
THE ADMINISTRATION OF JUSTICE

FOR HOMOSEXUAL PERSONS

IN NEW ORLEANS



LOUISIANA ADVISORY COMMITTEE

TO THE UNITED STATES

COMMISSION ON CIVIL RIGHTS

These edited proceedings of a community forum conducted by the Louisiana Advisory Committee to the U.S. Commission on Civil Rights were prepared for the information and consideration of the Commission. Statements and viewpoints in the proceedings should not be attributed to the Commission or to the Advisory Committee, but only to individual participants in the forum.

A SUMMARY REPORT

SEPTEMBER 1989



THE UNITED STATES COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights, first created by the Civil Rights Act of 1957, and reestablished by the United States Commission on Civil Rights Act of 1983, is an independent, bipartisan agency of the Federal Government. By the terms of the 1983 act, the Commission is charged with the following duties pertaining to discrimination or denials of the equal protection of the laws based on race, color, religion, sex, age, handicap, or national origin, or in the administration of justice; investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to discrimination or denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to discrimination or denials of equal protection of the law; maintenance of a national clearinghouse for information respecting discrimination or denials of equal protection of the law; and investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

THE STATE ADVISORY COMMITTEES

An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105(c) of the Civil Rights Act of 1957 and section 6(c) of the United States Commission on Civil Rights Act of 1983. The Advisory Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Advisory Committee; initiate and forward advice and recommendations to the Commission upon matters in which the Commission shall request the assistance of the State Advisory Committee; and attend, as observers, any open hearing or conference that the Commission may hold within the State.

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LETTER OF TRANSMITTAL

Louisiana Advisory Committee to the
U.S. Commission on Civil Rights

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Melvin L. Jenkins, Acting Staff Director

The Louisiana Advisory Committee voted 8 to 0, with one member abstaining, at its meeting in Baton Rouge on February 24, 1989, to submit this edited transcript of proceedings of a community forum on the administration of justice for homosexual persons in New Orleans to advise you on certain aspects of that topic. The forum was conducted in New Orleans on May 27, 1988, and every effort was made to assure a balanced perspective by inviting participants with a diversity of viewpoints and responsibilities related to the topic.

The Committee hopes that these proceedings, while not an exhaustive analysis, will provide information that will assist the Commission in its planning and requests that you approve their publication.

/s/

MICHAEL R. Fontham, Chairperson
Louisiana Advisory Committee

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ACKNOWLEDGMENTS: This report was the chief assignment of William Muldrow of the Central Regional Division of the U.S. Commission on Civil Rights. Support services were provided by Jo Ann Daniels. Editorial assistance and overall supervision were the responsibility of Melvin L. Jenkins, Director, Central Regional Division.

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SUMMARY

On May 27, 1988, the Louisiana Advisory Committee to the U.S. Commission on Civil Rights conducted a day-long community forum in New Orleans to gather information on the administration of justice for homosexual persons in New Orleans. Participants were invited who were knowledgeable about the issues, whose information or observations stemmed from their personal involvement or the conduct of their duties, and who represented a diversity of perspectives on the nature of alleged problems. These persons included attorneys and representatives of community organizations, investigatory and law enforcement agencies, judicial offices, the mayor's office and the city council. Mr. Glenn Ducote, assistant attorney general for the State, provided an overview of statutes and legislation which especially apply to homosexual persons in Louisiana. The final session of the forum was open to participation by members of the general public.

Major points of discussion centered on the nature and extent of prejudice against homosexual persons which may affect their treatment in the law enforcement and judicial systems; issues related to the frequency and causes of antigay violence; the nature and timeliness of response by police to crimes against homosexual persons; the quality of relations and extent of communication between the gay community and law enforcement agencies; the handling and disposition of cases involving homosexual persons in the judicial system; police departmental policies, sensitivity and procedural training which may affect the way law enforcement officers handle crimes related to homosexual persons; and the investigation and processing of complaints made to the police or city administration involving alleged crimes against homosexual persons or lack of equal protection for them.

The following is the edited transcript of remarks by participants. The forum and the proceedings should not be considered an exhaustive review or analysis of issues related to the administration of justice for homosexual persons. Rather, they have provided information about the topic which the Advisory Committee may decide merit further investigation or analysis.

The Committee is grateful to all who participated in the project and for the stimulating exchange of information and viewpoints. It hopes that the information presented will be useful to the U.S. Commission on Civil Rights in its program planning. Upon approval by the Commission, the published edition of the transcript will be sent for the review and consideration of law enforcement, judicial and city agencies with responsibilities for the administration of justice.

MR. GLENN DUCOTE

ASSISTANT ATTORNEY GENERAL, STATE OF LOUISIANA

I will present, on behalf of the Louisiana Attorney General's Office of the State of Louisiana, a brief overview of the statutes and legislation which apply to homosexual persons living in our State.

There are certain circumstances in which the Louisiana attorney general can and does become involved in the law enforcement process. Those are when he is called upon by courts directly, or upon the refusal of the local district attorney when there's a conflict of interest or other problem. Then our office can essentially sit as the district attorney ad hoc and handle criminal prosecutions.

Our office has a responsibility, and has in the past participated in defending Louisiana statutes whose constitutionality is challenged in courts. There was such a challenge filed against the Louisiana statute dealing with sodomy, and that lawsuit became inactive.

There are two areas where we do have statutes in place that have specific effect on homosexual persons: one is the criminal area and one is the civil area.

These involve the relationship of husband and wife by contract or marriage. There are specific prohibitions in our laws arising in Civil Code Article 89 which states very briefly and to the point, "Persons of the same sex may not contract marriage with each other." [La. Civ. Code Ann. art. 89 (West 1988)].

This is a more recent addition to our law than previous statements and was enacted in 1987. Prior to that time, I believe going back to the mid-seventies, there was a similar prohibition, but not quite in those same words. But, until the 1970's amendment of the statute, there had been no explicit prohibition in our law to that effect. In the seventies one of the States, I think Colorado, had a proposal which would have sanctioned same-sex marriages.

In response to that, Louisiana, along with many other States, made it quite clear that that was not a possibility under our law. Civil Code Article 89 specifically prohibits a marriage or union sanctioned by State law of persons of the same sex.

Article 96 of the Civil Code, which deals with civil effects which flow from marriages which for various technical reasons may be considered to be null and void, specifically states that purported marriage between parties of the same sex does not produce any civil effects. [La. Civ. Code Ann. art. 96 (West 1988)].

A purported marriage which is technically nulled or not completed according to the form required by law, if it is between man and woman, can have civil effects that will negate the validity of property transactions, the validity of the birth of children, and so forth. But a purported marriage between parties of the same sex can have no civil effects whatsoever, according to our civil law.

We have in our criminal code prohibitions under the title "Crime Against Nature." They appear in Title 14, Section 89, which make illegal virtually all homosexual acts and [those same] acts between persons of opposite sex, which may or may not be commonplace among the population. The statute is one which applies to the acts within marriage, outside of marriage, between man and woman, between man and man, or between woman and woman. [La. Rev. Stat. Ann. sec. 14:89 (West 1986)].

In some States, legislation in this area is specifically aimed at homosexual acts or is specifically aimed at acts outside of marriage. That is not the case with our law. This is the statute that I indicated earlier that had been challenged in Federal court here in New Orleans and has become inactive since a decision by the United States Supreme Court.

The Louisiana Constitution has some very broad and sweeping prohibitions against discrimination, and statutes enacted in our legislation pursuant to that, and some of our municipalities, such as the city of New Orleans, have created some antidiscrimination prohibitions by ordinance and statute.

The Louisiana Constitution's prohibitions do not incorporate prohibitions against discrimination based on sexual orientation or "sexual preference," as it's sometimes referred to. None of the statutes contain any prohibitions against discrimination based on sexual orientation.

MELVIN L. JENKINS, DIRECTOR

CENTRAL REGIONAL DIVISION OF THE COMMISSION

You mentioned that the criminal code applies to the act as opposed to the person. What has been your experience in the past? Has actual enforcement been towards homosexuals or to heterosexuals?

MR. DUCOTE. I haven't seen the statistics on that. I don't know that they even exist in our State.

COMMITTEE MEMBER BAKER. In New Orleans, in the period 1973 to 1974, there was a lot of litigation over this question in the New Orleans district attorney's office. The issue was litigated in the State Supreme Court at that time. There were many prosecutions under Article 89 at that time.

One prosecution came in our section of a homosexual act. All the other prosecutions were of heterosexual acts, and they involved a well-known, well-publicized vice undercover operation in the French Quarter in which the statute was used against the prostitutes who had been convicted of misdemeanors for the purpose of getting felony convictions on them.

JOHN OGNIBENE

COMMUNITY REPRESENTATIVE

I'm a 45-year-old businessman who's lived in New Orleans for 10 years. I'm a homosexual. I'm also gay. I would like to define those two terms before we proceed here today because I feel that the definitions are relevant to the topic under discussion.

A homosexual is someone who is sexually attracted to another person of the same sex. A gay person is a homosexual who has made a conscious choice to accept his or her homosexuality as a fact and to live his or her life as a full human being. Generally, this conscious choice is known as "being out" or "out of the closet."

It is possible, therefore, to be homosexual and not gay. I am a gay person. I have been aware of my homosexuality, although not by that title, for as long as I can remember. I have been gay since my sophomore year in college.

As a gay man, I've been in the gay civil rights movement for just over 21 years. Here in New Orleans, I've been an active member of the Louisiana Gay Political Action Caucus; founding president of the Crescent City

Coalition, a gay civil rights organization, and director of development for the New Orleans AIDS Task Force.

I have also been called upon to assist other gay men and lesbians in their attempt to obtain fair and equal treatment under the law. I hope, therefore, that I can shed some light on the issue before us here today.

One of the first questions I'd like to address is "Why are we addressing the issue of homosexuality in the legal system?"

Let me assure each and every person in this room that I would like nothing more than for my sexuality to cease to be anyone's business but my own. Yet each time I have tried to live my life as a truly private citizen, I have been--quote--"uncovered" as being a fag or queer, or I have been asked to stand by and watch my gay brothers and lesbian sisters, my fellow human beings, being verbally or physically abused, denied their right to even visit their own children, arrested and incarcerated, beaten and sometimes even killed simply because they are, quote, "different."

It is an irony that in a country which publicizes its commitment to human rights that what is conservatively estimated as one-tenth of its own citizens are denied those same human rights. Why is it that in a country that boasts "justice for all," the "all" seldom, if ever, includes justice for gay men and lesbians?

I will also bring to this Committee's attention that in your own statement, you are delegated to investigate issues that concern discrimination based on sex, but nowhere do the words "sexual orientation" appear.

Traditionally, certain myths have been used as a rationale for dispensing unequal justice for gays and lesbians in the legal system here in Louisiana. The first and, to me, the most absurd is the fact that to engage in a sexual act with a person of your own sex makes you a felon in this State.

The reasoning is that since you are a felon already the system of justice is different for you. The same justification is not used for other felons, however. Therefore, the true reason must be that homosexuality is, in and of itself, so terrible that the normal system of justice need not apply.

This fear of homosexuality, this homophobia, is based on the acceptance of certain myths as facts, and no discussion of legal rights for lesbians and gays can proceed unless these myths are explored and laid to rest. I cannot hope to do that in the short period allotted to me, but I can touch on some of the most relevant.

Myth No. 1: There is no real discrimination against homosexuals in Louisiana and in New Orleans, particularly in the legal system. I hope that before you leave here today you will be convinced of the inaccuracy of this myth. Also, I hope that you will be aware of how what you will hear today will only touch the surface of the actual problem.

Remember that the public revelation of even a single homosexual experience can result in a person being labeled "degenerate" and, in this State, a "felon," and thus subject to social sanctions, including the loss of employment and housing. There is no protection.

By merely coming forth to report an injustice, a gay person puts his entire life in danger. Gay people who have stood up for their rights have been threatened, not only with physical violence, but with blackmail. These threats, if left unheeded, could and have resulted in the loss of livelihood, friends, and family.

Please do not let the absence of large numbers keep you from believing that there is discrimination.

Myth No. 2: This is a problem unique only to one city in this State or to only one area of that city. Homosexuality occurs everywhere, in communities of every size, at every social level, in every profession, and among people of every walk of life. It is because of rampant homophobia in America today that it is understandable that most gays find it necessary to conceal this particular part of their lives.

[Myth No. 3:] Homosexuality is a sin, and in this city and in this State, this seems to be the argument that comes up over and over again. Aside from the obvious argument for sin being the business of the church, and the separation of church and State, there is another argument that can be made.

Other acts, including eating pork, smoking, driving a car, drinking coffee, and allowing whites to marry blacks, or vice versa, depending on the religion in question, are sins. For some churches, homosexuality is a sin; for others, it is not.

Those who argue that our justice system is based on a Judeo-Christian ethic sometimes are highly selective in their applications of biblical sanctions and ignore how much these concepts have evolved. For example, being a nonvirgin bride is no longer a capital offense, although it may be a sin.

Myth No. 4: Homosexuality is a mental illness and, therefore, falls into some crack in the judicial system and the justice system.

In 1935 Sigmund Freud wrote, "Homosexuality is assuredly no advantage, but it is nothing to be ashamed of, no vice, no degradation. It cannot be classified as an illness." That's from Freud's letter to an American mother.

Forty years later, in The Homosexual Matrix, a well-recognized book by C.A. Tripp, I will quote: "There is no known cure for homosexuality, nor is there likely to be, since the phenomenon which comprise it are not illnesses in the first place."

On December 15, 1937, the American Psychiatric Association Board of Trustees voted to remove "homosexuality" from the category of "mental illness." So that myth should be debunked.

These myths contribute to gay bashing, or violence against gays. There have been several incidents of gay men and women being physically attacked on our city streets. That these attacks are directly related to the victim's sexual orientation is clear because the attackers were also verbally abusive with direct references to sexual orientation. Victims who have reported these crimes to the police have been treated much the way women who have been raped were once treated; that is, as if the victim were partially, if not totally, responsible for the attack.

In addition to being belittled by police officers, many victims have been verbally abused by the very police officers they have called for help. It is not unusual for some New Orleans police officers to refer to gay men as "fags" or "queers" and lesbians as "butch" or "dykes" to their faces.

In one incident reported to me by a victim, an officer told him that's what faggots got for being on a street outside the French Quarter. The victim, although bleeding, was told to get off the street. The policeman, after having taken the victim's name and address, refused to give his badge number.

The victim was afraid to try to pursue reporting the incident through official channels or the Office of Municipal Investigation here in the city because, one, the policeman knew who he was and where he lived; two, any publicity that resulted might result in the loss of his job; three, perhaps he should not--this is what the victim told me: "Perhaps I should not have been outside the French Quarter."

It's a sad commentary that citizens of this country are beginning to believe, because of the legal system and the way they are treated, that there may be ghettos that they must stay in.

Other calls for help have produced police who have frisked the victims and demanded that they produce identification. In one case this was done, even after the victim had reported that his wallet was stolen, including his identification. The police officer simply told the victim that he was a "drunken queer" and that he should "go home and sleep it off." The victim reported this to me shortly after it happened, and he didn't sound drunk.

The reason people have told this to me was that part of my responsibility as president of a gay civil rights organization was to compile statistics like this and to try to find help for these people. People just don't walk up to me and tell me these things.

Gay people in the city have learned that the response they get from police is less than enthusiastic, even when a simple burglary is involved, and that response diminishes if the victim is gay. My own experiences have proved this.

I reported a break-in in my own home. The police who responded were polite until, through questioning, they learned that I was sharing the premises with another man. Their manner changed, and I was told that maybe it was someone that I had invited home late one night who had cased my home and returned to rob it, inferring that the burglary was, at least in part, my fault.

When I refused to accept this as a valid reason for their inactivity in continuing to investigate, I had to threaten to call the superintendent of police and a judge who happens to be a personal acquaintance of mine before the police continued the investigation. The treatment I received after threatening to call an official, of course, was first rate.

Many incidents that have been reported to me have not gone any further because the victims are simply afraid. There have been several instances of crimes committed against gay people being brought to trial, and the district attorney's office has handled the case in a less than vigorous manner. There have been murders that were not fully investigated until the gay community protested. The victims of these murders were known members of the gay community. Legal experts in the community have shared their concern that, even in an open-and-shut murder case, the defendant was not charged with murder but with a lesser crime because the victim was gay.

There was also an instance where a young lady was raped and the handling of the case was deplorable because she was identified as being a lesbian. The whole case was appalling, but I won't get into specifics. I hope that you do.

There is a fear on the part of the gay community that simply because they can be identified as homosexuals, and, therefore, "felons," that it is best to keep a safe distance from the police and the court system. The police and the D.A.'s office have demonstrated a disregard for the rights of gay people by harassing them.

The police can exercise discretion to issue a warning, a summons, or make an arrest. They have historically chosen arresting gay people. Some of these arrests have been made for carrying an open drinking container or blocking the sidewalk. It is obvious that these arrests are made in front of gay bars, and warnings are given in front of nongay establishments and arrests are not made. The police usually drop the charges on these cases.

The mere fact that the crimes of nature statute is on the books is a very important harassment tool. Police will threaten to arrest people for "attempted crimes against nature": "If you continue to stand here, I will arrest you on an 'attempted crime against nature' charge."

Incidents have been reported to police of policemen engaging in what we felt was entrapment, using the "crimes against nature" thing. Many of these charges do not get prosecuted, and the prosecution figures will show nothing. What happens is that a gay person is arrested and held in central lockup either overnight or for longer periods of time.

