the recommendations affecting public school education and students.

We started our work with the Commission on Sex Equity (a 25-member panel convened by the school district which was dedicated to eliminating sex discrimination in the school system). The Sex Equity

commissioners helped us to convene a joint meeting with all of the education commissions, including the American Indian Commission, Asian/Pacific Commission, Black Commission, Mexican American Commission, and Special Education Commission. This was the first time that all the commissions had ever held a joint meeting. More than 100 commissioners attended. We followed up with a survey of the commissioners about their level of support for recommendations to the school district.

The top 10 recommendations supported by the overwhelming majority of commissioners included: expanding peer counseling programs; sponsoring a seminar on AIDS; implementing the model curriculum on human rights; adopting a statewide anti-slur policy; adopting a district wide code of behavior; conducting classroom exercises on prejudice and intolerance; implementing the model curriculum on suicide prevention; creating more on-site child care; implementing the district's anti-gang task force; and including the culture of disability in the mandatory cultural curriculum. We had done our work. We pointed the way, set reachable goals, united various segments of the community, and got their support. It was now up to teachers, parents, students, and administrators to make these recommendations a reality.

One area of progress which I learned of in 1991, was the establishment of a Gay and Lesbian Education Commission, similar in structure and purpose to the other education commissions within the school district. The Family Diversity Task Force report was referenced in a letter sent by Councilmember Mike Hernandez to the school board members in support of the creation of a Gay and Lesbian Education Commission. The school board approved the proposal.

My work in the 1990s focused almost entirely on issues involving marital status discrimination and family diversity. Teenagers were not part of this agenda. It was not until 2004 that my attention was drawn to issues affecting teens. This was when I suddenly and unexpectedly found myself drawn into the rescue of a teenage girl who had been abused, abducted, and confined against her will. My efforts to rescue the girl uncovered a national disgrace involving tens of thousands of other teens who had experienced similar victimization. This discovery, and my desire to stop such abuse, prompted me to create an Emancipation Project which would expose the perpetrators of these abusive practices, help publicize the stories of survivors of such abuse, and promote remedial legislation to require governmental licensing and oversight of boot camps, so-called behavior modification programs, and private "boarding schools."

From 1990 to 1999, I split my professional work between my law practice and my human rights projects. My law practice focused exclusively on appeals. I would be appointed by the appellate courts in California to represent criminal defendants on appeal. Sometimes I was appointed to represent minors who had been removed from their biological parents because of abuse or neglect. But I gave up my law practice in 1999 when I assumed a full-time position as executive director of the American Association for Single People. Things went well, with ample funding from Lloyd Rigler and his LEDLER Foundation, until 2002 when Lloyd became impatient with the slow progress in attracting members to AASP. He decided to pull the plug on funding, and my partner Michael and I decided to sell our house in Los Angeles and to move to Kona, Hawaii. I had enough funding left to continue operating AASP, later named Unmarried America, on a small scale through e-mail, a Web site, newsletters, appearances on talk radio shows, and giving phone interviews to journalists and reporters for newspapers and magazines.

In August 2004, I flew back to the mainland for a family reunion. My mother and many of my siblings and their spouses and children lived in Michigan. After about a week of partying and family activities, it was time to return to Hawaii. I was scheduled to catch a plane from the Detroit airport very early the next morning, so I wanted to get to sleep by 10 p.m. Unfortunately, my bedtime plans were changed when my niece, Cameo, introduced me to her friend, Emma, and asked if I could speak with them privately. The three of us found a secluded place in the house and sat down for a chat. What a chat! Emma lived in an abusive home with a controlling father and a passive mother. For several years, her father had created a household filled with fear. Emma and her siblings would never know when their dad would become enraged. He would destroy furniture, yell and scream, and generally intimidate the family. Things had gotten so bad that Emma had attempted suicide on two occasions. She was depressed and afraid. Emma told me that recently her father had physically assaulted her. She was afraid to go home. Cameo wanted my advice as to what Emma should do.

I asked for more specifics about her situation at home. Emma said that her father once displayed a gun in the family home and threatened to kill Emma and everyone in the family including himself. She told me that she was once punched by her dad in the back of her head so hard that he broke his wrist. She recalled how her father once threw a chair through a window. He destroyed 14 picture frames which had been on the wall. He

even threw a patio set off the deck and onto the ground below and broke the glass tops on the furniture. Emma's mother had failed to intervene in any of this or to report the abuse to the proper authorities.

Needless to say, I did not get to bed as scheduled that night. I arranged for Emma to spend the night at Cameo's house. My sister Diane called Emma's mother and asked for permission for Emma to stay at their house for a few days. My sister Carolyn lived next door to a clinical psychologist who provided counseling and therapy to children and teenagers. Carolyn called Dr. Vanessa who scheduled an appointment for Emma the next day. The game plan was that Emma would tell Vanessa about the ongoing abuse. Vanessa would then have a legal obligation to report the problem to the Child Protective Services agency. I called my friend, Nora Baladerian, to get her opinion on this strategy. Nora is a clinical psychologist who specializes in child abuse. Nora gave her OK.

I flew back to Hawaii. For the next few days, I would get updates on how things were progressing for Emma. She saw Dr. Vanessa three times. Vanessa interviewed Emma's sister who confirmed that ongoing abuse was happening in the home. Vanessa reported the abuse to the county. The county called the parents in for an interview. Things were moving in the right direction. Emma, who was 16, returned to the school campus for a football game which occurred two days before Labor Day weekend. She was scheduled to start a new part-time job the next day. Cameo and her family were on a short vacation in Canada. They would return to Michigan on Monday, just in time for Cameo to attend the first day of classes on Tuesday.

On the Sunday of Labor Day weekend, I picked up the phone and took a call from my sister Diane. She was concerned that something may have happened to Emma. Cameo had received a call on her cell phone, while they were still in Canada, from Aaron, a friend of Emma. No one had seen or heard from Emma since Thursday night after the sports event. She did not show up at work on Friday. Aaron had received a short text message from Emma on Saturday morning. "Help, I'm scared." My sister Diane called Emma's house. Emma's mother told Diane that they had sent Emma to a boarding school out of state. She would not disclose the location of the school or its name. Calls then started flying back and forth among various friends of Emma. One of them finally confided to Cameo that Emma's mother had told her in confidence that Emma had been enrolled in Spring Creek Lodge in Montana and that she would not be home for a few months.

Diane called me with this information. Spring Creek Lodge? Montana? This did not sound right. Why would Emma disappear so abruptly? She was scheduled to attend her first day of classes on Tuesday. She was supposed to have started a new job. Could this have something to do with the fact that Emma's dad had been reported to the authorities for suspected child abuse? Emma was suicidal. She was in therapy with Dr. Vanessa. We checked with Vanessa and she confirmed that Emma was scheduled to see her on Tuesday afternoon after school got out. No one had consulted Vanessa about the effect of an abrupt move on Emma's fragile emotional condition.

Diane Coleman Rogers (left) and her daughter Cameo asked for intervention.

I told Diane and Cameo that I would try to do some research on the Internet about Spring Creek Lodge and that I would report back to them as soon as I had any relevant information. In the process of doing my research, I came across the address and phone number of Spring Creek Lodge. So I called and asked to speak with the executive director. The assistant director got on the phone and we spoke. He would not confirm or deny whether Emma was there. I told him that she was suicidal and that her therapist wanted to call her to speak with her. "That is not going to happen," I was told.

When I hung up the phone, I got back on the Internet to find more information about Spring Creek Lodge. I found several news stories and other postings indicating that Spring Creek Lodge is more like a prison for juveniles who are held there against their will, deprived of all outside contact with the world, watched 24 hours a day by another teen inmate, disciplined by their teen-inmate-watchdog, sometimes isolated in an isolation hut, placed on a limited diet of bananas and beans, etc.

The Lodge was part of a larger affiliation of similar facilities, known as the World Wide Association of Speciality Programs (WWASP). WWASP was being investigated by a congressional subcommittee in

Washington for abuse and neglect of teen inmates, had been referred to the Justice Department by a congressman for investigation, had some of its facilities closed by government agencies, had many facilities sued for abuse by parents, and had many other complaints against them for abuse and mistreatment of teens.

Emma was in deep trouble. I later learned that Emma had returned home about midnight on the day of her disappearance after having attended a party following the football game. She went to bed and then was abruptly awakened at 3 a.m. by a total stranger who forced her out of the house and flew her to Montana against her will. Emma's parents were aware of the situation.

I called Vanessa and brought her up to date on what had happened. I asked her to call the facility, inform them that she is Emma's treating psychologist, and request to speak with her. Vanessa later reported back to me that she made the call. She had a conversation with the "communications director" of the facility. Vanessa found out that the clinical director of the facility does not even have a professional degree. They would not allow her to speak to Emma.

I then had a long conversation with Tom Hanna, a child abuse prevention professional in New York. I was referred to him by Nora Baladerian. Tom was very concerned for Emma's welfare, especially considering her risk for suicide, the abduction, and her involuntary confinement in a non-therapeutic facility. He encouraged me to get more aggressive, to shift this to the legal arena, and to get as much publicity for this case as possible to make it high profile. He said that only such aggressive action would cause her release from confinement and her return to Michigan where she could get the therapy and support she needed. Failure to get aggressive might result in her death.

I followed Tom's advice and immediately placed two calls to child abuse hotlines, one in Montana and one in Michigan. I explained the situation about the abuse, the intervention of Child Protective Services in Michigan, Emma's suicidal risk, her abduction to Montana, the abrupt end of therapy, and the refusal of the facility in Montana to allow Emma to speak with her therapist in Michigan.

On Wednesday, September 8, I received an e-mail from a staff member at the International Survivors Action Committee (ISAC), a nonprofit group run by individuals who have survived involuntary confinement in facilities like the one in which Emma was being held

against her will. This was in reply to my request for information about Spring Creek Lodge. She said that time was of the essence, since Child Protective Services would probably take more than two weeks to respond, and since the contract Emma's parents signed with Spring Creek Lodge authorized the staff there to transfer Emma to a facility in Jamaica if she is "resistant" to their orders. ISAC had been monitoring Spring Creek Lodge and dozens of other facilities like it for several years.

I forwarded the e-mail message, with my own cover note, to everyone I thought would be interested in having Emma freed from confinement, including government officials and advocacy groups in Michigan. My cover note said that if CPS or Michigan authorities did not have Emma returned to Michigan this week (at least for an interview with authorities), then aggressive legal, political, and media action would be taken by me. I then made phone calls to several nonprofit groups and several agency officials in Michigan.

On Wednesday afternoon, there was a breakthrough. I received a call from a supervisor with Child Protective Services in Michigan. They were preparing a petition to file with the Probate Court. They hoped to have it filed by Thursday morning at the latest.

About noon the next day I spoke by phone with a social worker who informed me that a judge had entered an order temporarily placing legal custody of Emma with the CPS and directing the CPS to have Emma returned from Montana to Michigan. The social worker was on her way back to her office to set in motion a process to have the local sheriff in Sanders County pick Emma up from Spring Creek Lodge and turn her over to the social worker who was planning to fly to Montana on Friday to bring Emma back. We were making progress, or so it seemed.

I called the social worker on her cell phone at 5 p.m. Hawaii time to check on her progress with officials in Montana. I was concerned because I had read information that Spring Creek Lodge, which housed up to 500 teenagers, was the largest employer in Sanders County. The facility had strong connections with local officials. I planned to leave her a message asking her to call me as soon as Emma was on the ground in Michigan. To my surprise, the social worker answered the phone even though it was 11 p.m. in Michigan. She sounded very upset and shaken. I was informed that the Sanders County sheriff was refusing to honor the court order from Michigan.

My adrenaline started to rush. I decided to call the Child Abuse

Hotline in Montana again. They told me to call back in the morning. I then searched though the Web site of the attorney general's office in Montana. I found a telephone number for the Missing Persons Clearinghouse. I called the number and spoke with Tom. I informed him of the critical facts. We agreed that as I continued to make other calls, he would look through the attorney general's Web site and try to find names of people for me to contact in the morning. He promised to call me back a little later.

About 30 minutes later I received a call from an assistant attorney general in Montana. I was surprised because of the late hour there. I told him the entire story. He promised to make calls in the morning to key officials in Michigan to verify the facts. He would have them fax him the court order after which he would contact the Sanders County district attorney and the Sanders County sheriff to urge them to cooperate with Michigan authorities to implement the court order to return Emma to Michigan.

The assistant attorney general followed through as he had promised. He verified the facts and then put pressure on the Sanders County sheriff to honor the Michigan court order. The Michigan social worker flew to Montana with a deputy sheriff. Things in Montana had unfolded so strangely that they were not going to take any chances with anything going wrong when they were in Montana. Emma flew back to Michigan and was placed with her grandparents.

About a week later, Michael and I left Hawaii and returned to Los Angeles. This whole ordeal with Emma had happened at a very inopportune time for us. During Labor Day weekend and for the following week, we were packing our belongings since we had decided to rent out the house in Hawaii and to return to Los Angeles to live. With Michael assuming almost all of the duties associated with moving, I had been able to devote most of my time to the rescue of Emma.

I stayed in communication with the ISAC group and got updates on some of its activities. About a month after we returned to Los Angeles, I received a report that a teenage girl had committed suicide at Spring Creek Lodge. The institution had managed to keep the incident out of the media. But ISAC had its sources. I was saddened to hear of this tragedy, but glad that it was not Emma. We had secured her release in the nick of time, or she might have used suicide as her only escape from imprisonment.

I was informed that ISAC was having a conference in late October in San Diego for survivors of these teen boot camps and reprogramming

facilities. Staff at ISAC wondered if Nora could be there to help out in case any of them needed counseling. I talked to Nora and we both decided to attend this gathering. I was interested to learn more about this so-called "behavior modification" industry by hearing the stories, first hand, from young people who had been incarcerated in these facilities. Nora and I had informally decided to devote some of our professional time to this problem. So I prepared a brochure about our experience with Emma and invited people who experienced similar problems to contact us. The tentative name for the project was STAT – Stop Trafficking in Abducted Teens.

When we arrived at the conference site at a large hotel in San Diego, Nora and I were surprised to find that the conference organizers were not adequately prepared to conduct this event in a professional manner. There was no formal agenda. No welcoming remarks were scheduled. The leader of the group was not willing to speak to those in the audience, which consisted mostly of teens who were survivors of abductions and confinements, and some of their family members. The event was by invitation only. The organizers were hoping to attract media to hear the stories of these survivors, but no media showed up.

Nora and I wondered when the show would begin, who would give the opening remarks, who would coordinate the event, and who would document key points from this testimony and any significant recommendations from the audience that came up during the discussion period. Since no one would answer these questions, Nora and I assumed roles to fill this leadership void. We created an agenda. We gave opening remarks to set the tone for the meeting. We invited speakers up to the podium. We ordered a large presentation pad, wrote notes on it as speakers testified, and taped the papers to the wall so there would be visible documentation of problems and suggestions for the audience to see and discuss when testimony was finished. Nora and I wondered what the organizers would have done if she and I had not come to this event.

