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The Gay community in California is as diverse and heterogeneous in its composition, interests, issues and politics as is the dominant heterosexual culture, or for that matter any other minority subculture. On the other hand, the Lesbians and Gay men who comprise the Gay subculture are uniquely different from other minorities, because of their inimitable ability to be invisible, "in the closet," hidden. This fact has been both an asset and a liability in the social policy arena, and it plays an important role in the struggle for civil liberties, equality in employment opportunities and in the area of political strategy and policy implementation.

This paper focuses on a discussion and analysis of the politics leading up to the signing of Executive Order B-54-79, by Governor Edmund G. Brown, Jr. of California, on April 4, 1979.<sup>1</sup> The thrust of the order centers around non-discrimination in state employment based on sexual orientation. Further, this paper delves into the implementation strategy designed to carry forth the intent of the executive order.

#### BACKGROUND

Until this decade, Gay men and Lesbian involvement in politics had been primarily in the form of individual anonymous donations to political parties, to candidates, some loosely organized political groups usually on the periphery of mainstream political activity, and behind the scenes, low visibility

endeavors to secure legislative and legal changes around non-gay identified issues. There are many reasons for these approaches to social change, but the most critical has been the basic homophobic stance of the dominant culture, which has also been incorporated into the Gay identity.

Beginning around 1975, some significant changes occurred to create a somewhat more open political interaction between the increasingly identifiable Gay community and mainstream politicians. First, the evolving gay rights movement, which had begun with militant activists was reaching members of the "Gay establishment." These are the professional people with money, clout, position and status who had for years invisibly contributed solely to the predominate culture. These individuals emerged to provide some leadership, both in California and around the country.

In this state, the leadership has taken many forms and is fragmented along several dimensions. Tactical strategy differs for the accomplishment of various goals, but for this discussion the tactics can be categorized into those which pursue the legislative route, those which seek state level political appointments of openly Gay persons to positions of power, those which focus on the judiciary as the viable change agent, and those which seek structural changes through the executive branch. Each of these strategies has been employed singularly and in combination depending on the philosophical outlook of the participants and the issue under consideration.

In the area of issue identification and definition there are those for whom a broad definition, encompassing ideas that are relevant to the general population, seems most strategic and there are those who prefer narrowly defined issues specific to the Gay community. Each of these approaches has merit and each involves trade-offs. The interplay between them will be explored in the case of the executive order.

As a part of the developing political acumen in the Gay community, 1975 was the year that the controversial Sexual Privacy Act, which focused on decriminalization of sexual conduct between consenting adults in California, was finally passed. For six years, Assemblyperson Willie Brown, and his Gay and non-Gay supporters fought for this legislation and it was seen as a major victory, particularly for the Gay community. In some ways, the passage of this legislation put politicians on notice that the Gay community was becoming a viable political entity.

Equally important to the topic of non-discrimination in state employment is the executive order signed by then Governor Milton Shapp of Pennsylvania, in early 1975. This executive order was the first in the country, and it provided the model for California. The two most important features of the Pennsylvania order were the creation of a task force on sexual minorities to oversee the implementation of the executive order and the administrative location of the task force directly under the jurisdiction of the executive.

## THE SEARCH FOR AN ISSUE

After the passage of the Brown Bill, several Gay individuals began exploring the possibilities of other legislative changes. It appeared that the political climate was becoming more responsive to Gay issues, as long as they were couched in larger issues, a point that several Gay activists missed in their fervor to continue utilizing the legislative mechanism.

One of the primary concerns for strategists, at this time, was identification of an issue that would unite both Gay men and Lesbians. Unification of constituents, and intragroup coalescence has traditionally been a problem for this community. Varying degrees of conflict over prioritization of issues, mutual support and commitment have tended to factionalize and immobilize many important efforts. This tactical consideration ultimately led to a trade-off between identifying a mutually important issue, and redirecting energy away from Senator Roberti's Penal Code Reform Bill, which would have had significance for Gay men, but which had little impact on or for women.