Discrimination in our jails is something else. There is a separate unit of our city jail for gay people. Now, I can argue on both sides of that question. Is it to protect gay people from other criminals who are

incarcerated? It may be that, but the treatment that these incarcerated people get is very different from the treatment that other people in central lockup get.

There have been reports of there being no water in the gay portion of central lockup for as long as a week, in the middle of the summer, no drinking water. The terms are not "separate but equal." They are "separate but totally unequal."

If the prison is being run correctly, then if someone attempted to rape someone or to sexually abuse them, and they were sharing the same cell, then that person should be separated from the other person, whether that person is predominantly heterosexual or homosexual.

Perhaps the most dramatic example of disregard for the rights of gays and lesbians in this State was a case which involved two lesbian mothers. Both women had been married and divorced, each with at least one child. Although there was no proof ever entered into evidence of any wrongdoing, one of the mothers was even denied visitation rights simply because she admitted to being a lesbian.

Thankfully, after much litigation and many legal fees, the Crescent City Coalition and other gay organizations assisted in having the judge reverse this ruling. But it was a situation where all that an ex-husband had to do was to call a judge and say, "My ex-wife, the lesbian, is seeing her own children," and the woman was arrested. I hope that one of the reasons that this forum is being held here is because this Committee already sees that there is a problem and that some day lesbian and gay men will live in a country, in a State, and in a city where the words "sexual orientation" will be there to provide them with the backup that they need so that they can enjoy the full rights and privileges that are granted to every other citizen in this country.

STEWART BUTLER

COMMUNITY REPRESENTATIVE

I describe myself as a gay activist. I am currently the secretary of the Louisiana Gay Political Action Caucus. I am not officially representing the Louisiana Gay Political Action Caucus. The National Institute of Justice, the research arm of the Justice Department, has studied hate crimes and found that "Crimes of bias are far more serious

than comparable crimes that do not involve prejudice because they are intended to intimidate an entire group." Its study noted that almost none of the statutes that address crimes of bias include gay and lesbian victims of bias.

Sitting in a bleak jail cell in Birmingham, Alabama, the great civil rights leader, Dr. Martin Luther King, had words that civil rights commissioners should heed: "Injustice anywhere is a threat to justice everywhere." Ladies and gentlemen, there is injustice in New Orleans, Louisiana. There is violence against people simply because they are gay or perceived to be gay, and there is an insidious unfairness in a system of justice that discourages victims from seeking redress.

Homophobia is like a wheel--a homophobic wheel of evil--whose spokes interlock in an intricate web of cause and effect. The unequal administration of justice is only one spoke of that wheel, but it is impossible to discuss that spoke without discussing the others.

The homophobic wheel of evil includes a spoke for the denial of our first amendment right of free speech and expression. We are denied that right by a hypocritical and homophobic government that not only won't protect us but, in fact, sanctions and sometimes even promotes the discrimination, violence, and other forms of retribution which are more likely to occur against those of us who protest.

Sodomy laws in 26 States make it illegal for human beings to sexually express their love for one another in ways that millions and millions of people--both straight and gay--find satisfying and intensely human. Simply put, sodomy statutes are no more than the grotesque invasion of a citizen's right to privacy by an intrusive government. These intrusions provide the excuses homophobes use to deny antidiscriminatory protection to gay men and women. Sodomy statutes also promote a favorable climate for antigay violence. Finally, to underscore the hypocrisy of sodomy laws, in five States, heterosexual sodomy is legal while homosexual sodomy is illegal.

The homophobic wheel of evil includes a large spoke for the hysteria surrounding the AIDS epidemic and the pitiful responses of our government to a crisis until it was perceived that that crisis could also involve heterosexuals.

The homophobic wheel of evil includes youth suicide. During the first 6 months of 1987, there were three gay victims of youth suicide in three different southern Louisiana communities. Even when it is known or suspected that homosexuality may have been a factor, it's not reported, thus contributing to the "conspiracy of silence."

The homophobic wheel of evil includes a conspiracy of silence. In October 1987 the largest civil rights demonstration ever seen in the United States saw 1/2 million people gather before the U.S. Capitol demanding to be treated equally. This was ignored by Time, Newsweek, and U.S. News and World Report.

Antigay discrimination and violence are increasing every year. Two years ago, in New Orleans, a lesbian woman was raped by two men, one of whom was caught in the act by police. The jury found the men not guilty, expressing the sentiment that the woman got what she deserved because she was lesbian.

One month ago in the 1000 block of Bourbon Street, two men were savagely beaten by homophobes who, again and again, yelled that the two victims deserved the beating because they were faggots and spreading AIDS.

Finally, the homophobic wheel of evil includes unequal administration of justice. We in the gay community know that this justice is unequal. We know it because we are its victim, and we charge this system with hypocrisy.

In many cities, studies indicate that 80 percent of antigay violence, attacks, and violent crimes go unreported to the police. There's too much to lose to make such a report: a job, a home, a family.

COMMITTEE MEMBER KUTCHER. This is addressed to either one of you gentlemen. The focus of the hearing today that we've been allowed to explore is criminal justice in the justice system. One of the keys to making some inroads in the criminal justice system has been changing of the personnel, by including more women, more blacks, more Hispanics, and the like. Are there a number of homosexual or openly gay people in the police department or any of the other law enforcement agencies in this area, or who are part of the district attorney's office or part of the criminal justice system?

MR. OGNIBENE. I wish I had the ad that appears frequently in the Times-Picayune for deputies for the civil sheriff and criminal sheriff's

office which reads, as closely as I can remember it, "Only people of good character may apply."

By definition, a homosexual, particularly an open homosexual, is a felon. I doubt very much whether that's an invitation for someone to submit themselves to investigation, for they would have to admit to being a felon, with the likelihood that a felon would not be defined as someone of good character.

Are there people we have worked with who are sensitive to and who may or may not be gay? From time to time, there have been. But history will reflect that anytime anyone has shown an open sensitivity to gay people in this city, it has been used against them. Since most of the people in top positions--district attorney, civil sheriff or criminal sheriff, judges--are elected officials, it's a very chancey kind of thing.

There is no protection under the law for someone to say, "I am championing the civil rights of a recognized minority or a recognized group that is entitled to these civil rights." You cannot hide behind that. You cannot use that because there is no such thing.

MR. BUTLER. I can only second that. As far as the justice system in general, maybe this personal experience or feeling of intimidation on my part might shed some light. I go around my normal course of business--not always but often--wearing a "Vote Gay" button. I go to the bank, to the post office, the supermarket, out to dinner, wherever one goes in one's normal course--to the doctor's office. But when I deal with the criminal court system, either in traffic court, or to go down to central lockup to bail somebody out, I make sure this button isn't on.

MR. OGNIENE. In addressing the police department on this particular question about going out and recruiting openly homosexual people, the response has been they cannot legally do it because of the felon issue; also, that they do not think that would be a good morale issue. It would pose a morale problem in the police department to have someone who is openly gay.

If someone does apply to the police department and it is discovered that he is gay, that would not be grounds, as far as they are concerned, for dismissing him. However, the one instance that I do know there was a gay policeman, he was harassed by his fellow officers, and there was no official reprimand from the superiors so that he left the force feeling his own life threatened.

COMMITTEE MEMBER ADAMS. Do you think that the statistics or information that we really need about violence against gay people should be a Federal responsibility, or should the State pass legislation to require it, or could it be done on a local level?

MR. OGNIBENE. I think that this is a Federal problem.

COMMITTEE MEMBER KUTCHER. How do you compare the administration of justice for openly gay/lesbian people in New Orleans versus other places in the State?

MR. BUTLER. You're going to find few openly gay people in other areas of the State. In my years of experience, I can only think of about three, leaving Baton Rouge out of it, perhaps. We know that these problems occur in other parts of the State as well as here. There was a gay bar in Raceland, Louisiana, that was burned to the ground New Year's Eve 1986. Early last year, a TV person from Shreveport, Louisiana, wanted to do a TV series on antigay violence, but had to drop the subject because no one would speak to him, including gay people.

This conspiracy of silence about which I speak is not limited to the community at large, but it runs rampant within the gay community, itself, because of the fear of loss of jobs, and so forth and so on, and a conditioning to internalized homophobia where many gay people do, in fact--at least subconsciously--feel as though they're not quite as good as other people.

MR. OGNIBENE. It seems an absurdity to me that statistics are even needed to do what you want to do. If there is no discrimination against gay people, what would be the problem to adding "sexual orientation" to all civil rights laws? And, if there is a problem with discrimination against gay people, if you add those two words, you will have people who will have legal protection to come forward and to verify that those two words are, indeed, needed. If you add those two words, if you need statistics, you'll have them.

COMMITTEE MEMBER MCDADE. Would you explain the use of the term "homophobia"? To me, it implies, "phobia," "mental illness." Are you implying that a person with a deeply held religious feeling that homosexual activity is wrong, has a phobia and, therefore, mentally ill?

MR. OGNIBENE. The word "phobia" means an "unjustified fear"; it does not mean "mental illness." The word "homophobia" simply means "unjustified or unfounded fear of homosexuals."

COMMITTEE MEMBER MCDADE. What you're saying, then, is that persons with "homophobia," even if they have deeply held feelings and doubts about this particular topic, have a homophobia attitude, is that correct?

MR. BUTLER. Yes. But let me draw this distinction, I am not impugning their integrity or good intentions.

COMMITTEE MEMBER BAKER. There seems to be some desire to collect statistics. Would you be in favor of the criminal justice system, the police, or the D.A.'s office asking every victim of a crime whether they were homosexual or not? If you are in favor of that, would that be a violation of their civil rights to intrude into their privacy by asking that question?

MR. BUTLER. I don't think that it's necessary to ask that question. The statistics should be collected where the information is volunteered or where it's obvious.

MR. OGNIBENE. If you knew you were in a situation where the answer to your question was going to submit you to further physical abuse, separation from other people, terrible treatment by the district attorney's office or the police department, if you said, "Yes, I'm a homosexual," would you volunteer that information? It's a ridiculous question because that's not the place to gather statistics.

COMMITTEE MEMBER JONES. You mention in your comments that something in the vicinity of 10 percent of the population is homosexual. I am very interested in knowing the methodology for developing that figure.

MR. BUTLER. My statistics were very conservative, come from the Kinsey research and have been verified over and over again. It is a broad figure and does not pertain particularly to large urban areas because homosexuals have a tendency to seek large urban areas because they can get lost in the population. The number is even higher in Louisiana, probably much higher than 10 percent.

COMMITTEE CHAIRMAN Fontham. You indicated there were instances where police have used city ordinances to arrest homosexuals out of gay bars, things of that nature. Have those laws included other minorities, particularly blacks?

MR. OGNIBENE. I do not know whether or not they have, but there was an instance, probably the most dramatic, where over 100 gay men and women were arrested in one night for being on the sidewalks of the French Quarter. They were arrested under a city ordinance for "blocking the sidewalk."

On any day of the week, go by Pat O'Brien's where lots of supposedly heterosexuals do literally block the sidewalks. To my knowledge, there has never been an arrest.

MR. BUTLER. There is separation in central lockup. I was once arrested and asked did I want to be in a gay section, and I said, "No, I'm not gay." I denied the truth because I feared more from the authorities than I would my supposedly fellow inmates who might endeavor to rape me or something.

THE REV. SHELLEY HAMILTON

PASTOR OF THE METROPOLITAN COMMUNITY CHURCH AND

COCHAIR OF THE LOUISIANA GAY POLITICAL ACTION CAUCUS

We do have a story, and a history, a culture, an identity. The pages of history are filled with the persecution, violation, oppression and injustice perpetrated against lesbian and gay people. Is it not an issue of justice when a mother or father lose their children because they are gay or lesbian? Is it not an issue of justice when people suffer trauma and abuse because of how they look or simply how they are perceived to be?

Two years ago a lesbian was raped in New Orleans by two men. Throughout her trial, the defense attorneys continually made reference to her sexual orientation. The rapists were acquitted in the face of conclusive evidence that they had violated this woman. The message: It was and is all right to rape women who are lesbians.

In 1986 a woman was accosted and arrested as she left a New Orleans lesbian bar. The police harassed her verbally, physically abused her, and then released her. Do you think that she felt safe enough to go to the police station and file a report on this incident?

In 1986 a woman from Baton Rouge was raped and beaten as she left a lesbian bar here in New Orleans. She said the disrespect she experienced from the police was as brutal and traumatizing as the rape itself. Her life since then has been in total isolation from the world.

Right now in the city of New Orleans, at this moment, a lesbian woman is being denied full visitation rights for her child even though she shares equal custody.

A young woman in Baton Rouge, recently released from jail, was separated from the other women while she was incarcerated. When she dared to ask why, she was told that they didn't want any queers spreading

diseases. This completely ignores the reality that lesbians are the least likely to contract or transmit sexually transmitted diseases.

This same woman, while in prison, was put in isolation for 30 days for sitting on another woman's bed, having her hair cut. She was accused of trying to influence the other woman to be gay.

Another woman in Baton Rouge, while in custody, was taken into a sergeant's office and told that she was demon-possessed and was going to burn in hell because she's a lesbian. The Bible was read to her and she was told that she would never be released from jail until she repented of her sin.

In March of this year, a lesbian in Baton Rouge was picked up on a charge of violating her probation. She was forced to appear before a judge, spent several weeks in jail, until it was realized that her probation period had already ended.

Six months ago two gay men were arrested and jailed and harassed for several hours. Their crime? One of them whistled at a police officer. Heaven knows why. How many heterosexual men do you think have ever been arrested for whistling at women?

In addition to pastoring a church, I'm also a therapist. I have the awesome responsibility of trying to help people put their lives back together after experiencing a lifetime of abuse and oppression—first, by their families, and then by a society that makes criminals out of us because of who and how we love.

I'm working with women right now who have been violated by their families and by strangers and then further violated by the police when they sought help. In the past 6 weeks, I've not talked to a single lesbian or gay man who, if they didn't have a personal horror story themselves regarding the police or the courts, knew of someone who did.

These incidents are all Louisiana-related and very recent, but I've pastored for 13 years—I've pastored in New York City, Philadelphia, in Los Angeles, and Boston. I've worked in hospitals, in jails, in colleges, in shelters for homeless people, churches and schools, and everywhere I go, gay and lesbian people suffer injustice.

I have been afraid since I was a child that someone would find out I was a queer. Most of my sisters and brothers grow up with this fear. It's so deep within us that we allow ourselves to be raped, humiliated, beaten, without trust that we have any options.

We've learned that "justice for all" doesn't mean gay and lesbian people. We've learned if we're beaten up or raped, we'd best not call the police because, if they find out we're a faggot or dyke, we might get raped or beaten again--or worse.

My first experience with the administration of justice in this society was 25 years ago. I was sitting in a gay bar in Baton Rouge, Louisiana, and the police threw tear gas into the bar and arrested everyone who were there. We were charged with disturbing the peace.

My experience over the years and my experience these past 6 months in New Orleans tells me that my freedom, my individual right to justice and equal protection under the law, is just as precarious as it was 25 years ago.

When the world looks at me, it says "lesbian." That translates into "sex." I become defined by what you think I do sexually. Your laws become different for me because I'm a lesbian. You see a lesbian. My friends, my people, my colleagues, my peers, they see me as a preacher, a teacher, a therapist, a good cook, a fun-loving woman just trying to live a good life, to be a kind neighbor and a friend.

LEONARD GREEN

COCHAIR OF THE LANGSTON AND JONES SOCIETY

In the New Orleans area recently, a case involving two black men participating in same-sexual activities with each other ended on a murderous note. Leonard Adams murdered Terry Williams because Adams was informed that his sex partner had acquired immunodeficiency syndrome. The local justice system failed to seriously address the issue. Leonard Adams received a 1-year reduced sentence, which has been suspended. He will be placed on parole for the remaining time. This is another sign of unfair justice to a black, possibly gay, person who is now dead.

COMMITTEE MEMBER MCDADE. How prevalent is violence of homosexuals towards other homosexuals?

MR. GREEN. It is a problem here in the city of New Orleans.

REV. HAMILTON. There's a subtle implication in that question that when violence is perpetrated on a minority by a minority, that it, somehow, is more acceptable. I don't think that there are any more incidents of gay violence on gays than there are heterosexual violence on heterosexuals.

The case that Mr. Green just cited is a clear example of how the justice system handed down a very light sentence when a murder was committed. This man received a year's sentence, and in that sentencing was the implication that because both of these men were gay, this was an acceptable way to deal with it.

COMMITTEE MEMBER MCDADE. I had read some statistics from some information in Washington indicating that some people do consider the homosexual lifestyle to be violent. I was curious as to whether or not you perceived a lot of violence compared to violence in the heterosexual community, or less violence.

REV. HAMILTON. In my 30 years of experience in the gay and lesbian community, I find gay and lesbian people to be the least violent people in our society.

COMMITTEE MEMBER BAKER. I've yet to hear anything about the criminal justice system and discrimination. I'd like to hear something that actually goes to discrimination based on the fact that a person is gay or lesbian. If there's any inequality here, in terms of suspected prostitution operations, it seems to me the gays are getting favorable treatment by not being prosecuted.

JOHN RAWLS, ESQ.

NEW ORLEANS REGIONAL CHAPTER, LOUISIANA LESBIAN AND GAY POLITICAL ACTION CAUCUS

The Supreme Court of the United States has routinely struck down statutes used to interfere with citizens just carrying on their ordinary activities, whether those be called "loitering statutes" or what.

In a case involving the city of Cincinnati, they struck down a statute that comes very close to both a New Orleans ordinance and a Louisiana statute, which is called "obstructing the sidewalk."