The testimony we heard over the next two hours was shocking, stunning, and depressing. About 15 teenagers and young adults recounted their ordeals: abuse or neglect by their parents; being abducted and transported to boot camps or private locked facilities; physical and emotional abuse at the hands of staff members; and symptoms of post traumatic stress disorder or severe depression which manifested after their release, sometimes lasting years.

How could this be happening in the United States of America? To

United States citizens? We started asking questions. We discovered that there are huge gray areas of the law that some greedy business people take advantage of. Most of these programs are unlicensed and unregulated. Parents, sometimes unsuspecting of what goes on in these programs, sign their kids over to the program administrators, and pay up to $50,000 per year for these services. With parental "permission," the programs can do what they want. Parents are cut off from their teenagers for months without any communication. With no governmental oversight and little parental contact, the situation is ripe for neglect and abuse of these kids.

Nora is president of Spectrum Institute, the nonprofit corporation which sponsored my work with Unmarried America and which had sponsored her work with the Disability, Abuse, and Personal Rights Project. Now that Unmarried America was winding down and operating at a very basic level, I had some extra time that could be devoted to this human rights cause. So we decided to create the Emancipation Project under the umbrella of Spectrum Institute.

In December 2004, I developed a Web site and produced a brochure, business cards, and stationery. My sister Diane, a graphic artist, created a logo for the project. I asked Nora to help me publicize this national problem to people in her child abuse prevention and intervention networks. Nora is well known among professionals who work in the field of child abuse as well as those who work to help victims of crime. She has many friends in law enforcement. She attends professional conferences on child abuse and victims' rights, throughout the nation, on a regular basis. She is often a presenter at these conferences. So Nora responded enthusiastically to my request for help. She promised to introduce me and the Emancipation Project to her colleagues and associates. She agreed to help me get conference organizers to authorize presentations exposing the abuses of teenagers by this "behavior modification" industry – an enterprise which we later learned was generating about $1 billion annually.

In the next few months, I was contacted by three people who sought my help to deal with friends or family members who had been placed in these facilities. Isabelle Zehnder was close to two young girls who had been sent off to a locked facility in North Carolina by their abusive parents. An older brother of the girls had spent time in a similar place in Samoa and had managed to get released before he was able to fulfill his intentions of committing suicide as his only escape from that hell hole.

Carrie complained to me that her teenage son, who was on

probation for a relatively minor crime, had been sent by the boy's father, her ex-husband, to a locked facility in Jamaica. The boy's father had convinced a judge to authorize this placement. Tranquillity Bay was known by advocates fighting against this "teen help" industry as a particularly brutal place. Kids from facilities in the United States were often sent there as punishment because of the lack of government oversight and the inability of authorities in the United States to regulate the institution or prevent abusive conduct by the staff there.

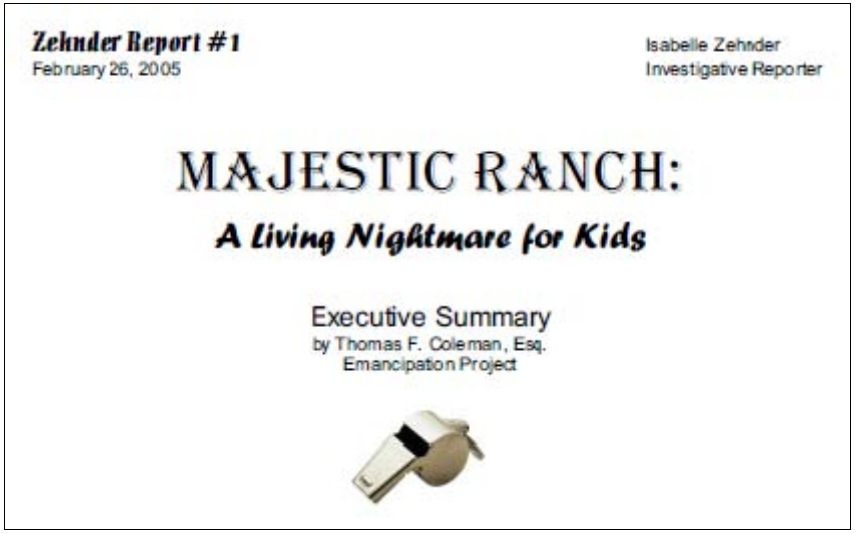
Kathy contacted me after her granddaughter disappeared and the girl's mother refused to disclose her location. Kathy knew that the girl had been sent to some type of private facility, but she did not know where and she did not know how to find out if the girl was OK.

I got involved and helped each of these women. I put Kathy in touch with Isabelle who offered to help Kathy find the facility and penetrate its security to gain contact with her granddaughter under a subterfuge. Isabelle was a good investigator and had developed a passion to help those who were adversely affected by this oppressive network of facilities. Once they found out where the granddaughter was being housed, they traveled together to a remote location in Montana where they were able to gain entry to the facility under the guise of being parents who were looking for such a facility to place their own kids. It turned out that, although the place was severely strict, and even though the girl had been placed there against her will and without legal justification, she had adapted. She wanted to complete the program. Kathy accepted her granddaughter's decision, and was relieved she was OK, but she was upset that her own daughter had gone to such extremes to punish the granddaughter and had kept Kathy in the dark as to the girl's whereabouts.

I coached Carrie on how to handle the situation with her son. She needed to request a modification of the terms of her son's probation and petition the court to order him removed from Jamaica and sent back to the United States. She should gather news stories and other information to document abuses at Tranquillity Bay. She needed to place the probation department on notice that if anything happened to her son, she would hold them accountable – especially since they were now aware of how dangerous this facility was. Carrie was successful. Once the judge read her paperwork and supporting documentation, and once the boy's public defender argued the case at the probation modification hearing, the judge ordered him to be removed from Jamaica and returned to this country.

As I helped Isabelle gather more information, prepare legal arguments and develop procedural strategies to gain the release of the two girls from North Carolina, Isabelle and I seemed to develop a strong bond. Our energy was soon diverted from the situation in North Carolina to a larger problem in Utah, a state which was the headquarters of WWASP, the national headquarters of the largest network of "teen help" locked facilities which were privately owned and operated. There were several such facilities in Utah, one of which was known as Majestic Ranch, a facility which took kids as young as 8 years old.

Isabelle had received reports from some former staff members who previously worked at Majestic Ranch. They disclosed information about filthy conditions at the facility, improper nutrition, inadequate medical services, and abusive practices. Isabelle asked me if I would work with her to investigate these accusations, write a report, travel to Utah, and expose these conditions. I agreed to help. If these reports were true, we felt the place should be closed and the children returned to their parents or placed in a safe setting. Since Utah law did not require these facilities to be licensed, they were mostly unregulated unless someone "blew the whistle" on specific instances of abuse which were documented and provable in court. This almost never happened, since the parents were kept out of communication with the kids, and no one other than staff really knew what was going on inside. The kids were all from other states, so when they got released, either their parents would not believe their accusations of abuse,



or the kids were too afraid or ashamed to disclose the atrocities they experienced. Perhaps Isabelle and I, with the help of former and even some current staff, could end this cycle of silence.

Isabelle flew to Salt Lake City from Northern California. Michael and I flew there from Los Angeles. Michael came along to be our bodyguard and to help with logistics. Of more than 20 hotels and motels in Salt Lake City we could have chosen, I selected one near the state Capitol. Once we arrived and settled in, we were stunned to see a large group of young people there wearing T-shirts with a logo of Cross Creek Manor. That is a locked "teen help" facility which itself had been accused of abusing young people housed there. This group of kids were graduating from a three-year intensive program. What a coincidence that our little group of rescuers would share the restaurant at the hotel with kids who had just completed years of "reprogramming" during their confinement.

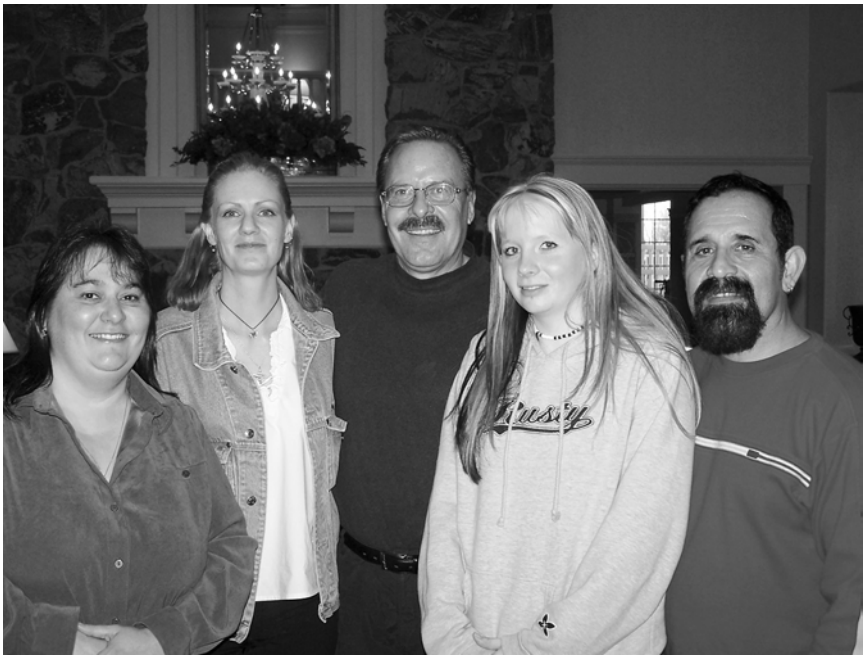
We gathered the rest of our affidavits, had copies of our report printed, and made brochures to distribute at the Capitol. We notified the press that we were holding a press conference inside the Capitol and that we would be "blowing the whistle" on child abuse in Utah. We even brought police whistles with us to use as props for the event.

The press conference was attended by three television stations and both major newspapers. The media were fascinated that we were able to gather such detailed information about instances of alleged abuse occurring inside Majestic Ranch. After the press conference, we delivered reports to the offices of the governor, attorney general, and other agencies. We handed out brochures to lobbyists and members of the public in the hallways outside of the legislative chambers.

Later that afternoon, we drove back to the airport where we watched a news story about our event on a television monitor at a restaurant. The following day, both newspapers carried a story about our report. We had attracted the attention of the media and through them we gained the attention of state legislators and state agencies. Earlier in the year, a bill to require such facilities to be licensed by the state and regulated by a government agency had gone down to defeat. We hoped that the report about Majestic Ranch would cause the Legislature to reconsider this issue. Later that year, our wish was fulfilled. A law was enacted regulating the "teen help" industry in Utah.

That was gratifying, but Utah is only one state. Efforts to regulate similar facilities in Montana had been defeated in the Legislature there.

There were dozens of such facilities in Montana, including Spring Creek Lodge, the place where Emma had been confined along with about 500 other teenagers. The state and local government systems in Montana were corrupt when it came to protecting teenagers locked in private detention facilities which were often mislabeled as boarding schools. Since these facilities did not have teachers, they were not even regulated by the state



Isabelle Zehnder (left), Tom Coleman (middle), and Michael Vasquez (right) receive help from two former employees who "blew the whistle" with allegations of abuse at Majestic Ranch.

Office of Public Instruction. Teenagers were supposed to learn through self-guided educational programs. Those of us who were working hard to crack this system and to bring it down knew that federal regulation would be needed to help kids in places like Montana.

I started working with staff members of Congressman George Miller of California. Being a Democrat, he was then in the minority party in the House of Representatives. Miller had been investigating this "teen help" industry and had even asked Attorney General Alberto Gonzales to conduct his own investigation of human rights abuses by these boot camps and so-called behavior modification facilities. Gonzales was not much

help. I reviewed drafts of some legislation Miller was developing and gave my feedback to his staff. A bill was introduced but we all knew that it would not even get a hearing until the chair of a legislative committee took an interest. Since these businesses were making large donations to the Republican Party and Republican politicians, we sensed that such a hearing would not occur as long as the Republicans controlled the House of Representatives.

Nora and I circulated Miller's bill anyway, just to keep the public educational component going. It would be part of the educational materials we would distribute as we made presentations at various professional conferences throughout the nation. We flew to Albany, New York, for a regional conference on child abuse where we gave a Power-Point presentation in a workgroup focusing on abuses within the "teen help" industry. We distributed literature at a national child abuse conference in Boston, where we also met with parents of a boy who had committed suicide at a program in West Virginia. Nora introduced me to a high-ranking official with the American Bar Association who operated ABA programs dealing with children and youth. He took an interest in this issue. We had him meet with these parents too, just to make sure that the emotional connection to the issue was not lost.

In September 2005, Nora and I did two presentations on this issue at the 10th International Conference on Family Violence in San Diego. There we were again, in San Diego, the place where in October 2004 we had heard the testimony of survivors of this "teen help" industry. We were surprised at just how much we had accomplished in less than a year.

This issue had sparked the interest of a producer with public television in Montana. She contacted me to enlist my support for a documentary she was making on the "teen help" industry. She wanted her audience to learn the cold hard truth about teens who are being abused, parents who are being defrauded, and government officials who are turning a blind eye to an industry which is generally unlicensed and unregulated. Anna Rau traveled to Michigan to interview me on film at a time when I was in the Detroit area for a family event. While she was there, she also interviewed the deputy sheriff who had accompanied the social worker to retrieve Emma from her captivity in Montana. Eventually, Anna created a powerful one-hour documentary which featured survivors and their parents, as well as highlighting Congressman Miller's bill. Miller spoke very passionately on camera about the need to bring this situation under control.

I reluctantly decided to discontinue the Emancipation Project and to put my professional talents to work in other ways. I discovered too much dissension, bickering, and infighting going on within the ranks of the "good guys" who were fighting the "teen help" industry. Various leaders, advocates, and groups dealing with these issues were suing each other or posturing for publicity for themselves. This was not what I had envisioned when I started the Emancipation Project and when I got involved in these activities to help teenagers in distress. So I moved on.

About two years later, after the Democrats took control of the House of Representatives, Congressman Miller held hearings on the abuses within the "teen help" industry. His legislation to regulate the industry, with various federal controls and oversights, passed the House of Representatives in June 2008, but was not acted on by the Senate. Miller has reintroduced the bill (H.R. 911) as the Stop Child Abuse in Residential Programs for Teens Act of 2009.

I was pleased to have been able to participate with a network of concerned individuals and organizations to help create public and professional support for the Miller bill, support which was essential for its initial progress. Hopefully, Congressman Miller's most recent bill will gain the support of both houses of Congress and be signed into law by President Obama. The teenagers of America, and in many cases their unsuspecting parents, need such protection.