The issue of employment was targeted for its broad based appeal and because of the strides made in Pennsylvania. One of the primary strategists, Thomas Coleman, an attorney and co-chairperson of the National Committee for Sexual Civil Liberties, visited the Pennsylvania Task Force in October, 1975. He was privy to a meeting between task force members, representatives of various state agencies and representatives from the

Gay community.<sup>2</sup> Coleman was struck with the sophistication of information being shared, the airing of problems and the brainstorming of issues. He immediately recognized the potential power involved with developing a liaison with the executive branch. He also recognized how limited the knowledge was in the California Gay community about the internal workings of state government, and the broad impact state agencies had over the lives of Gay people.

This new awareness had profound impact on the political strategy chosen by several individuals and groups in the area of employment. Up to this point the thrust for change in California had been on legislative and legal reforms. Now, a third option existed.

THE EXECUTIVE BRANCH AS A VIABLE ALTERNATIVE FOR CHANGE

Early in 1976, John Forjan introduced the Gay Employment Bill (A.B. 633) backed by supporters from Northern California. 1976 was an election year and many Gay politico's felt the timing was wrong for pressing such an openly Gay, controversial piece of legislation.

IT WAS defeated in the Assembly. THIS LEGISLATIVE intent was used against us already. See Pacific Telephone case.

Reviewing the historic events of the Willie Brown Bill indicates that just a few months earlier when the salient issue was "privacy," which was not an overtly Gay issue, the conservatives so vigorously opposed the legislation that when the tie vote was rendered, conservatives attempted to leave the chambers in order to break the quorum. Instead, the Senate was

locked in session and awaited Mervin Dymally's precipitous arrival from Colorado to break the tie.

Given this type of legislative antics and the fact that many politicians were up for re-election, which meant they were unlikely to take chances on issues with high stakes, and given that nationally no such model legislation had been enacted (and to date no state has such legislation), the Gay Employment Bill seemed doomed to failure. While the timing may have been incorrect for the intended outcome, an argument can be made regarding its unintended purposiveness. By creating substantial publicity in the above ground media, attention was drawn away from the burgeoning work by others, who were developing linkages with the executive around employment issues. The fanfare provided an unacknowledged benefit for those Gay political strategists who wanted a narrow scope of conflict around issues of employment and, in part, enabled them to develop over the next three years a strategy that subsequently evolved into building a high salience issue within the executive branch.

At the same time, articles began appearing in the Gay oriented media geared toward educating and persuading constituents of the importance of the executive branch. <sup>of note</sup> These articles called for support and involvement in securing an executive order covering employment. This use of direct referent and motivational power was to no avail. There was little response from the Gay community. One can speculate that, after years of quiet "in the closet"

- politicizing, the majority of the Gay leadership was more interested in overt tactics that would foster confrontation, discussion of issues and create high visibility, even if the trade-off was not always winning.

#### STEPPING STONES TO THE EXECUTIVE ORDER

Two additional events in 1976 solidified the direction of this small group committed to the executive order. Milton Shapp came to California to campaign on behalf of his bid for the presidency. In the process he met with various Gay groups. The proponents of the executive order convinced Shapp to write a letter to Governor Brown, sharing information on the Pennsylvania experience and the contributions made by the Council on Sexual Minorities.<sup>3</sup> This activity, in retrospect, served three important purposes: 1.) It gave legitimacy to the idea of an executive order for California; 2.) It introduced and identified to the Governor, a small cadre of Gay leaders interested in the pursuit of working with the executive branch; and, 3.) It further strengthened the connection between California proponents and the resources available in Pennsylvania, which would ultimately be drawn upon during the implementation phase.