Walk past K-Paul's on Charles Street and you tell me if the sidewalk is being obstructed. Walk past Pat O'Brien's. But a couple of years ago, nine lesbians standing outside Charlene Schneider's bar were arrested for having open containers of alcohol in public and obstructing the sidewalk. This kind of selective enforcement of a statute and an ordinance is, I think, germane to your discussion. Every once in a while when Vieux Carre cops have nothing else to do, they sweep through the French Quarter and they arrest men who appear to be gay for obstructing the sidewalk.

They frequently will beef up the charge by planting one marijuana cigarette and one stamp-size packet of cocaine. You tell me how many people walk around with one marijuana cigarette and one stamp-size packet of cocaine. We have a 16-page memo that we routinely file on these cases. If we file the memo attacking the constitutionality of the statute, the city attorney drops the charges because he doesn't want the statute or the ordinance challenged in court.

Under the sodomy statute of Louisiana, I am an unindicted felon, and anytime anybody wants to cause trouble for me or any other lesbian or gay lawyer, or any lesbian or gay doctor, or psychiatrist, or psychologist, or school teacher, or social worker, or anyone else who requires moral turpitude as a grounds for State licensure, all they have to do is pull up the sodomy statute. The sodomy statute is selectively used against us and it's selectively held in place.

COMMITTEE MEMBER QUIGLEY. One of the people on the Committee earlier said that they thought the crime against nature statute was more enforced against the female prostitutes than anybody else. Is that a fair statement of how the laws are enforced now?

MR. RAWLS. The real point is not how it's enforced but that it exists. If I were still a married, straight lawyer, I wouldn't have to worry about having my license yanked at anytime. But, because I am openly gay, I can always have somebody allege that I have violated the sodomy statute by trying to procure them, and all of a sudden my private life becomes a matter of public investigation by the Louisiana State Bar Association and by a court of law.

I'm afraid that I put so much emphasis on my own community, I forgot the impact of the administration of justice on repression of the other 90 percent of the adult population that are straight men and women.

Just as the repression of segregation had directed impact on any whites who were suspected of being too soft on the issue, some effeminate men and women who appear to be too masculine, people who don't conform to society's expectations of getting married, and so forth, suddenly find themselves discriminated against.

It's hard to pick out, but you are not going to find a person running for judge or a person acting as the district attorney or even sometimes a person on the jury if that person is perceived by other people as being

suspect. That's how discrimination affects those who are not ever supposed to be the targets of discrimination.

JAMES KELLOG

ATTORNEY

Good morning. My name is Jim Kellog, and I'm pleased to speak to you today concerning gay men and lesbian women and the administration of criminal justice in Louisiana.

I've been practicing law for 12 years. In those 12 years I've been involved in a number of civil liberties cases, practically every kind of civil rights case there is--a wide variety of gender cases, the rights of prisoners, the mentally ill and the mentally retarded, school discrimination cases, and employment discrimination cases. I have also represented gay men and lesbians in a variety of cases from divorce to child custody, issues including State planning and succession, and I'm gay. That makes a difference.

Try as we may, we've all been offended by our society's attitude towards homosexuality. Homophobia is fundamentally different from racism and sexism. It's not necessarily worse. I'm not saying that racism and sexism are not important because they very much are, but they are fundamentally different, in that our society lacks a fundamental awareness of the injustices that are done to gay men and women. Antigay bias is an acceptable form of bigotry, both socially, religiously, and legally.

The United States Supreme Court has specifically stated that because of a millenia of morality, gay men and women do not have the same rights to privacy that are thereby afforded straight people. Those fundamental facts are important in realizing how pervasive homophobia is, and it affects gay men and women as much as it does straight men and women. We have famine, hatred and violence, but still people think that it's important whether or not somebody goes home to Jack instead of Jill.

There are a number of elements in the criminal justice system, but the police, by far, not only in New Orleans but throughout the State, most clearly reflect the prejudices of our society at large.

Let me give you a few examples. The first is a result of enforcement of the laws which are on the books. The New Orleans City Council and our legislature, in its infinite wisdom, keep accommodating or passing the laws that help the police in this regard. Two of our most notorious laws were

on the books as recently as the 1970s. I give you this background to show you how things are changing, and it's only getting a little bit more sophisticated.

One of my favorite statutes prohibits cross-dressing except on Mardi Gras Day. On Fat Tuesday they actually had police go into gay bars and check men who were dressed as women to make sure they were wearing boxer drawers. If they happened to be wearing panties, they were arrested. That's within the last 10 years.

Another law that was on the books until fairly recently prohibited an alcohol beverage permit being issued to prostitutes, cross-dressers, and homosexuals. It also prevented them from entering bars and taverns in this city.

Those laws were rarely enforced. They were on the books and they were an effective tool of harassment. If an election was coming up, the police could go into the bars and say, "We have a homosexual here. We're going to close the place down," and they did.

Now we use different statutes. The most notorious used now, not only against gays, but against people in general in the French Quarter, is obstructing the sidewalk. They choose that particular statute, which is blatantly unconstitutional, for controlling street musicians.

Let me show you how it's used against gay people. Some people refer to an incident that happened several years ago. [Former Mayor] Dutch Morial was perceived as having a large gay constituency that was supporting him. The city was so split along racial lines that a black person, to be elected, would have to get 7 to 10 percent of the white vote in order to win. The perception was that the gay and lesbian vote, geographically centered in the French Quarter, was not enough to put a black politician over the top.

The police department didn't have a lot of love lost for Dutch Morial at the time, and ... I got a telephone call one Friday evening that there had been 35 people arrested outside of four separate gay bars. It was during the middle of the summer.

In the French Quarter in the summer, people start drinking, they spill out onto the sidewalks, all with their plastic cups. Most of the gay bars are fairly isolated from the mainstream of the French Quarter. The same thing happened the next night. There is a bar in the French Quarter known as Jewel's in the back part of Decatur Street that had a Sunday afternoon

beer bust, and it didn't take a genius to figure out what was coming down, that they were going to arrest people at Jewel's that night. The sum total of the weekend was that we had 103 people arrested, 100 gay men, and three charges of resisting arrest. Ultimately, the charges were dropped, but people still had to go to court to deal with that.

Anyone who's been to New Orleans knows that you have people lined up outside of Galatoire's, outside Antoine's, outside all of K-Paul's. None of those people were arrested and, in fact, obstructing the sidewalk was not the problem. The problem was that the police department wanted it real clear that the gays were pushing too hard in certain regards.

Another incident happened right before the 1984 World's Fair. It was part of a concerted effort to clean up the French Quarter. That happens when you get a convention coming to town. Its fairly predictable.

What happened in 1984, however, was a little bit different. We had spent a lot of time educating the police department ... doing some sensitivity training with them. What was happening, particularly in the back side of the French Quarter, which is generally perceived as being the more gay area, away from tourists, was that anytime more than three or four gay men were walking in the same block they were stopped, and asked to produce two or three picture identifications.

Because no one carries two or three picture identifications, if you couldn't produce them, they asked you where you were from and all kinds of questions. Ultimately the people were arrested for obstructing the sidewalk, or for failure to move on, which is another interesting statute that we have in New Orleans, one of those charges that won't stand up in court. They don't intend for them to stand up in court. The charges are going to be dropped. Everyone knows they're going to be dropped.

But a gay man or woman has to be worried about his name being put in the newspaper. They often have to hire an attorney. They go through an elaborate process to get the charges dropped. You can bet it's seen as a tool of intimidation and it is used for that.

When it became clear that there was a pattern, several of us requested to meet with [then-] Police Chief Morris. Five of us were telling him what the problem was, and Chief Morris ultimately said, in so many words, that the real problem was that gays were being too open these days and too visible, and that what we should do is voluntarily limit ourselves to two

or three people per block. If we didn't, we would expect the harassment that was going on. That was the meeting that we walked out of and it created quite a bit of stir.

Things calmed a bit after that, but now communications have changed. They're no longer educating the police officers, they're no longer giving them the 5 minute lecture I gave you, that they are afraid of gays, and it does make a difference. Gays are not the same as everyone else. We have a different history, different culture, and we have different forms of repression, too.

I could go into a lengthy dissertation on the New Orleans vice squad and the patterns of arrest. It is again fairly predictable when that will be occurring. The vice squad goes out to City Park, Audubon Park, stakes out a particular restroom, and then, if a single man comes in, he is going to be arrested for attempted crime against nature or for obscenity. It doesn't matter who the person is, if he is perceived as being gay.

I have represented heterosexual joggers who are stopped in Audubon Park because they had to stop to go to the bathroom, who were arrested for that. Do you think that a heterosexual arrested for that sort of thing is going to press charges and try to file a damage suit to prohibit that? No. The district attorney's office will drop it if the person doesn't get in trouble for another 6 months.

Nothing happens in most of those instances, and yet, because of the nature of the charge, attempted crime against nature or obscenity, or something like that, people will not fight it. People are concerned about records.

The district attorney's office has been fairly cooperative. For a first offense, they will generally drop the charges and put a person on what's called a "diversionary program." They'll drop the charge and enter it as a "not guilty" finding and hopefully the record can be expunged. But still the person has to go through the fear, not only that they'll be found out or their employer might find out, but all the other things. It's seen as a tool of harassment.

I had a case in St. Tammany Parish that is remarkable for the abuse of police processes. It's one of the few cases where my client was willing to take it to Federal court and where we won the case, actually.

This person is gay--not openly gay, and had a fairly good job. He got a telephone call in the middle of the night from someone who later was found to be an undercover police officer, who said, "So and so told me that you and I should get together and it might be interesting if we did," and so forth. "Sure. Come on out. Come to my house."

He came to the house, right in the front door. The place was surrounded by police officers, who not only arrested my client but forced him to strip so they could strip search him. They went through everything in the entire house. The man happened to be religious, and they started making a lot of anti-Catholic comments because he had a picture of the Pope on his wall. They were using any gay epithet you can imagine as they were doing these things.

The search lasted over a period of 2 hours. He was in a rural area. The officer found a post hole digger and said, "This is what you use when you pick up the boys and kill them and bury them." They brought charges against him that we had a difficult time getting dropped.

Finally, we went to a preliminary examination and the judge hesitantly decided to drop the charges. That never happens. You never win a preliminary examination before a judge. But the judge found the police officers were lying.

We as a society, New Orleans, every city and town through the State of Louisiana, need to outlaw bias-related violence, whether racially based, gender-based, or sexual orientation-based.

We need strong policies by State and local governments about discrimination, specifically on the basis of sexual orientation. We need to promulgate those. We need special training, particularly for the police department. Those kinds of sensitivity things should be a requirement for every single police department around.

We have seen throughout this State and through the country an incredible amount of discrimination that gets blurred. It's no longer just, "We are against the queers. We are against the queers because they are going to kill us." That gets pulled together somehow.

It's a very important thing, the hysteria going on about AIDS. You see it in police officers who put on rubber gloves to arrest someone simply because they are gay. You see it as people are put into separate cells in prisons, not even because they have AIDS but because they are gay they might also have it.

MARK GONZALEZ

ATTORNEY

I have lived in New Orleans for over 10 years, being gay and being an attorney and politically active. I have heard or come in contact with many instances of injustice against gays. I will succumb to the temptation to start with the most colorful instance I have regarding transvestites or cross-dressers.

About a year ago a young man I represented, while cross-dressed and walking alone down nearly deserted Dauphine Street in the French Quarter late at night--it was about 1:00 in the morning on a Friday--was stopped by police officers and arrested for obstructing the sidewalk.

In the past, gays and especially transvestites have been arrested under this or similar charges, and you have also heard about the largest instance, which was in the summer of 1981, when about 50 to 100 people were arrested outside a gay bar.

Another situation, less clear-cut, involves technically valid, though harsh laws against some types of sex--"crimes against nature." I represented people arrested for violations in public places where I strongly believe that if the situation had been between a gay and a girl, in a public place even, they would have been told to move along, or probably the woman would have been allowed to stay and the gay would have been asked to move along and would have been charged and given a 5-year sentence.

I must mention on behalf of a lot of people who are in jail in this State a situation that has been brought to my attention. If you divulge the fact that you are gay, you will be segregated in the prison with the possible rationale being it's for your own protection. Whether you want it or not, you are going to be segregated and, by being segregated, you'll not be allowed to get a job, a work-release job or have the other privileges that a general population prisoner has. In fact, if you can't get work release it's a bad mark on your record that you haven't been successful on a work-release program.

MR. KELLOG. We didn't have a Louisiana Gay Political Action Caucus until about 10 years ago. We didn't have an AIDS Task Force until about 5 years ago. We date the gay movement in the United States from the riots that happened in New York at Stonewall Bar where there were a bunch of drag

queens. Police came inside and decided to arrest everyone, and the drag queens decided they weren't going to put up with it. That was 1969. I've lived in New York for 18 months and, coming back, I see a dramatic change in the social structure in the gay community in New Orleans. The bars are no longer the only place where people meet each other. We've set up our own social organizations, our own racquetball teams, baseball teams and everything else. That's a very, very recent development.

COMMITTEE MEMBER BAKER. Mr. Kellog, you mentioned the D.A.'s office and you said they were very cooperative in diversionary programs, et cetera. It appears that from your testimony that the focus is on the police in the enforcement of certain ordinances. It was noted that these ordinances are enforced not only against gays but against prostitutes and street musicians. I don't see in what you told me anything that identifies the enforcement problem as one directed at gays. It appears that this is a traditional problem that's always existed in the French Quarter, where the police, the vice squad, have used, over the years, various ordinances and questionable ways against, in their minds, questionable activities. We haven't isolated this as anything particularly against gays.

MR. KELLOG. I disagree with you very strongly. When I first came to New Orleans 12 years ago, one of the major problems we were having with the police here was brutality. They would come up with a premise for the stop, such as a tail light being out or something like that. If something happened to provoke the police officer, someone taking a photograph, or something like that, the police officers went crazy. They would arrest people. They would beat people up, send them to the hospital. They would use such charges as obstructing the sidewalk, failure to move on, interference with a police officer, things like that. I, myself, was arrested at the Jazz Fest one year in exactly that kind of situation. When the city started getting sued for that, when police officers finally got arrested because the Justice Department was able to bring some pressure to bear, that changed.

COMMITTEE MEMBER BAKER. That was not directed solely at gays, that was a general problem with the police.

MR. KELLOG. I'm saying we need to shine the spotlight on the police department now and show what they're doing.

I'm not saying prostitutes should not be arrested and that certain activities shouldn't be prohibited. But people who are standing on the

sidewalk, walking in groups of three and four at the back part of the French Quarter should not be arrested for failure to move on, should not be stopped and asked for picture I.D.s. That happened to me, and the police officers knew me. They asked for three or four picture I.D.s.

COMMITTEE MEMBER BAKER. But that's a problem with the police, if the allegations are accepted. Generally, it is not one that is focused solely on gays.

MR. KELLOG. But the focus of your meeting today is problems in the criminal justice system. Just because the police are abusing everyone doesn't mean that they're not abusing gays.

COMMITTEE MEMBER BAKER. We're trying to identify whether the abuse is directed at gays.

MR. KELLOG. That is the perception that the police officers have. Then-Police Chief Morris told me that the reason people are being arrested in the French Quarter is because gays have been too visible. That is discrimination. Street musicians and prostitutes are not popular in the French Quarter. I submit that law-abiding gay people are not popular in the French Quarter and have been subject to harassment repeatedly in the last 12 years that I have lived here.

COMMITTEE MEMBER BAKER. Why are street musicians being harassed?

MR. KELLOG. One of the major problems was that the people who owned shops in the French Quarter were complaining the street musicians were taking business from their businesses. New Orleans passed a whole series of laws against street music, which we took to Federal court. It declared street music to be a personal or a protected activity. Most of the harassment of street musicians stopped at that point.

One of the problems we have in trying to change things and stop some of the harassment by the police is getting people to come forward, be identified as gay and challenge the statutes that exist. There are many unconstitutional laws on the books that police officers know are unconstitutional. The city attorney knows they're unconstitutional. The district attorney knows they're unconstitutional. The point is not to prosecute people but to arrest them, get them out of the area, harass them, and get them to be less visible and less openly gay.

COMMITTEE MEMBER BAKER. Isn't it a fact that the police generally are merely responding to complaints by businessmen and people who live in the

neighborhoods in all of these instances where they're, in fact, enforcing those statutes?

MR. KELLOG. No, that's not true. In the two instances that we're talking about, major instances, where the hundred-some-odd people were arrested at one time, and also the instance where they were arresting people right before the World's Fair, there were no complaints.

Although the police said there were complaints made, they never can identify a complaining witness to us. You get two or three renegade cops and the rest of them go along with it. No one is there to supervise them and stop it.

There was a period when we were able to get some very sympathetic people in the police department. We were having regular meetings with them, and most of the stuff stopped. The word was sent down the line to the police officer on the beat that this was not tolerable. We need to set policies that say, "It is not acceptable for members for this police department to harass people simply because of their sexual orientation or perceived sexual orientation." Then we need to set in place a strong mechanism to take care of that kind of discrimination. We need to keep copies of complaints.

COMMITTEE MEMBER MCDADE. You mentioned the term "homophobia," and there seemed to be a misunderstanding of the term, or perhaps I didn't understand it. Could you go over your understanding of the term "homophobia"?