My advocacy for teenagers in general, which started out at a policy level, had eventually led me into advocacy for a specific category of young people. Some of these kids had been in minor brushes with the law or had been disobedient to their parents. Others were victims of child abuse who had done nothing to deserve being abducted and confined against their will. I learned that some of these victims of institutional abuse and parental neglect were gay and lesbian teenagers whose parents sent them away for reprogramming so they could become "normal."

As I look back on my life experiences, and review the various advocacy roles I have played as a lawyer and educator, I have a sense of pride that I was able to help rescue Emma and to use that experience as a springboard to helping hundreds of other abused teenagers.

Chapter Thirteen

The Power of the Media

Leveraging free publicity helps
build public support for change

In March 1979, I spoke at a conference sponsored by New York University School of Law. The conference was titled "Law and the Fight for Lesbian and Gay Rights." It was attended by more than 200 law students and lawyers, not only from the New York area, but from various parts of the nation.

I was impressed by the fact that the keynote speaker was Robert Abrams, attorney general of the state of New York. To my knowledge, this was the first time in history that the chief law enforcement officer of a state had participated in a conference focusing on gay rights.

The audience was reminded by the attorney general that "[t]he attorney who seeks to assert the rights of gay people must recognize that the outcome of a particular case is of direct concern to a large number of people." This was because the issue of gay rights was stirring up emotions of large segments of society along the entire political spectrum. While there was growing support for gay rights, there was widespread and deep-seated resistance. Judges were caught in the middle of this divisive political battle.

Attorney General Abrams underscored the necessity for attorneys who advocate for this constituency "to educate the bench, other members of the bar, and very often *the general public* about the realities of the gay community in order to prevail on the merits of a particular case."

Educating the general public as a method of winning court cases— that was not something to which I had previously given serious consideration as a strategy for successful litigation.

Shortly after the attorney general spoke, three of us conducted a panel presentation on "Securing Gay Rights Through Constitutional Litigation." My co-presenters were E. Carrington Boggan, the newly elected chairperson of the Section of Individual Rights and Responsibilities of the American Bar Association, and David A. J. Richards, a professor of law at New York University School of Law.

When the panel session was finished, I was approached by a law student who enjoyed the event and who wanted to speak with me at greater length. We arranged to meet later in the day for an early dinner, when the conference activities had ended. After dinner, we sat at the restaurant's bar, discussing a variety of legal and political issues. Leonard Ebreo was an intelligent, articulate, and interesting young man. We found ourselves tossing around all sorts of ideas, including the role of the media in securing gay rights.

Leonard picked up on a theme that Attorney General Abrams had only touched on during his speech – educating the public. "You are focusing too much of your time and energy on courts of law and not enough time on the court of public opinion," Len insisted. He argued that using the media to shape public opinion was something I should do more often.

"The media is the key to success in gay rights advocacy," this young upstart told me. His words of wisdom did not sink in right away, but eventually I came to understand just how right Leonard Ebreo was in his analysis of the situation. I later realized that public education through the media was one of the important strategic tools to secure gay rights. It was also an important tool to gain legal rights and economic benefits for domestic partners and single people, as well to promote respect for family diversity. If Leonard were alive today, he would be happy to know that 29 pages of my 49-page curriculum vitae detail my work with the media.

During the first 15 years of my legal career, I was active and aggressive when it came to litigation and lobbying, but rather passive in terms of media relations. Yes, my work drew the attention of the gay media and I would be quoted in the local legal newspaper in Los Angeles. But I had not yet stepped onto the national media stage. That eventually changed after philanthropist Lloyd E. Rigler took an interest in my work and began supporting test cases and special projects in which I participated.

The first major financial commitment from Lloyd came in 1985 when I established a "Domestic Partners Equity Fund" under the auspices of the Institute for the Study of Human Resources, a local foundation in Los Angeles. Lloyd's own nonprofit corporation, then known as the LEDLER Foundation, would make grants to the Equity Fund, which in turn would support my human rights advocacy activities. From 1985 through 1988, I concentrated my efforts on securing equal rights for domestic partners, expanding the definition of "family" in public policy, and promoting respect for family diversity in society at large. Family diversity was a theme that Lloyd could embrace and for which I had a passion.

I was teaching a class on "Rights of Domestic Partners" at USC Law Center, directing the work of the Los Angeles City Task Force on Family Diversity, and participating as a member of the California Legislature's Joint Select Task Force on the Changing Family. In early 1989, I filed a brief in the New York Court of Appeals in the case of *Braschi v. Stahl Associates Company*. The question before the court was whether the term "family" in a New York City rent control law was broad enough to include two people who were not related by blood, marriage, or adoption. The brief I filed along with my colleagues Jay Kohorn and William Gardner urged the court to adopt a broad definition of family that would be consistent with the reality of family diversity in New York.

Lloyd could see that family diversity was a concept that could propel major changes in public policy and private sector benefits programs. Lloyd made his millions by marketing a food product to the masses. Now he wanted to market family diversity to the public, sensing that this was a concept that the public would support. Once such support became visible and widespread, it would be easier for legislators and judges to make decisions that would create equal rights for unmarried couples.

In May 1989, Lloyd called me into his office to announce a decision he had made. With me at this meeting was Christopher McCauley. Chris had been the co-chair of the Los Angeles City Task Force on Family Diversity from 1986 to 1988 and was then working with me on the "Family Diversity Project" which was an advocacy effort we initiated after the Task Force completed its work in 1988. Lloyd advised us that he wanted 1989 to be the year that America would be introduced to the concept of family diversity in a big way. Lloyd decided to launch a public awareness campaign. Chris and I would be spokespersons for family diversity. Lloyd would hire a public relations firm to direct the campaign.

Josh Baran and Associates was retained by Lloyd for the duration of 1989. Josh was a seasoned public relations expert whose job it would be to generate publicity for the Family Diversity Project and to get Chris and me in newspapers and magazines, and on radio and television. Chris and I rose to the occasion and worked with Josh and his associate, Shana Weiss, for the next eight months. With the help of Josh Baran's firm, more than 30 million Americans learned about family diversity in 1989 through news stories in *The New York Times*, the *Los Angeles Times*, *The Philadelphia Inquirer*, *Newsweek*, *Time*, and *Glamour*, as well as a dozen talk-radio shows throughout the nation.

Lloyd was impressed when Josh was able to arrange for my appearance on ABC's Nightline, a show with 4 million viewers. The show focused on the victory in the *Braschi* case in which New York's highest court accepted our arguments that the term family should be defined broadly and was inclusive enough to cover unmarried couples. On the show, I debated Gary Bauer who was with the Family Research Council, a right-wing organization that wanted the term family to remain limited to those related by blood, marriage, or adoption.

When Lloyd's contract with Josh Baran and Associates ended in December 1989, I was in the middle of another project that had great media potential. I was chairing the Consumer Task Force on Marital Status Discrimination. This blue-ribbon panel had been convened by Los Angeles City Attorney James Hahn. I had asked Jim to help us to shake up the business community by educating the public about the widespread practice of marital status discrimination against unmarried consumers. The group held its first meeting in October 1989 and conducted public hearings for the next few months. We planned to issue its final report in March 1990.

During my tenure as chairperson of the Consumer Task Force, I worked closely with Sky Johnson, director of community affairs for the city attorney's office. Together, we developed a media strategy for release of the final report: "Unmarried Adults: A New Majority Seeks Consumer Protection." The issues addressed in the report were important and we wanted to generate as much publicity as possible. The question was, how we could maximize the media turnout at the press conference that Jim Hahn would conduct to announce the findings of the Task Force? We decided to approach a seasoned writer with the *Los Angeles Times* and to offer him an exclusive advance story.

The writer, Victor Zonana, was intrigued by the novelty of the

story. Singles' rights were a new issue, a sexy issue. Victor was impressed by the testimony given by victims of discrimination during our public hearings. A draft of the final report was given to Victor about a week before the press conference at City Hall.

The strategy worked. Editors at the *Los Angeles Times* must have liked the story Victor wrote because it appeared on the front page of the paper on March 29, 1990. Television news producers often look to the morning newspaper for story ideas for evening news segments. Apparently they liked what they read, since the venue of the press conference was filled with television cameras. All of the local television stations carried the story that night, as did *The CBS Evening News with Dan Rather*. Right after the press conference, I received a call from a producer with NBC inviting me to appear as a guest on the *Today* show. I was flown to New York that afternoon and did a live interview with Bryant Gumbel the next morning. As a result of this television coverage, the issue of "singles' rights" had its national debut and millions of Americans learned about the issue of marital status discrimination against tenants, insurance consumers, credit union members, gym and health club users, auto club members, and airline frequent fliers.

The producers seem to have been impressed with my performance, since I was later invited back as a guest on the *Today* show to talk about discrimination against unmarried couples. The issue of singles' rights also spread to Northern California. The *San Francisco Chronicle* decided to do its own story on the issue, running an article titled "Standing Up for Singles' Rights."

The initial barrage of publicity in March 1990, when the issue of singles' rights first caught the attention of the media, and the follow-up publicity later that year on radio talk shows and in newspaper stories, had a beneficial effect beyond that of public education. The media exposure helped to brand me as an expert in singles' rights. Once the media consider someone an expert on an issue, it is likely that reporters and producers will come back to the well again and again, especially if you are noted for giving meaningful quotes or sexy sound bites. My role as an advocate was enhanced by all of this publicity.

Although the first few months of my work in 1990 focused on singles' rights, the latter part of the year returned to the theme of family diversity and the debate over the definition of family. I discovered an obscure statute upon which I developed a system in which couples and

groups of individuals could declare themselves to be a family and register their family status with the California secretary of state. After testing the system quietly, making sure that it would work, I decided to use the media to again "spread the gospel" of family diversity to the American public. I enlisted the help of various types of couples and nontraditional families, got them to quietly register, and scheduled a press conference to announce the secretary of state's new registration system. I decided to use the same technique with this press conference as was done with the release of the Consumer Task Force report the prior year. I gave an exclusive story to Laurie Becklund, a writer with the *Los Angeles Times* and shared an advance copy of the registration certificates and media materials with her on condition that the story would be embargoed until the morning of the press conference.

When I opened my newspaper on the morning of December 13, 1990, there it was. On the front page of the paper was the headline: "The Word 'Family' Gains New Meaning." The placement of the story and its timing had the same effect as before. Cameras from all the local television stations were there at the press conference and the evening news programs carried the story. Over the next several days, stories about the family registration system appeared in *The New York Times*, the *San Francisco Chronicle*, *The San Francisco Examiner*, and *The Orange County Register*. The publicity was helping to educate the public and to make family diversity a hot political topic.

The following year I learned how judges sometimes try to manipulate the media. In this case, it was an apparent attempt to avoid publicity by a panel of judges on the state Court of Appeal in Los Angeles. Although I was not yet involved in the case as an attorney for the tenants, I had been following the *Donahue* case for several months. I knew that the court would be issuing a ruling on whether a landlady could use her religious beliefs as a legal excuse to violate fair housing laws that prohibit marital status discrimination. Knowing a little about the judges on this particular panel, I suspected that the ruling would favor the landlady. If the media did not carry the story, the judges would escape public scrutiny. I was determined to make sure that their ruling would receive the criticism it deserved. I was able to calculate, with some certainty, that the ruling would be released at the close of business on the day before Thanksgiving.

I contacted Henry Weinstein, a legal writer for the *Los Angeles Times*, and shared with him my belief that the judges would try to avoid media attention by the timing of their ruling. He sensed that my instincts

were correct and so he got the approval of his editor to prepare a story just in case I was right. When the opinion was filed with the clerk of the court at 4:30 p.m. on November 27, 1991, Henry was able to review it quickly, finish the story, and have it ready for publication in the paper the next morning. When I picked up the paper from my front porch on Thanksgiving Day, there was the front-page story: "Rental Denial Is Upheld on Religious Basis."

I learned another lesson from this episode. Showing up, or being available, is critical in the game of publicity. If a reporter or producer calls, and they are on a deadline, if you are not available you will probably lose out. You will be skipped over and the next person on their expert's list will be contacted and quoted in the story.

Although I was supposed to leave the house at noon for a family dinner in Oxnard that afternoon, I delayed my trip a few hours so I could be available in case any television producers might call about the *Los Angeles Times* story. Sure enough, I received a call about 1 p.m., and a news crew arrived at my home by 3 p.m. I did an interview and then left for Oxnard. That evening, my partner and our family members were able to watch the segment on ABC's World News Tonight with Peter Jennings.

Sometimes a court case is so interesting or sexy that the media will follow it through from start to finish without the need for any prodding by the litigants or their attorneys. Such "easy media" does not happen that often, but when it does, the publicity seems to take on a life of its own. That was the situation with two cases in which I represented unmarried couples who were denied apartments because of the religious beliefs of the landlords. In the *Donahue* case, the tenant sought my legal representation a few days after the *Los Angeles Times* story was published on Thanksgiving Day. The *Smith* case arose two years later. In both situations, the media were intrigued by the tension between "civil rights" and "religious freedom." As a result, I was quoted in stories about these cases from 1991 when I first became involved until 1997, when the U.S. Supreme Court refused to overturn a California Supreme Court ruling favoring tenants.

On occasion, the media can be used as a substitute for litigation. With enough media exposure, and resulting public attention and political pressure, an adversary can sometimes be persuaded to change course. This happened with the city of Oakland in 1998 when the city extended health benefits to same-sex domestic partners but not to opposite-sex couples. I became concerned when I learned that the state labor commissioner

threatened to sue the city if it did not extend the benefits to all unmarried couples, regardless of gender. The issue was not a "slam dunk" win, and I was afraid that if the labor commissioner lost the case in court, other cities would start to enact same-sex-only benefits plans too and that the practice would become widespread. So I arranged to represent the employee, Mickey Ayyoub. I asked the labor commissioner to hold off with the lawsuit for a few months, hoping that I would get the city to change its policy through the use of media exposure and political pressure.

I lined up letters of support from nonprofit organizations representing seniors and women, as well as letters from various state officials. I wrote an op-ed article for the *San Francisco Chronicle* and arranged for news stories with the *Oakland Tribune*. When another disgruntled employee saw the publicity, he came forward and joined the cause. We filed another complaint with the labor commissioner and used the occasion to hold a press conference. That, in turn, generated more publicity adverse to the city. After several months of a relentless barrage of negative publicity and political pressure, members of the City Council decided that it was time to throw in the towel and to remove the gender restriction.

In 1999, I gave up my law practice and devoted all of my energy to the cause of equal rights for unmarried individuals, couples, and families. Lloyd Rigler founded, and funded, the American Association for Single People. I became its executive director. Although I would file a friend-of-the-court brief in test cases from time to time, and seek political and legal reforms through the legislative process, the bulk of my work began to focus on media work. Lloyd wanted AASP to gain a large membership base and obtaining media exposure was one way to attract members. I wanted to secure legal and economic reforms for unmarried workers, consumers, and taxpayers, and obtaining public support through media exposure was critical to this effort. So, for different but overlapping reasons, Lloyd and I shared a desire for widespread media attention for AASP and its causes of singles' rights and family diversity equality.

