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1 RE: NEW JERSEY CIVIL UNION)
REVIEW COMMISSION)
2 _____)
3

4 Wednesday, July 16, 2008
Trenton, New Jersey

5
6 BEFORE: Civil Union Review Commission
7 COMMISSIONERS:

8 FRANK VESPA-PAPALEO, ESQ., CHAIR of CURC
STEVEN GOLDSTEIN, VICE CHAIR of CURC
(via telephone)
9 STEPHEN HYLAND, ESQ., SECRETARY OF CURC
BARBARA G. ALLEN, ESQ.
10 REV. CHARLES BLUSTEIN-ORTMAN
BARBRA CASBAR-SIPERSTEIN
11 JOE KOMOSINSKI
ERIN O'LEARY, ESQ.
12 MELISSA H. RAKSA
13 ALSO PRESENT: ESTHER NEVAREZ,
CURC STAFF

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1 T R A N S C R I P T of the Civil
2 Union Review Commission, taken in the above-
3 entitled matter before Debra Rice, Professional
4 Court Reporter and Notary Public of the State of
5 New Jersey, taken at the offices of the New
6 Jersey Civil Union Review Commission, Division on
7 Civil Rights - 6th Floor, Walter Lucas Commission
8 Conference Room, 140 East Front Street, Trenton,
9 New Jersey, on Wednesday, July 16, 2008,
10 commencing at 1:00 p.m.

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1 MR. VESPA-PAPALEO: Good
2 afternoon; let's begin. Esther?
3 MS. NEVAREZ: In compliance with
4 Chapter 231 of the Public Laws of 1975, notice of
5 this meeting was given to the Secretary of State,
6 the Press of Atlantic City, the Camden Courier
7 Post, the Jersey Journal, the Trenton Times, the
8 Asbury Park Press, The Record and the Star
9 Ledger.
10 Call to order.
11 Barbara Allen?
12 MS. ALLEN: Present.
13 MS. NEVAREZ: Charles
14 Blustein-Ortman?
15 MR. BLUSTEIN-ORTMAN: Here.
16 MS. NEVAREZ: Robert Bresenhan?
17 (No response was given; not
18 present.)
19 MS. NEVAREZ: Barbra
20 Casbar-Siperstein.
21 MS. CASBAR-SIPERSTEIN: Here (via
22 telephone.)
23 MS. NEVAREZ: Steven Goldstein?
24 MR. GOLDSTEIN: Hello (via
25 telephone).

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1 MS. NEVAREZ: Joe Komosinski?
2 MR. KOMOSINSKI: Here.
3 MS. NEVAREZ: Stephen Hyland?
4 MR. HYLAND: Here.
5 MS. NEVAREZ: Erin O'Leary?
6 MS. O'LEARY: Here.
7 MS. NEVAREZ: Melissa Raksa?
8 MS. RAKSA: Here.
9 MS. NEVAREZ: Linda Schwimmer?
10 MS. SCHWIMMER: Here.
11 MS. NEVAREZ: Kevin Taylor?
12 (No response was given; not
13 present.)
14 MS. NEVAREZ: And Frank
15 Vespa-Papaleo?
16 MR. VESPA-PAPALEO: Here.
17 Okay. Thank you. Let's move on
18 to a motion to approve the minutes of June 18th.
19 MR. HYLAND: So moved.
20 MR. BLUSTEIN-ORTMAN: Seconded.
21 MR. VESPA-PAPALEO: Moved by Mr.
22 Hyland, seconded by Mr. Ortman. All in favor,
23 say "Aye."
24 (A unanimous response of "Aye" was
25 verbalized by all members of the Commission.)

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1 MR. VESPA-PAPALEO: No one
2 opposed, that motion carries to approve the
3 minutes. Thank you.

4 My report is as follows: I'm
5 going just to try to stay on schedule. At 1:30
6 we have the State Bar scheduled to call in to
7 provide some testimony. Then Tom Prol, counsel
8 for Garden State Equality, will be calling in as
9 well. And I believe that is it for today; so we
10 should be out of here quicker than usual.

11 With regard to the topic of
12 today's call-in testimony, one of the areas of
13 our review is foreign jurisdictions. So what
14 we're going to focus on today is how that's dealt
15 with in New Jersey with civil union partners. So
16 you have in your packet, just to give you a
17 heads-up, first a letter of February 16, 2007, a
18 three- or four-page letter to Joe Komosinski from
19 former Attorney General Rabner. This is an
20 attorney general advisory opinion that speaks to
21 this issue. You have that.

22 Then you have in your packet, two
23 documents, letters to Attorney General Milgram,
24 one dated August 9, 2007 and then one dated
25 September 14, 2007, which speak to issues

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1 concerning that advisory opinion. So that's
2 essentially the topic of the testimony today.

3 You also have in your packet a
4 copy of an OPRA request that came in to the Civil
5 Union Commission, which our OPRA custodian --
6 you don't have that, okay. Well, we have
7 received an OPRA request; so that's being handled
8 through regular OPRA procedures, and those
9 documents have been or are in the process of
10 being copied or stored so that they can be handed
11 over on a CD-ROM or compact disk to a person.

12 MS. O'LEARY: Frank, who is the
13 OPRA request from?

14 MR. VESPA-PAPALEO: It's from a
15 Victoria Jakelsky, Flemington, New Jersey.

16 There are 12 items that are
17 requested under OPRA. I'll just try to go over a
18 few of them. Basically, all correspondence
19 submitted to the Commission for our review and
20 consideration; that is this binder that we're
21 going go to be going over (indicating).

22 MS. ALLEN: And who is it from,
23 Frank? Did you say?

24 MR. VESPA-PAPALEO: Victoria
25 Jakelsky.

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1 MS. ALLEN: With no association to
2 any --

3 MR. VESPA-PAPALEO: No; it doesn't
4 say. It just says "Flemington, New Jersey." So

5 it's basically correspondence that we've received
6 at the Commission, correspondence between members
7 of the Commission. When I say "correspondence,"
8 obviously, e-mail, letters, memos, all of that
9 stuff, reports or other documents from the
10 Commission to members of the legislature,
11 legislative aides, et cetera, copies of
12 correspondence, et cetera, sent to the Governor's
13 Office or people that work there, and then for
14 every hearing or meeting that we've had, copies
15 of the notices, invitations and all of that,
16 regarding the meetings. Then it lists the
17 various meetings basically from November to May,
18 the agenda, the minutes, transcripts; all of that
19 is on the Web site already.

20 MS. O'LEARY: With regard to the
21 correspondence among members of the Commission,
22 Frank, can I make a request that your office
23 provide notice to me at least if you're going to
24 be producing any of the correspondence in
25 response to the overall request?

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1 MR. VESPA-PAPALEO: Sure.