MR. GONZALEZ. I was trying to explain what I would call the "dynamics of discrimination" against gay people, lesbians. Discrimination is generally referred to, especially in Federal laws, as against blacks, or on the basis of sex or religion. Discrimination against those people is very obvious. On the other hand, the discrimination that takes place against gays and lesbians is very subtle. We're afraid of losing our job or we're afraid of losing friends or any number of things. It's not just an attitude, it's an actual practice. In one instance that I know of, the young man was asked to get this test or he wouldn't be able to continue with his employment. Nobody came out and said, "We know you're gay, we know you're a queer," or anything like that. They just alluded to it. A lot of times the proof of discrimination that we have to bring forth is almost impossible to get.

MR. KELLOG. The homophobia is also within all of us who are gay, too. It's something that's so ingrained in us that we're not even always conscious of it. I had to sit and think about the implications of making the statement that I am gay in a public forum, where the news media was going to be available, whether that was perhaps going to bring the bar association down on me, whether it was going to affect the way that people thought about me, and whether it was going to allow people on this Commission to put me in a pigeonhole and ignore what I was going to say. The fact that I had to sit and make a conscious decision to make such a statement is part of my internal homophobia that I've got to deal with.

Homophobia is no easier to define in concrete terms than either racism or sexism. We all know when people use the word "nigger," and also most of us know that when you use the term "girl," that's racist or sexist. A lot of people don't think of it as being homophobic when they use the term "fag" or "queer."

My own brother, who knows that I'm gay, 2 weeks ago started telling me AIDS jokes in Shreveport. That's part of the homophobia that goes on every day. I've been openly gay for 5 or 6 years. So it was an inappropriate type of thing to do. It happens all the time.

I'm not saying simply that the New Orleans police department is homophobic, although they are. I'm saying that all of us in this room are homophobics in one degree or another. We try to get over that.

I'm racist to a large extent because of the way that I was brought up. I've also done an awful lot of civil rights work and try to work around that, but occasionally, in the deepest, darkest recesses of our mind, it does make a difference whether someone's black or white. I think that it is the same for most of us, whether a person is gay or straight. That's what homophobia is.

COMMITTEE MEMBER JONES. In the case of a battery against a gay person, is it your understanding that, even with appropriate testimony, conviction would be unlikely in New Orleans?

MR. KELLOG. A lot depends on the particular judges, and the particular predisposition and feelings about it. We like to pretend that judges are neutral and detached on these kinds of things, but they're not. I have heard comments in chambers, as I represent people who have been arrested in City Park, from individual judges that are totally intolerable. Frankly, I think the judiciary needs education.

I see it in civil cases, also, primarily in the situation of child custody. That's where it's most predominant. Many of the judges are very, very good on that and don't allow that kind of thing to happen. But many people come into it with their own prejudices, and you have to take time to educate the judge in a particular case as to what's really going on, and the fact that because a woman is a lesbian doesn't mean that she's not going to be a good mother.

COMMITTEE MEMBER JONES. If you were to make it a felony, the defendant would be entitled to a jury trial. Wouldn't homosexual victims be likely to fare less well in getting convictions against attackers before a jury than would be the case of the judge?

MR. KELLOG. There's no way to make a blanket statement. If you've been practicing criminal law, you know what that judge's prejudices are.

I think for any kind of hate crime where you have clear proof that it was racially motivated, religiously motivated, or motivated by the person's sexual orientation, that that should be treated differently.

It's a fact that having the civil rights laws on the books changed a lot of things that were going on. We had to fight an awful lot of cases to do it, but most people accept that you can't discriminate on those kinds of bases. But the law does shape society and does change the attitude of people in their day-to-day dealings with others. In Orleans Parish, I would probably opt for a jury in many of those instances. If we were talking about DeSoto Parish up in Northwest Louisiana, ain't no way in hell I would take that to a jury.

CHAIRMAN FONTHAM. You weren't actually contending that the police discriminated against all persons in the French Quarter, were you?

MR. KELLOG. No.

CHAIRMAN FONTHAM. My understanding was that you were saying it's not only homosexuals but there are some other distinct groups who may be discriminated against, for instance, I gather you were including just ordinary people who the police don't identify as having any specific aspect about them?

MR. KELLOG. In preparation for the World's Fair when they were picking up people for being in the groups, a large number of straight people were arrested in the back part of the French Quarter because the police officers perceived that that was the gay area, and straight people, married with

kids and all the rest, were arrested. Those charges were dropped a lot quicker.

CHAIRMAN FONTHAM. But you're still suggesting that the arrests occurred because of the perception that the people are gay?

MR. KELLOG. Yes.

SHIRLEY PEDLER

DIRECTOR, AMERICAN CIVIL LIBERTIES UNION OF LOUISIANA

I've been asked to talk about general police-community relations in New Orleans as opposed to addressing specifically police problems as they might pertain to the homosexual community.

The ACLU maintains an open line and we receive all kinds of complaints from all kinds of people, and these number approximately 200 every month. Of this number, we investigate only a tiny fraction, namely, those that the ACLU actually intends to litigate. We file only about 12 cases per year. Consequently, we have no way of knowing whether allegations made in other complaints are or are not correct.

It's our impression that there is a serious problem with policemen's conduct in New Orleans generally. Of the roughly 200 complaints we receive each month, probably 20 to 25 percent of those allege police abuse of some sort.

In the last 2 months, we have received 22 complaints alleging police misconduct within the New Orleans Police Department. A fairly typical type of complaint is for someone to allege being beaten by the police and then being charged with disturbing the peace or obstructing justice.

For example, one recent complaint is from the man who maintains that his wife called the police owing to a fight they were having; the police arrived and ordered him off the property, then followed him into a bar, clubbed him and arrested him for disorderly conduct. Again, that's a typical kind of complaint.

People will tell us or write that they were apprehended for some reason, they may have gotten into a rather hostile verbal exchange with the police, they are then beaten and then charged with disorderly conduct.

Another common complaint is entry without warrant. One recent complaint is from a man who claims that the New Orleans Police Department received false information from an informant and that the police broke into

his house and ransacked it. Again, that's a typical kind of complaint.

The level of brutality alleged is sometimes very extreme. One complaint comes from a man who was attempting to locate an apartment with the assistance of his cousin, owing to the fact that he's mentally ill. He and his cousin were knocking on the open door of an apartment with a "for rent" sign in the front. They claim that members of the New Orleans Police Department arrived and the complainant writes as follows, "The officers said, 'Halt, niggers, or we'll blow out your brains.' As I started to try to talk to one of the officers, he grabbed me. The other grabbed my cousin. They told us to walk inside and said if any shots were fired, we were getting the first bullet. They cuffed us and took us into the bathroom saying, 'Nigger, you're lying,' swinging a black stick, hitting me in the eye, which started bleeding all over everywhere."

The man said that he was beaten until he was badly bruised and that his wrist was fractured. Again, this doesn't constitute the kind of information that we receive and compile. We only investigate those complaints when we're anticipating litigation, so I don't maintain to you that this constitutes hard data.

There's no doubt in my mind that some of the complaints that the ACLU receives are spurious and self-serving and that there is no foundation to them. Even if half of the complaints we receive are valid, there's a very serious police abuse problem with the New Orleans Police Department.

We're likely to only redress one complaint a year of this nature. That's all we've got the resources to do. The range of concerns of the ACLU is very broad, including all civil rights matters and civil liberties matters. Police abuse is only one of those. As far as I can tell from my knowledge of the community, there seems to be no adequate remedy at hand.

The people who filed these kinds of complaints have no way to redress them. Either the ACLU does it or it doesn't get done. Most of these people tend to be poor, a disproportionate number of them come from minority groups, they don't have the resources to retain private counsel and sue for redress of grievances concerning these problems.

CHAIRMAN Fontham. To what extent do you observe that the police abuse, to the extent it exists, is directed at minority groups, including homosexuals or other explicitly defined subjects of sex in society?

MS. PEDLER. It's my impression that there's a disproportionate amount of difficulty with respect to the black people in this community. It's not

uncommon for the people who complain to us to allege the use of racist language, particularly the use of the term "nigger." Whether or not the physical abuse is more intense with respect to minority members of this community, I really couldn't say. I have no way to assess that.

With respect to the gay community, of the 20 complaints that we collected in April and May, only one of those appears to come from a member of the gay community.

But it was a very standard kind of complaint of the kind that we have received over the years. It was a French Quarter arrest; the police pulled up, asked the individual what he was smoking, he said, "It's a cigarette. Here, have one." He alleges that the police said to him something like, "This is the end of it for you, pretty boy," arrested him and charged him with obstructing justice or disorderly conduct, some such thing as that.

Again, the impression is that that kind of conduct is not uncommon, particularly in the French Quarter, that people will be arrested for obstructing the sidewalk, just for standing there. They're believed to be gay or they're believed to be soliciting homosexual acts, and they're just picked up off the street and charged with obstructing the sidewalk.

In answer to your question, it is my impression that the problems are more severe with respect to racial minorities and with respect to the gay population.

CHAIRMAN FONTHAM. Do you have access to any information, or do you have knowledge based on the experience of the ACLU, as to comparatively the treatment of homosexuals by the New Orleans justice administration versus other areas of the State or other parts of the country?

MS. PEDLER. I think it's fair to say that the majority of the complaints we receive alleging maltreatment of members of the homosexual population tend to come from New Orleans substantially.

SGT. NORBERT FONSECA

NEW ORLEANS POLICE DEPARTMENT

I was asked to come speak to the Committee by Superintendent Woodfork. I attempted to gather some statistics in the event that I would be asked some questions concerning the problems you all are having with civil rights violations, and the statistics that I was able to gather at that time indicated that there are a fair amount of arrests that are made concerning

prostitution, crime against nature, violations of indecency. I was also asked to present things on such general crimes as blocking the sidewalk.

In reviewing these complaints I couldn't determine whether there would be any area where there would be some kind of specific or selective enforcement on those particular types of crimes. Those crimes are very general crimes and they wouldn't only apply to professionals that are out on the street, so to speak, hustling.

I thought the best way to do this would be to open it up to discussion because it isn't our policy to selectively enforce against any one group. Our policy is just to enforce the laws.

COMMITTEE MEMBER KUTCHER. We've heard a lot of testimony earlier this morning about obstructing the sidewalk, and that this is used in a selective manner in the French Quarter around certain gay bars, and it's almost never around K-Paul's or Pat O'Brien's or Galatoire's, other places where there are large amounts of sidewalk congregation. What is your reaction to those sorts of complaints?

SGT. FONSECA. I think that law has been enforced only where you have some kind of general type of violation, where the prostitutes, for instance, are on the street hustling. That law is only enforced where a police officer knows that within a year's period of time, that individual has been arrested for prostitution or one of the other related crimes. I think it's 42:46, which specifically states that the officer has to have some kind of present knowledge concerning this individual's activities, being arrested for prostitution, crimes against nature or things of this nature, and that is when the enforcement comes in.

Usually, the enforcement act is taken in an area where some types of crimes are involved. It's not arbitrary. I got a complaint yesterday where they were having some problems around Cabrini Playground. The complaint was that they were openly masturbating in public at that area and harassing the elderly people.

This is something that has to be dealt with. This isn't just arbitrarily going out and harassing someone. Rights are being violated.

COMMITTEE MEMBER KUTCHER. For masturbating in public, you would arrest them for obstructing the sidewalk?

SGT. FONSECA. If they witnessed that violation then they would be arrested for a 106. [La. Rev. Stat. Ann. sec. 14:106 (West 1986)]. This happens to

be obscenity. The arrest won't be a general arrest. It would be on what observations and what crimes were committed at that particular time.

COMMITTEE MEMBER KUTCHER. The complaint this morning is specifically about obstructing the sidewalk. People weren't complaining about masturbating, things like that. How would you define the crime of obstructing the sidewalk?

SGT. FONSECA. There's also another crime. I think it's 114.1, which also relates to blocking the sidewalk. It's a more general term, but I don't think it would be used. That would be just blocking the sidewalk, including a vehicle blocking the sidewalk or a pedestrian deliberately obstructing someone else's pathway.

The crime and the law that I'm referring to is more specific and it's related to the types of crimes I explained to you before.

COMMITTEE MEMBER KUTCHER. This morning they explained about one weekend when over 100 people were arrested for obstructing the sidewalk, and all 100 of those charges were dismissed; the officer never showed up in court. Is that the regular way police work is done?

SGT. FONSECA. I can't answer that question because I don't have that information before me. I spoke to the commander of the vice squad yesterday concerning that type of situation where the crimes are reverted back to the D.A.'s office for whatever reason, the diversionary program. The officers make the arrest and then it goes to the court and the offense is diverted.

I have no personal knowledge of the particular incident you're talking about. I don't know why the cases would have been dismissed.

CHAIRMAN FORTHAM. Are you knowledgeable concerning police department policies and practices in general?

SGT. FONSECA. Yes, sir.

COMMITTEE MEMBER KUTCHER. About how many people are on the force in New Orleans?

SGT. FONSECA. Roughly, I believe, there are about 850 police officers, and the rest would be staff level people and civilians that do administrative work. So I would imagine it comes between 1,100 and 1,300, but I'm really not that certain about that.

COMMITTEE MEMBER KUTCHER. Of the 850 police officers, how many would you know or would you guess are gay or homosexuals?

SGT. FONSECA. I do not know. I know of several people that I have been told are gay.

LT. GARY KESSEL

NEW ORLEANS POLICE DEPARTMENT

I'm currently the director of police education and training out at the Municipal Training Academy. I oversee the basic law enforcement training for recruit personnel, and also inservice training for our veteran police officers.

I know that the thrust of what we're talking about is essentially human rights and civil rights. There are a number of areas in the recruit basic training in which basic civil rights and human relations come into play. It's a very recurring thing. I did jot down a list of a few topics in which I know the treatment of people, human rights and civil rights, does come into play.

One course is a civil liabilities course, the civil rights of people; also our community relations block; also in the areas of victimology and criminology; and specific blocks of instructions relating to interviews and interrogations. Very prominent, very much a part of a course of instruction that we call "Crisis Intervention," which is the specific handling of conflicts, or mediating conflicts between people.

We have a specific course of instruction for handling the mentally disturbed. We have "Simulation Training," in which we attempt to simulate specific scenarios that recruits might run across once they reach the field environment or the street environment. A number of these simulations or scenarios involve people in conflict or the mediation in disputes or bring into play the question of human rights.

The final course of instruction that I have jotted down is one that we call the "Laws of Police-Citizen Contact," relating to those laws that come into play whenever there is interaction between the police and citizens, dealings with, for example, detentions and stops and frisks and lesser intrusions, things of this nature.

SGT. REID B. NOBLE

NEW ORLEANS POLICE DEPARTMENT

I am the recruit training commander and recently inherited the course in police-community relations. We are mandated by State law to teach a basic training course. The basic training course mandated by the State of

Louisiana consists of 240 hours of instruction in various subjects, too numerous to mention right here, but some of them are the ones that Lt. Kessel mentioned.

One of those subjects is police community relations. State law requires that we teach 16 hours in that area. The New Orleans Police Academy provides 827 hours of instruction as compared to the mandated 240 hours by State law. The 16 hours in police-community relations treated specifically in that area is amplified to 40 hours. And there are numerous other areas where it recurs. Most of our subjects recur through the academy training, which lasts 20 weeks. You may be introduced to subject matter, for example, elements of criminal conduct, in the beginning of the course and it will recur again later, through most of your other subjects.

In the police relations community aspect, which occurs during the first 2 weeks of training after the basic skills course, the main theme, the thrust of the course, itself, is situational and impartial enforcement of the law. In other words, attempt to engrain in these recruits the thought processes that will allow them to discuss or treat or meet anyone on the street situationally and impartially.

The whole idea is that everyone should have law enforcement, across the board, treated the same way, and rendering aid to victims and all the other things that police officers have to do. Police officers, as you well know, have to do everything. They have to be actors, psychologists, salesmen, medical aides, everything else.

My main thrust is to teach the recruits that it is not necessary to approach someone in an abrasive or aggressive manner, rather to treat everyone the same until something shows them that they should not be treated the same. For example, a hardened criminal pulling a gun on them.

The whole idea is that we train them to be cautious and to also be on the lookout for certain things that may spark something else. Down the road, they again get this training in interviews, interrogations, laws of police-citizen contact, what laws you need when you approach someone.

The course of instruction consists of role-playing, lectures, films, and at the very end of academy training, a simulation training program that lasts for a week. During that week, we walk through different scenes that they may encounter as police officers on the street and show them the ideal way to react or treat whatever has arisen. Then we run them through it and

pretend like it's real. Out on the street, we simulate different types of people that they may meet on the street.

Now, 20 weeks to a recruit may seem like a long time because he's anxious to get out of there. We feel that it's ample for academy training because you can only tell and instruct and show someone so long in the academy itself.

But that's not the end of training. After that, they enter a 16-week phase with field training officer (FTO) training. When they get into the district that they will be assigned to, we leave it to the seasoned veteran officer, the field training officer, who has been through training himself, a different type of training, to further inculcate the ideas that we have put forth.

After the FTO training, the recruit is reviewed again. If there is a problem at all, he may be dismissed from the FTO program and dismissed from the department.

During the academy, if some problem arises, even as late as simulation training, which occurs in the 19th or 20th week, then we dismiss him. We recommend dismissal, and he appears before an academy review panel, and the panel considers all the cases. Then the superintendent, the appointing authority, decides what to do. But we do dismiss if we see inadequate behavior or inadequate absorption of material.

In the State law, the State objectives of basic training that we are mandated to teach, treats specifically certain problems with different groups of people. For example, the elderly, the handicapped, different sexual orientation, ethnic groups, minorities are several different areas that we teach.

We teach the person that by dealing with someone who is either handicapped or elderly, or whatever the specific category may be, there may be some special problems that will be encountered. We teach them that that will happen.