During the 2000 presidential election cycle, the campaigns of Al Gore and George Bush both were pushing family issues and ignoring single people. The Democrats chanted "working families" and the Republicans sang the tune of "family values." From all of the campaign rhetoric, it was almost as if the nation's 80 million unmarried Americans did not exist. Lloyd thought this was a great opportunity to reach out to unmarried and single voters. I agreed. The question was how to get the media to pay attention to single voters and their issues.

Fortunately, Lloyd had the financial resources to prime the pump with the media by underwriting a national ad campaign by AASP. Lloyd paid for some large display ads in *USA Today* and the *Los Angeles Times* in October 2000. Other large ads appeared in the *Village Voice* in New York City and other alternative newspapers in Los Angeles, Cleveland, and Minneapolis. We issued a press release through PR Newswire to announce the launch of a national ad campaign targeting single and unmarried voters. The ads cost Lloyd about $100,000 in all.

The headline of the *USA Today* ad asked: "Are you one of the 80 million single or unmarried adults ignored by the George W. Bush and Al Gore campaigns?" It listed ways in which unmarried workers, consumers, and taxpayers experience discrimination. It urged singles to join AASP, providing a coupon which could be clipped and mailed with their donation.

The ads and the PR Newswire release caught the attention of Mike Schneider, a reporter with The Associated Press. He turned the ad campaign into a national news story. The Associated Press released the story for publication on October 23, 2000. "Singles Swing Unnoticed Past Candidates," the headline read in *The Times-Picayune*. "Singles Feel Left Out of Campaigns," said the *Seattle Post-Intelligencer*. The *Denver Post* headlined the story "Singles Snubbed by 'Family' Emphasis." Papers carried the AP's story in Michigan, Kansas, Georgia, Illinois, Virginia, and elsewhere. Lloyd's investment in paid advertising in *USA Today* leveraged free publicity in dozens of newspapers as a result of the AP story. Those stories brought many readers to our Web site which enabled them to join AASP online. In addition to gaining members, the ad campaign and resulting free publicity also brought single voters to the attention of the Republican and Democratic parties at the state and national levels.

Once George Bush took office in January 2001, Lloyd thought it was time for AASP to introduce itself to members of Congress and to press the issues of single people on Capitol Hill. We developed materials to distribute to representatives and senators and their staff members. Lloyd paid for a full page ad in *The Washington Post* to announce our arrival. "The American Association for Single People is coming to Washington D.C. from May 1 - May 3," the headline of the ad declared. The ad asked some hard hitting questions about discrimination against single people and boldly stated that "82 Million Unmarried Americans Deserve to Know Why" this discrimination is allowed to continue.

I was accompanied on the trip by my partner, Michael Vasquez,

and our friend, Michael Patino. In those three days, we entered the offices of all 535 members of Congress, distributing literature and verbally informing staffers about our cause. This was the first time that any singles' rights group had accomplished such a feat.

The *Washington Post* ad apparently caught the attention of David Crary, a writer with the office of The Associated Press in Washington D.C. About a week after we returned to Los Angeles, he called our office and informed me that he wanted to write a story about our trip to Washington. After interviewing me at some length, he arranged for an AP photographer to come to our office the next day. I wanted to maximize the marketing potential of this story, and particularly of this photo, so I did a little brainstorming and came up with an idea that paid off handsomely. I took a large banner which we had created for a parade and strategically placed it on a wall that I planned to stand in front of for the photo. We added our Web site address to the banner in large bold lettering. When the photographer arrived, I stood in front of the banner and asked him to take the photo of me standing at that location. Since the story was about our organization, it was logical and appropriate for the group's banner to be the backdrop. What the photographer didn't know was that we had added the Web site address to the banner just for this occasion.

David Crary, the AP writer, was very savvy about the timing of the release of his story. He knew that newspapers are short of staff during three-day holiday weekends. It is more likely that an editor will select an AP wire story to run on a holiday weekend than at any other time. So when his story was released just prior to the Memorial Day weekend, it was carried by newspapers throughout the nation. Many of the papers also used the photo. There it was, our banner and our Web site address catching the attention of readers everywhere. As a result of the prominence of the Web site address, about 300 people joined AASP online over the next few days.

I am fascinated by demographics and have become a master of analyzing data from the Census Bureau on marital status and living arrangements at the local, state, and national levels. Newspaper reporters and editors are also fond of census data. They love to take census reports and news releases and turn the data into news stories. The Census Bureau will give the media advance access to these reports, on an embargoed basis. But to access these pages on the Web site of the Census Bureau, a username and password are needed.

I wanted access to this embargoed information so that I could study

it prior to its release and could pitch stories to the media based on about-to-be-released Census Bureau reports. I decided to ask for a username and password. After all, I was a member of the media too. I was publishing a newsletter for AASP. I also maintained its Web site. There's no harm in asking, I thought. So I made my request and it was granted.

I knew that data from the 2000 census would begin to trickle out in 2001. So I regularly monitored the embargoed media pages of the Census Bureau's Web site, especially its "upcoming releases" page. When I would find something of interest, I would study the information and prepare talking points for the media. I would pitch stories to reporters. I would also be prepared to put the new data, and relevant analysis, on our Web site as soon as the embargo was lifted.

I noticed that Genaro Armas, a reporter with The Associated Press, wrote many of the AP stories focusing on census data and demographic trends. I made it a point to let Genaro know that I was familiar with census data and was available to give him background information about demographic trends involving single people and provide quotes for any census-related stories he would write. He must have put my name and phone number on his experts list, since I received many calls from him over the ensuing years, resulting in publicity for AASP in his stories.

The first series of AP census stories in which AASP was mentioned and in which I was quoted, appeared in newspapers throughout the nation from May 15 to May 20, 2000. These stories helped give AASP visibility, enhanced my credentials as an expert on singles' issues, and attracted more members for our organization. "Unmarried Couples Increase," said the headline in the AP wire story appearing in *The Honolulu Advertiser*. "More Dads Raising Kids Alone," said the *Detroit Free Press*. "Percentage of Nuclear Families Falls," popped the headline in the *Columbia Missourian*. Dozens of other newspapers carried the AP story as well.

Radio talk-show producers use newspaper stories for ideas about topics and guests. Once the issues of singles' rights and family diversity became regular fodder for newspaper stories, I started to receive more requests to appear on talk-radio shows. Over the years, I have appeared on dozens of such shows, discussing the definition of family, or equal rights for unmarried couples, or discrimination against unmarried tenants, consumers, and workers. During election cycles, the topic often turned to issues of concern to single voters.

One aspect I liked about these talk-radio shows is that they are

aired live. I could say what I wanted without being edited. This proved useful, not only when it came to issues, but also with respect to marketing the organization itself. I learned how to slip our Web site address into the conversation before anyone could object. I would repeat it again later in the show. Then I would ask for permission to give out a phone number for listeners who may not have access to the Internet. Free publicity through radio talk shows became a regular source of advertising for AASP. Not only was I able to educate the public, we also attracted paid members.

CBS Radio News receives AASP award for "Living Single" series from Tom Coleman (left) and AASP member Perry Heath (right).

Another tactic we used for marketing was to purchase remnant advertising space at deeply discounted prices. I found a national advertising company that is able to negotiate rock-bottom prices for its clients. The key to the deep discounts is the client's willingness to go "standby" for advertising space, sometimes waiting up to two weeks for it to appear in print. Newspapers often have extra space which they had allocated for advertisers, but the space did not sell. As a result, they can either fill the space with a news story, or they can offer it to a bulk advertising agent, at a highly discounted price. Usually, the advertising department would

prefer to sell the space rather than turn to the editorial department to fill it.

This remnant ad space can sell to the ultimate client for 80 percent less than the normal retail price for the space. Now that's a discount!

I knew that Lloyd loved a deal. I pitched the idea of using this broker for some advertising. He loved the idea. So on several occasions we were able to place ads in dozens of newspapers, seeking paid members for AASP, at very affordable prices.

From time to time, I would use a more conventional way of sharing my views with the general public. I would write a commentary on an issue or a case and submit it to the editor of the op-ed pages of a newspaper. Sometimes they were published, sometimes not.

The first opinion piece of mine that was published in a newspaper of general circulation was titled "California Needs Stronger Laws Against Bigots Who Resort to Violence." I wrote that commentary after the California Legislature voted to add "sexual orientation" to a hate crime statute. As supporters of the bill awaited word on whether our conservative Republican governor would sign it into law or veto it, I sent the governor a letter and included a copy of my article from the Los Angeles *Herald Examiner*. George Deukmejian soon signed the bill into law.

A few years later, when we launched the family diversity media blitz in 1989, I wrote an op-ed piece for the *Los Angeles Times* titled "The Family Is Changing and We Should Admit It." Over the next 15 years, my commentaries appeared in newspapers in San Francisco, Philadelphia, Detroit, San Diego, and Phoenix, as well as in *USA Today*.

Eventually, media outreach was almost unnecessary. When a reporter or producer wanted to do a story on single people, or domestic partners, or family diversity, AASP would pop up as a resource during an Internet search. Members of the media would go to our Web site and find background materials and fodder for their story ideas. Then they would call and ask for an interview which, in turn, would result in a newspaper or magazine story or a radio or television segment.

My advocacy work, using media as a primary method, began in earnest around 1988 and lasted for nearly 20 years. Looking back on my role as an agent for change, I now realize that public education through various media campaigns was just as important in securing equal rights as were the court cases that I won or the legislation that I successfully promoted. The role of the media in facilitating effective advocacy work

should not be underestimated.

Law student Leonard Ebreo saw the value of the media as a tool for political and legal reform long before I caught the media bug. I now understand that the court of public opinion is at least as important as a court

Michael Vasquez and Tom Coleman meet with Lloyd Rigler (center) to discuss plans for an advertising campaign in 2003.

of law when it comes to creating change. Sometimes judges will take a courageous step forward before public opinion has made such a change safe. But that is only sometimes. A governor or a legislature may take a risk and move the agenda of equal rights forward before a majority of the public supports such a move. But only sometimes.

I have learned that an effective advocate will find ways to use public education as a way to minimize the perceived or actual risk for politicians and judges. Len Ebreo pointed me in the right direction, and Lloyd Rigler later helped me to understand that the media are just as important as the three branches of government, perhaps even more important, when it comes to creating lasting change.

Chapter Fourteen

The Domino Effect

Early victories create precedents
which have a rippling effect

The legal and political landscape is so much different today from what it was when I started my advocacy activities as a law student at Loyola Law School in 1972. Society is more heterogeneous and people are more accepting of diversity. Today's youth is being raised in a culture that is more welcoming to minorities, including sexual minorities. The current generation of young people, unless it is reminded by some of us older folks, would find it hard to believe that many of the legal rights and social expectations they now experience are relatively recent developments. Many of the rights people currently take for granted can be traced back to early political and legal victories, or the tilting of dominos, which are documented in this book.

Sexual Privacy Dominos

Today, the right of sexual privacy for consenting adults is a social expectation reinforced by constitutional law. Criminal laws against sodomy, oral copulation, fornication, deviant sexual intercourse, and gross indecency were embedded in our penal codes since our nation was founded. Consenting adults were prosecuted and imprisoned for conduct which today is commonplace. This transformation from criminal prosecution to constitutional protection did not happen overnight. The first sexual privacy dominos started tilting some 50 years ago.

The Domino Effect

The impetus for sexual law reform in the United States can be traced back to the development of the *Model Penal Code* by the American Law Institute, a process that started in 1951 and continued until the final report was published in 1962. The project involved a comprehensive review of antiquated criminal codes then in existence in state statutory schemes throughout the nation. The American Law Institute was charged with reviewing these statutes and recommending a coherent set of criminal regulations that would be appropriate for modern times. Part of that process involved a review of criminal laws regulating human sexual behavior.

The drafters of the *Model Penal Code* were influenced by the work of Alfred Kinsey, founder of the Institute for Sex Research at Indiana University, later known as the Kinsey Institute. Kinsey conducted the most comprehensive research on human sexual behavior and published his first report in 1948, titled *Sexual Behavior in the Human Male*. This was followed by another report in 1953 titled *Sexual Behavior in the Human Female*. These reports dispelled the myth that homosexual behavior was rare and that oral and anal sex among heterosexuals was uncommon. Once the silence about the prevalence of other than marital sexual intercourse was broken, it became logical for the drafters of the *Model Penal Code* to question the propriety of branding nonprocreative sexual conduct of consenting adults as criminal.

Illinois became the first state in the nation to adopt the *Model Penal Code*, a set of statutes which omitted criminal penalties for private sexual conduct between consenting adults. The omission of such a statute from the revised penal code in Illinois did not create any uproar or public controversy. That was largely because the reform was part of a bill containing hundreds of pages of statutory revisions. The sexual law reform aspect was buried in a complicated legal maze.

I first learned about the Kinsey reports and the *Model Penal Code* when I met Arthur Warner in 1972. Arthur was founder of the National Committee for Sexual Civil Liberties. This group consisted of professors, lawyers, and others who joined forces to use their combined talents to seek the repeal of laws criminalizing private sexual conduct of consenting adults. The *Model Penal Code* was one of the group's primary tools in this quest for sexual privacy rights.

Arthur had been in communication with the drafters of the *Model Penal Code* when that project was in process. He worked behind the

scenes to help bring the reform to fruition in several states. Arthur believed that publicity was no friend to sexual law reform advocates. He abhorred publicity and avoided it at all costs. This made a lot of sense because putting a spotlight on sexual law reform would alert the opposition who, in turn, would pressure lawmakers to preserve the status quo of criminality.

So Arthur and some of his comrades on the National Committee would quietly lobby key lawmakers in various states as they considered adopting the *Model Penal Code*. I became one of those quiet lobbyists of the Joint Legislative Committee for Revision of the Penal Code, a group consisting of several members from the Assembly and Senate of the California Legislature. During 1974 and 1975, I worked behind the scenes to monitor proposed revisions to the *Model Penal Code* and to make sure that decriminalization of consenting adult behavior would remain in any proposal that the Joint Legislative Committee would present to the full Legislature for consideration. My efforts turned out to be uneventful, since a special bill directed solely at sexual privacy rights took center stage in California in 1975. When Assemblyman Willie Brown's consenting adults bill passed the Legislature in May 1975, I redirected my energy to other projects since the goal of sexual law reform in California had been accomplished in full public view.

The California method of protecting sexual privacy rights was unique. No other state in the nation had taken the issue head-on with public scrutiny and debate. Eleven states decriminalized consenting adult behavior between 1961 and 1976. All but one, California, were accomplished with Arthur's behind-the-scenes approach through the adoption of the *Model Penal Code*: Illinois (1961), Connecticut (1971), Colorado (1972), Oregon (1972), North Dakota (1973), Hawaii (1973), Delaware (1973), Ohio (1974), New Hampshire (1975), and Maine (1976).