2 MS. O'LEARY: I just would like to
3 know if any of my correspondence is being
4 produced.

5 MR. VESPA-PAPALEO: Okay. I mean,
6 whatever is on our system is what is being
7 produced, so basically any correspondence that
8 has gone out from me or from our staff, even we
9 had interns, I think, last summer, that kind of
10 stuff. We reviewed most of it, and it seems like
11 most of it is announcements about our meetings.
12 Here's copies of documents we're going to review;
13 here's the agenda; here's the speakers. All that
14 kind of stuff is being produced. But I will have
15 our OPRA person contact those of you who work for
16 the State to advise you and send you a copy of
17 this as well. But we're using our OPRA
18 custodian --

19 MR. GOLDSTEIN: Who is the
20 Commission's counsel on OPRA requests? Is it the
21 AG's Office?

22 MR. VESPA-PAPALEO: Every state
23 agency has an OPRA custodian. So we are using
24 for the Commission the same OPRA custodian that
25 the Division on Civil Rights uses, and that

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1 person has very explicit procedures that he has
2 to follow in consultation with our department,
3 OPRA experts. So all of this gets reviewed to
4 make sure that we are in compliance with what we
5 have to do through the department. So that's who
6 we're using.

7 REVEREND BLUSTEIN-ORTMAN: And
8 we're not in compliance just by posting it on the
9 Web site?

10 MR. VESPA-PAPALEO: Well, they're
11 asking for stuff beyond what's on the -- for
12 example, the e-mails between us about meetings
13 that we don't post on the Internet. We just post
14 basically all the transcripts, all the meeting
15 notices, any announcements from the AG's Office,
16 like press releases, that's the kind of stuff,
17 the names of the commissioners. So the actual
18 correspondence part, we don't post on the
19 Internet, because we just don't have that
20 capacity, okay? So I will get that to everyone.

21 And then we also have an item
22 which is the record, the book of all the
23 documents that we've received from people in the
24 public and so on, testimony that people wanted us
25 to consider. Did everyone receive a CD-ROM copy

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1 of it?

2 REVEREND BLUSTEIN-ORTMAN: Yes.

3 MR. VESPA-PAPALEO: Okay; what I
4 would like to do is approve the content of that.
5 We have to go back and just repair some
6 typographical mistakes on the listing, but all
7 the documents are in there, as you can see, up
8 until basically the last document which is the
9 report from Professor Sears that he talked about
10 at the last hearing.

11 MS. RAKSA: Did he ever forward
12 the other report that was referenced in his
13 testimony that I believe was an earlier report?

14 MR. VESPA-PAPALEO: I think we may
15 have included it in here. I know I handed that
16 out at the last meeting, but I don't see that in
17 here. And that one was about domestic
18 partnerships; so it was even prior to the
19 decision in Lewis. But I can add that in,
20 because that's available on the UCLA -- on the
21 Williams Center Web site. Yeah, I don't see that
22 in here.

23 Brad Sears' report that is in here
24 is his most recent report, issued in June of
25 2008. Melissa is asking about the report that

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1 Brad referred to from December of 2006, which
2 does not seem to be in this booklet.

3 MS. NEVAREZ: No, it's not.

4 MR. VESPA-PAPALEO: So what I
5 recommend is if I can get a motion to approve the
6 contents of this, and what we will do going
7 forward, Melissa has graciously offered to get
8 the assistance of her intern to just fix some of
9 the typographical issues, and then going forward
10 we'll just add anything on to the end of this,
11 and we'll just continue adding to this.

12 REVEREND BLUSTEIN-ORTMAN: Move to
13 include.

14 MS. RAKSA: Second.

15 MR. VESPA-PAPALEO: All in favor,
16 say "Aye."

17 (A unanimous response of "Aye" was
18 verbalized by all members of the Commission.)

19 MR. VESPA-PAPALEO: Anyone
20 opposed? No. Okay; thank you.

21 So you will see that the last item
22 in there has actually been copied and put into
23 your folder for today. That's the follow-up
24 report from Professor Sears on the financial
25 impact of civil union and marriages in New

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1 Jersey.

2 With regard to the Division on
3 Civil Rights, there's no change from my last
4 report, no additional matters to report. And
5 that's the end of my report.

6 Steven, do you have a report,
7 Steven Goldstein?

8 MR. GOLDSTEIN: I am here; sorry.
9 How are you? We have exceeded 1,000 complaints;
10 we are up to 1,003 complaints. One of the recent
11 complaints involved an agency - and when I get
12 back, I'll describe more about it -- a company
13 that does business with an agency of the State,
14 and I think it's nebulous whether they have to
15 provide (inaudible) benefits or not, but that's a
16 company that is a contractor of the State, and
17 the legal issue arises whether that company has
18 to abide by the Civil Union Law or can invoke
19 ARISSA. And that complaint is not within 1,003
20 number, but there are many inquiries right now,
21 assuming that New Jersey recognizes out-of-
22 jurisdiction same-sex marriages like those
23 performed in California, Canada and shortly
24 Massachusetts, which is going to lift its ban on
25 out-of-state marriage or out-of-state couples.

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1 So there's just real weird misinformation or
2 misimpression as continued from last month by
3 same-sex couples in New Jersey believing that
4 their marriages from out of state are recognized
5 as marriages in New Jersey.

6 MS. NEVAREZ: Frank, I think
7 somebody just joined the teleconference.

8 MR. PROL: Tom Prol.

9 MR. VESPA-PAPALEO: We're not
10 ready for your testimony yet.

11 Anything else, Mr. Goldstein?

12 Thank you, Steven.

13 All right, we'll move on. Stephen
14 Hyland?

15 MR. HYLAND: It came to my
16 attention this past week that Ocean Township
17 believes that couples who are over the age of 62
18 cannot enter a domestic partnership if they are a
19 same-sex couple, which is an incorrect

20 interpretation of the law as modified by the
21 Civil Union Review Commission or -- I'm sorry;
22 the Civil Union Bill. I wonder if maybe there is
23 something that should be done, either from the
24 State or from Frank's Commission, that sends out
25 something to the League of Municipalities, for

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1 example, to maybe get a clarification on the
2 status of domestic partnership throughout the
3 State. Other than that, I have nothing further
4 to report.

5 MR. VESPA-PAPALEO: Stephen, which
6 municipality is it?

7 MR. HYLAND: This was Ocean
8 Township.

9 MR. VESPA-PAPALEO: I will have my
10 staff look into that.

11 MR. HYLAND: Yes. They were
12 flatly told by the clerk there that they would
13 not issue a domestic partnership registration to
14 a same-sex couple who were both 62 or actually
15 over the age of 62.

16 MR. VESPA-PAPALEO: We'll check
17 that through the division office for sure.

18 Okay; thank you.

19 Joe Komosinski?

20 MR. KOMOSINSKI: To date, we have
21 a total of 2,849 civil unions that have been
22 registered. To date, we've had 4,972 domestic
23 partnerships registered, and that total includes
24 43 domestic partnerships that were registered
25 after the implementation of the Civil Union Act.

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1 We have 61 reaffirmations of civil unions. So
2 far for 2008, there are a total of 480 civil
3 unions that have been registered. And for 2007,
4 there were 2,369.

5 MS. ALLEN: What does that mean,
6 "reaffirmation"?

7 MR. KOMOSINSKI: Reaffirmation,
8 that's one of the things we're going to cover
9 today. If they entered into a civil union in
10 another state, they can reaffirm their vows here
11 in New Jersey and get a reaffirmation. Also, if
12 they were married in another state,
13 Massachusetts, California, and they come to New
14 Jersey, they can do a reaffirmation, since we
15 recognize that as a civil union.

16 MR. VESPA-PAPALEO: Joe, with
17 regard to the reaffirmation, can you explain the
18 process, and also is this required? Is it
19 optional, all of that?