For example, with the elderly one of the most blatant would be that the person would be hard of hearing. They're going to need to approach the person and make sure that they're understanding and hearing everything that's going on. And then, of course, language barriers and this type of problem.

In the past, the academy had a forum conducted by several members of the community. I was not there at the time. I had only heard about it. It frankly ran into the same problem that we run into when we have civilians who try to teach police courses. It is not that there is a misunderstanding as to the civilian interpretation of things or the civilian presentation or treatment of things. It's just that the civilian may not be aware of all the laws involved or all the policy involved.

LT. KESSEL. I believe it was in 1980 that we were approached by Mr. John Harmon who asked if we would object to his preparing a presentation for the recruit class to assist in a form of "sensitivity training." We, of course, had no objection to that, and invited him to do so.

He made his particular presentation two or three times. In so doing, something very disturbing arose, but I don't know why. I don't know whether it was because of what was said in the classroom or the quality of instruction, or whatever the case may be.

To see if we were accomplishing the intended or desired purpose we surveyed the class informally to find out how receptive they were to the given presentation, hoping to find a very positive result. Quite honestly, what we found was a very negative result.

What I recall was that a number of recruits objected to some of the material that Mr. Harmon presented. There were specific religious implications and so forth and so on. I don't know if that's a fact.

But what I can say as fact is that the recruits at that time, in each of those presentations, found something negative. The impression that we came away with was that rather than helping or creating a more positive approach, or accomplishing the sensitivity training that it had intended to achieve, it was doing quite the opposite.

We didn't quite know what to do about that. We just decided to let the presentations continue in hope something would change. Finally, they were just discontinued. That is, Mr. Harmon just stopped making the presentations. Perhaps he was getting the same negative return from the students that they sent back to us.

I don't know the nature of the problem that we had there, but I do know I was very much concerned because we were not achieving what we had hoped to achieve. Something quite the opposite happened.

PETER L. MUNSTER

DIRECTOR, OFFICE OF MUNICIPAL INVESTIGATION

We are not in any way connected with the New Orleans Police Department. We are a small agency. We have three investigators, myself, and two secretaries, a total of six people.

When we started, about 1981, the gay community backed the ordinance that created us. I've been with them for about 3 years. I come from the Federal service. I have a degree in sociology and business.

We're a professional investigative service. We report directly to the chief administrative officer of the city of New Orleans, who is the same person the chief of police reports to.

We were created out of a perceived community need to investigate city employees, most notably, the police department. OMI [Office of Municipal Investigation] can investigate all city employees with the exception of employees of elected officials other than mayor. For instance, we cannot investigate the employees of the city council. They are elected officials. They exempted themselves from our investigation.

OMI handles between 500 and 600 complaints a year. Less than 2 percent are for any type of discrimination based on sex or sexual orientation, that we could determine. We don't keep statistics on this. We went back and looked at the files to get an idea of what was going on.

Our preliminary area of investigation is police brutality and police misconduct, which accounts for 80 to 85 percent of our total complaints. We did 444 police complaints last year. That's what we received. The rest of them were other city employees.

The policy of OMI is to take complaints from anyone providing we have authority under our enabling legislation to investigate the complaint. If we do not have authority, we try to refer it to the agency that can handle it.

If somebody brings us a complaint about the Criminal Sheriff's Office, which we have no authority over, we have guidelines whereby we refer it to certain people that would handle the complaint.

As far as I can determine, at least in my 3 years, we have never refused a complaint from anyone based on sexual preference. OMI does not inquire into anyone's sexual preference.

All investigators have at least 5 years investigative experience before they came to OMI, a college education, and must pass a stringent background check. Of the three investigators I have right now, one is an ex-policeman, one is an ex-parole officer, and one is an ex-sex crime investigator for the district attorney's office. So we have a broad range. Actual experience at this time exceeds 10 years per investigator.

We have subpoena powers for all city employees and all city documents. City employees must give statements in our administrative investigations or possible forfeiture of their job.

Our investigations are primarily through sworn statements and the gathering of documentary and physical evidence. All sustained investigations are submitted to the chief administrative officer for concurrence. If he concurs, sustained cases are forwarded to the appointing authority--in this case, it would be the chief of police, director of streets, director of the health department--for discipline. OMI makes no discipline judgments in the thing. All discipline comes from the department heads.

The concept of OMI has, I believe, worked well within the New Orleans community. OMI has answered over 3,500 complaints in the 6 years we've been keeping records, and these complaints were all against city employees.

We have seen an increase in the number and severity of complaints since its inception, a reflection, I feel, of OMI's activity. We think we've reached that base level, which is going to be between 500 and 600 complaints a year. OMI stands ready to assist all people with complaints against city employees regardless of race, sex, religion, or sexual orientation.

COMMITTEE MEMBER KUTCHER. A number of fellow members of the bar made some statements today regarding the "selective enforcement," of some statutes which are on the books, the constitutionality of which was questionable, particularly, obstructing sidewalks, failure to move on.

The clear analogy that I drew in my mind was the same selective enforcement against blacks in the 1960s is being applied in the 1980s against people who have a different sexual preference. For that reason, not because they're doing anything in public that straight folks don't do, but they're doing it in a neighborhood that is assumed to be populated

by gays who are outside of establishments that are frequented by gays, and that doesn't strike me as being particularly fair. It seems to me that the responsiveness of the police force to that problem should be something which is more of a continuing basis than it has been.

I invite your comments as to selective enforcements.

LT. KESSEL. I'd like to briefly address two things: selective enforcement and the sensitizing of recruits to the needs of people.

"Selective enforcement" is a term that is often kicked about and often misused. You will hear it arising a lot of times in law enforcement, and it usually surfaces in the area of selective traffic enforcement.

Let's define it in a negative sense here today because I think that's what we're talking about, selective enforcement against different groups of people for whatever reason--against blacks, minorities, gays, whatever the case may be. Each and every one of our staff has been chosen, if not for their ability to instruct, for no other reason than each and every one of them is a very professional law enforcement officer with long years of experience, who is not known to discriminate against anyone, who has no history of such complaints, whose qualities the superintendent of police would like to see reflected in his new recruits.

We are all long-time law enforcement officers, but we all are humans. Our years in law enforcement have led us to see a broad spectrum of people and their needs. It takes us back to that day when we placed our hands in the air and swore that we would look out for those who couldn't take care of themselves, and protect lives and property. The last thing that they need is a law enforcement officer who operates in violation of the public trust. The thrust again is that of situational and impartial enforcement of the law. We're not to misuse a law. We're to take the law as it is written, apply it impartially in situations where it should be used, and to the end for which the law was written: the welfare of the community. So I assure you that with our recruits and with the professional staff we go to great lengths to try to avoid selective enforcement in the negative sense. We don't try to neatly pigeonhole people. We talk to the needs of specific people, the aged, the elderly, minorities, gays, whomever. We all have specific problems and specific needs.

But, if we begin to categorize and pigeonhole people, then that may start building walls where none existed. We have attempted to treat everyone the same, as members of the community.

COMMITTEE MEMBER KUTCHER. I don't doubt what you say and I don't doubt that that's what you are teaching, but I wish somebody from your office was here this morning to hear the stories we heard. It's a long way from teaching to practice.

LT. KESSEL. Certainly.

COMMITTEE MEMBER KUTCHER. Apparently there's some well-documented--.

SGT. FONSECA. Where is this documentation? I'm not talking about the complaints that were made this morning. Mr. Munster had just indicated to you that the percentage of the complaints of this nature are minimal, and I can tell you from the time that I served in internal affairs, I never entertained a complaint of this nature; and, to my knowledge, right now, I don't know if we do have any complaints. Where are these people taking these complaints?

COMMITTEE MEMBER KUTCHER. Well, apparently there was at least one or two instances where several people were arrested for obstructing the sidewalk outside a bar in the French Quarter. I am relating to you information which was furnished to us today, and it goes a long way to say, "Because nobody filed a complaint, it means it didn't happen." I don't think that's a fair quantum leap. It may have well happened and the charges were dismissed and everybody said, "Well, I'm not going to push it any more." So I don't think because somebody didn't have the inclination to file a complaint with Mr. Munster's office means it didn't happen and there weren't instances of selective enforcement.

MR. MUNSTER. Let me explain what happened with these. You're talking basically about obstructing the sidewalk. We get "obstructing the sidewalk" a lot.

First of all, we're not in the business of deciding whether it's a valid arrest or not. Almost 100 percent of these complaints go to arraignment. This would account for the officer not showing up in court.

The city attorney then proposes dropping the charges. They sign a hold harmless agreement against the city of New Orleans. This eliminates us from doing any investigation whatsoever in the case because they are holding the city blameless, harmless. It's been the opinion of the attorneys who have advised us that once they sign this, nothing further can be done about the investigation. This has been the reason a lot of these things never went forward.

Also, when these people go through this, they're charged court costs, 60 bucks, just to go through this. I think Sheriff Foti charges another \$27.50. It costs them 100 bucks. So they don't have criminal records, the charges are all dropped, and they're out \$100.

I'd like to point out that the police department has a sensitivity training program within it, it's Operation COPE. They take 10 or 20 community people and put 10 or 20 policemen in the same room out at the police academy. I think it does a lot of good for the police to see--"the other view of it"--in all fairness, there is some sensitivity training.

SGT. NOBLE. I neglected to mention a vital part of the community relations part of the training. We work directly with the public affairs office. Part of the 40 hours in the community relations aspect of the training course is done with a media and police segment and a crime prevention segment, in which the crime prevention officers address the recruits regarding the New Orleans Neighbors and Police Anti-Crime Council (NONPAC), and the Neighborhood Watch people.

It has been ongoing, and it just wasn't done with a forum-type treatment. It is done through crime prevention officers who work in each area of the city.

COMMITTEE MEMBER MCDADE. This morning we heard a lot of allegations that people had been treated differently by the police because they were homosexual, and they indicated that the reason they did not file complaints was fear of exposure or retaliation on the part of the police.

When complaints come to your department, Mr. Munster, are they pretty well contained in your office?

MR. MUNSTER. If any disciplinary action is taken against an officer, and if the officer appeals it to civil service, the complainants would be called as witnesses in an adversarial procedure. There is a possibility of them actually being exposed to the community.

We are allowed to take anonymous complaints, but how do you proceed with an anonymous complaint for brutality? The main proof you have of brutality is the subject who was brutalized, or the subject who was arrested. It's very hard to process one of these types of complaints anonymously. We operate under the same standards of proof that operate in a court of law. It's very hard to produce one of these cases without the complainant. The only type of cases generally that we do anonymously

are systemic-type cases where it happens to a lot of people. It's very hard to take a brutality case from a person who does not want to or refuses to testify. It's almost impossible.

COMMITTEE MEMBER JONES. We heard three lawyers this morning who testified about "selective law enforcement" as it related to these ordinances about blocking the sidewalk and that sort of thing.

SGT. FONSECA. It's not the policy of the New Orleans Police Department to discriminate against anyone. It's not the police department's policy to selectively enforce the law against any particular person.

I cannot deny that there are abuses out there, but I can assure you that if those abuses are brought to the attention of the proper authority, disciplinary action will be taken. We will not tolerate that.

These arrests for blocking the sidewalk are not directed specifically at the French Quarter. It's citywide. Usually, those arrests are made in crime-related areas where there's open hustling on the street. Usually when the "obstructing the sidewalk" law is enforced, it's because of some criminal activity that the officer knows occurred within a year's period of time. The law is pretty clear on defining that. This individual has to have been arrested within a year to that officer's knowledge. As I stated before, it's usually against the prostitutes that are hustling in the Quarter. It doesn't usually indicate on that particular arrest what this individual was doing at the time. It just says "obstructing the sidewalk."

COMMITTEE MEMBER MADDEN. You mentioned the 40 hours of community relations training. Does that include specific training on race relations?

SGT. NOBLE. Yes, because it comes under the situational and impartial enforcement of the law where I described that we treat special problems in handling certain people, like elderly, handicapped, ethnic, et cetera.

COMMITTEE MEMBER MADDEN. What you're saying is you do have some specific training about race relations but apparently not any specific training about dealing with homosexuals?

SGT. NOBLE. Yes, that's in the same portion of police community relations where I listed different groups, segments of the community that we discuss which have special problems in handling. For example, with the elderly, you may be dealing with someone who cannot walk, cannot hear, may be senile. With the handicapped, who you may have to physically lift and move from one place to another, and things like that.

The recruits leave the academy and go into their own assigned districts. Each district represents a different portion of the city, with its own particular problems and different treatments for those problems.

LT. KESSEL. You might say, "What problem could arise with the gay community? What problems do you address there?" The special need that we address in that area is a caveat of sorts, in that we tell the officers not to carry any personal prejudices or vices or prejudge any situation based upon their own system of beliefs. "Be somewhat objective. Stand back from it and treat it as you would anyone else, whether they're old, elderly, young, black, white, green, orange. Handle the dispute, mediate the dispute, and leave your own value system or whatever out of it. Handle it professionally and go on from there."

COMMITTEE MEMBER ADAMS. What kind of sensitivity training are the older, more experienced police officers receiving in the area of sensitivity?

SGT. NOBLE. There is ongoing inservice training which we have not mentioned yet, and this is really important. It is done in Police Officer 1, 2, 3 and 4 training, each of which is a 2-week training program conducted on the officer's own time, and we get an amazing turnout. Of course, the incentive is promotion to the next seniority rank of PO-2, 3, and 4.

COMMITTEE MEMBER ADAMS. You've provided some training since 1980 with regard to the gay community, but I was wondering: Is there someone out there who is trying to capture a training need that addresses specific groups within the community, addresses the needs of specific police officers, such as the officers in the French Quarter, who maybe have specific training needs with regard to the gay community?

SGT. NOBLE. The best vehicle for this was the one I mentioned with the crime prevention officers. Each district has a crime prevention officer assigned to it.

COMMITTEE MEMBER ADAMS. I'm not so much talking about crimes as I am about police relations, or problems that segments of the community are indicating.

SGT. FONSECA. I participated in the program that Mr. Munster spoke of, the COPE program. They took experienced officers that deal on the street with the different groups. They took people from the gay community, the homeless community, the people out of the projects, and other segments of

the community, got them in there where everyone had the opportunity to speak their piece and develop understanding as a result of talking. It was a training program, and I believe that the program is still going on, and it's done on city time.

MR. MUNSTER. Because of our office, the chief administrative officer (CAO) has double feedback with the police department. The CAO is the boss of the Chief of Police, Warren Woodfork. He gets Woodfork's view of the police department and our view. We do an annual Mardi Gras report, tell how Mardi Gras looked this year as or compared to last year. If we find something that we think is a recurring problem with the police department we bring it to the CAO's attention. We do this with all city agencies, not just the police department.

COMMITTEE MEMBER BRASS. I heard two different stories today. This morning I heard from members of the gay and lesbian community and they related to me specific instances of police indifference because the individual happened to be gay or lesbian. This afternoon I hear from Sgt. Fonseca that that's not true, and from Munster that he has not received any complaints. I question whether or not Sgt. Fonseca is correct regarding his not bringing statistics because it's not public information.

SGT. FONSECA. I cannot give you arrest information. That's a Federal violation of the law.

COMMITTEE MEMBER BRASS. I question whether or not that's correct because if you'll look in any hometown newspaper I can tell you who got arrested and what they were charged with, their names and their addresses.

SGT. FONSECA. I suggest you familiarize yourself with the Truth and Information Act, sir.

COMMITTEE MEMBER BRASS. My question, pure and simple, is whether or not there exists any violation of the civil rights of persons in this city because they happen to be gay, homosexuals, or lesbians, which is what we're trying to get at based on the allegations which we've heard.

SGT. FONSECA. It is not the department's policy to discriminate against anyone. When we do have a problem that is called to our attention, we'll handle it expediently. If they do not want to handle it through Mr. Munster's organization and they don't want to handle it through our internal affairs, there are other Federal organizations that will entertain civil rights violations.

I can't account for the officer on the street who abuses his authority. But, if it's not called to our attention, we can't handle it. Obviously, there are some problems on the street if these people are coming north and making these types of complaints.

The only thing I can tell you is what I'm privy to. We have no reason to hide anything. I'm not trying to hide anything by failing to bring those statistics to you.

COMMITTEE MEMBER QUIGLEY. Councilman Jackson's office released a study about 6 weeks ago for--a computer study of the arrests for obstructing the sidewalk in the city of New Orleans over the last 18 months to 2 years, which may be the same thing you looked at.

SGT. FONSECA. It may be.

COMMITTEE MEMBER QUIGLEY. So it is a public record. When I looked at those, it indicated to me that a substantial number of arrests were in the French Quarter, and the other group was mostly along the homeless corridor, the other side between Poydras and Felicite.

Are those the same statistics that you looked at this morning?

SGT. FONSECA. The records that I looked at indicate to me that a lot of the arrests are made in the area of the sixth district, where there's a crime-related area. I just scanned it to see if there was any pattern of where those types of arrests were made.

STAFF MEMBER MELVIN JENKINS. As a followup to that, I want to make a request of the Sergeant--to provide to us the information that you reviewed this morning in preparation for your presentation.

SGT. FONSECA. I would be happy to discuss with my superintendent to determine if I can do that. I can't release that information. I'm sorry, sir.

STAFF MEMBER MELVIN JENKINS. We expect a written explanation from your office concerning this information for the Advisory Committee's consideration.

SGT. FONSECA. All right.

COMMITTEE MEMBER REIBOLDT. How large is the French Quarter?

SGT. FONSECA. It's a 10-square-block area which begins at Iberville Street, goes to Esplanade, and runs from North Rampart Street to Decatur Street.