These early precedents set the stage for sexual privacy dominos which fell in the 1980s and 1990s, a process which continued until 2003 when the United States Supreme Court issued its landmark ruling in *Lawrence v. Texas*. In that case, the court invalidated the Texas sodomy law and by implication stopped the use of similar privacy-invading laws in another dozen or so states which still had sodomy, fornication, or gross indecency statutes on the books. So, while the final credit for the death of these laws must be given to the Supreme Court, the domino effect was started by people such as Professor Alfred Kinsey, through his Kinsey reports, and Professor Louis B. Schwartz, primary author of the *Model Penal Code*. The addition of Arthur Warner, and his little band of sexual

civil libertarians, created a catalyst for the sexual law reform effort, causing sexual privacy dominos to fall in rapid succession in the 1970s.

Legal Profession Dominos

"Law school is an isolating enough experience in the best of circumstances, but for gay and lesbian students it can be even more so." This statement was made by Scott Wylie, associate dean at Whittier Law School, when he nominated the Lesbian and Gay Lawyers Association for a California State Bar Diversity Award in 2004. If those words rang true to Dean Wylie in 2004, he should have been a student in law school in 1971.

I felt socially isolated as a law student at Loyola when I first arrived in California from Michigan that year. I longed for the opportunity to meet other gay or lesbian law students. The problem was how to find them. There were no openly gay law students, at least none that I could identify.

Helping to create the nation's first Gay Law Students Association in March of 1972 was a very liberating experience. When we first formed the group in Southern California, there were fewer than a dozen members. As for openly gay or lesbian attorneys who could serve as role models or mentors for us, there were none in the Los Angeles area. Yes, there were some gay attorneys, but they kept a very low profile. Some of their peers suspected they were gay, or assumed so, but the sexual orientation of a practicing attorney was not something that was openly discussed. As for openly gay or lesbian judges, there were none. So, as founding members of the Gay Law Students Association, we were on the cutting edge.

I vividly recall the feeling of social isolation as I interacted with other members of the Law Student Division of the American Bar Association. The Law Student Division's Assembly was composed of two representatives from each of the nation's ABA-approved law schools. Back then, there were probably more than 100 such law schools, so there must have been 200-or-so members of the Assembly. During my service as an ABA student representative in 1972 and 1973, I was the only openly gay law student in the group.

Fortunately, by the time the American Bar Association held its annual meeting in San Francisco in August 1972, Dick Gayer was starting

to organize a gay student group at Hastings College of Law, and Tim Stearns was doing the same at Golden Gate University School of Law. They, and a few openly gay lawyers from other parts of the nation, attended a presentation on gay rights that I coordinated at the ABA's annual convention. To my knowledge, this was the first time that the topic of gay rights was officially part of the agenda of this national legal association.

The following year, I introduced a resolution in the Law Student Division dealing with discrimination against lesbians and gays in the legal profession. The Assembly of the student body passed the measure, which called for an end to investigation, denial of admission, and disciplinary action by state bar associations because of the sexual orientation or private sexual behavior of law students and attorneys. The resolution was forwarded to other sections of the ABA for their consideration.

In 1974, after I had obtained my license to practice law, another breakthrough occurred – this time closer to home. Attorney Al Gordon and I made a presentation on gay issues at the Los Angeles County Bar Association. The event was written up in *The Advocate*, a magazine for the gay and lesbian community. "A Small Breakthrough Opens Wider as Straight Lawyers Start Listening," the headline stated.

These first few steps to open up the legal profession to gay and lesbian issues, and to acknowledge – indeed welcome – the participation of gay and lesbian lawyers and law students, had a rippling effect. Soon the annual Conference on Women and the Law was opening its agenda to our concerns. I recall how empowering it felt to make a presentation on "Sexual Orientation as a Suspect Classification" at the group's annual meeting in Madison, Wisconsin in 1977.

Several major events within the legal profession occurred in 1979. At the local level, I became a founding member of the Los Angeles Lawyers for Human Rights. It started with a very small group of lesbian and gay lawyers. Today it is known as the Lesbian and Gay Lawyers Association and has more than 300 active members.

At the state level, I participated that year in a panel presentation at the annual conference of the California State Bar association titled "Current Developments in Gay Rights Law Reform." At that time, the State Bar had no official committees or venues to deal with gay and lesbian legal issues or to focus on gays and lesbians in the legal profession. Today, the State Bar has an ongoing Committee on Sexual Orientation and Gender Identity Discrimination.

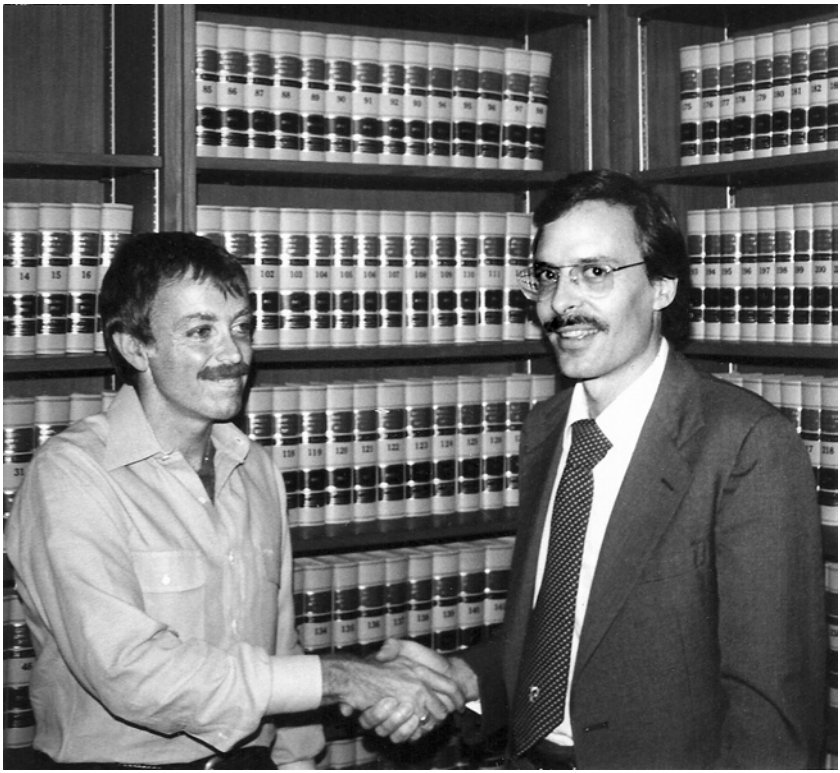
At the national level, I was thrilled to participate in a symposium sponsored in 1979 by New York University School of Law on "Law and the Fight for Lesbian and Gay Rights." This was the largest gathering of gay and lesbian law students, professors, and attorneys that I had ever witnessed. With New York Attorney General Robert Abrams giving the keynote speech, this conference elevated gay and lesbian legal issues to a much higher level than had ever occurred.

By 1988, the diversity and openness of the legal profession had evolved to the point where a Lavender Law Conference was held at Golden Gate University in San Francisco. This gathering was the impetus for the formation that year of a national Gay Law Students Association and within a year of a National Lesbian and Gay Bar Association, now known as The National LGBT Bar Association. Today, this national lawyers group has a Law Student Congress which comprises members from 74 law schools throughout the nation. This student group has a formal affiliation with the Law Student Division of the American Bar Association. The ABA itself has a Commission on Sexual Orientation and Gender Identity for its lawyer members.

Soon after I became a lawyer in 1974, I began to experience open and blatant homophobia from the bench. Commissioners and judges had the gall to order my clients not to associate with known homosexuals. Despite the fact that I was a known homosexual, they were so set in their ways that they did not think twice before they uttered these offensive words to a member of the bar standing in front of a crowded courtroom. While there were a few openly gay lawyers in Los Angeles at that time, there were no openly gay judges. The presumption that judges were heterosexuals and that homosexuals were criminals contributed to this anti-gay atmosphere within the legal profession. Then a breakthrough occurred in 1979 when Governor Jerry Brown appointed attorney Stephen Lachs to be the first openly gay judge in the state, probably in the nation. That was followed by appointment of Rand Schrader as a judge in 1980. Rand was one of the founding members of the Gay Law Students Association in 1972. Steve was an attorney-mentor for the group when we first formed.

With the appointment and election of openly gay and lesbian judges to the bench in the ensuing years, the presumption that judges are heterosexual is no longer tenable. By 1993, there was a sufficient number of such judicial officers that about 25 of them formed an International Association of Lesbian and Gay Judges.

This evolution within the legal profession has transformed the experience of being a gay or lesbian lawyer, law student, or law professor from that of isolation and fear to that of inclusion and dignity. The dominos tilted by the first generation of openly gay law students, lawyers, and judges in the 1970s, along with others tilted in subsequent decades, have continued to have a positive rippling effect within the legal profession in the new millennium.



Tom Coleman congratulates Steve Lachs on his judicial appointment by Governor Jerry Brown.

Hate Crime Dominos

Freedom from violence headed the list of concerns of the California Commission on Personal Privacy when its report was issued in December 1982. Writing the report for the commission, I included a recommendation that the state's Ralph Civil Rights Act – a law imposing civil penalties for

bias-motivated violence – be amended to include "sexual orientation, age, and disability."

The rationale for including sexual orientation in the statute, which already included race, religion, color, and national origin, was to send a signal to would-be perpetrators of violence that violence directed at gays and lesbians because of their sexual orientation would not be tolerated. A different rationale supported the inclusion of age and disability. Seniors and people with disabilities are often considered by criminals as classes of people who are easy prey because they are vulnerable. We believed that especially vulnerable classes of people deserve extra protection and that people who prey on such victims, because of this perceived vulnerability, deserve extra punishment.

When my work with the Privacy Commission was done, I soon found myself participating as a member of the California Attorney General's Commission on Racial, Ethnic, Religious, and Minority Violence. The group was convened in 1984 and worked diligently on hate crime issues until it disbanded in 1990. This happened to coincide with the emergence of hate crime political awareness within the gay and lesbian community. The National Gay and Lesbian Task Force launched an anti-violence project in 1982, with Kevin Berrill as its director.

When the first hate crime legislation was enacted by Congress in 1969, the concept was limited to violence motivated by racial, ethnic, or religious prejudice. We pushed the envelope further when legislation was passed by the California Legislature in 1984, adding age, disability, and sexual orientation to the Ralph Civil Rights Act. The governor, a conservative Republican, had a tough choice when he was asked to sign the first law in California with statewide scope that included the words "sexual orientation." However, being of Armenian ancestry, George Deukmejian knew about the evils of violence perpetrated against entire classes of people based on hate and prejudice. He signed the bill into law and California became the first state in the nation to include sexual orientation in hate-crime legislation.

Over the next several years, the Attorney General's Commission sought other legislation to deal with bias-motivated violence. The state Legislature adopted a Hate Crimes Statistics Act, requiring law enforcement officials to collect data and issue reports on hate crimes. Laws were enacted increasing punishment for crimes motivated by bias against protected minorities. Laws were enacted to require law enforcement

officers to be trained about victims and would-be perpetrators of hate crimes. By 1990, California had a series of statutes, and judicial rules, dealing with this issue in a comprehensive manner.

Our work in California, and the work of the National Gay and Lesbian Task Force on a national level, started tilting hate-crime dominos throughout the United States. Congress passed a Hate Crime Statistics Act which was signed into law in 1990. It included provisions for collecting statistics on state-defined crimes motivated by sexual orientation, though it did not include a federal prohibition of hate crimes themselves, . By 2006, there were 32 states with hate crime laws that included sexual orientation in their provisions. In 2007, there were 17 states that had hate-crime bills pending.

California's Privacy Commission pointed to the hate-crime domino in 1982. Attorney General John Van de Kamp and his Minority Violence Commission did follow-up work. Frank Ricchiazzi, a founding member of the Log Cabin Republicans, worked with me to convince George Deukmejian to tilt that domino in favor of freedom from violence. That early legislation, coupled with ongoing work by the National Gay and Lesbian Task Force and Kevin Berrill's anti-violence project, caused the hate-crime dominos eventually to fall in all directions throughout the nation.

In 2007, both houses of Congress passed a measure to create a federal law against hate crimes, including those based on sexual orientation, but the measure was eliminated in a conference committee when President George Bush threatened to veto it. Now, with President Barack Obama as a supporter of the proposed Matthew Shepard Hate Crimes Prevention Act, which the House of Representatives approved in April 2009, proponents of the bill are hopeful that federal law will soon protect all victims from violence motivated by anti-gay bias.

Fair Housing Dominos

I learned in 1979 that securing fair housing protections for gays and lesbians was not going to be an easy task. Forget that an obscure judicial ruling in California theoretically provided such protection. The truth was that gay and lesbian tenants lacked financial resources and without the help of the California Department of Fair Employment and Housing, this

theoretical protection was virtually meaningless. Victims of discrimination – people who could not afford to buy a home – needed help from a government agency in order to do battle with a landlord who refused to rent to them for illegitimate reasons.

The resources of the Department of Fair Employment and Housing were directed to helping victims of discrimination solely based on race, religion, color, national origin, or gender. The powers-that-be did not want to dilute the resources of the agency by opening up its administrative process to help other classes of people who suffered from discrimination. So, by virtue of an administrative directive, staff members were ordered not to accept complaints of sexual orientation discrimination in housing.

A political battle was launched by a few of us who were outraged that a civil rights enforcement agency could pick and choose which victims were worthy of their help and which were not. With the help of state Senator David Roberti, we were able to convince the agency head responsible for the exclusion of gay housing cases – who was now up for confirmation to a position in Governor Jerry Brown's cabinet – to have the directive rescinded and rewritten to include sexual orientation discrimination in the agency's mandate.

This political victory in 1979 made California the first state in the nation to provide administrative and judicial protection to gay and lesbian victims of housing discrimination. It put the full power of the state behind the victims and against discriminating landlords. The next state to do so was Wisconsin when it passed a law in 1982 banning sexual orientation discrimination in employment, housing, and public accommodations.

In the wake of these two precedents, the fair housing dominos started to fall in other states, although not at the pace or in numbers that we would have hoped for. Today, there are 15 states that prohibit sexual orientation discrimination in housing, including California, Connecticut, Hawaii, Illinois, Maine, Maryland, Minnesota, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Washington, and Wisconsin.

Executive Order Dominos

The first executive order by a governor prohibiting sexual orientation discrimination within state employment was issued by Pennsylvania Governor Milton Shapp in 1975. One of the people

responsible for convincing the governor to issue this directive was Anthony Silvestre, a gay rights activist from Philadelphia. I met Tony that year, after he was invited by Arthur Warner to join the National Committee for Sexual Civil Liberties. Tony soon arranged for me to attend a meeting of the Governor's Council on Sexual Minorities, a group that was convened to help implement the executive order. I was so impressed with the work they were doing that I knew it was my job to convince Governor Jerry Brown to issue a similar executive order in California.

