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## CALIFORNIA PRIVACY REPORTS: FOCUS ON IMPLEMENTATION

In December, 1982, the California Commission on Personal Privacy completed an 18-month investigation of invasions of privacy in the golden state. A 500-page Report, containing over 80 recommendations, was sent to every member of the state Legislature, every state appellate judge, each member of California's congressional delegation, all statewide elected officials, including the Governor, and hundreds of other interested officials and organizations throughout the country.

When the Report was first issued, newspaper and magazine articles, as well as radio and television stations around the state, reported on many of the Commission's recommendations. Associated Press and United Press International also provided coverage. KNX-TV in Los Angeles devoted two editorials to the Report, praising the recommendations overall, and taking exception to those dealing with benefits for unmarried couples.

Several months later, after the initial fanfare and media attention have subsided, many people who were associated with the work of the Commission are asking, "What ever happened to the Commission's Report and its recommendations? Is this another example of a government report collecting dust? Was the study just an intellectual exercise for a select group of individuals?" These are legitimate questions which deserve answers! Some of the answers appear in the following pages.

What I have observed happening with respect to the Commission's work is partially reflected in this newsletter. I have been so encouraged by the progress during this implementation phase that I wanted to share it with Commission participants, recipients of Commission documents, and others who are interested in privacy rights implementation. I'm sure that what appears in this newsletter is only the tip of the iceberg.

I would appreciate hearing from you. Please let me know about privacy-related legislation, court cases, administrative actions, speaking engagements, articles, and other events, so that I may include them in this publication. I hope to publish this newsletter on a bi-monthly basis. I look forward to hearing from you.

The next issue of this newsletter will focus on developments in California with respect to the rights of domestic partners. It will also contain a short bibliography of privacy-related articles.

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## ACTION ON RECOMMENDATIONS

### Legislation

The following bills, which would implement recommendations made by the Commission on Personal Privacy, have been introduced in the California Legislature:

**FAIR EMPLOYMENT:** (AB 1) Would add "sexual orientation" to Government Code section 12920 et seq., thus prohibiting such discrimination by private employers, and giving the state Department of Fair Employment and Housing jurisdiction to investigate and remedy cases involving such discriminatory practices. Passed Assembly Labor Committee on a vote of 7 to 5; passed Assembly Ways and Means Committee on a vote of 12 to 8. Likely to come up for vote on Assembly floor in June. Author: Art Agnos (San Francisco) [See Report, p.426; Executive Summary, p.76]

**FREEDOM FROM VIOLENCE:** (AB 848) As initially introduced would have added "sexual orientation" to Civil Code section 51.7 which provides for \$10,000 minimum damages to persons who suffer violence or threats of violence because of their race, color, religion, ancestry, national origin, political affiliation, or position in a labor dispute. After the intervention of Thomas Coleman and Barbara Waxman, the bill was amended to include "age" and "disability." Set for vote in Assembly Judiciary Committee on May 18. Author: Assemblyman Tom Bates (Oakland). [See Report, p. 385, Executive Summary, p. 66]

**EMPLOYMENT POLYGRAPH TESTS:** (AB 487) Would amend Labor Code section 432.2 so that all government employees would be protected against mandatory polygraph tests. Present law protects private-sector employees and applicants but exempts government employees and applicants from such protection. This bill would eliminate the government-worker exemption. Referred for interim study by Assembly Judiciary Committee as a 2-year bill. Authors: Chacon (San Diego) and Tucker (Inglewood) [See Report, p. 253, Executive Summary, p. 69]

**JUROR PRIVACY ACT:** (AB 651) This bill would implement Commission recommendations on juror privacy by: (1) repealing Code of Civil Procedure section 227 which authorizes the seizure of prospective jurors from public places, and (2) require a further study of juror privacy to be conducted by the California Judicial Council. It would also require courts to inform jurors of their constitutional right of privacy and establish a procedure for jurors to assert this right during the selection process. The bill would also give trial judges the discretion to conduct voir dire on their own or to allow the attorneys to participate in the voir dire process. On April 25, 1983 the bill was held over for interim study, thus effectively killing the bill for this year. The bill was sponsored by Assembly Republicans. Author: Bill Bradley (Palm Desert). [See Report, p. 289, Executive Summary, p. 57, and Supplement Three which contains a report and an article by Godfrey Lehman on this subject.]