COMMITTEE MEMBER REIBOLDT. How many police officers are assigned per shift to this area?

SCT. FONSECA. I would probably say maybe 25 or 30 officers per watch. That's a very densely populated area.

COMMITTEE MEMBER REIBOLDT. How many different types of crime in this area would be subject to obstructing the sidewalk? Prostitution?

SCT. FONSECA. We have prostitution, yes, ma'am. We have purse snatchers. We have quite a bit of narcotic traffic. We have a lot of characters that just play that area looking for a victim. And we have one other problem that's becoming quite prevalent down there is the "stash and dash," where they break the window and steal your purse.

COMMITTEE MEMBER REIBOLDT. There are 10 blocks here where there are probably 25 people per shift trying to keep justice on all of these different kinds of crimes.

SCT. FONSECA. Yes. Most of the times these officers are going from call to call and do not have the luxury of choosing.

KEVIN BOSHEA

CHIEF OF THE SCREENING DIVISION

ORLEANS PARISH DISTRICT ATTORNEY'S OFFICE

I've been a prosecutor for the last 7 years. In addition to being a trial attorney, I was head of a task force in 1983 involving pornography in the city of New Orleans. From 1984 to 1987, I was head of the sex crimes and child abuse unit at the D.A.'s office, and after that I became the chief of the screening division.

The screening division reviews all State arrests and determines whether or not criminal prosecution should be involved. My experiences run the gamut of everything from police brutality to pornography to what I just got out of, which was a tax trial.

I'm speaking primarily from my own experiences as far as a prosecutor is concerned, that there does exist a bias and a prejudice within the community with respect to people of homosexual orientation. I firmly believe that.

I have seen it especially true in the jury sector, and I have examples. I'd like to bring to mind one specific example. There's a case that was in section B of criminal district court. It was an aggravated rape prosecution.

On the night of the incident, the victim of the case, who is present here today, was leaving her place of work, which is a French Quarter restaurant, in the late evening hours and was on her way back to her residence when she was attacked by two individuals. The attack took place in an alley in the French Quarter, and a citizen overheard her screaming and notified the police. When the police apprehended the defendants, one of the defendants was on top of the victim with a knife in his hand. Pretty strong facts, I dare say.

The defense introduced evidence to show that the victim was homosexual. The jury got it. - In spite of what was very, very strong and compelling evidence, 12 noble New Orleans Parish citizens said the words "Not guilty" and put the defendants back out on the street. Do I think that that had something to do with it? Yes, I do. I honestly do.

In other instances we attempt as trial attorneys to keep irrelevant information out. Just as in a sex charge, for instance, the victim's prior sexual history, if not with the offender, is not relevant and there's statutory law on that particular aspect. So should it be with respect to sexual orientation. It's absolutely irrelevant.

However, it does appear to impede the criminal justice process because jurors apparently, in certain instances, will consider that in terms of making determinations of guilt and innocence. Of course, that's not involved.

We primarily try to keep that information out via a motion "in limine," which is filed pretrial. In instances where we've succeeded in the trial courts and that information has not been delivered to the jury and the jury relied solely on the facts and the evidence, as they are supposed to, most of the time the juries have come back with what I perceive to be acceptable verdicts--verdicts that are based on the facts.

I wanted to use that as an example. I have handled cases before involving gay citizens and, as far as I'm concerned that makes no difference. I can speak for my office as saying that my office does not feel that way either.

One of the problems, however, is a legal problem that you need to be aware of. There is what may be perceived to be a statutory disparity. [La. Rev. Stat. Ann sec. 14:89]. I'm calling to mind, for instance, the R.S. 14:89, which is the crime against nature statute, versus the R.S.

14:82 statute [La. Rev. Stat. Ann. sec. 14:82], which is the prostitution statute.

If a person solicits a person for vaginal intercourse, it is a misdemeanor. If a person solicits a person for oral sex, it's a felony. That seems to be a little bit unequal. There's been a lot of discussion about trying to change it legislatively. However, no legislation, to my knowledge, has been filed at this particular point.

With respect to the kind of cases that I see as chief of screening involving the R.S. 14:89 statute, the vast majority of those cases are that of solicitation; that is, a male or female individual solicits another person for intercourse.

Based on the statute and my responsibility under my oath of office, if the evidence is sufficient to prosecute, a prosecution will be instituted. If I perceive or if my screeners perceive evidence of entrapment that is readily apparent or insufficient evidence to justify a prosecution, that prosecution will be refused.

With respect to the balance of cases in that particular area, there are instances involving public masturbation in the city park area, where a lot of cases seem to emanate from, Scout Island in particular, as well as incidents of public homosexual conduct in automobiles or in parks or what have you.

Unfortunately I was not able to bring in the actual statistics. I don't have them in front of me, and I apologize for that fact. I can only give you generalities.

In the instances where you have a public display of that nature, the New Orleans Police Department, apparently, is responding to citizen complaints. I do not receive those complaints personally. The police department does, and the police department responds accordingly.

There's a case that stands out in my mind, and it's presently in court, where two individuals were apparently engaging in activity in an automobile in the French Quarter at approximately 9:00 on what I believe was a Friday evening. That was accepted as a "crime against nature" charge.

After [the initiation of] prosecution the defendant has several options, one of which is to plead guilty. In instances where defendants plead guilty--unless there's a substantial criminal history--I cannot recall of any case where an individual was sentenced to jail time under

that particular circumstance. Usually, it appears to be a fine or active or inactive probation that's involved.

With respect to other options of the defendant, of course, he has the option to go to trial and determine his guilt or innocence. The basic reading of the last couple of cases has been that, with respect to [La. Rev. Stat. Ann. sec.] 14:106, Subsection A, which is the exposure [obscenity] statute, the jurors appear to be quite willing to convict under those circumstances.

There are certain individuals who have requested periodically that they be allowed to go into a counseling program. In those instances where the terms and conditions of the counseling are to the satisfaction of all parties concerned, prosecutions have been dropped.

WILLIAM GLENNON

CHIEF OF THE CRIMINAL DIVISION

NEW ORLEANS CITY ATTORNEY'S OFFICE

I'm assuming that you all are primarily concerned about the municipal court. We handle every type of misdemeanor case that's written by the New Orleans Police Department, or complainant who walks in off the street. Regrettably, my office does not keep statistics on the individual type of prosecutions which go on in municipal court.

We do not screen the cases. We do not see a case until it is set for trial. The cases are originated by the New Orleans Police Department or by walk-in complaints. An affidavit is filed with the clerk, but the arraignment is conducted by the court. When the matter eventually gets to trial, my assistant is called upon to prosecute the matter. We have very little discretion about what kind of charge is filed.

The primary concern of this committee, in general, is to determine whether or not there is discrimination against minorities, and the focus apparently of this committee today is on the question of whether or not there exists prejudice against homosexual persons.

In our prosecution I can state equivocally there is none. We don't distinguish between black, white, green, or blue, and we hopefully do not distinguish whether or not the complainant is a homosexual or the defendant is a homosexual. The complainant is treated just like any other citizen. We proceed with the trial of the matter where a trial is called for.

The note that I received from Mr. Jones indicated that you all were concerned about this statute on the books that relates to obstructing the sidewalk. My prosecutors--most of them are quite experienced in these matters--realize that this statute, in general, is normally used because the police receive a complaint from the public about the assemblage on the street corner or rowdy behavior.

Most of these complaints that are written under the obstructing the sidewalk statute arise because the police department doesn't know what else to charge a person with and has an irate citizen yelling and screaming about somebody out in front of their home creating a disturbance. Those statistics are not kept by our office. They would have to be obtained, if they are obtained at all, through the police department and possibly the Office of the Criminal Justice Coordinating Council.

COMMITTEE MEMBER BRASS. There was an allegation here this morning by another member of the bar that--as it pertains to the obstruction of the sidewalk statute--when those cases come up, and the constitutionality of that statute is challenged, those charges are dropped.

MR. GLENNON. First of all, the ordinance is on the books. It has not been declared unconstitutional. There is no litigation pending, that I know of, from the municipal court that has challenged the constitutionality of that. We handle cases on an individual basis. We try to be fair to both sides: the complainant and the victim. We don't just throw the thing out because we don't think it's constitutional. We throw it out on the basis of the facts.

STAFF MEMBER WILLIAM MULDRON. The allegations actually were that this is an occurrence of considerable magnitude. In other words, up to 100 people have been arrested under the city ordinance for obstructing a sidewalk, and invariably we have been told that the charges are dropped so that the constitutionality of this ordinance is never able to be tested. Are you aware that invariably--and that's the word that's been used--the charges are dropped.

MR. GLENNON. I assure you that there is no plan on the part of the city attorney's office to drop these charges automatically because of fear of the constitutional challenge. When you mention the number of such cases it surprises me. Very, very few of those cases come before us. When you say 100, over what period of time?

STAFF MEMBER WILLIAM MULBROW. In one instance, one day.

MR. GLENNON. That would be surprising to me. I'd like to see the cases.

COMMITTEE MEMBER KUTCHER. I've heard two different stories today. The folks who were here this morning said one thing, and the representatives of the police department said another regarding this. I'm wondering if there's anybody in the audience who can specifically recount that event. There were people who stated this morning that on a particular weekend--and I gathered it was on more than one occasion--there were a number of people arrested based on obstruction of the sidewalk in front of what are known to be gay bars in the Quarter. The question that I would have to ask you is whether you're aware of any such incidents?

MR. GLENNON. I'm not aware of it and not aware of any complaints being made, either.

COMMITTEE MEMBER QUIGLEY. It was about 5 years ago, as I recall. At the time that it happened, it was--

UNIDENTIFIED MALE SPEAKER. 1985

COMMITTEE MEMBER BRASS. This is my point. As I understand the testimony or the information this morning, there were 100 arrests made under the obstruction of the sidewalk statute, and, to be more specific, there were three lesbians and 100 gays that were arrested, and those charges were dropped. Mr. Kellogg's allegation was that the arrests were made purely as harassment.

My question is whether or not that happened, if you have any knowledge of it, and that the arrests were made purely because the persons were gay or lesbians.

MR. GLENNON. I really do not have any specific information on that. We're talking about something that happened in 1985.

COMMITTEE MEMBER BRASS. As I get the information, this is a recurring occurrence when homosexuals or lesbians are arrested under this statute and, when the constitutionality of this statute is challenged, the charges against them are dropped. Your response is that does not happen, to your knowledge?

MR. GLENNON. Certainly not in the past 2 years. To my knowledge, we have not had a whole parcel of people arrested for obstructing the sidewalk who would fit under the category of gay or lesbian under this statute. If it has been, it was disposed of before it got to the district attorney's office.

We don't screen cases. It might have been filed, and it also might have been dismissed by the court without our knowledge.

COMMITTEE MEMBER MADDEN. Mr. Boshea, in the case you talked about, the woman who was raped and, because she was known to be gay, the alleged rapists were set free. What do you think would be an appropriate remedy?

MR. BOSHEA. There are a couple of options that are available. For instance, the criminal code has within it a rape shield statute which states, basically that a victim cannot be questioned about her prior sexual history unless it is with the offender and the issue of consent is involved. [La. Rev. Stat. Ann. sec. 15:498 (West 1981)].

The prior sexual history of a woman is never at issue and never allowed to be discussed pursuant to statutory law unless it is with consent, and the issue of consent is involved. Perhaps an amendment could be made to the Code of Criminal Procedure using some of the language of the rape shield statute and indicating that questions involving sexual orientation should not become at issue unless it is pursuant to a consent-type defense.

For instance, if we're dealing with a homosexual rape, and the defense in that case is consent, that is that the sexual act happened between individuals of a voluntary nature, then I think that questions involving the individual's orientation should be brought to the jury because it is part of an individual's defense and he's entitled to that. However, when that is not at issue, when it is not germane at all to the facts and circumstances, it does not belong in front of the jury.

The only temporary solution that I can deal with at the present time is that of a pretrial motion "in limine," which basically we have to argue on an individual basis to the judge and, if the judge goes along with us, great. But, if the judge doesn't go along with us and the defense is allowed to bring it out, it can cause problems.

COMMITTEE MEMBER QUIGLEY. Mr. Boshea, in terms of the arrests or prosecutions on crimes against nature, would you have any idea of the percentage of the arrests or prosecutions that were between heterosexuals as opposed to homosexuals?

MR. BOSHEA. I'm aware of about three or four incidents where prosecutions were instituted--of course, pursuant to an arrest--involving individuals that were engaged in the conduct--publicly. I'm talking about two

individuals, male and female--for instance, oral sex in a vehicle, in public. I am not aware there is not a large number, to my knowledge, of arrests being made involving heterosexuals.

With respect to incidents where a police officer is involved in a situation involving a female who is a prostitute and there is conversation and perhaps a sex act is committed, there is a higher percentage of that. But that number still is not that high, to be totally honest with you. I can only tell you that I'm only aware of three or four incidents where heterosexual caught-in-the-act situations have been prosecuted over the past 5 years.

COMMITTEE MEMBER QUIGLEY. What's a rough estimate for the number of homosexuals if it's three or four for heterosexuals?

MR. BOSHEA. There isn't that many more. I'd say there's perhaps two or three times that number. I think that's a fair statement. There just aren't that many incidents where we actually have cases involving caught-in-the-act situations between two citizens.

STAFF MEMBER WILLIAM MULDRON. I received an allegation that within the past 2 years, and I think reference is made to Orleans Parish, that there have been six murders in which the victims were homosexual persons. In each case a weapon was involved and I was told that, by definition, is a first-degree murder charge. In each case, however, reduced charges were brought against the perpetrators, second-degree murder. The understanding of the person who made this allegation was this was done because it was felt that a conviction of first degree murder could not be obtained because the victim was a homosexual.

MR. BOSHEA. There is a recognition--and it is not a recognition that we like, but it's a recognition that exists--that apparently there is a degree of bias and/or prejudice that does exist. You have to remember the reality of the situation. It's easy for somebody to say, "Well, you should have gone forward with the first-degree murder charge" and "You should have gone all the way with it." But, when you're not the person involved, or you're not the family that's affected, it's a little bit different.

For instance, the rape case I mentioned in my opening remarks--I don't know for a fact, but I would be surprised if the victim in that case wouldn't have been happy with 40 years instead of going all the way at this particular point. Because she went all the way she got nothing.

There are instances where manslaughter or second-degree murder charges have been accepted. It may well be that those charges were either screened as first-degrees and reduced to second-degrees or taken as second-degrees. But you have to remember what the number one responsibility is, and that is to my client, who may be the victim. I know that if I go all the way with this thing that we may well end up with nothing, and turn to my client and say, "Look, we can take 10 years right now." And my client says, "Do it." Yes, that's a reduction. That's what my client wants and that's what I get paid for. I can tell you, however, that there are plenty of instances where we've gone forward and we've been successful. A lot of it depends on the circumstances of the individual cases.

There's one other case I just wanted to mention that was reminded to me before I came down here. This is an incident where an individual was being prosecuted for attempted murder and the victim was gay. The victim was so concerned about that being exposed to a jury, and he had no assurance whatsoever that it would not be exposed to a jury, that he told us to take whatever we could get. We ended up having to plead the guy on an armed robbery as opposed to an attempted murder charge.

A lot of decisions are made, as far as charge changing, as a result of either the victim's concern related to us or our realities of the situation with respect to the individual case.

PENELOPE BRAZILL

DIRECTOR, NEW ORLEANS DIVISION OF HUMAN RESOURCES

This statement has been prepared on behalf of the Mayor of the city of New Orleans. We, the city of New Orleans, support all efforts to guarantee basic civil rights for all citizens and to end legal forms of discrimination currently practiced. We strongly believe that public institutions must be available for full and equal participation of all citizens and that barriers built on prejudice must come down.

We are a city of caring people. Now is the time for us to work together to restore the city. We have a responsibility to see that all citizens have equal rights, and only through equal rights can we expect full participation in pulling this city together as a community.

We had an effort to organize a Gay Advisory Commission to the Mayor within the last year. That effort is still under way. The groups that

wanted to comprise the advisory committee had not determined in their own organizations who would be members of that committee and thus represent those groups equally. So the efforts are still under way.

But, in approaching the Mayor for his support of an advisory committee on gay issues in this community, this statement was shared with him: It says, "We're governed by the same laws as non-gay people but we must live in constant fear of our reputations, jobs, family attitudes, and our general well-being because of the presence of uneducated, unsophisticated, and untrue fears about our gayness."

In part, as a result of the approach of those groups, the Mayor of the city very aggressively supported the 1980 change in the Code for the City of New Orleans, equal rights for all citizens in the community. It was with distress on the part of the Mayor and his administration that the amendment and those changes did not pass in the area of fair housing.

In part, it is our belief that the ordinances did not pass because a great many people fear homosexuality. Things that you don't understand, you usually are afraid of. Coupled with the fact that the virus of AIDS has been associated as a gay disease, we have many people in the community and the city of New Orleans that we feel are subject to hysteria and, as a result of that, want to isolate and have people who have different sexual orientations live in areas which are not in their own neighborhoods.

The dialogue between the gay community and the Barthelmy administration has been open and has been frequent. The deputy of the city health department represents the Mayor on the Metropolitan Area AIDS Committee, and we have most recently initiated a program through the department of health addressing the problems of AIDS as it relates to minorities in the community.

We recognize that there is discrimination targeted toward the gay community, and this is why the Mayor has and will continue to aggressively support a city ordinance change.

We also recognize that the AIDS virus can result in additional discrimination to this community, and this is why the administration is taking a proactive role in AIDS education.