I worked for three years on this project. I got Jerry Brown's attention when Governor Shapp wrote him a letter at my request. Shapp offered to help Brown in any way he could. I also knew that I had to get the issue of an executive order onto the agenda of gay and lesbian rights activists in California. I wrote this issue up in gay newspapers. I spoke with political advocates. I wrote a commentary in the *Sexual Law Reporter* titled "The Executive Branch of Government: An Untapped Source of Power for Gay Rights."

Eventually it happened. I received a phone call on April 4, 1979, from J. Anthony Kline, Governor Brown's legal affairs secretary, giving me a heads up that an executive order would be signed later that day. For the next two years, several members of the National Committee for Sexual Civil Liberties, along with local activists in California, worked with me to implement the executive order. Eventually, the State Personnel Board created a Sexual Orientation Nondiscrimination Project and established a full-time position which my friend and colleague, Leroy Walker, filled.

After the two executive order dominos tilted in Pennsylvania and California, the issue of executive orders became part of the ongoing political conversation among lesbian and gay rights activists throughout the nation. Governors in other states began to issue such orders, although not always without a political or legal battle.

Even the executive orders in Pennsylvania and California were challenged. Conservative lawmakers in California asked the state attorney general for an opinion on whether Jerry Brown overstepped his authority. Legal challenges were filed in court in Pennsylvania. Eventually, both of these executive orders were validated. It took four years before another governor would make such a bold move, but eventually the executive order dominos started to fall more rapidly.

There are now 27 states with similar executive orders: Pennsylvania (1975), California (1979), New York (1983), Ohio (1984), New Mexico

(1985), Oregon (1987), Colorado (1990), New jersey (1991), Minnesota (1991), Washington (1993), Iowa (1999), Montana (2000), Delaware (2001), Indiana (2001), Vermont (2002), Arkansas (2002), Michigan (2003), Arizona (2003), Kentucky (2003), Louisiana (2004), Maine (2004), Rhode Island (2005), Oregon (2006), Virginia (2006), Kansas (2007), Maryland (2007), and Massachusetts (2007).

It has been a bumpy ride in some of these jurisdictions. The most recent controversy occurred when Governor Bobby Jindal of Louisiana rescinded that state's executive order in 2007, arguing that it was unnecessary. The attorney general of Virginia issued an opinion in 2006 that the governor's executive order therein was invalid. Conservatives challenged Arizona Governor Janet Napolitano's order in court, but the state Supreme Court refused to hear the case. The Kentucky order, which was originally issued in 2003, was rescinded by another governor in 2006, but reinstated by a subsequent governor in 2008. The same type of flip flop occurred in Ohio, where an order was issued in 1984, rescinded in 2000, and reinstated in 2007. In Oregon, the order was placed on the ballot and the voters repealed it in 1988, but the state Supreme Court ruled the initiative invalid and reinstated the order in 1989.

Despite all these political and legal games, the bottom line is that most states now have such executive orders in place. The icing on the cake is that President Bill Clinton issued such an order to protect federal employees from sexual orientation discrimination in 1998. It is hard to imagine, but all of this started with the tilting of a domino in Pennsylvania and another in California. The momentum of these first two gubernatorial actions created precedents which rippled throughout the nation.

Private Sector Dominos

Securing job protection for gay and lesbian state employees is one thing, but outlawing sexual orientation discrimination by private employers in quite another. Governors could base their executive orders on constitutional protections. But constitutional provisions only apply to government action, not private activities. So reaching into the private sector to regulate employment discrimination is dependent on statutory protections enacted by legislative bodies.

During most of the 1970s, there did not appear to be any state

statutes anywhere in the nation to prohibit private employers from engaging in sexual orientation discrimination. The enactment of such legislation appeared to be in the far distant future, given the level of opposition from conservative political forces. After all, lesbians and gay men were viewed as criminals in most states, given the existence of criminal laws prohibiting homosexual conduct, even in private and between consenting adults.

But with the passage of the consenting adults act in California in 1975, a major focus was placed on securing a law to add sexual orientation to the list of prohibited acts of discrimination by private employers. Year after year, Assemblyman Art Agnos would introduce his job protection bill, only to see it defeated each time. But then a major breakthrough occurred in 1979.

The California Supreme Court issued its landmark ruling in a case known as *Gay Law Students Association v. Pacific Telephone and Telegraph Company.* I was one of the lawyers who participated in the case. The court's opinion was written by Justice Matthew Tobriner, a brilliant jurist who had a tremendous sense of fairness – and a very creative mind. Writing for a majority of the judges, Tobriner found that an existing statute prohibited private employers from discriminating against openly gay workers. The statute made it illegal for an employer to attempt to regulate the political activities of employees. Being openly gay is a political act, Tobriner concluded. This is especially true in a society that is permeated by homophobia and prejudice. So there it was. California became the first state in the nation to reach into the private sector to prohibit sexual orientation discrimination.

It would take a few more years until the California attorney general would issue an opinion that gays and lesbians who are private about their sexual orientation are protected too, by virtue of a state constitutional provision that protects the right of privacy. Unlike most constitutional provisions, the courts had ruled that when the right of privacy was added to the state constitution by an initiative, voters intended it to regulate the private sector too. It took a bit longer, but eventually I spearheaded a successful drive to convince Governor Pete Wilson to direct the state labor commissioner to accept and process all complaints of sexual orientation discrimination, whether they involved openly gay or closeted employees.

Wisconsin became the second state in the nation to outlaw private-sector employment discrimination against gays and lesbians when it added sexual orientation to state civil rights laws in 1982. It has taken many hard-

fought political battles in other jurisdictions over the years, but building on the private sector dominos that fell in California and Wisconsin, there are now 20 states plus the District of Columbia that prohibit such discrimination: California, Colorado, Connecticut, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Washington, and Wisconsin.

A bill is pending in Congress that would outlaw such discrimination throughout the nation. There is a good chance that it will be passed by Congress and be signed into law by President Obama sometime during his first term in office, especially since public opinion is solidly in favor of such legislation.

Domestic Partnership Dominos

When I first started teaching a class at USC Law Center on "Rights of Domestic Partners" in 1985, there was not much to cite in terms of legislation specifically dealing with rights and benefits for domestic partners. Most of the class was devoted to underlying legal principles and indirect judicial precedents. No state had yet attempted to protect domestic partners or recognize domestic partnerships as a legitimate family form. Only two municipalities in the nation – both in California – had ventured into this newly emerging area of law. The City Council in Berkeley had voted in 1984 to extend health benefits to domestic partners of city employees. The City Council in West Hollywood had voted in 1985 to create a domestic partnership registry with the city clerk, a procedure by which unmarried couples could officially declare their family status. Both ordinances defined domestic partners as two unrelated adults, whether of the same or opposite sex, who considered themselves to be a family unit and who were economically interdependent and responsible for each other's welfare.

I knew in my heart, as well as my head, that the extension of rights for domestic partners was the wave of the future. I continued to teach the class each year for the next several years. I also found ways to advance the political cause of these couples. I knew that the little dominos that fell in Berkeley and West Hollywood were important first steps, but I also knew that it was imperative that the cause be given a major boost by passage of

domestic partnership legislation in a major city such as Los Angeles.

The creation of the Task Force on Family Diversity in 1986 set the stage for enactment of domestic partnership legislation in Los Angeles. I directed the work of the Task Force and wrote its final report. When the report was released in 1988, its most visible recommendation was for the City Council to extend sick leave and bereavement leave to domestic partners of city employees. We deliberately kept the scope of the measure small in order to diffuse opposition. We chose low-cost and high-empathy items as the first step. We knew that once this precedent were established, and a registration procedure were created within the Personnel Department, other benefits could be added later. The measure was adopted and Los Angeles became the largest city in the nation to approve domestic partnership benefits. This domino would definitely have a rippling effect throughout the nation. During the next few years, the list of benefits for Los Angeles city employees was expanded to include health and dental coverage, extended family leave, and ultimately even pension benefits.

In the years following this breakthrough in Los Angeles, other major cities would adopt domestic partner benefits for municipal employees. Some would establish domestic partner registries for residents. Private sector employers started to follow this trend, especially after the city of San Francisco enacted an Equal Benefits Ordinance which required businesses that sold the city their goods or services to extend domestic partner benefits to their own employees. When a few members of the Board of Supervisors tried to limit the Equal Benefits Ordinance to same-sex couples, I launched a political offensive against that proposal. Fortunately, when the dust settled, the new law applied to both same-sex and opposite-sex couples.

Today, there are more than 10,000 employers offering domestic partner benefits. The vast majority of these benefits plans apply to same and opposite-sex partners. There are also dozens of cities that have created domestic partnership registries.

After Los Angeles first enacted domestic partner benefits in 1988, I turned my attention to enactment of a statewide domestic partnership registry. The idea was to create a registration procedure, with only a few benefits at first – again to lower the resistance to the measure. I would fly to Sacramento year after year to testify in support of these bills. When Gray Davis became governor in 1999, there seemed to be a real chance that such a measure would be signed into law. Unfortunately, the new governor wanted to have the law apply only to same-sex couples.

Lloyd Rigler and I resisted this approach and were able to stir up enough opposition, especially from organizations representing seniors, that the governor shifted his position and came up with a compromise. The domestic partnership registry would be available to same-sex couples of any adult age and to opposite-sex couples if both parties were over the age of 62. Although Lloyd and I were not happy with the exclusion of young and middle-aged heterosexual adults, we did not have the political power to stop this compromise from being enacted. So the model established in California was that domestic partnership would be for gay couples and heterosexual seniors. This model was later followed by New Jersey and Washington.

I am proud to have been an early promoter of domestic partnership rights and benefits and to have had a hand in crafting legislation on this topic. In 1995, I developed the framework for a Comprehensive Domestic Partnership Act which I submitted to the Hawaii Commission on Sexual Orientation and the Law. The following year, I shared that proposal with the Hawaii Senate. I later published a law review article in which the model law was shared with the academic community. My proposal extended all the rights and benefits of marriage, under state law, to registered domestic partners. Thus it was truly comprehensive in that sense. The only difference was the label for the relationship. It was "domestic partnership" rather than "marriage" and "domestic partners" rather than "spouses."

That model was specifically used in California, New Jersey, and Washington, and with the exception that the label was changed to "civil union," it has also been used in Vermont, New Hampshire, and Oregon. In June 2009, Nevada enacted the broadest domestic partnership law in the nation. Not only does it give all the rights of marriage to registered domestic partners, it allows unmarried couples of any adult age to register regardless of whether the partners are of the same sex or opposite sex.

Singles' Rights Dominos

Vivien Kellems started a singles' rights tax-reform crusade in 1948. She was then 52 years old. That was the year I was born. At that time, single people were paying as much as 41 percent more in taxes than married people with the same income. Kellems pursued her campaign

against the singles' tax penalty – a law that was enacted soon after World War II ended – lobbying members of Congress with her relentless vigor, until Congress passed a tax reform act in 1969. Kellems, a resident of Connecticut, died in 1975.

When I took up the cause of singles' rights in 1972, I was not aware of Kellems or her tax crusade. Nor was I aware of another pioneering woman who was launching a "singles' pride" movement of her own, right in my own backyard.

Marie Babare Edwards, a psychologist in her early 50s, started offering workshops at the University of Southern California in 1971. They were titled "The Challenge of Being Single." By 1975, she published a book of the same name. The book distilled her findings gathered from thousands of interviews with single men and women – divorced, separated, widowed, and never married. Marie was quite witty. Writing about marriage, she cautioned, "Weigh and balance the pros and cons of marriage . . . Never forget that an altar is also a place where sacrifices are performed." Marie died in 2009, at the age of 89.

Marie's book, although primarily social in nature, also revealed that she had the makings of a political activist. In the book, she proclaimed a Singles' Manifesto. In the preamble of the manifesto she wrote: "Whereas the written and spoken word about singles has been and continues to be one of gloom and doom, untruths and misinformation, we the singles of the United States - divorced, separated, and never-married - in order to bury the myths, establish the truths, uplift our spirits, promote our freedom, become cognizant of our great fortune as singles, do ordain and establish this manifesto for the singles of the United States of America."

One of the planks in the manifesto was an affirmation that "I will no longer suffer in silence the injustices to me as a single, but will do everything I can to eradicate them." This powerful statement not only was a call for social equality but could be interpreted as a demand for economic and legal justice. I only wish that I had been able to know of Marie's pioneering work at that time, or even to have met her before she died and to have had the opportunity to thank her for her efforts to boost the self esteem of single people and to spur them into action.

The cause of singles' rights got a boost from the women's rights movement in the 1970s. One of the first victories was enactment by Congress of the Equal Credit Opportunity Act in 1974, a law strongly supported by the National Organization for Women. This act prohibits

lenders from discriminating against consumers on the basis of sex or marital status. It was later interpreted by the federal courts to prohibit discrimination against unmarried couples as well as unmarried individuals. Today, there are 27 states which also prohibit marital status discrimination in credit transactions.

It was during this era of the 1970s and early 1980s that state lawmakers began to add protections against marital status discrimination to their civil rights laws. Again, this was largely due to pressure from women's rights organizations. Today there are 21 states with laws prohibiting marital status discrimination in employment and 23 with laws outlawing such discrimination in housing transactions.

The issue of singles' rights was elevated and amplified in 1990 when the media started to pay attention to this cause. The singles' rights movement was taken to the next level of public awareness when the American Association for Single People (later renamed Unmarried America) was formed in 1999. Hundreds of people would make donations to the organization each year and tens of thousands would visit our Web site each month seeking information about issues of concern to them as unmarried workers, tenants, consumers, and voters.

But the issue of singles' rights never took hold in the way in which I had hoped it would. The media found the issue of interest, but politicians considered it dangerous. With Democrats trying to outdo Republicans in showing their support for the family, few politicians were willing to embrace the singles' rights cause. Gay and lesbian rights, yes. Women's rights, yes. Domestic partnership rights, yes. Family diversity rights, yes. But singles' rights, no. At least not yet.

So while a few singles' rights dominos were tilted in the 1970s, and the cause was made highly visible during the past decade, it may take some time into the future before the domino effect truly takes hold for this worthy cause.

Chapter Fifteen

The Future

The dominos will keep falling
but not without resistance

In my attempt to write about the future in general, and the future for unmarried and single people in particular, I am guided by words of wisdom from René Dubos, a Pulitzer Prize-winning biologist and a humanistic philosopher. Dubos died in 1982. His last written work was an essay titled "A Celebration of Life."

Lying in a hospital bed, Dubos, then nearing 81, wrote, "I am more convinced than ever that life can be celebrated and enjoyed under the most trying and humble of circumstances." After giving many examples of humble joy, his essay turned to predictions by "experts" that humankind has lost control of its affairs and that, *if* we won't change our ways, our industrial civilization is doomed.