20 MR. KOMOSINSKI: For
21 reaffirmation, it's not required. It's an option
22 that they have available. And I'm passing out
23 now, there's an application; it's the same
24 application for marriage, civil union,

25 reaffirmation and remarriage. So it's the same
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1 application for everyone to complete, and then
2 depending on what they'll check off at the top,
3 what they're actually filing for, that will
4 determine the license and certificate that is
5 generated.

6 For a reaffirmation or a
7 remarriage, there is no waiting period. They
8 complete the application; they file it with the
9 local, and the local issues them a license
10 immediately that they can then use to either
11 reaffirm their civil union or remarry in New
12 Jersey.

13 REVEREND BLUSTEIN-ORTMAN: Someone
14 would choose to reaffirm for what reason?

15 MR. KOMOSINSKI: Sometimes it may
16 be something along the lines that they were
17 married in another state or civil unioned in
18 another state, and they now live here, and they
19 just want to have something on file with New
20 Jersey, even though we recognize that other
21 state's civil union. It may be something that
22 it's their one-year anniversary, and they want to
23 renew their vows or their five-year anniversary,
24 and they want to renew their vows, that kind of
25 thing.

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1 REVEREND BLUSTEIN-ORTMAN: So this
2 might not be the place for this question, but the
3 question that comes to my mind then is what does
4 that do for the dissolution of a relationship
5 should that come into play down the line?

6 MR. KOMOSINSKI: If they have a
7 dissolution --

8 REVEREND BLUSTEIN-ORTMAN: If
9 somebody has a reaffirmation of their civil
10 union, and then there's a dissolution down the
11 line.

12 MR. KOMOSINSKI: Then it would
13 dissolve both those unions. It would dissolve
14 the civil union and then the affirmation of the
15 civil union. Both of them would be dissolved.

16 MR. VESPA-PAPALEO: Joe, is there
17 a fee attached to reaffirming a civil union?

18 MR. KOMOSINSKI: Yes, a \$28 fee,
19 the same as the initial application for marriage
20 or for civil union.

21 MR. VESPA-PAPALEO: I know we get
22 a report of how many people have affirmed their
23 civil union. How many people have reaffirmed
24 their marriages?

25 MR. KOMOSINSKI: I'll have to look

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1 at that and give you a number. It's a low
2 number, probably somewhere along the same line as
3 we have for reaffirmation, but I'll double-check

4 and let you know.

5 MR. VESPA-PAPALEO: That would be
6 helpful; thank you.

7 MS. ALLEN: On the dissolution, is
8 there some requirement if there is a dissolution
9 in another state that the paperwork be sent to
10 -- I mean, how would you know that that had been
11 dissolved unless somebody sent you some
12 notification?

13 MR. KOMOSINSKI: Typically, we
14 aren't notified. There's no requirement that we
15 are. For marriages, we don't get notified of the
16 divorce. Typically, for civil unions, it's the
17 same requirement, that we're not required by the
18 courts to be notified. What they have done is,
19 in domestic partnerships, they do have to notify
20 us when those are terminated. So many of those
21 courts have used that same form to notify us that
22 the civil union has been terminated, and then
23 we'll reach out. Then we'll let them know that.
24 A civil union is different than a domestic
25 partnership. There's a different requirement;

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1 there's different rights and obligations.

2 MS. ALLEN: So there wouldn't be
3 one particular depository of that information, of
4 how many dissolved --

5 MR. KOMOSINSKI: Right, exactly.
6 So, currently, my office -- the court keeps the
7 divorce information. My office doesn't get any
8 of that. So I just have the actual marriage
9 certificate or the civil union or the domestic
10 partnership. So it does open some of that
11 loophole that I couldn't tell very well how many
12 divorces occurred and how many people that were
13 married and divorced in New Jersey. I'd have a
14 better handle of domestic partnerships. I get
15 notified of both. Civil unions kind of falls
16 somewhere in the middle between those two.

17 MR. VESPA-PAPALEO: Joe, I just
18 recently got married in California on June 21st.

19 REVEREND BLUSTEIN-ORTMAN: Mazel
20 tov.

21 MR. VESPA-PAPALEO: Thank you. If
22 I go and fill out this form and check off
23 marriage, reaffirmation of my marriage, not civil
24 union, would I be in violation of giving false
25 information or perjury, because that's how I want

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1 it to be listed, as marriage, not as a civil
2 union. What would your office do in that case,
3 or what are you required to do, I guess?

4 MR. KOMOSINSKI: The applications
5 are actually filed at the municipal level, and
6 they handle the applications. So most likely
7 what would happen is they would explain to you
8 that your marriage in California is viewed as a

9 civil union here in New Jersey, and that since we
10 don't allow same-sex marriage in New Jersey, we
11 wouldn't allow you to do a remarriage. We would
12 offer you to do a reaffirmation.

13 MR. VESPA-PAPALEO: What is the
14 basis for that? I mean, is there a legal opinion
15 that the local registrars rely on?

16 MR. KOMOSINSKI: They base it on
17 the same one that you passed out earlier, which
18 covers the same-sex marriage in other
19 jurisdictions.

20 MR. VESPA-PAPALEO: All right. Is
21 Peggy on?

22 MS. SHEAHAN-KNEE: Yes.

23 MR. VESPA-PAPALEO: Hello, Madam
24 President; thank you for waiting.

25 MS. SHEAHAN-KNEE: Sure, no

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1 problem, my pleasure. Thank you for
2 accommodating me.

3 MR. VESPA-PAPALEO: Thank you for
4 being with us electronically.

5 This is Peggy Sheahan-Knee,
6 President of the New Jersey State Bar
7 Association.

8 Madam President, thank you for
9 agreeing to join us today and share your thoughts
10 on behalf of the State Bar as to the Civil Union
11 Act.

12 MS. SHEAHAN-KNEE: Happy to be
13 able to appear. Are you ready for me, Frank?

14 MR. VESPA-PAPALEO: Sure.

15 MS. SHEAHAN-KNEE: All right, good
16 afternoon to everyone there. My name is Peggy
17 Sheahan-Knee, I have the pleasure of serving as
18 President of the New Jersey State Bar
19 Association, and on behalf of our nearly 17,000
20 members, I appreciate the opportunity to speak to
21 the Civil Union Review Commission today. I'm
22 also joined by Tom Prol, who is a trustee member
23 of our Board of Trustees, and he will speak to
24 you after I have completed my statement.

25 I would like to briefly reiterate

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1 the Association's position against New Jersey's
2 Civil Union Law and report on some of the adverse
3 impact on the practice of law as well as on
4 attorneys and their clients. I would also like
5 to report the Association's high priority support
6 for the pending Freedom of Religion and Equality
7 in Civil Marriage Act.

8 Members of the Commission, the New
9 Jersey State Bar Association took deliberation of
10 these bills, as with all legislation, very
11 seriously. The bills were circulated widely
12 throughout the Association, soliciting comments
13 from all interested sections and committees. The

14 New Jersey State Bar Association's Board of
15 Trustees voted to oppose the legislation that
16 established civil unions in New Jersey with high
17 priority.

18 We believe, and the passage of
19 time has unequivocally shown, that the Civil
20 Union Law is a convoluted, burdensome and flawed
21 statutory scheme that fails to provide equal
22 rights to same-sex couples as required by the New
23 Jersey Supreme Court decision in its landmark
24 October 25, 2006 case of Lewis vs. Harris. Lewis
25 promised equality, but civil unions did not

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1 deliver it.