**DECEASED CELEBRITIES PRIVACY:** (SB 613) This bill would overturn a 1979 state Supreme Court decision that allowed anyone to use a deceased person's likeness or name for commercial purposes without permission of their heirs. Although the Commission technically did not make a recommendation on this issue, it suggested "that the Legislature review both sides of the arguments presented in the Lugosi case, with a view toward clarifying the law in this area." This bill was voted out of the Senate Judiciary Committee on an 8-0 vote. It now goes to the Senate floor. Author: William Campbell (Hacienda Heights) [See Report, p. 157]

### Litigation

**LOITERING LAWS VOIDED:** The Commission recommended that subdivisions (d) and (e) of section 647 of the Penal Code be repealed. Subdivision (e) requires persons who loiter or wander on the streets to provide a "credible and reliable" identification and to account for their presence when requested by a peace officer. On May 2, 1983, the U.S. Supreme Court declared subdivision (e) unconstitutional. Kolender v. Lawson 51 U.S. Law Week 4532.

The appellate department of the San

Diego Superior Court, in an unpublished decision, declared subdivision (d) unconstitutional, but that decision is not binding in other parts of the state. People v. Meza, Superior Court No. CR 58622, December 21, 1982. Subdivision (d) prohibits loitering in a restroom -- a registerable sex offense. [See Report, p. 270, Executive Summary, p. 63]

**POLYGRAPH RULE UPHELD:** An employee of the San Francisco Police Department was fired after she refused to submit to a polygraph test. The clerk sued the city on the ground that requiring non-sworn personnel to take lie detector tests violated equal protection of the law because sworn personnel are protected against mandatory testing pursuant to Government Code section 3307. The Court of Appeal held that exempting peace officers from mandatory testing did not violate equal protection. The right of privacy was not addressed in the court decision. Civil Service Assn. v. Civil Service Commission (1983) 139 Cal.App.3d 449 [See Report, p. 253, Executive Summary, p. 69, and Assembly Bill 487]

**"SQUEAL" RULES ATTACKED:** The United States Court of Appeals recently heard oral argument in a government appeal from an injunction issued by a federal judge blocking the so-called "squeal" rule. That rule would require family planning agencies to notify parents before providing contraceptive or abortion services to minors. The suit was filed in Washington D.C. by Planned Parenthood Federation of America. Los Angeles Daily Journal, March 3, 1983. [See Report, p. 296, Executive Summary, p. 91]

**SEX REGISTRATION CHALLENGED:** The California Supreme Court has been asked to void the requirement that persons convicted of lewd conduct [647(a)P.C.] must register as sex offenders. Jay Kohorn argued the case. In re Reed. The Commission recommended that this requirement be eliminated for such misdemeanor cases. [See Report, p. 269, Executive Summary, p. 63]

#### **Administrative Actions**

**CALIFORNIA ATTORNEY GENERAL:** On March 30, 1983, at a reception in his honor hosted by MECLA, Attorney General John Van de Kamp praised the Commission's

Report as "one of the most significant reports to be generated during the Brown administration." Van de Kamp promised to provide leadership in implementing Commission recommendations. Assigned to coordinate implementation efforts is Marc E. Turchin. In addition, Mr. Emil Stipanovich has been appointed as Liaison to the Gay and Lesbian Community.

**STATE PERSONNEL BOARD:** Supplement One is now available for purchase. This Supplement contains topical reports concerning sexual orientation, sexual harassment, and alternate families. Revision of the report on sexual harassment held up production of this Supplement.

Pat Wakayama has received an Award for Superior Accomplishment from the State Personnel Board. This award was based, in part, on her contributions to the work of the Commission on Personal Privacy.