In conclusion, the Mayor fully supports equal rights for all citizens, pledges continued support in protecting the rights of every citizen, regardless of race, creed, religion, or sexual orientation.

COUNCILMAN JOINTY JACKSON
NEW ORLEANS CITY COUNCIL

Being a black man, I've known injustice. Also being a black man, I've known--as most black people have known in this country--I've known discrimination. Being heterosexual, I've not known injustice or discrimination based on sexual orientation, but I've just recently learned.

I've learned about discrimination and violence and harassment and injustice targeted at gay men and lesbian women from my friends in the gay community. What I have learned disturbs me and, to a large degree, frightens me.

It disturbs and frightens me because it represents hatred. It represents a hatred that gay people suffer, which is no different from that which black people suffer. And, with all hatred, we understand that hatred is evil.

Gay people are, in my opinion, hated because of their membership in a group, just as surely as black people in most cases are hated because of their membership in groups. Gay people are hated because of their sexual orientation, as well as black people in the past were hated, and even today are hated, because merely of the color of their skin.

The defeat of the proposed city ordinance, as Miss Brazile mentioned in her testimony, that was supported by the mayor, would have prohibited discrimination in jobs, housing, and in public accommodations. It was a defeat for all of us here in the city of New Orleans.

I'd just like to comment that when we heard testimony for the ordinance and against the ordinance this hatred surfaced. Those in the religious community, as well as those, I'm sad to say, in the black community voiced their opposition to the ordinance in a tone that really, in my mind, symbolized the kind of hatred that they had for other fellow human beings.

I personally can bear testimony to that hatred that is being experienced in the city of New Orleans. During the debate that I just mentioned I and my family received the grotesque hatred. People phoned my office, people phoned my home with all kinds of threats. My children were confronted, my wife, my family, even within my church, and by people from all segments of this community--not necessarily only the police, but whites, blacks, religious people. People who heretofore had pronounced a

commitment for the struggle of human rights approached me and my family in a manner which scared me.

We cannot, in my opinion, continue to allow the festering sore of hatred to grow until it consumes us all. We cannot ignore the injustices done in the name of justice, and we cannot allow the administration of justice to be administered in one way to one group and in another way to another group.

You have heard today from those representing the city of New Orleans and throughout the State that there is no concerted effort to sanction a plan of discrimination regarding justice. I would hope that this is true.

Last year representatives of the gay community came to me as a city councilman, as an elected official of the city of New Orleans, to go with them to speak with our chief of police, the Honorable Warren Woodfork, regarding the unequal application of the city's laws regarding the blocking of sidewalks.

This is not the first time that I can recall that members of the gay community have been targeted by members of the police department for selective enforcement of this law. I know our police chief to be a very honorable man. I know him to be a very fair man. He promised at that meeting that the laws would be fairly enforced.

But members of the gay community who have been victimized by past injustices are not convinced that this will not happen again. I think you've heard some testimony about that today.

Therefore, I would urge you, as members of the Advisory Committee, to recommend to the U.S. Civil Rights Commission and the Congress that funds to do your work be increased so that a very thorough study of arrest records could be made to determine if, as gay activists have suggested, that they're being victimized by the American system of justice in the most un-American of ways.

Furthermore, I would like to let this Committee know and to announce publicly, that I will offer a resolution to the city council at our next meeting that would urge the cities of the United States to follow the lead of the House of Representatives in passing the Hate Crime Statistics Act offered by Rep. John Conners and supported by our own representative here from the city of New Orleans, the Honorable Lindy Boggs.

Furthermore, this resolution will urge the President of the United States to recognize that unless we enact laws to determine if indeed hate crime is based on race, religion, sexual orientation, or ethnicity, crimes against blacks, Hispanics, Southeast Asians, Jews, and gay men and lesbian women.

Unless we do the investigatory work necessary to verify the existence of hate crime and whether or not it is getting worse we can never enact laws to fight the crimes of violence that, in my opinion, endanger us all.

As Dr. King said when he was sitting alone in his jailhouse in Birmingham, "Injustice everywhere is a threat to justice everywhere." And we're caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one, directly affects all indirectly.

I think that we would be fooling ourselves if we thought that there are not police officers who are antigay. I think we would be fooling ourselves if we would not think that there are elected officials who are antigay. I think we would be fooling ourselves if we would think that there aren't blacks who are antigay. In my opinion, we would be denying the truth if we believed that all people, particularly gays and lesbians, have equality before the law.

Equality before the law is a goal that we, as black people, have sought for 100 years. It is a goal that gay men and women have set for themselves, also. This goal of equality before the law must be achieved if our nation is to endure and to flourish. I believe we can be successful. I believe we will be successful.

COMMITTEE MEMBER KUTCHER. It seems to me that you all may be the only folks who have been here today who have some authority to do something about what everybody else has talked about.

There have been vast discrepancies as to past events related by the participants, either the police or gays. What can the city do to try to come up with a program to make the police department, specifically, and I guess everybody in general, more sensitized to what we all agree is a discrimination, or I at least view as a discrimination?

COUNCILMAN JACKSON. First of all, I think that the city must make a public statement.

If you don't say, "We are against discrimination" as a public body, then how can you very well expect your employees to honor that kind of

self-imposed commitment? I am presently working with ACLU because we're trying to document, as you are trying to document, more succinctly and more clearly the prevalence of the discrimination.

I think you might have heard about my request to the department to receive statistics so we can see whether or not they're "indiscriminate stopping." I believe it. I have seen it happen with my own eyes, but we have to validate that.

It must begin by us having some form of law, some form of ordinance, some form of preamble or some statement that indeed this city, through its elected body, will not tolerate discrimination, be it the police department, be it NOPD, be it the finance department, be it whatever.

MS. BRAZIER. The police department comes from the same kind of community that all of us that live in New Orleans are a part of. All of us that live in this community are partly responsible for the defeat of that ordinance.

When you talk about sensitizing the police to specific minority groups--and I think we can consider gays a minority group, then you're talking about persons who are going to step out the role of what the community expects them to do. If we, as a governmental body, have said it's okay to treat these people differently because of their sexual preferences, then it's very difficult, as Councilman Jackson pointed out, to say to the police, "we're going to hold you accountable for doing what the community has said it's okay for you to do."

COMMITTEE MEMBER MCDADE. This is the second time in 2 days I've heard the--quote--"fear of AIDS" used in a political vein in liberal ways. You mentioned the sodomy, that some people objected to it.

I think we have to face some realities here. Whether we object to something or whether we don't object to it, the realities are that according to the CDC, somewhere around 80 percent of those people polled on AIDS are homosexual or bisexual males. We also have to face the reality that every time we hear the absolute definite fact about AIDS, it generally contradicts something we heard in the past.

The fear of AIDS to many people is a logical concern. Are we going to treat AIDS as a political issue, or are we going to treat AIDS as a health issue?

COUNCILMAN JACKSON. Let's talk about [the situation] before AIDS because I think that people justify their discrimination or their prejudices or their bias on--quote--"the emergence of AIDS crisis."

I will tell you while there was some mention of AIDS at the hearings, and while people objected to the passage of the ordinance, a lot of it had to do with their prejudice and it wasn't imbedded in--quote--"the AIDS crisis." You'll find that most people who will tell you, "I don't like gays, I don't like lesbians," will also say "I really think that we need to do something about this health problem." So they justify. It is a health issue, but it is, in my opinion, a political issue.

I think that the violence that the gay community has expressed to me, and the discrimination that they perceive, have not really been totally founded in our fear of AIDS.

I guess my gut feelings are simply that I think it is a political issue, it is a health issue, and even if it's solved tomorrow you still would have people who, because of their own biases and prejudices, would want to discriminate against people they suspect are gay.

COMMITTEE MEMBER MCDADE. I've heard it several times today that people are afraid of AIDS; therefore, they are homophobic.

MS. PRAZILE. I'd like to comment on that. Any health issue is a political issue because the health of the community is of extreme significance. The gay community has "gotten their act together" in regards to AIDS and AIDS education. The fastest growing number of affected persons are intravenous drug users. We have more babies born with AIDS now than ever before.

When you look at it in terms of number and where it's growing, it's not in the homosexual male, bisexual male because this community has educated themselves and have begun protecting themselves. It is now into other areas.

The real fear--and this is one of the reasons why the Mayor established an office in the health department just this year for AIDS education to minorities because of the disproportion of minorities that are now represented as AIDS victims.

COMMITTEE MEMBER JONES. Does it appear to you that the underpinnings of our law is built on the assumption that homosexuality is a preference.

COUNCILMAN JACKSON. I believe it's a question of orientation. But I don't believe that government ought to ground itself in justifying what it chooses--what it does against a person because that's the way the person's oriented, to look at whether or not it's an orientation or preference.

COMMITTEE MEMBER JONES. The point I'm trying to make is this: Federal law makes a suspect classification of race and sex, for example. These are

unchangeable facts of a person's life. You and I were born black. We can't change that. Penny Brazile was born a female. She can't change that.

So those are suspect classifications. Therefore, for an employer to discriminate against us because we're black or Penny Brazile because she's a woman is prohibited by Federal law. It is a suspect classification. There are other kinds of things that are not suspect classifications because they're not so obviously inherent, unchangeable.

COMMITTEE MEMBER MADDEN. Certainly laws and ordinances are not the remedy for every kind of discrimination that we've been talking about here today, but what do you think are the remedies that we need in the laws on the Federal level? You alluded to the Hate Crimes Act. On the State level, what kind of laws do we need to pass or improve, and then on the local level?

COUNCILMAN JACKSON. I think you need a clear statement by the Federal Government that discrimination based on one's sexual orientation is against the law. I think we need to make that statement loud and clear, and I think you ought to provide for the enforcement and prosecution of it as you would with other civil rights.

I think the same thing ought to happen on the State level, and I think it ought to happen here, as we've tried to do, on the city level. And I just think that the courts, themselves, ought to be more aggressive in prosecuting folks who violate one's civil rights, be it Hispanic, black, or otherwise, in my opinion.

We have a rich history of civil rights efforts that's ongoing, and it's just a matter of duplicating those kinds of remedies. We have to come with a very massive education program, by all three levels of government, as it relates not only to the whole question of AIDS to change people's minds, and at least to provide the information.

COMMITTEE MEMBER QUIGLEY. How realistic is it that the State of Louisiana is going to repeal the sodomy law? Are they going to do that anytime soon?

COUNCILMAN JACKSON. No. In my honest opinion, that will--unfortunately, I'm sad to say it, we're a long way from that on the State level.

COMMITTEE MEMBER QUIGLEY. What about passage of a State law prohibiting discrimination on the basis of sexual orientation? Is that likely to happen in the near future?

COUNCILMAN JACKSON. No.

COMMITTEE MEMBER QUIGLEY. Increased money dedicated to research into antigay violence and its consequences, is that realistic? Is that going to come on either the local or the State level here in Louisiana?

COUNCILMAN JACKSON. It will be a long time coming from the State level. We have at our local level provided general funds to try to assist in that, but it nowhere meets the kind of demand, realistic demand that there is. The types of money to do a thorough broad-based study would have to come from the Federal level.

COMMITTEE MEMBER QUIGLEY. The city of New Orleans has done some research on that?

COUNCILMAN JACKSON. We provide the monies in the area of the AIDS research. I think the city put \$50,000 in it. We provided some monies to the police department.

MS. BRAZILE. Generally, whenever there is a lack of money on a Federal, city, or State level, the first thing that goes is community services. And the understanding of differences of people is in the area of community services. I certainly don't see an increase in any money.

COUNCILMAN JACKSON. I don't see it in the foreseeable future, any significant lot of monies to do that, because our city is broke. But, I know of at least \$50,000 general fund money that we did provide for the AIDS problem.

COMMITTEE MEMBER REIBOLDT. My question, specifically to you, Penny, goes back to your comment about the mayor's attempt to organize a gay advisory committee. I was a little bit shocked that couldn't be done, realizing the type of representation that was here this morning.

MS. BRAZILE. It can be done, and I think so because I was so intimately involved in trying to get this done. The Mayor recognizes that it takes everybody to make this work. He does not take credit as the authority on how everybody lives and what is the best quality of life for that particular person. So during his administration, he has been most receptive to have different groups that represent different parts of the community advise him as to what is the appropriate way to respond to them in their neighborhoods and communities.

COUNCILMAN JACKSON. Let me just say that for the civil rights ordinance there was unity among the various members of the gay community. I think the defeat of the ordinance, per se, had a chilling effect on a lot of organized efforts.

CYNTHIA FRANDRIA

CITIZEN

I am the victim of the rape case that several people have spoken about today. It sickens me that I have to speak about it once more.

The decision was unanimous that--and I quote-- this was brought up by the defense attorney: "That since she chooses indiscriminate sex, it would stand to reason, therefore, that she would pay to be raped." The amount of money in question was \$2. That would have been \$1 per rapist. I'm not that cheap, even if I were going to do that.

Also, the defense attorney addressed me and it was not objected to in my own testimony, and I think what he was implying was that I'm lesbian so, therefore, I must be masculine. "If you're so tough why didn't you save yourself from this horrible thing?"

I actually did try to physically walk away from that. I was strangled and had two knives at me. So I think I did what I had to do to survive, to stay alive. I guess on the one hand I'm grateful that I'm here to talk about it.

CHARLENE SCHNEIDER

CITIZEN

I'm 48 years old, I own a gay club, and I've owned it for 11 years. We run a very good club. It's very political. We try to stay politically correct. But I can tell you this, I don't worry about myself because I'm okay, but I've worried about our kids.

At my club, nine women were arrested outside that bar--nine women: three policewomen from Baton Rouge, two chemists, two school teachers, and two women who owned their own business. They weren't hustling, they weren't prostituting, and they weren't blocking a 14-foot, 8-inch sidewalk. It was pure harassment. There's no other reason but this.

This policeman tells me that OMI was organized because of the gay community and the black community working together. The other gentlemen would want to tell about internal affairs. The reason OMI was born was because internal affairs wasn't doing anything. Our good Mayor Morial did help us to institute OMI and, with the help of our present mayor, we've continued on with this. I think that that's very, very important.

But the nine women arrested outside of my bar--a councilman came down because he didn't understand what was going on. The sergeant was still

there. They had taken my girls away. I was in the middle of a breakdown because I'd been in jail six times. I've lost my top-secret clearance, I've lost everything in my life, but I'm not going to lose me in this, and I'm not going to lose my friends and the kids coming up today who are just good, gay people. I mean this.

You can talk about pornography and prostitution and hustling. I would like to ask all of you: How long do you spend making love a week? You don't have to answer that. I just want you to think about this silly question. How long do you make love a week?

So let's say if you're a honeymoon couple, 5 hours. So let's go down to after 2 years. You're doing 2 hours a week. This is what we're here about. The other hours in my week, I spend shining my shoes, paying my taxes, running my business, feeding my cat, cutting my grass, going to meetings.

I don't understand why we're different. I don't understand what 2 hours a week, who I go home to love--why we have to meet about this (pause). I'm sorry.

We don't want your help and we don't want special rights, and nobody wants to hustle on the corner. Prostitution is against the law. Go to jail. Hustling's against the law. Go to jail. You commit a crime. Go to jail. I don't care if you're gay. A crime is a crime. But the crime of being gay, this--it's so sweeping, it just-- (pause).

Obstruction of a sidewalk might be a very good law if the only people you were arresting were obstructing a sidewalk. But what you're saying is, "Oh, here's two prostitutes and there's three gay men walking down the street, so we'll bust them all together and we'll take them off." And that's it. That's the sweep. The sweep is we're included.

We need so many things in our community, and the last thing we need to add is hate because our group is a very loving group and, within every group, you're going to have some bad eggs. But I can tell you the bad eggs aren't getting busted. It's the good kids who work every day.

I hope one day that all of this is just history, hopefully, like the civil rights movement. I guess we'll always be working on that, too, because I suppose there'll always be haters out there. As Jesse Jackson says, "There'll always be the dream, the dream busters, and the dream makers." We're going to stick with this dream.

RICHARD SACHEP

CITIZEN

After listening to the people at the police department, I figured I just had to stay and give you another view of the relationship between the police department and the gay community.

I was one of four or five different members of the gay community who would lecture at the police academy during what they called their "cultural forum." This has not taken place in the last 3 years. The cultural forum was one afternoon set aside to sensitize police officers, both recruits and inservice personnel, to the needs of various minorities, whether they were Hispanic, deaf, Vietnamese, gay, or a woman living in the projects.

I don't know any of the people at this table because I apparently came along after their time, but I could produce three people from the police academy who were well pleased with the information that was exchanged during these forums.

Only one time--and I think I lectured four times--was there a police officer who was outraged by the fact that this openly gay man had come and asked to be treated like everybody else. He was so angry that he was almost incoherent and he lost any trace of professionalism. I didn't have to say a word because his colleagues knew that he had become unprofessional. This was a very clear example of the kind of police officer who should be kept away from areas where there are a lot of gay residents, especially in the French Quarter.

Some of these police officers have mentioned the COPE seminars. "COPE," which stands for "Community-Oriented Police Education," is sponsored by Loyola's Institute of Human Relations. It is a voluntary 16-week seminar. Sixteen police officers and 16 members of various communities come together 16 weeks in a row and spend the evening discussing various issues.

I was involved in one of those seminars. Only 5 minutes out of the 16 weeks dealt in any way with gay issues or police relationships with gay people. I don't want this Committee to go away thinking that there is any kind of formal educational sensitivity training going on right now between the police department and the gay community. It is not.