The second major event of 1976 involved the National Committee for Sexual Civil Liberties and the Fair Employment Practices Commission, (F.E.P.C.).<sup>4</sup> This Commission is within the executive branch of state government and derives its authority and jurisdiction from the Fair Employment Practices Act.<sup>5</sup>

The Pacific Telephone Company had been presented with a unanimous verdict from the San Francisco Human Rights Commission regarding PT&T's policy of anti-Gay discrimination. The Commission had ruled that PT&T's personnel policies must explicitly prohibit bias against Gays in hiring, firing, and promotions.<sup>6</sup> The case was brought to the F.E.P.C. Here was a clear example of employment discrimination. It was the Committee's thought that if they could get the Commission to recognize its jurisdiction over discrimination based on sexual orientation, one more reason for employment legislation would be resolved, thus avoiding loss of the entire issue in the inevitable defeat of the Gay Employment Bill. It should be pointed out that if this strategy had worked, many of the issues involved with employment for Gay people, such as benefit procurement and allocation would have been left unaddressed.

One of the major dilemmas for any group struggling to secure change is to assess the pros and cons, benefits and drawbacks to each potential victory or failure. At the time the National Committee opted for this direction to see if they could: 1. expand the jurisdiction of the F.E.P.C.; 2. elaborate and clarify the parameters of the Fair Employment Practices Act; 3. continue building inroads into the executive, using this issue as a vehicle; and, 4. proceed with gathering information on the intricacies of state agencies and commissions.



Three basic arguments were presented to the Commission by the Committee for their consideration with regard to jurisdictional clarification.

1. Under the Uhnruh Civil Rights Act, the State Supreme Court had ruled that the listings of groups for whom it was illegal to discriminate against, was meant to be illustrative rather than restrictive. This had applicability to the enumerated groups in the Fair Employment Practices Act.
2. Under the equal protection clause, the state cannot establish an agency that protects the rights of everyone but Gay people. This is what the Commission was contending in a resolution passed by them in 1971 clarifying their jurisdictional limitations.
3. Since discrimination based on sex was defined as one of the categories under the F.E.P.A., under this concept Gay people were being penalized based on the gender of their partner, and therefore should be covered under this category of non-discrimination.<sup>7</sup>

The rationale for presenting these arguments would appear to be derived from the traditionally "Gay" route of utilizing the courts to clarify seemingly non-Gay issues. If the Commission accepted these arguments the discriminators would have to sue to overturn the ruling, and the Attorney General's Office would be obliged to defend the Commission. The case would have gone to the Supreme Court in a different posture than it ultimately did under the Gay Law Students Association vs. Pacific Telephone and Telegraph Company and the Fair Employment Practices Commission.

One important variable intervened to make this approach not viable. The problem was some litigation pending in San Francisco

against the Commission regarding similar issues. The Committee tried diligently to have the attorney drop the case, but he refused. Thus, the Commission had a perfect avoidance tactic, contending that it could not deal with the arguments presented above until after the court had ruled on the pending case.

The Committee had gathered enough information from their contacts in the executive branch on the prior dealings of the Commission to force them into public hearings on the issue. While this might be construed as expanding the scope of conflict, it must be remembered again that the politicians and the above-ground media were firmly ensconced in the political races, and Gay issues were not considered to carry substantive merit by the traditional press unless they involved a scandal. The major impact of the hearings related to their coverage in the Gay media. They provided another opportunity to expand the importance and power of the idea that the executive branch of government exerts enormous influence over Gay peoples' lives.

The Commission voted publicly 5 to 2 not to expand their jurisdictional power. The final arguments were reported by News West in October, 1976, and are as follows:

"The Commission has always considered that it would be be usurping a legislative function if it unilaterally extended its jurisdiction beyond the enumerated categories...the protection against employment discrimination based on sexual preference does not lie with this Commission; it properly lies with the legislature."<sup>8</sup>

One could speculate that the Commission was attempting to "set-up" the Gay community to abandon other alternatives to resolving employment issues. By favoring, covertly, the Gay Employment Bill, or at least some type of legislative decision, they knew full well, that any such legislation would be defeated. This would eliminate the Commission's responsibility for examining their own homophobic stance.