**DFEH:** The Department of Fair Employment and Housing recently revised its intake guidelines and will now accept some cases involving discrimination against children in housing. When the Wolfson case was handed down by the Supreme Court, DFEH refused to process these cases, arguing that they lacked the resources. The Commission recommended that DFEH include such cases within its list of priorities. That recommendation has been accepted in part. If a tenant alleges discrimination against children and also alleges discrimination on the basis of another category enumerated in the Unruh Act (race, color, sex, etc.) then DFEH will investigate all aspects of the case. But if the allegation is based only on discrimination against children, DFEH will not accept the case. Over 1,300 cases involving such discrimination have been reported since last April. [See Report, p. 433]

**CALIFORNIA LIBRARY ASS'N:** The March, 1983 Newsletter of the association contains anti-censorship guidelines to prepare local entities to respond to censorship pressures or campaigns, "in response to the Commission's recommendation." Copies are available for \$2.00 per copy, prepaid. Orders should be directed to California Library Association, 717 K Street, Suite 300, Sacramento, CA 95814. [See Report, p. 74, Executive Summary, p. 57]

#### OTHER PRIVACY-RELATED LEGISLATION

- SB 184 (Marks) would add "sexual orientation" to the bases of nondiscrimination with respect to rental or sale of re-development property.
- SB 910 (Roberti) would provide for research grants for the study of Acquired Immune Deficiency Syndrome (AIDS). The bill would appropriate \$500,000 from the General Fund to the State Department of Health Services for this purpose.
- File 78-3500 S-1, being considered by the Los Angeles City Council, would create a local Freedom of Information Act.
- AB 524 (Harris) would allow for reimbursement of legal expenses incurred by state workers who win discrimination cases against state agencies. Presently does not cover sexual orientation cases, but could be amended to achieve that result.
- AB 1512 (Alatorre) would amend the Information Practices Act to provide that personal information about an individual may be disclosed to agency attorneys.

#### OTHER PRIVACY-RELATED LITIGATION

- Strip searches of prisoners arrested for the first time of such petty offenses as traffic tickets have been ruled unconstitutional by San Diego federal judge Gordon Thompson Jr. Daily Journal, 1-18-83.
- The Iowa Supreme Court ruled that a leukemia victim who is trying to convince a California resident to donate blood, may not force the University of Iowa to send the possible donor a letter to the effect that the donor is the only person who can help the victim. The court ruled that the letter to the reluctant donor would invade her privacy. Daily Journal, 3-29-83.
- West Germany's highest court ordered a postponement of a controversial national census that has been widely criticized as an invasion of privacy. Los Angeles Times, 4-14-83.
- The California Supreme Court heard oral argument in a case (People v. Carney) in which the court will decide whether occupants of motor homes are entitled to the same privacy protections as dwellers of conventional residences. Los Angeles Times 5-12-83.

- Rape victims, protected by law from revealing past sexual conduct at the trial of an accused rapist, do not have to expose their sexual history at a preliminary hearing either. People v. Jordan, First District Court of Appeal, AO18855.

- A San Francisco federal judge approved a consent decree granting involuntary psychiatric patients in state hospitals the right to refuse medications, so long as they are "competent" to provide consent. If capacity is contested, an independent psychiatrist will be appointed to determine the patient's competence. Los Angeles Times, 5-14-83.

#### OTHER ADMINISTRATIVE ACTIONS

- Wisconsin Governor Anthony Earl has created a Council on Lesbian and Gay Issues to study ways in which government agencies can implement recently enacted nondiscrimination legislation.
- Utah Governor Scott M. Matheson vetoed two bills aimed at banning sexually explicit programs for cable television, saying the bills would hamper freedom of choice. Los Angeles Times, 3-31-83.

#### PRIVACY RIGHTS PRESENTATIONS

- Professor Les Pincu arranged for Thomas Coleman to speak at the February dinner meeting of the Central California Business and Professional Association.
- At its May dinner meeting in San Francisco, the Golden Gate Business Association heard Thomas Coleman discuss implementation of Commission recommendations concerning the gay community.
- Commissioner Nora Baladerian produced a seminar for service providers on "Sexuality and Disability in the 80's." Tom Coleman and Jay Kohorn made presentations regarding client's privacy rights and legal responsibilities under the criminal laws.
- "The Privacy Connection - - How Gay Rights Fit into the Privacy Rights Movement" is the subject of a panel at the annual conference of the National Committee for Sexual Civil Liberties in San Francisco on Saturday, May 28. The panel consists of Thomas Coleman, Jay Kohorn, and New York University Law Professor David Richards.