2 We felt, and we continue to feel,
3 that the Civil Union Law violates the New Jersey
4 Constitution's guarantee of equal protection to
5 all citizens. The Civil Union Law created a
6 separate, unequal and unnecessarily complex legal
7 scheme, and the New Jersey State Bar Association
8 remains unconvinced that this law satisfies the
9 Supreme Court's determination that "The unequal
10 dispensation of rights and benefits to committed
11 same-sex partners can no longer be tolerated."

12 As I speak to all of you today,
13 the sad reality is that the New Jersey Civil
14 Union Law has shown itself to be what the New
15 Jersey State Bar Association predicted it would
16 be, a failed experiment in discrimination.

17 Mr. Chairman and the members of
18 the Commission, this tragic experiment in
19 discrimination must end. The law has perpetuated
20 an unacceptable second-class legal status for
21 same-sex couples and their families and has
22 implicitly conveyed a message that discrimination
23 is acceptable. The fact that we now enshrine
24 discrimination in our State's law books is an
25 anathema to the longstanding protection and

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1 promotion of civil rights that has made New
2 Jersey one of the leading states in the nation in
3 fostering fairness and equality for all citizens.
4 Many have called on the New Jersey legislature to
5 remove this blemish from New Jersey' record of
6 providing full equality to all its citizens. The
7 New Jersey State Bar Association again joins in
8 this call.

9 Following our testimony before
10 this Commission last September by the prior
11 President, we watched as couple after couple
12 stepped before this Commission and bared intimate
13 details of their lives in a parade of personal
14 indignities. They shared stories and aired the
15 laundry of their private health problems and
16 financial hardships, inviting the public into
17 their homes and personal lives in order to
18 document the discrimination that they have

19 experienced under this law. They did so speaking
20 into a public microphone while a court
21 stenographer typed a transcript of every private
22 moment they shared and every personal story they
23 exposed. All the while, every word they spoke
24 became an intrusion on their dignity. We
25 actually applaud these couples and their honesty,

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1 but we cannot let it pass without remarking that
2 this intrusion could have and should have been
3 avoided in December of 2006 with the passage of
4 marriage equality legislation.

5 We heard civil union partners
6 speak of their private health problems being
7 exacerbated by healthcare professionals who did
8 not recognize their civil union relationships and
9 family status at critical moments when they
10 wanted to visit a seriously injured or ill loved
11 one. We heard civil union partners talk about
12 how some employers and labor unions did not
13 recognize their relationships for health and
14 retirement benefits, either out of ignorance of
15 the law or intentional discrimination. We heard
16 the testimony of those who came forward to speak
17 of the disproportionate inequality visited upon
18 poor communities and people of color.

19 Members of this Bar Association
20 spoke to the Civil Union Review Commission of how
21 the Civil Union Law has adversely affected the
22 practice of law across the board: In family law,
23 in estate planning, in elder law and real estate
24 and in other practice areas in which the State
25 Bar member attorneys represent gay and lesbian

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1 clients. Our members' practices and their
2 service to clients who are gay and lesbian have
3 been made all the more difficult by New Jersey's
4 failure to enact marriage equality legislation.
5 I poignantly highlight the testimony of one of
6 our member attorneys who represents a member of
7 the military who declined to enter into a civil
8 union because doing so would automatically out
9 him in our State's public listing of gay men and
10 lesbians, subjecting him to a dishonorable
11 discharge or worse.

12 Today I report to the Commission
13 that the New Jersey Bar Association has drafted
14 legislation that is proposed for introduction in
15 the legislature that will put the Civil Union Law
16 on equal footing with the State's marriage laws.
17 At this time, there is no basis under New Jersey
18 law for dissolution of a New Jersey Civil Union
19 Law that is akin to the irreconcilable
20 differences basis for a heterosexual divorce in
21 New Jersey. While the glaring shortfall
22 demonstrates how separate is unequal and how one
23 water fountain always gets fixed later than the

24 other, I note to the Commission that the
25 legislature amended the New Jersey divorce

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1 statutes to provide for the irreconcilable
2 differences basis a mere three weeks after it
3 passed the Civil Union Law. Allow me to express
4 the gravity of this disparity another way: At no
5 time since New Jersey Civil Union Law became
6 effective has it ever been equal to marriage.
7 With such a pedigree, the Civil Union Law was
8 doomed to be unfair, and same-sex couples were
9 banished from the table of equality from the very
10 start.

11 We note that the 'Star Ledger' and
12 the 'New York Times' have reported extensively on
13 the failure of the New Jersey Civil Union Law and
14 the harm these failures are causing to real
15 people and real families in New Jersey. Both of
16 those papers, together with the 'New Jersey Law
17 Journal' and 'the New Jersey Lawyer' newspaper,
18 have formally opposed the Civil Union Law and
19 called on our State legislature and Governor
20 Corzine to enact marriage equality legislation at
21 the earliest possible moment.

22 In closing, let me say that no
23 segment of our population, no matter how
24 disenfranchised it may be, should be held back
25 from a seat at the table of equality. With that

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1 said, we commend the work of this Commission, and
2 I highlight to you the importance of this issue
3 at the highest levels of the State Bar. I
4 fervently and unequivocally state that we support
5 marriage equality legislation as an issue of high
6 priority to this Bar Association. We ask again
7 that the Bar Association be part of the continued
8 dialogue on this issue through the assistance of
9 our member attorneys.

10 With your permission,
11 Mr. Chairman, let me turn to Tom Prol, and thank
12 you for allowing me to testify today.

13 MR. VESPA-PAPALEO: Thank you,
14 Madam President.

15 MR. HYLAND: Peggy, this is
16 Stephen Hyland.

17 MS. SHEAHAN-KNEE: Hi, Steve.

18 MR. HYLAND: Hi. I don't know if
19 you're aware of it with regard to the
20 irreconcilable differences issue, but we had
21 testimony two most ago from the administrative
22 office of the courts that indicated that they had
23 sent a directive out to all of the judges
24 throughout the State that stated that the
25 Irreconcilable Differences Bill, because it was

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1 passed at about the same time as the Civil Union
2 Bill, has to be read in pari materia with the

3 Civil Union Bill and therefore that
4 irreconcilable differences was a cause of action
5 for dissolution of a civil union.

6 MS. SHEAHAN-KNEE: Oh, no; I
7 wasn't aware of that.

8 MR. HYLAND: Well, I asked them at
9 that time that it would be nice if they would do
10 that as an announcement to the Bar, because
11 apparently it's a very well kept secret, and I
12 have not seen anything since then.

13 MR. PROL: I think the point is
14 that the law for divorces was amended, but the
15 Civil Union Dissolution Statute was not. And so
16 what we see is, we have to go through these added
17 steps of getting the administrative offices of
18 the court or extensive motion practice in line to
19 argue these constructive arguments in order to
20 make the laws equal as necessary.

21 MR. HYLAND: That's a valid point,
22 Tom, and I agree with you. There are other bills
23 before the legislature now to modify or provide
24 changes to the marriage laws that do not include
25 civil unions, and so therefore we're going --

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1 MR. PROL: The testimony today is
2 that the State Bar is drafting legislation and is
3 seeking sponsors to introduce in order to
4 memorialize in the existing law rather than a
5 policy directed out of administrative existing
6 law that in fact irreconcilable differences is
7 the basis for dissolution of a civil union. At
8 present, that's not in the law. It's simply an
9 administrative interpretation.