"What a big *if* that is," Dubos wrote.

"Human beings inevitably alter the course of events and make mockery of any attempt to predict the future from an extrapolation of existing trends," he observed. "In human affairs, the logical future, as determined by past and present conditions, is less important than the willed future, which is largely brought about by deliberate choices – made by the human free will."

I agree with Dubos. In human affairs, the willed future always prevails over the logical future. I also agree with Olaf Helmer, who in a 1967 article in *The Futurist* rejected the notion of the future as "unique, unforeseeable, and inevitable." Instead, he foresaw "a multitude of

possible futures, with associated probabilities that can be estimated and, to some extent, manipulated." That manipulation, I believe, is accomplished by our actions as they are guided by our intent or free will.

I have been guided by this philosophy as I embarked on my projects and cases. My advocacy has looked toward a willed future. I recall a conversation I had with my primary benefactor, Lloyd Rigler, when I asked him to fund my quest for fair housing rights for unmarried couples who were being discriminated against by "religious" landlords who objected to unmarried cohabitation. "You can't fight religion," Lloyd warned me. I shot back, "It may be an uphill battle, but it is possible to gain equal rights for unmarried people despite religious objections."

He funded my work on this issue, and several years later the California Supreme Court ruled that the religious beliefs of a business person are not a legal basis to discriminate against consumers in violation of civil rights laws. The United States Supreme Court declined to overrule this decision. It was an uphill battle, no doubt about that. But my clear and steadfast vision of fairness and justice governed by secular principles ultimately prevailed.

My projections about the future of unmarried individuals, couples, and families – and gays and lesbians, whether married or not – are not simply based on historical events and social trends. Rather, they are grounded more in my vision, which is shared by many other activists and advocates, of a nation – indeed a world – in which individual rights are protected and freedom of choice is respected. It may have taken more than 40 years from the time that Illinois, in 1961, was the first state to respect the sexual privacy rights of consenting adults until the Supreme Court invalidated the remaining privacy-invading laws on the books in 14 states. But it does not have to take 40 more years to secure full equality and justice for unmarried people in other aspects of life.

Gay rights advocates will continue to press for the legalization of marriage for same-sex couples. They have already achieved success in several nations, including Netherlands, Belgium, Spain, Canada, South Africa, Norway, and Sweden. They have also won court victories in several places in the United States, including Massachusetts, Connecticut, and Iowa, with a partial victory in California. Vermont, Maine, and New Hampshire, have legalized gay marriage through the legislative process.

It will take many years of continued advocacy, but other states will eventually legalize same-sex marriage. Most states have laws prohibiting

same-sex marriage, and 39 of them have embedded this prohibition into their state constitutions. In these 39 states, same-sex marriage could only be legalized by another vote of the people, or by a federal court ruling declaring same-sex marriage to be a right protected by the federal Constitution. Considering that the United States Supreme Court only recently recognized the right of same-sex couples to engage in sexual relations in the privacy of their own homes, and considering that the current Supreme Court is even more conservative now than it was when that ruling was handed down in 2003, it is unlikely that same-sex marriage will be forced on the states by the Supreme Court anytime soon.

However, there could be some progress at the federal level in the near future. It is only a matter of time before Congress and the President repeal the Defense of Marriage Act. DOMA currently prevents the federal government from recognizing the validity of same-sex marriages even when they are legalized in an individual state. DOMA runs contrary to the principle of federalism, where the states regulate family matters and the federal government recognizes the laws of the states in this regard. When DOMA is repealed, same-sex couples who have valid marriages in states which allow them, will also be entitled to marriage rights for many purposes under federal law, such as social security benefits, immigration, income taxes, and estate taxes.

DOMA could be repealed, perhaps during President Barack Obama's second term, should he be fortunate enough to have a second term. It could also be invalidated by the federal courts. Such lawsuits are already under way. Several gay and lesbian couples who were legally married in Massachusetts are suing the federal government in order to obtain recognition of these relationships as marriages for purposes of a variety of federal benefits. By the time this lawsuit is decided in federal district court and reviewed by a federal appeals court, it could be 2012 or later before the case finds itself on the docket of the United States Supreme Court. It would be interesting if Congress made the case moot by repealing the law before the Supreme Court issued a ruling in the case.

Although the decision of the California Supreme Court to uphold Proposition 8 was based solely on California law, the issue is now in federal court anyway. By upholding the validity of the 18,000 or so same-sex marriages performed in California between June 15 and November 4, 2008, the court has handed the opponents of Proposition 8 a federal constitutional issue on a silver platter.

The court ruled that it was not clear that California voters intended to invalidate existing same-sex marriages when they enacted Proposition 8. Because of this ambiguity, it would not be fair to declare these marriages, once legal, to be illegal. As a result, two classes of same-sex couples have been created in California – those whose marriages are legal and those who are not allowed to marry. There is actually a third class – same-sex couples who were legally married in Connecticut or Massachusetts prior to the passage of Proposition 8. For those few months that gay marriage was legal in California, those out-of-state marriages were recognized, or recognizable, as legal by California law. Now what happens? Are the out-of- state marriages performed prior to November 4, 2008, still considered legal in California? Or are they invalid, and if so, why?

This is the stuff that federal equal protection arguments are made of. The first federal lawsuit against Proposition 8 was filed in June 2009, shortly after the California Supreme Court upheld the initiative but validated the 18,000 marriages performed between June and October 2008. Challengers to Proposition 8 are claiming that it is irrational, and certainly not reasonable, for the state to recognize some same-sex marriages but not allow others also to marry. Out-of-state couples who visit or move to California also want their marriages, legal when performed in Connecticut or Massachusetts prior to November 4, 2008, to be recognized as lawful in California, just as the marriages of the 18,000 California couples.

This mess will have to be sorted out by the federal courts. Granting recognition to some same-sex marriages, but not others, does appear to deny thousands of same-sex couples their federal right to equal protection under the law. It is not unreasonable to predict that Proposition 8 will someday be declared invalid by federal judges. What will the anti-gay-marriage people do then? They threatened to remove from office any member of the California Supreme Court who voted to overturn Proposition 8. But federal judges are not elected. They are appointed for life. So any threat of retaliation will ring hollow as the upcoming litigation around Proposition 8 winds its way through the federal courts.

The aspect of family law where major progress will continue to occur, even in the short term, is with respect to domestic partnership rights and civil unions. Several states, and dozens of municipalities, already provide rights and benefits to same-sex couples, and sometimes to opposite-sex couples as well, when they register their relationships under these categories. Most Democrats and many moderate Republicans support

rights and benefits for domestic partners and partners to civil unions. It is likely that these laws will flourish and expand.

Many of these changes are well under way. In some jurisdictions, the progress is occurring in small steps. The Maryland Legislature passed a bill to exempt a surviving domestic partner from an estate tax which is imposed when property is held jointly and a partner of the same or opposite sex dies. A surviving spouse, under such circumstances, is exempt from this transfer tax. A domestic partnership bill, giving unmarried couples many of the same rights as married couples, was passed by the Nevada Legislature, only to be vetoed by the governor. With support from the large casino industry, the Legislature overrode the veto and the bill became law. In April 2009, Colorado Governor Bill Ritter signed a bill allowing an adult to make decisions for an unmarried partner in case of illness, incapacity, or death. In June 2009, Hillary Clinton used her authority as Secretary of State to grant health and other benefits to same-sex and opposite-sex domestic partners of State Department employees. The same month, President Barack Obama signed a memorandum directing all federal agencies to extend various benefits to same-sex partners of federal employees. A few days later, the Census Bureau decided to count married same-sex couples in the "married" category for the 2010 census.

Even in the small community of Sandy, Utah, council members are considering a measure that would extend health care benefits to the domestic partners of city employees. If the City Council there takes a cue from Utah Governor Jon Huntsman, it will approve the proposal. Huntsman, a Republican who was nominated by President Obama in May 2009 to serve as Ambassador to China, stunned conservatives when he announced that he supported civil unions for same-sex couples.

As the years pass on, the number of private sector employers offering benefits for domestic partners will grow. There are now more than 10,000 companies with domestic partner benefits programs. As time goes on, it is likely that such benefits will be offered by the overwhelming majority of public and private employers. More employers are also likely to offer benefits for adult blood relatives who live with and are dependent on employees, especially for dependent adult children. In the last few years, more states have adopted laws requiring employers to continue health benefit coverage for adult children. These laws have popular support, so it is not hard to imagine that most, if not all, states will have such laws in the coming decade.

As it stands now, only half of the states have laws prohibiting marital status discrimination in housing. Federal law does not protect unmarried individuals or couples from such discrimination. Most of the state laws were enacted in the 1970s and 1980s in response to pressure from women's rights proponents. The list of states with such protections has not grown in recent years. It remains to be seen whether more states, or the federal government, will prohibit marital status discrimination in housing. Property rights advocates, and conservative religious organizations, argue against such laws. It will be up to single people, and their supporters, to put more pressure on state legislatures and Congress than conservative forces do. Single people have voted at a lower rate than married people. They have also lacked an organized political base. As a result, it is questionable whether equal rights for single people will become popular enough to overcome these obstacles to success.

With respect to marital status discrimination by insurance companies, the trend has been to eliminate marital status as a rating factor in automobile insurance. With consumers having more choices, and becoming more savvy in selecting insurance products, I believe that marital status will eventually become irrelevant in the insurance industry. This will probably happen even without the enactment of new laws prohibiting marital status discrimination in this industry.

The personal privacy rights of seniors and people with disabilities are likely to grow stronger in the coming years. Young people, and even middle-aged people, already expect the government and businesses to respect their right to sexual freedom. As people age, they will challenge any arbitrary rules that restrict their right to have sex or their right to cohabit with an intimate partner. People with disabilities will continue to flex their political muscle and insist that their sexual privacy rights be respected too. As a result, independent living and assisted living facilities will have to accommodate these concerns.

The rights of teenagers will also expand, especially for those who are responsible and law abiding. Most states already set the age of consent for sexual relations at 16. California, which has an unrealistically high age of consent of 18, will need to revise that age downward. If it does not occur through the Legislature, someday a court will declare that it is unconstitutional to make criminals out of two consenting 17-year-olds or an 18-year-old teen who has sex with a willing 16-year-old.

Legislatures, courts, and law enforcement agencies will take a more

active role in regulating the so-called "teen help" industry. Courts will rule that parents commit child abuse if they force a child into a private locked facility. The law will afford children and teens the right to a judicial or administrative hearing before they are confined in boot camps or behavior modification facilities. And if such confinement is allowed, the facilities will be monitored by state agencies and periodic review hearings will be required. The law will no longer allow children to be treated as though they are the property of their parents. With the rising cost of defending against political and legal attacks on these facilities, more of them will close on their own accord. Spring Creek Lodge in Montana and Tranquility Bay in Jamaica shut their doors in 2009. More will close in coming years.

As a general matter, unmarried adults will gain more clout in American society, if only by the sheer numbers. Today there are more than 100 million unmarried adults in the United States. About 44 percent of adults are not married. They head up a majority of the nation's households. The demographic trends over the past 40 years have been going in only one direction – a greater percentage of unmarried individuals and a greater percentage of unmarried households. If these trends continue, it is not hard to imagine a day, in the not-too-distant future, when there is an unmarried supermajority.

Most people who live to the age of 70 or beyond already spend more years of their adult lives being unmarried rather than married, considering the combination of years in which they are single, divorced, and widowed. When more people become aware of this fact of life, and when more people reject the idea that equal rights should depend on their current marital status, there will be a growing consensus that marital status discrimination should be a relic of the past.

The future of unmarried people in the rest of the world is a more complicated matter to ponder. Currently, some parts of the world are progressive while other parts are repressive. In Canada, for example, marital status discrimination is prohibited under the Charter of Rights, which is the equivalent of a national constitution. In South Africa, the constitution prohibits sexual orientation discrimination. In contrast, some Arab nations condemn homosexual conduct as a capital crime and forbid unmarried men and women from even holding hands.

Most European and Scandinavian nations treat unmarried individuals and couples with a considerable amount of respect under the law. France, for example, enacted a law several years ago which gives

unmarried couples – whether same-sex or opposite-sex – many rights and benefits similar to those of married couples. Tens of thousands of couples, a majority of whom are heterosexual, have registered their relationships under that law. The United Kingdom has a civil partnership law for same-sex couples. As mentioned before, a few European nations have legalized same-sex marriage.

In a variety of nations, a special time has been designated for people to celebrate their singleness. National Singles Week is commemorated in the United Kingdom during the second week of August. Italian singles celebrate St. Faustino's Day, which is February 15. November 11 is singles' day in China. A three-day fair in Paris has commemorated single life during the month of November. Thailand sponsored its first "Miss Spinster" contest in November 2004.

Contrast the celebrations in these nations with the manner in which unmarried men and women are treated in many nations which have Muslim majorities.

According to a 2007 story in *The Times of London* about human rights violations against unmarried residents of northern Iraq, some "598 women have been burnt, beaten, shot, strangled, thrown from tall buildings, force-fed with lethal drugs, crushed by vehicles, drowned, decapitated or made to kill themselves so far this year, exceeding the 553 recorded for the whole of 2006." This is in addition to the torture and killing of an unspecified number of unmarried men.

And just what have these single people done to merit such cruel and inhumane treatment? Being seen in public with a boyfriend or girlfriend, or a young woman refusing to enter into an arranged marriage with an old man selected by her father.

The story in *The Times* was prompted by the so-called "honor" killing of Du'aa Aswad, a 17-year-old girl in northern Iraq, by her relatives and other angry villagers. According to the story, "Du'aa was stoned to death by a mob in the Kurdish hillside village of Basshiqa, northern Iraq, after being found with her 19-year-old boyfriend, Muhannad Ummayad, in an olive grove." The two never had intimate relations, as an autopsy of Du'aa would later confirm.

Mobile phone video clips taken at the time of the mob's attack on Du'aa show her being taken from a village leader's home in a headlock, resisting and screaming as police watched in silence. In the marketplace, she was stoned to death by the mob. The story explains that even though

the method of stoning rarely occurs, "honor killing is rampant, particularly in Kurdish areas of Iraq and Iran. Kurdish women are killed almost every day for 'dishonoring' their families."

To evade a 2002 law against honor killings -- a law which is rarely enforced -- perpetrators often force unmarried women to kill themselves, making it appear to be an accident or a suicide. But those who die are the tip of the iceberg, because there are untold numbers of unmarried women who flee from their homes and towns in order to escape from the threat of violence.

In Malaysia, one regional government recently announced plans to hire Islamic spies to snoop on the activities of unmarried citizens to make sure they were not holding hands or showing affection. Unchaperoned meetings between unmarried couples are criminal under Malaysia's Islamic law. Violators can be imprisoned for up to two months.