The other thing that had me somewhat upset was the attitude of Sergeant Fonseca because he sort of blurred the issues. "We need to arrest

these people walking down the street because somebody is masturbating up the block." What has one thing got to do with another? Because I'm gay, does that mean that I engage in that kind of activity? What about all the hustlers on the street? Just because a kid on the street is selling his body doesn't mean he's gay. He doesn't belong to the gay community. He doesn't go to the gay bars. He's not part of our organizations. We can't ever reach people like that. If you ask these kids, "Are you gay?" they'll say, "Hell, no."

What about the people picking them up? They must be gay. Wrong again. These people generally are married people, possibly bisexual, can't afford to be part of the gay community, and for some reason or other, which I don't understand, do these things with these teenage hustlers.

So we're going to arrest gay people standing in front of the gay bar because there are prostitutes down the block? Do you see the confusion of issues?

It seemed to me that the impression coming across from these police officers, the policymakers, the ones who give the flavor and the atmosphere to the police department, is that "This is what these people do; therefore, we have to get them off the street."

I think you should be aware of the confusion of issues. I don't know any gay people that are in favor of public sex. That is not the issue. The issue is "Am I allowed, as a citizen of this country, to stand in the middle of a pedestrian mall on Bourbon Street with 10,000 other people and not be arrested?"

In terms of reporting crimes, in this city, as in so many others, it is perfectly legal for an employer to say to somebody, "You're lesbian. You're fixed." "You're a faggot. Get out." And you have no recourse. When somebody is illegally charged, it's very difficult for them to make the choice between continuing to earn a living or press for their civil rights.

I happen to own my own business. Nobody can fire me. But we deal with some very large conservative corporations, and every time my name is in the newspaper or my face is on television, I have to worry: "Am I going to lose a big contract? Is one of my employees going to lose their job?" because I won't be able to keep them employed because I stood up for my civil rights. Even though I am somewhat insulated from the job security

problem, I still have to be cautious. Although the police department claims there's no policy of discrimination against people, it occurs every single day because of certain officers who are free to vent their discrimination and their prejudice and abuse the law and falsify arrests against gay men and women. I think this is very important for you to realize that it does happen. It's only the tip of the iceberg that you're seeing now.

My own partner in life of 10 years was arrested for standing on Bourbon Street. An employee of mine, who is obviously gay and very effeminate, saw two men who had nugged him several weeks before. Two blocks away there were some police officers standing by their car, and he asked them to go and arrest them. They said, "Sure, honey, you go and hold them for us. We'll be right over."

A few weeks ago, a young gay man was arrested and thrown into central lockup, and the officer putting him into the holding cell with other men said, "Here you go, boys. Here's a fairy for you. Have fun with him." Ladies and gentlemen, only the blind cannot see what's happening here.

JOHN MAUIS, ESC.

NEW ORLEANS REGIONAL CHAPTER

LOUISIANA GAY POLITICAL ACTION CAUCUS

I gave some documents to your staff person, including the letter that I sent to Mayor Barthelmy on behalf of the Board of the Lesbian and Gay Political Action Caucus, charging that there is a policy by police officers of arresting those who are obstructing the sidewalk and a policy by the city attorney's office of dropping those charges if the constitutionality is challenged. (Appendix A)

I also have the statute, Section 61:114.1, "Obstruction of Sidewalks." You'll see it does not make sense as an ordinance. When you put paragraph A and paragraph B together and drop out the notice requirement, then you get what the police are actually enforcing. The statute by the way is Louisiana Revised Statute 14:100.1. That's the equivalent statute. (Appendix B)

I also have the memorandum that we use as attorneys to get this statute dropped (Appendix C), and the specific citation of the Supreme Court that I would make to you is Coates v. City of Cincinnati, 1971, case.

It's 402 U.S. 611, 91 Supreme Court 1686--I regret I do not have the Lawyers Edition 2nd cite--in which Justice Brennan said:

"The 1st and 14th Amendments do not permit a State to make criminal the exercise of the right of assembly simply because its exercise may be 'annoying' to other people. If these were not the rule, the right of the people to gather in public places for social or political purposes would be continually subject to summary suspension through the good-faith enforcement of a prohibition against annoying conduct, and such a prohibition, in addition contains an obvious invitation to discriminatory enforcement against those whose association to gather is annoying because their ideas, their lifestyles, or their physical appearance is resented by the majority of their fellow citizens." [402 U.S. at 716]. And, as the Supreme Court points out, citizen complaints, which the police officers have said is justification, is no justification for denial of constitutionally guaranteed liberties.

Remember for a second how they said, "Well, it's no big deal. They only get a \$60 fine." Think for a moment what an arrest means, ladies and gentlemen, because most of you probably have never been through one. It means you're frisked in public, you're handcuffed, you're put in a police car, you're taken to central lockup, you're processed. You have to call somebody to get you out of jail. You may have to post bond. And you then have to go to court.

The American Medical Association, the American Psychology Association, the American Psychiatry Association all say homosexuality is not a disease. I'm not sick. But the National Association of Social Workers has gone the other step and said that one of the worst diseases we have in this country socially is homophobia.

RICH MAGILL

CITIZEN

I would like to see you recommend to the U.S. Civil Rights Commission and to the Congress that they do pass legislation that will prohibit discrimination based on sexual orientation. We should be included in these laws. We shouldn't have to be before you regarding the administration of justice.

JOHN D. RAWLS
ATTORNEY AT LAW

220 Camp Street, Suite 315
New Orleans, Louisiana 70130
(504) 525-7117

May 13, 1988

The Hon. Sidney J. Barthelemy
Mayor, City of New Orleans
City Hall, Room 2E10
1300 Perdido Street
New Orleans, LA 70130

Re: Louisiana Civil Rights Commission
Advisory Committee Hearing
May 27, 1988

Dear Mayor Barthelemy:

On behalf of the Board of the New Orleans Regional Chapter of the Lesbian and Gay Political Action Caucus (NORCO/LAGPAC), I am writing at the request of that Board to express our concern that the City continues to enforce a policy of arresting, harassing and prosecuting gay men and lesbians. While the notorious "Obstructing the Sidewalk" ordinance is the most obvious aspect of that policy, it is not the only one.

We respectfully request that you insure that both Police Superintendent Woodfork and City Attorney Jones attend the hearing of the Louisiana Civil Rights Commission Advisory Committee on May 27th. We want Mr. Woodfork to explain to that Committee why his Department arrests gay men and lesbians on a selective and discriminatory basis under this ordinance. We also want Mr. Jones to explain why his attorneys prosecute on this ordinance except when its clear unconstitutionality is raised, and why they uniformly drop the charges when its constitutionality is challenged by defense attorneys.

We respectfully submit that lesbians and gay men who are not bothering anyone else have the right as citizens to walk the sidewalks of the French Quarter and other neighborhoods without being set upon by police for sport, as happens repeatedly in this City. We also respectfully submit that attorneys on the City payroll have an obligation to the citizens of New Orleans to refuse to prosecute under an unconstitutional ordinance. We know you to be a person of compassion and understanding, but the repeated actions of police officers and attorneys show a different set of attitudes entirely.

Page Two

The Hon. Sidney J. Barthelemy

May 13, 1988

We look forward to seeing Police Superintendent Woodfork and City Attorney Jones at that hearing. We would be delighted if you personally could spend some or all of that day listening to the testimony that we intend to present, or at least arrange for a representative of your office to do so.

Thank you as always for your kind consideration of our requests.

Sincerely,

John D. Rawls
On behalf of the Board of the
New Orleans Regional Chapter
of the Lesbian and Gay Political Action Caucus

JDR/lw

enc.

cc: All Board Members

§ 61-112 STREETS, SIDEWALKS, ETC. § 61-114.1

Section 61-114.1. Obstruction of sidewalks.

(a) It shall be unlawful for any person to obstruct or cause to be obstructed any sidewalk or any entrance or window of any building so as to prevent the free and proper use thereof.

(b) If any person or persons by the performance of any outdoor act causes a crowd to gather, and if the crowd makes passage by pedestrians inordinately difficult, then the New Orleans Police Department shall have the authority to order such person or persons to cease performance of his or their act. The person or persons to whom such

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Supp. No. 12-77

§ 61-115 STREETS, SIDEWALKS, ETC. § 61-117

an order is given must obey the order immediately or be subject to arrest for a violation of this Section.

(c) The provisions of this Section shall not apply to a person or persons engaged in watching a parade. (M.C.S., Ord. No. 4440, § 1, 12-18-70; M.C.S., Ord. No. 6619, § 1, 12-22-77.)

APPENDIX C

*Received
10/16/86
[Signature]*

MUNICIPAL COURT
CITY OF NEW ORLEANS
PARISH OF ORLEANS
STATE OF LOUISIANA

NUMBER:

SECTION C

CITY OF NEW ORLEANS
VERSUS

FILED: _____

DEPUTY CLERK _____

MEMORANDUM IN SUPPORT OF
MOTION TO QUASH

MAY IT PLEASE THE COURT:

Defendant herein, _____, was arrested on September 7, 1986, and charged with violation of MCS 61-114.1, obstructing the sidewalk.

Defendant submits that the instant prosecution and charge should be quashed as being fatally defective and unconstitutional. More particularly, _____ prosecution for a violation of MCS 61-114.1 should be quashed since the underlying statute is so vague as to fail to inform a person of average intelligence of what conduct is proscribed and is so indefinite as to delegate to the police officers the power to determine what conduct is illegal and to enforce the statute arbitrarily and discriminatorily. The statute fails to conform to the notice requirements of due process. Moreover, the statute as applied in the instant case is overbroad and reaches conduct protected by the United States Constitution and the Louisiana Constitution.

New Orleans Municipal Code Statute §61-114.1, obstruction of sidewalks, states as follows:

(a) It shall be unlawful for any person to obstruct or cause to be obstructed any sidewalk or any entrance or window of any building so as to prevent the free and proper use thereof.

(b) If any person or persons by the performance of any outdoor act causes a crowd to gather, and if the crowd makes passage by pedestrians inordinately difficult, then the New Orleans Police Department shall have the authority to order such person or persons to cease performance of his or their act. The person or persons to whom such an order is given must obey the order immediately or be subject to arrest for a violation of this Section.

(c) The provisions of this Section shall not apply to a person or persons engaged in watching a parade. (M.C.S., Ord. No. 4440, §1, 12-18-70; M.C.S., Ord. No. 6619, §1, 12-22-77.)

In charging with the violation of said ordinance, the prosecution must allege either that unlawfully obstructed or caused to be obstructed a sidewalk or an entrance to a window of any building so as to prevent the free and proper use thereof or, in the alternative, must allege that was a party to an outdoor act which caused a crowd to gather, that the crowd made passage by pedestrians inordinately difficult, and that, when ordered to cease performance of their act, did not obey the order "immediately" and was arrested therefor. The ordinance is unconstitutionally vague on its face as subjecting the right of assembly to an unascertainable standard and is unconstitutionally broad as authorizing punishment of constitutionally protected rights of free association and assembly. Defendant submits that a person of average intelligence cannot, based on the language of the ordinance, determine what conduct is proscribed. The statute is so indefinite as to delegate to police officers the power to determine what conduct is illegal and to enforce the act arbitrarily, and, as such, the ordinance encourages erratic and arbitrary arrests or convictions.

Initially, it should be noted that when a prosecution is instituted for the obstruction of public sidewalks, the Louisiana Supreme Court has required that the charges themselves be specific and set out the facts or circumstances necessary to inform a defendant of the nature and the cause of the crime with

which he is charged. State v. Smith, 146 So.2d 152 (La. 1962). In that case, a defendant was charged with violating La. R.S. 14:100.1 relative to the obstruction of public passages and with violating La. R.S. 14:103.1 relative to disturbing the peace. Since the Bill of Information in that case merely tracked the language of the statute, the Court held that the charges were insufficient, as being no more than a conclusion of law. Hence, the specificity and particularity of the charges in the instant matter must at the very least be sufficient enough to inform the defendant of the precise nature and cause of the crime with which he is charged. Furthermore, counsel submits that when dealing with constitutionally protected actions, those requirements must be emphasized and adhered to. The aforementioned standard of specificity is not met in the charges levied against

In Coates v. City of Cincinnati, 402 U.S. 611, 91 Sup. Ct. 1686 (1971), the Supreme Court of the United States held that a Cincinnati ordinance was unconstitutionally vague on its face as subjecting the exercise of right of assembly to an unascertainable standard and unconstitutionally broad as authorizing punishment of the constitutionally protected right of free assembly and association. The statute at issue in that case, provided that it "shall be unlawful for three or more persons to assemble, except at a public meeting of citizens, on any of the sidewalks, ... and there conduct themselves in a manner annoying to persons passing by" The Court noted that no standard of conduct was specified at all and, as a result, men of common intelligence would necessarily have to guess at its meaning. The Court further found that the ordinance at issue violated the constitutional right of free assembly and association and that mere public intolerance or animosity cannot be the basis for an abridgement of these constitutional freedoms. Id. at 617. In so doing, the Court stated:

The First and Fourteenth Amendments do not permit a state to make criminal the exercise of the right of assembly simply because its exercise may be "annoying" to some people. If this were not the rule, the right of the people to gather in public places for social or political purposes would be continually subject to summary suspension through the good faith enforcement of a prohibition against annoying conduct. And such a prohibition, in addition, contains an obvious invitation to discriminatory enforcement against those whose association together is "annoying" because their ideas, their lifestyle or their physical appearance is resented by the majority of their fellow citizens. *Id.* at 617 (emphasis added).

Although the statute struck down in *Coates* is not identical to the instant statute, the principles outlined therein are applicable. Firstly, counsel submits that men of common intelligence must necessarily guess at the meaning of MCS 61-114.1. What does it mean to "obstruct" a sidewalk? Further, in Section (b) of that statute, what type of "performance of any outdoor act" falls within the purview of the statute? And when is passage by pedestrians made "inordinately difficult"? In fact, the ordinance, on its face and as applied, delegates to police officers the power to determine what conduct is illegal and to enforce the statute arbitrarily and discriminatorily. As noted in *Coates, supra*, this inevitably leads to discriminatory enforcement against those whose association together is "annoying" because their ideas, their lifestyle, their physical appearance is resented by the majority of their fellow citizens. As such, the ordinance becomes an unconstitutional exercise of the police power, and is therefore void.

Particular emphasis must be placed on the fact that the ordinance herein concerns First Amendment rights. The Supreme Court has made clear that "the power of a State to abridge freedom of speech and of assembly is the exception rather than the rule The limitation upon individual liberty must have appropriate relation to the safety of the State. Legislation which goes beyond this need violates the Constitution." *Herndon v. Lowry*, 301 U.S. 242, 57 Sup. Ct. 732 (1937).

In Shuttlesworth v. City of Birmingham, 382 U.S. 87, 86 Sup. Ct. 211 (1965), the United States Supreme Court held that the defendant could not be convicted for violating an ordinance which made it an offense for one who was blocking free passage of the sidewalk to refuse to heed the police request to move on and the related ordinance which made it an offense for any person to refuse or fail to comply with order of police officers directing traffic. The relevant paragraphs of the Birmingham General City Code provided: "it shall be unlawful for any person or any number of persons to so stand, loiter or walk upon any street or sidewalk in the city as to obstruct free passage over, on or along said street or sidewalk. It shall also be unlawful for any person to stand or loiter upon any street or sidewalk of the city after having been requested by any police officer to move on." As in the instant case, the court noted that in fact the statute set out two separate and disjunctive offenses. One paragraph made it an offense to stand, loiter or walk upon any street or sidewalk so as to obstruct free passage. It was also made an offense to stand, loiter upon the street or sidewalk after having been requested by a police officer to move on. The court reasoned that, literally read, the second part of the ordinance said that a person may stand on a public sidewalk in Birmingham only at the whim of any police officer of that city. "The Constitutional vice of so broad a provision needs no demonstration. It does not provide for government by clearly defined laws, but rather for government by the moment-to-moment opinions of a policeman on his beat." Id. at 91 (citing Cox v. State of Louisiana, 379 U.S. 536, 559, 579, 85 Sup. Ct. 453, 466, 469) (emphasis added).

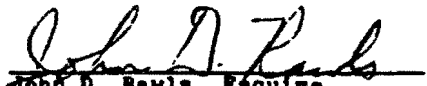
As concerns the instant case, notwithstanding the vagueness and overbreadth of the statute per se, to satisfy the requirements of due process, the State must make an initial showing that

in fact was obstructing a public sidewalk, and that said obstruction prevented the free and proper use of that sidewalk, whatever that means. Counsel again submits that, by its very terms, the statute proscribes conduct which is impossible to determine. Moreover, even if a reasonable man or a man of common intelligence could determine the scope of an obstruction which prevents the free and proper use of a sidewalk, under Section (b) of Section 61-114.1, the State must then further show that the accused was a member of a crowd that was ordered to disperse, and that the order was not "immediately" followed.

CONCLUSION

The instant prosecution charging with violation of MCS 61-114.1 must be quashed as pursuant to an ordinance which is unconstitutionally vague and overbroad on its face. Moreover, the facts of the instant prosecution as well as the very language of the statute evidence an unconstitutional application of the ordinance which lends itself to selective prosecution and arbitrary arrest. Simply stated, the vagueness and overbreadth of this ordinance is such that a man of common intelligence cannot determine what conduct is proscribed, and results in a chilling effect on constitutionally protected rights of assembly and association.

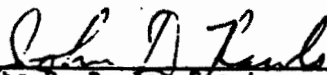
Respectfully Submitted,


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C E R T I F I C A T E

I certify that I have placed a copy of the foregoing in the United States mail, postage prepaid, to the office of the City Attorney on this 15th day of October, 1986.


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