10 MS. SHEAHAN-KNEE: And if I might
11 add, from the standpoint -- I'm by practice an
12 elder law attorney and an estate planning lawyer,
13 and we have encountered problems at times with
14 the Division of Taxation on interpretation of
15 estate tax regulations that basically because of
16 the interjection of the civil union statute and
17 not having a marriage act, you have to go to the
18 Division and ask them for interpretations, and it
19 opens other doors. So it definitely can pose a
20 lot of other requirements that really should not
21 be there.

22 MR. HYLAND: It's a mess.

23 MR. PROL: Yes. I mean, that's
24 the same point; an administrative guidance
25 document can be withdrawn by a subsequent

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1 administration if they don't find that agreeable
2 to their policies.

3 MS. SHEAHAN-KNEE: Correct. And
4 also, not everyone -- just as I didn't know
5 about the administrative or the court's
6 pronouncement about irreconcilable differences,
7 not all the practitioners are going to know about

8 these pronouncements. In a tax return context,
9 they could even be taken that it doesn't reflect
10 those administrative pronouncements.

11 MR. PROL: You're talking about
12 estate tax returns or New Jersey State?

13 MS. SHEAHAN-KNEE: Yes, New Jersey
14 estate and state tax returns. Anyway, I'm sorry;
15 I didn't mean to interrupt you.

16 MR. PROL: No; thank you. I
17 wanted to see if the Commission had any more
18 questions.

19 MR. VESPA-PAPALEO: No. Tom, feel
20 free to go ahead with your testimony, and please
21 try to speak up so that the court reporter can
22 hear you.

23 MR. PROL: Good afternoon. Thank
24 you, Mr. Chairman and members of the Commission.
25 I'm grateful for the opportunity to appear before

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1 each of you today, and thank you for the time and
2 hard work you contribute to your review of the
3 effectiveness of the New Jersey Civil Union Law.
4 My name is Thomas Prol. I'm an attorney-at-law
5 in the States of New York and New Jersey,
6 practicing at Scarinci Hollenbeck in Lyndhurst,
7 New Jersey. I'm also a trustee of the New Jersey
8 Bar Association, an adjunct faculty member at New
9 York Law School and Vice-Chair of the Board of
10 Garden State Equality. I echo New Jersey State
11 Bar Association President Peggy Sheahan-Knee's
12 statements in support of marriage equality in New
13 Jersey. Her words are the official position of
14 the Bar Association being presented today. I
15 speak to you as a legal practitioner and academic
16 who has studied these issues in depth and
17 analyzed the various common law and
18 constitutional principles that impact same-sex
19 couples.

20 I would like to briefly report to
21 you on the status of the legal creation of
22 same-sex relationships around the country and on
23 the issue of interstate recognition of the
24 relationship of same-sex couples. I will then
25 speak to you about why New Jersey Civil Union Law

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1 places same-sex couples who choose to be
2 partnered in our State at a disadvantage. On
3 this latter point, I will describe how the New
4 Jersey Civil Union Law unfairly deprives them of
5 due process and true equality.

6 As I start, I wanted to follow up
7 on the one point New Jersey State Bar Association
8 President Peggy Sheahan-Knee raised, which I
9 think is significant and important to the work of
10 the Commission, which is the New Jersey
11 legislature's failure to keep the State's Civil
12 Union Law in sync with the State's marriage laws,

13 a clear violation of the Supreme Court's Lewis v.
14 Harris decision and an ominous sign that the
15 Lewis promise of equality has not and never will
16 be realized under the New Jersey Civil Union Law.
17 President Sheahan-Knee reported the State Bar is
18 drafting legislation and seeking sponsors to fill
19 a hole in the Civil Union dissolution provision
20 that does not authorize a same-sex couple to
21 terminate their relationship under irreconcilable
22 differences. The fact that this hole was created
23 even before the ink was dry on Governor Corzine's
24 signature is a mystery. Indeed, when the New
25 Jersey Civil Union Law became officially

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1 effective on February 19, 2007, it was already
2 unequal.

3 Now I'm going to report briefly on
4 the overview of recognition of same-sex
5 relationships. Currently, 41 states ban the
6 creation of same-sex marriages through statutes
7 and constitutional amendments designed to mirror
8 the federal ban recognition on same-sex marriage.
9 Other states and some countries have chosen to
10 define relationships with a wide variety of
11 statutory constructs. Depending on the specific
12 legislative creation, each relationship category
13 provides bundles of rights and responsibilities
14 to those who enter into them. Defined
15 relationship categories includes civil marriage,
16 civil unions, civil solidarity pacts, civil
17 partnerships, registered partnerships, reciprocal
18 beneficiary relationships and domestic partners.

19 Massachusetts and California, as
20 we all know, are currently the only states that
21 provide full marriage equality for same-sex
22 relationships through the provision of actual
23 Marriage, capital "M", rights. Vermont and
24 Connecticut provide for civil unions, Connecticut
25 being the first state to enact such a law without

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1 a court order. Hawaii grants citizens reciprocal
2 beneficiary relationships with a handful of
3 marriage-like rights, while Alaska, Maine,
4 Maryland and the District of Columbia provide for
5 domestic partnerships of varying intensity of
6 recognition and benefits.

7 Some states, while not
8 specifically allowing for the creation of legally
9 recognized same-sex relationships within their
10 own jurisdiction, will nonetheless recognize
11 relationships validly formed in other
12 jurisdictions under the Common Law principle of
13 comity and the U.S. Constitution's Full Faith and
14 Credit clause. Right now, for example, New York,
15 Connecticut and Rhode Island are examples of
16 states that will recognize same-sex couples who
17 were legally married in other jurisdictions.

18 On March 3rd, the New York
19 Attorney General interpreted the Domestic
20 Relations Law to provide that the exclusion of
21 same-sex from marriage presents serious
22 constitutional concerns under the New York State
23 Constitution. On May 17, 2004, predating the
24 enactment of Connecticut's Civil Union Law,
25 Attorney General Richard Blumenthal --

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1 MR. VESPA-PAPALEO: Tom, are you
2 there?

3 MR. PROL: Yes.

4 MR. VESPA-PAPALEO: Okay; hold on
5 a second. Whoever else is on the line, please do
6 not put us on hold, because we hear your music.
7 Either hang up and call back or please stay on
8 the line, okay?

9 MR. PROL: Should I take that as a
10 commentary on my testimony?

11 MR. VESPA-PAPALEO: Go right
12 ahead, Tom.

13 MR. PROL: My point is that
14 Connecticut, even prior to the enactment of the
15 Civil Union Law, the Attorney General there
16 stated that same-sex marriages performed in
17 Massachusetts are not automatically void in that
18 state, because the state has no statute declaring
19 same-sex marriage void.

20 On May 17, 2004, Rhode Island said
21 -- the Attorney General Patrick Lynch said his
22 state would probably honor any marriage "validly
23 formed in another state" and noted that "The only
24 marriages in Rhode Island deemed void involve
25 bigamy, incest or mental incapacity or marriage

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1 in which one or both of the parties never
2 intended to be married."