Amnesty International reports that scores of women in Turkey have been married without their consent. Forced marriage violates a woman's right to choose her partner, a right protected by the Universal Declaration of Human Rights, and specified in the International Covenant on Civil and Political Rights.

Romance between unmarried men and women is a crime in Iran. Those caught by the police, perhaps just dancing or kissing at a private party, are arrested. Three years ago, Iran sent a message to its population that unmarried sexual conduct would not be tolerated. Atefeh Rajabi, a 16-year-old girl, was hanged in the public square of her village, after she was convicted of having sex with unmarried men. A religious judge who put the rope around her neck later received letters of congratulation from the town's governor, commending the mayor for his "firm approach."

Najam Haider, a professor in Islamic studies in the Theology Department at Georgetown University, recalls instances when unmarried men have also been punished for having premarital sex, although not with the death penalty.

Many countries in the Mediterranean and Muslim worlds tolerate or allow “honor” killings of unmarried girls and women by their male relatives, according to a report by Human Rights Watch. These killings are done to "restore family honor" after these women have engaged in "inappropriate" sexual behavior or have been perceived to have done so.

A United Nations report has noted honor killings occurring with

some frequency in Egypt, Iran, Jordan, Lebanon, Morocco, Pakistan, Syria, Turkey, Yemen, and other Mediterranean and Gulf countries. In societies where they occur, honor killings are often regarded as a private matter for the affected family alone. The courts rarely become involved, and when they do, the sentence is usually no longer than one year in jail.

In October 2008, Asha Ibrahim Dhuhulow, a young unmarried woman, was executed in Somalia after she complained to authorities that she had been abducted and raped by three men. Rather than prosecute the perpetrators, a group of radical Islamists seized the woman, buried her alive up to her neck, and then stoned her to death as a crowd watched. The radicals claimed that she deserved to die because she had committed adultery.

Recent events in Afghanistan and Pakistan suggest that sexual privacy dominos may begin to tilt in parts of the Muslim world. Reactions by leaders in those two nations – partly in response to international pressure – give a glimmer of hope that human rights protections under secular law will not be overruled by religious regulations and punishments.

A law passed in Afghanistan and on the verge of being published in the nation's official codes, was temporarily halted by President Hamid Karzai in April 2009 after he received protests from British and American officials. The law would have allowed husbands to rape their wives. It also would have prohibited a married woman from leaving her home without first obtaining permission from her husband. This law would have applied to the Shiite population in Afghanistan.

British Prime Minister Gordon Brown said that it would be unacceptable for British soldiers to be fighting and dying in a nation that had such utter disrespect for the human rights of women. United States Secretary of State Hillary Clinton also criticized the law, as did officials from several Scandinavian countries. President Barack Obama called the law "abhorrent." In response, the Afghan justice ministry said the law was put on hold pending further review.

The incident in Pakistan involved a 17-year-old woman who was flogged in the Taliban-controlled area of Swat, an area just 100 miles from the nation's capital, Islamabad. A video showed the woman pinned to the ground as she was repeatedly whipped by a Taliban commander. The flogging occurred in response to her refusal to accept a marriage proposal from a Taliban fighter and because she was allegedly seen in the company of another man.

The recently reinstated chief justice of the Pakistan Supreme Court was outraged by what was depicted in the video, which was shown on national television. He and other members of the Supreme Court ordered the attorney general of the country to appear in court to explain what the Justice Ministry was going to do in response to this obvious human rights violation. The chief justice ordered a senior official from the Interior Ministry to personally travel to Swat to determine why civil authorities in the area are allowing such abuses to occur there.

Despite small steps to correct these situations in Afghanistan and Pakistan, marital status abuses need better human rights monitoring throughout the world. No human rights agency currently has a program targeting human rights abuses based on "marital status."

Amnesty International and Human Rights Watch have done a commendable job focusing on the rights of women as well as the rights of gays and lesbians. But evidence shows that unmarried men and women, regardless of sexual orientation, need an agency to champion their international human rights too.

Without an international agency to monitor and report on human rights abuses against unmarried people, it could be decades, or generations, before unmarried people in many parts of the world receive even a semblance of the rights and protections they receive in other civilized nations. The prospect of intervention by such a human rights agency would be enhanced if progressive political and religious forces choose to make this issue a priority. This depends in large measure on whether the logical future or the willed future prevails. That, in turn, depends on how strong our commitment is to this type of change.

We are in the midst of a short-term revolution within a long-term process of evolution. Social, legal, and economic changes regarding gay rights, singles' rights, and family diversity have been evolving for years, both in the United States and internationally. But recently, the intensity and the speed of the change have increased. Thus, it feels to some right now as if we are in the midst of a cultural seismic shift.

But viewed in context, and historically, what we are experiencing is just the falling of dominos, seemingly in all directions. While this may appear scary to some, in reality there is nothing to fear. After all, it's just change – and in most cases it is progressive change for the better.

Epilogue

Once an advocate, always an advocate

As I was finishing this book and getting it ready for publication, I began to wonder what the next phase of my professional life would involve. Would my role as an advocate come to an end? Would I retire? Write more books? Teach? Work part time as a legal counselor? Do volunteer work?

After thinking about these options, I asked my friend Nora Baladerian for suggestions. I told her that what kept bubbling up for me was a feeling that I should use my skills as a creative advocate for some worthy cause in which my participation would make a difference. She invited me to have lunch with her and Kay Buck, executive director of CAST – Coalition to Abolish Slavery and Trafficking. Perhaps there would be a role for me in this human rights endeavor.

A funny thing happened on the way to that lunch meeting. That morning, as I read the *Los Angeles Times*, I noticed a story about a teenager in Texas who was sentenced to 100 years in prison. The 18-year-old boy had a mental disability. His IQ of 47 made him the mental equivalent of a 6-year-old child. His offense involved five minutes of sex play with a 6-year-old neighbor boy.

As I was reading the story, I told my spouse, Michael, about it. "That must be a follow-up story," Michael said, "because there was a similar story in the paper yesterday." I must have missed the prior story, so I went digging in the stack of old newspapers to find it. I cut out both articles and decided to share them with Nora at lunch that day.

While we waited for Kay to arrive at the French Market restaurant in West Hollywood for lunch, all I could talk about was the case of Aaron Hart. I was on fire. "We have to get involved in this case," I told Nora. When she heard the details, she fully agreed.

When Kay arrived, we spoke about the issue of human trafficking. As I listened to her explanations, I knew that I was intellectually interested in this issue – but I did not have the same type of passion for it as she did. All I could think about was the Aaron Harts of the world – people with developmental disabilities who get caught up in the criminal justice system. How many pretrial detainees with mental retardation are raped or abused in jail as they await trial? How many prison inmates with developmental disabilities are tortured by sadistic convicts who take advantage of dependent and vulnerable adults?

I decided to work with Nora to alert disability rights advocates throughout the United States about the case of Aaron Hart. I would notify various committees of the Texas Bar Association about this issue and enlist their help. I would contact the *Chicago Tribune* reporter who wrote the two newspaper stories I read and ask him to put me in touch with Aaron's new appellate attorney and a local activist in Paris, Texas, who had taken up Aaron's cause.

I did receive the contact information and was able to speak with David Pearson, the appellate attorney. He welcomed my assistance, especially when he learned that I had handled criminal appeals on a regular basis for more than 20 years. I also spoke with Brenda Cherry, the local activist. She was delighted to learn that her efforts to get media attention for Aaron's case not only triggered these news stories, but had the extra benefit of attracting advocates such as Nora and me to help with Aaron's case.

I wrote a powerful synopsis of the case, titled "Teen's 100 Year Prison Sentence a Travesty of Justice." Nora and I sent that piece to others in her national disability rights network. I sent it to the attorney general of Texas, the director of the Department of Corrections, and the Lamar County district attorney. We wanted them to know that people throughout the nation were monitoring the situation, especially since it was reported that Aaron had been raped while he was in the county jail.

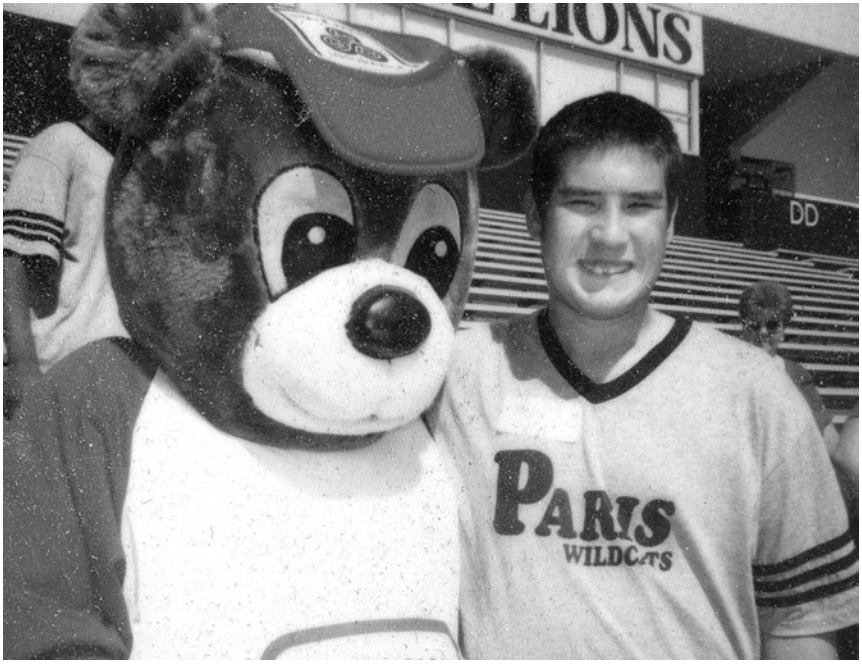
My commentary noted that Aaron's cruel sentence and his rape while in custody were the result of what I called a "Texas Triangle" – an overzealous prosecutor, an incompetent defense attorney, and an unusually

cruel judge.

Aaron's problems with the criminal justice system started when he was questioned by the police after the mother of the neighbor boy reported the incident. The police took Aaron into custody and read him his Miranda rights – as if a boy with an IQ of 47 is going to understand this legal mumbo jumbo – after which Aaron agreed to answer questions. Aaron admitted to the sex play. So he was arrested and taken into custody. The prosecutor charged Aaron with five felony counts.

Instead of pleading not guilty, challenging the alleged confession, and developing a defense based on mental incapacity, the attorney had Aaron plead guilty to all five counts. The attorney asked for a jury trial on the issue of sentencing, a procedure which is allowed in Texas. At the sentencing hearing, no expert witnesses were called and the issue of Aaron's incapacity was not addressed. No alternatives were presented as an option to a prison sentence.

Despite the fact that this was Aaron's first sexual offense, and prior to that he had a minor record for petty theft and criminal mischief, the prosecutor pressed for a sentence of 40 years. The jury recommended a



Aaron Hart (at age 16) participates in Special Olympics games.

sentence of 30 years on each of three counts and 5 years on each of the other two counts.

At the time of sentencing, the judge had the discretion to run the sentences concurrently, a procedure that would have been normal in this type of case. That would have resulted in a 30-year sentence. But no, not this judge. He decided that Aaron was a menace to society and decided to run them consecutively. Thus, the 100-year prison term. Aaron will be eligible for parole when he is 68 years-old.

Fortunately for Aaron, attorney David Pearson decided to inject himself into the case and to undo the damage caused by the Texas Triangle. He was appointed to represent Aaron and immediately filed a motion for a new trial or new sentencing. Pearson argued that Aaron was not competent to understand the legal proceedings and did not understand his Miranda rights. His confession and guilty pleas should be set aside for these reasons alone.

But the guilty verdict and 100-year sentence were illegal for other reasons. The first defense attorney was incompetent. He should have had mental health experts appointed to evaluate Aaron. A motion to suppress the confession should have been filed. Mitigating evidence should have been presented to the jury. Sentencing options other than prison incarceration should have been given to the judge for consideration. The judge abused his discretion in running the sentences consecutively. A life sentence for a first offense such as this by a defendant with mental retardation is cruel and unusual punishment.

After a hearing on the issues, the judge took less than a minute to rule. The motion was denied. Aaron was taken away in shackles by the bailiff and transported to county jail. While Aaron was in custody at the local jail awaiting sentencing, he was raped by an inmate. We later learned that after sentencing, but before he was turned over to state officials to be sent to prison, Aaron was sexually assaulted by two other inmates.

Nora and I wrote to state and local officials, demanding that Aaron be given medical and psychological treatment – the type of treatment that any rape victim is entitled to under state and federal laws. We insisted that he be segregated in a unit where he would be safe from vicious predators. We were put in touch with a local attorney who connected us with Aaron's parents. She promised to initiate a guardianship proceeding so that Aaron, who is technically an adult, would have someone looking out for his well being. Nora, who is a forensic expert in mental retardation, enlisted a

similar expert in Texas to work with the appellate attorney without cost. We invited state and national organizations to file friend-of-the-court briefs in support of Aaron's appeal. We kept the media informed of our actions, each step of the way. In other words, Nora and I used every tactic we could from my "creative advocacy" toolbox.

Our tactics seem to be helping Aaron's case. After a favorable editorial by *The Paris News*, and our sustained pressure on the Texas attorney general, Aaron was placed in a segregated custodial setting for inmates with mental retardation. He will be much safer there than in the general population. His appeal is pending, with many organizations creating a chorus of voices asking for justice for Aaron Hart.

I created a Web site – www.justiceforaaron.com – for Aaron's case. Through the Internet, we hope to attract more support to remedy this particular injustice.

But equally important is the larger issue that Aaron's case has raised. How does the criminal justice system in Texas, and elsewhere, treat suspects, defendants, and inmates who have mental retardation? Surely, this is a research project waiting to be funded. Beyond the research phase, there is the educational component. I envision seminars on this topic for judges, prosecutors, and defense attorneys – through local and state bar associations as well as on a national scale through the American Bar Association.

Whatever the outcome of Aaron's case, Nora and I know that our intervention increased the chances that he would not suffer further abuse while he is in custody. We also know that our efforts have increased the chances that his appeal will be successful and that his conviction will be reversed or that his sentence will be modified in an appropriate manner.

What I learned from all of this is that I will probably never fully retire from my lifelong role as advocate for justice and defender of the oppressed. Just when I think that it is time to take a rest, my eyes and my heart will probably be drawn to another injustice where my time and talents can be useful. Then I will jump into action. What else can I do? Creative advocacy is in my blood.

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"An utterly fascinating memoir from a brilliant and courageous attorney. Thomas F. Coleman has changed the fabric of the American legal system in several significant ways, as summarized in this important, impressive, and easy-to-read book."

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The career of Thomas F. Coleman as an advocate for social, political, legal, and economic change has spanned four decades. Whether lobbying in a legislature, arguing before a supreme court, debating an opponent on television, or participating in a protest march, his goals have been consistent – protecting civil liberties and securing equal rights.

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