3 To date, six countries in several
4 world regions have legalized same-sex marriage.
5 In North America, Canada legalized same-sex
6 marriage with the approval of the Civil Marriage
7 Act in 2005. In Europe, the Netherlands, Spain
8 and Belgium enacted laws that allowed same-sex
9 couples to enjoy the rights and responsibilities
10 of marriage. In addition, most other European
11 countries have enacted provisions that grant many
12 marriage-like rights as same-sex couples.

13 In the Middle East, Israel
14 followed a high court ruling and registered its
15 first married gay couple on January 29, 2007.
16 And in Africa, the Constitutional Court of South
17 Africa gave the legislature one year to cure the
18 constitutional violation created by denying
19 same-sex couples access to equal marriage rights.

20 Civil unions, as opposed to
21 Marriage with a capital "M" pose significant
22 burdens to same-sex couples who wish to seek

23 recognition of their relationships outside the
24 New Jersey state boundaries. The reason is
25 simple: Because every state has marriage laws on
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1 their books, and to argue otherwise, that a civil
2 union should be recognized in another state,
3 would not be found in those states' statutory
4 enactments.

5 I want to discuss one particular
6 issue with you that I've been active on in the
7 last year, and it deals with a February 15, 2007
8 formal opinion 03-2007 of the New Jersey Attorney
9 General. In there, it declares that "Government
10 sanctioned same-sex relationships that will be
11 established under the laws of other states and in
12 foreign nations will be valid in New Jersey as
13 civil unions or domestic partnerships." It's my
14 feeling that the Attorney General's opinion,
15 which also specifically addressed the recognition
16 of so-called same-sex marriage in Massachusetts
17 and foreign nations, is wrong. What happened in
18 this opinion is the Attorney General's Office
19 dissected the Common Law principle of comity in
20 the Full Faith and Credit clause in an
21 eight-sentence, single footnote analysis.

22 The opinion in general endeavors
23 to provide full recognition of civil unions to
24 foreign marriages of gays and lesbians. However,
25 between the lines, I see what is a new holding in
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1 New Jersey's legal analysis that requires every
2 policy official and civil servant to subject all
3 foreign marriage to a discriminatory test. New
4 Jersey now requires all marriages entering its
5 jurisdictional limits be evaluated based on the
6 sex and sexual orientation of the spouses. If
7 the spouses are gay or lesbian, their marriage, a
8 so-called same-sex marriage, in the Attorney
9 General's opinion, must necessarily be
10 transformed into a civil union by operation of
11 law.

12 And the point I'll make -- and I
13 just want to go off into two different issues:
14 The first is that I served a couple years in the
15 Peace Corps. I learned the Nepalese language. I
16 lived in between India and China. My instructor
17 was a gentleman who had been in an arranged
18 marriage. If he were to ever have the ability to
19 come into New Jersey and enter New Jersey with
20 his wife, we would provide him full recognition,
21 even though he has an arranged marriage which is
22 not necessarily legally formed in New Jersey.
23 His marriage would be accorded full rights and
24 recognition once he came. The same thing if
25 there is a Common Law marriage, such as they had

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1 in Pennsylvania until 2005, a Pennsylvania Common

2 Law marriage, when it comes to New Jersey, would
3 be fully recognized. Understand that New Jersey
4 has not allowed the creation of Common Law
5 marriages in its boundaries since approximately
6 1929. This is fairly significant, because what
7 the Attorney General's opinion represents is a
8 complete shift in our recognition of marriages
9 from our other states and countries. And now, in
10 four sentences of that opinion, we now convert
11 foreign marriages to civil unions when the couple
12 is a same-sex couple. I think that's fairly
13 significant.

14 I'll point out a contrast: In New
15 York, New York is a state that does not allow for
16 the creation of same-sex marriage. They have
17 clearly gotten the Constitutional and the Common
18 Law analysis correct. Governor Paterson, as many
19 of you know, on May 14, 2008, issued an executive
20 directive that provides that marriages from other
21 states and countries, even those between same-sex
22 couples, should be recognized and provided full
23 benefits and recognition within the borders of
24 New York. Interestingly, that arose out a Fourth
25 Department litigation in which the trial judge

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1 and the appellate court found that not only was
2 this the correct legal interpretation, but to
3 decide otherwise would actually subject the
4 defendant to discrimination violations under New
5 York's anti-discrimination laws.

6 I think these are fairly
7 significant issues and ones that the Commission
8 should understand seriously impact why the word
9 "marriage" is so key, not only with the
10 recognition in the state of foreign marriages,
11 but when a civil union couple leaves New Jersey
12 and goes to another state, specifically a state
13 that does not have a public policy against the
14 creation of a same-sex relationship of any name,
15 where there's a state like that, a state that
16 provides for recognition of marriage will then
17 recognize a marriage out of New Jersey. However,
18 there is no provision under those state laws for
19 the recognition of a civil union. So, for
20 example, for a California marriage of a same-sex
21 couple, if that couple goes to the State of New
22 York, they will be fully recognized as married.
23 But in New Jersey, a New Jersey civil union
24 couple that tries to import their relationship
25 into New York would have a much harder burden,

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1 and I would dare say it would not be recognized,
2 simply because New York does not have a process
3 or a vehicle for recognizing a civil union. It's
4 a huge difference, and it's one of the most
5 significant reasons why in terms of interstate
6 recognition, the Civil Union Law deprives New

7 Jersey couples of due process and full and fair
8 equality.

9 MR. VESPA-PAPALEO: Okay; thank
10 you, Tom.

11 MR. PROL: I just wanted to say
12 thank you to the Commission. I know a lot of you
13 give a lot of free time to this, and I do
14 appreciate your doing that, and I am truly
15 honored to appear here and present testimony.
16 Thank you.

17 MR. VESPA-PAPALEO: Tom, we have a
18 few questions from the Commission.

19 MR. PROL: Okay; shoot.

20 MR. HYLAND: Tom, this is
21 Stephen Hyland.

22 MR. PROL: Hi, Stephen.

23 MR. HYLAND: I like your opinion.
24 If a same-sex couple from Massachusetts or
25 California was married in either of those states

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1 and relocated to New Jersey, under the Attorney
2 General's opinion, if they decided to terminate
3 or dissolve their relationship, they would only
4 be granted a dissolution of a civil union. Would
5 that then be given recognition in either of the
6 states in which their marriage would have been
7 recognized?

8 MR. PROL: Well, that's actually a
9 question that pertains to the specific -- I'm
10 not an attorney in Massachusetts or California;
11 so I think it would require a very experienced
12 family law practitioner in one of those states to
13 answer that. Again, I think we talked about what
14 is possible or what is not, but at the end of the
15 day, what we're talking about is additional
16 hurdles and steps and legal analyses that
17 same-sex couples have to go through simply
18 because they're not married. So I think it's a
19 great question, and I'm curious about it myself,
20 but I don't know -- because what happens is,
21 under the Attorney General's opinion, which, by
22 the way, is simply an opinion, but I think every
23 state department would take a formal opinion of
24 the Attorney General quite seriously and rely on
25 it heavily. I mean, to go against that, I think

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1 they would have to have a very good reason. In
2 this case, I think they would. But under the
3 Attorney General's opinion, the foreign marriage
4 between a same-sex couple, which the Attorney
5 General calls a "same-sex marriage," I think that
6 would pose some issues for recognition in New
7 Jersey. I mean, it's the first time, I think, in
8 1,000 years of the Common Law interpretation of
9 the principle of comity, and in our Full Faith
10 and Credit analysis under the U.S. Constitution,
11 it's the first time that a state has (inaudible)

12 that and, even without a strong public policy
13 against recognition of a marriage, has decided to
14 not recognize that, because in this opinion is,
15 in fact, the refusal to recognize a marriage as a
16 marriage, and that ipso facto is refusal to
17 recognize. Just simply by the act of converting
18 it into a Civil Union Act is a rejection of the
19 marriage itself.

20 MR. HYLAND: Well, it seems to me
21 that what you're saying, first of all, is that
22 the part of the opinion that you disagree with
23 has to do with the issue of recognizing all
24 marriages entered outside the State of New Jersey
25 as marriages in New Jersey, and not necessarily

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1 with the section that states that the State will
2 recognize civil unions or civil partnerships as
3 civil unions in this State. But it also sounds
4 like, from that opinion, there would be a
5 disparity in treatment in that a couple married
6 in Massachusetts, for example, as a heterosexual
7 couple who then came to New Jersey and divorced,
8 would be given a judgment of divorce that we know
9 would be recognized in all 50 states as a
10 divorce, but what we have then for a married
11 couple who is a same-sex couple from
12 Massachusetts, for example, or California, is
13 they would be issued a dissolution of their civil
14 union, and we have no information as to whether
15 that would be recognized in any other state as
16 terminating their marriage.

17 MR. PROL: Yes. I mean, the
18 dissolution certificate is not a judgment of
19 divorce. It's a judgment of dissolution. So
20 what comity or what Full Faith and Credit
21 analysis would be applied in that other state is
22 up in the air. And that, in and of itself, is a
23 problem, because clearly the judgment of divorce
24 would carry weight, but the judgment of
25 dissolution, just the different nomenclature and

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1 the different laws and whatnot, you know, it's up
2 in the air in terms of what another state would
3 see that as. And particularly in these states
4 that are hostile, we're seeing a lot of problems
5 where any sort of indices of same-sex
6 relationships, they get a very thorough review
7 and enhanced scrutiny.

8 MR. HYLAND: Well, setting aside
9 those states that don't recognize same-sex
10 marriages, because in those states, they're not
11 going to care whether a same-sex couple has a
12 divorce most likely, at the same time, it seems
13 to be a disparate treatment of same-sex couples.
14 In your opinion, would that be a violation in
15 itself of the Lewis decision?

16 MR. PROL: I think that the entire

17 Civil Union Law is a violation of the Lewis
18 opinion. I think that it was poorly drafted. I
19 think there t was a rush to get it passed, and I
20 think in that process, a number of key mistakes
21 were made, including the fundamental public
22 policy statement that the Supreme Court called
23 for; that's actually completely missing. And I
24 testified to that at a prior hearing. But I
25 think the Civil Union Law fails wholesale fashion

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1 of providing for the promise of equality that
2 Lewis demanded.

3 MR. HYLAND: Is there any public
4 policy stated in the Civil Union Bill that would
5 prohibit recognition of same-sex marriage entered
6 into elsewhere as being recognized as a marriage
7 in New Jersey?

8 MR. PROL: Absolutely not. And
9 that's a key issue, as you know, Stephen, that
10 the public policy is actually the only bar to
11 recognition of a marriage from another
12 jurisdiction. So we have public policy against
13 incest, child marriages, marriages between people
14 who didn't want to get married; those are
15 defenses to the recognition in the State of a
16 marriage, but where you have an opinion like
17 Lewis, which clearly provides strong public
18 policy in favor, there is actually no
19 constitutional bar to that recognition. And, in
20 fact, all public policy would be in favor of that
21 recognition. There's actually no legitimate
22 legal basis for converting California,
23 Massachusetts or other countries' marriages into
24 civil unions in New Jersey.

25 MR. HYLAND: Okay; thank you.

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1 MR. VESPA-PAPALEO: Tom, you
2 identified a number of states, I think New York,
3 Connecticut, Rhode Island, that have declared
4 that they will recognize out-of-state marriages,
5 either of heterosexual couples or gay or lesbian
6 couples. How were those declarations made? Was
7 that through statutory revision, or was that just
8 made through announcements or pronouncements by
9 the Attorney General?

10 MR. PROL: They were all
11 pronouncements by the Attorneys General of each
12 state. Only recently, of course, you know that
13 the Governor of New York also made that an
14 executive order for the recognition. So right
15 now it's simply legal opinions of the governors
16 of those states, and it's important to recognize
17 that those are states which do not provide for
18 the creation of those relationships in their
19 states. Here in New Jersey, we actually have the
20 Civil Union Law, which is, on paper anyway,
21 designed to mirror a marriage, but, for example,

22 in New York, they don't even have a domestic
23 partnership law, and in Connecticut, the Attorney
24 General's opinion predated the establishment of
25 civil unions in that state. So, in light of

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1 that, I think New Jersey's shortcoming here is
2 particularly egregious.

3 MR. VESPA-PAPALEO: Tom, I know
4 you sent these letters that we have copies of to
5 the Attorney General. The first one was about a
6 year ago. What would have to be done in order to
7 fix this Attorney General advisory opinion?
8 Would it just be to issue another advisory
9 opinion or remove the one that was previously
10 issued?

11 MR. PROL: Well, I've been in
12 contact with the Attorney General's Office. I've
13 requested modifications probably half a dozen
14 times, and it's not the entire opinion that needs
15 to go. It's simply a few sentences at the end of
16 that. And I've met with the First Assistant
17 Attorney General. I've met with Special
18 Assistant Attorneys General. A number of people
19 I have written, and I've had no progress made on
20 this front. So the answer to your question is,
21 it could either come from a modification of that
22 opinion, which I think could be done quite easily
23 with a one-page revised opinion, or it could be
24 done through an executive order a la Governor
25 Paterson's in New York that would achieve the

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1 same result. And I think that would probably be
2 the most solid way to achieve it, through the
3 Governor's actions.

4 MR. HYLAND: This is Steve Hyland
5 again. It sounds like either of those courses
6 would be non-binding on private individuals.

7 MR. PROL: Right. I mean,
8 obviously the executive order would have more
9 effect than, say, what we talked about before
10 about the administrative office, the court's
11 issuing their opinion for their directive. But
12 the executive order would carry some weight, but
13 a subsequent governor could rescind that. The
14 executive order would clearly carry more weight,
15 more impact and more force than the Attorney
16 General's opinion, because the opinions can be
17 relied or not relied on, but the executive order
18 is a directive which everyone must follow in
19 state government. So I think that there's a
20 pecking order here. You're looking at the
21 Attorney General's opinion, then the Governor's
22 executive order and then, of course, a statute or
23 a regulation, but ideally changing it to marriage
24 equality legislation would be the best. But, in
25 the meantime, the governor's executive order

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1 would carry the most weight.

2 MR. HYLAND: But there's nothing
3 in that mechanism that would require, for
4 example, a private employer to recognize the
5 marriage of a same-sex couple as a civil union?

6 MR. PROL: No. That would only
7 carry weight within the State Department,
8 executive branch departments, but I think
9 particularly where you have the overlay of
10 anti-discrimination statutes and the law against
11 discrimination here, the Governor's executive
12 order or a revised formal opinion would carry a
13 lot of weight in terms of making that a valid
14 claim.

15 MR. VESPA-PAPALEO: Tom, right
16 after this question, Reverend Ortman has a
17 question. Are you aware of any other challenges
18 or any legal challenges to this advisory opinion,
19 any court proceedings? Are you aware of anyone
20 who has actually tried to register for
21 reaffirmation of a marriage?

22 MR. PROL: I'm not, but I think
23 there's a couple contexts that would be the
24 perfect vehicle for challenging that. One is
25 what Stephen Hyland was talking about with the

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1 dissolution versus divorce issue, and the other
2 would be there is that particular forum where
3 someone coming from California could reaffirm
4 their marriage, and when they fill out the form
5 in New Jersey, they are required to convert it
6 into a civil union through that form. And so
7 those are two vehicles by which I think the State
8 commits an act of discrimination in terms of this
9 opinion and reliance on that opinion. And I do
10 think that on that basis, it subjects the State
11 to some liability, a remedy at least for that
12 couple when they are subjected to that
13 discrimination.

14 MR. BLUSTEIN-ORTMAN: Tom, thank
15 you for your testimony. A question that I have
16 that is perhaps my confusion, and if it is my
17 confusion, you underlined it when you were
18 talking about Governor Paterson's executive order
19 or whatever the particular document was that
20 directed acceptance of out-of-state same-sex
21 marriages to be accepted within the State of New
22 York. My understanding of that was when that was
23 first made, that was in regard to state
24 employees, and that the State of New York would
25 recognize state employees with same-sex marriages

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1 out of state. So my question is, does it pertain
2 only to state employees, or does it pertain to
3 all citizens of the State of New York?

4 MR. PROL: Well, you're right to
5 dissect that nuance. The executive order is a

6 directive to all state agencies, and as it says,
7 and I'm reading from the order right now: "As a
8 result of the above, it is now time to conduct a
9 review of your agency's policies, statements and
10 regulations and those statutes whose construct
11 has (inaudible) your agency to ensure that the
12 terms such as "spouse," "husband" and "wife" are
13 construed in a manner that encompasses legal
14 same-sex marriages, unless some other provision
15 of law would bar your ability to do so." And
16 then he references a compendium of New York State
17 statutes and regulations. So, in fact, it is for
18 all state agencies, but that's widespread. So
19 that's in the provision of benefits to state
20 employees all the way up to the recognition that
21 the state provides for any number of rights and
22 benefits that accrue to married couples in the
23 State of New York. For example, let's say -- I
24 think the best way to dissect that nuance that
25 you're calling out is, can someone walk into a

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1 private park and claim, "I'm married in
2 California, and therefore I should get family
3 membership"? And I'd say yes, because the issue
4 that was raised in the case that brought
5 (inaudible) in Governor Paterson's (inaudible),
6 Martinez vs. County of Monroe, actually pointed
7 out that it would be a violation of New York
8 State's Human Rights Law to do otherwise. So the
9 way that this will become of legal effect with
10 private entities is through --

11 MR. BLUSTEIN-ORTMAN: Through
12 their interaction with the state?

13 MR. PROL: Well, through
14 interaction with the state, but also through
15 discrimination claims and damages that are
16 awarded through that. There's a couple carrots
17 here.

18 MS. CASBAR-SIPERSTEIN: It's Babs;
19 I just have a question as far as the ruling. In
20 view of the fact that New Jersey is always trying
21 to bring businesses, especially financial
22 services, high-tech stem sell, where we have to
23 compete, or maybe even with states like, for
24 example, New York, California or Massachusetts,
25 do you think that the Attorney General's ruling

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1 would have an impediment on companies or
2 individuals moving, to move to New Jersey?

3 MR. PROL: A lot has been written
4 on this subject, but I think that at the very
5 least, it creates an impression with people that
6 the State has not fully embraced equality.
7 There's a really interesting book out there by
8 Richard Florida; he's written a lot on this
9 subject, about embracing people's different
10 backgrounds and whatnot. And I think just from a

11 marketing point of view, yes; I think it presents
12 a barrier. I think if someone who is a highly
13 desirable candidate for a job has a choice
14 between California, Massachusetts and New Jersey,
15 and they happen to be gay, this might be the
16 tipping point in the decision for them.

17 MS. CASBAR-SIPERSTEIN: Thank you.

18 MR. VESPA-PAPALEO: Any other
19 questions from the Commission for Mr. Prol?

20 Okay; thank you very much, Tom.

21 MR. PROL: All right; thank you.

22 MR. VESPA-PAPALEO: We will
23 continue with any other commissioner reports
24 that we interrupted. Joe, did you have any
25 additional items?

0056

1 MR. KOMOSINSKI: Yes, I do have
2 additional items. I checked with my office, and
3 for remarriages, we have roughly between 800 and
4 1,000 remarriages that occur a year.

5 MR. VESPA-PAPALEO: When did the
6 State start providing a remarriage authorization
7 form?

8 REVEREND BLUSTEIN-ORTMAN: Stay
9 tuned.

10 MR. KOMOSINSKI: I'll have to
11 double-check. It's prior to me; that's for sure;
12 so I'll have to double-check.

13 MR. VESPA-PAPALEO: Well, my
14 question is, was it in existence prior to the
15 Civil Union Act?

16 MR. KOMOSINSKI: Yes, it
17 definitely was.

18 MR. VESPA-PAPALEO: Okay; because
19 that's helpful to know. Thank you.

20 Any other items from you, Joe?

21 MR. KOMOSINSKI: No, that's it.

22 MR. VESPA-PAPALEO: Do any other
23 commissioners have anything that they would like
24 to report on? No. Then our next meeting is
25 August 20th, and we will see everyone at that

0057

1 time. Does anyone know, are they away on
2 vacation that week? I mean, are we going to have
3 the ability to get quorum?

4 Babs, are you around on August
5 20th?

6 MS. CASBAR-SIPERSTEIN: August
7 20th, I'm leaving for Denver, either the 20th or
8 21st.

9 MR. HYLAND: The convention.

10 MR. VESPA-PAPALEO: All right;
11 well, we circulate an e-mail this week just to
12 see if we're going to get quorum for that
13 meeting. If not, we will just adjourn it until
14 September.

15 REVEREND BLUSTEIN-ORTMAN: If

16 you're going to meet, I'll surely think of you at
17 least once that afternoon. It's the least I can
18 do.

19 MS. CASBAR-SIPERSTEIN: That would
20 be so kind of you.

21 MR. VESPA-PAPALEO: Esther will
22 send around an e-mail this week or next week just
23 to find out if we're going to have quorum so we
24 can make sure ahead of time. If there's nothing
25 else, thank you very much. See you next month.

0058

1 We are adjourned.

2 (The meeting was concluded at 2:15
3 p.m.)

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1 CERTIFICATE

2

3 I, DEBRA RICE, a Notary Public and
4 Professional Shorthand Reporter, certify that the
5 foregoing is a true and accurate transcript of
6 the proceedings which were held at the time,
7 place and on the date hereinbefore set forth.

8 I further certify that I am
9 neither attorney nor counsel for, not related to
10 or employed by any of the parties to the action
11 in which these parties were taken; further, that
12 I am not a relative or employee of any attorney
13 or counsel employed in this case, nor am I
14 financially interested in this action.

15
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DEBRA A. RICE

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18 DATED: July 31, 2008

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