What the Commission was not aware of was that the Committee had continued to gain credibility with the Governor's office, and had learned that vacancies would shortly occur on the Commission. Additionally, the Governor had the power of appointment.

Armed with this important information, several people went to the larger Gay community, both through the media and by personal communication with influential individuals. A campaign began for the enlistment of the Governor's aid in the appointment of people that were sensitive to Gay issues. But again, for the most part, the Gay community was non-responsive. Their involvements were directed toward electoral politics, openly supporting candidates and judges for office, (the majority of whom were elected). Few people saw the significance of this indirect approach to gaining prominence.

#### LINKAGES WITH THE GOVERNOR

Two key individuals, notably Dick Caudillo, then President of the Gay Rights Chapter of the American Civil Liberties Union, and Tom Coleman, contacted Carlotta Mellon, the Governor's Appointment

Secretary. After discussion of the issues, they persuaded her of the importance of screening potential applicants to appointed positions for homophobic bias. They elicited a commitment on behalf of the Governor to begin examining all appointees to boards, commissions, and regulatory agencies. The problem, of course, was how to do this. Dr. Mellon went so far as to enlist the Gay academic community in developing a measuring instrument to assess homophobia.<sup>9</sup> This implicitly gave strategic function and location to Gay representatives with the executive branch.

The symbolic significance of this commitment went virtually unnoticed by the larger Gay community, though it was reported in the Gay media. News West reported the following:

"Although Mellon expressed a commitment on behalf of the Governor to try to insure that homophobic persons would not receive appointments to posts where their bias could be exercised in public policy, it is believed that Brown would rather not have the matter become a controversial political issue."<sup>10</sup>

It seemed only logical to the advocates that soliciting the Governor's support for an executive order would be the next step. The ~~Ferry~~ Ferry Bill had been defeated, Brown had not received the feared public backlash for his support of the Gay community, he had a letter from Milton Shapp outlining the feasibility of an executive order, and Gays had established a firm foothold in the executive branch. Additional support came from other segments of the "left" as well.

The farm workers committed themselves to lobbying for appointments by the Governor of persons supportive of protecting Gay

rights, in return for community support of the farm workers initiative-Proposition 14.<sup>11</sup> This coalition was a perfect example of network power. The farm workers traditionally have had the support of the Governor on labor issues which lent credibility to the Gay advocates pressing on issues of employment. The farm workers gained entre into the Gay community, which supplied them with organizing skills directed toward the middle-class, and received financial resources from Gay backers.

The only missing link seemed to be unification and commitment within the larger Gay leadership around furthering the goal of utilizing the executive branch of state government as a vehicle for change.

#### MIS-DIAGNOSING ONES CONSTITUENTS

The strategies employed by the small group of advocates had been quite effective within state government in a relatively short period of time. The major drawback was their inaccurate assessment of the community's political direction. One cannot be sure if the problem resides with resistance to the approach, or if key individuals and groups were just too "wrapped up" in their own activities to really notice the alternatives. Another issue, is the mis-calculation on the part of the proponents regarding their need for support from the monied and political segment of the community to actually secure the executive order. Brager and Holloway call this "identification of critical actors." They state that the more complex the organization, (or community) the

more likely it is that the "critical actors" will be numerous and difficult to band together.<sup>12</sup> This is certainly true in the Gay community, and one can speculate that it was this failure to convert some of the key actors to the pursuit of the executive approach that delayed the process.

The dilemma facing those who wanted modifications of institutional practices, involved raising this issue to high salience. Complicating the dilemma was the fact that this type of change strategy involves collaborative tactics, requiring long-term commitment to activities with relatively low visibility, conducted on numerous fronts simultaneously, with minimal recognition, glamour or need for an identifiable charismatic leader. The proponents failed to assess their own timing in relationship to the overall needs, direction and thrust of the community they represented. This became a restraining factor which eventually was partially overcome by events that no one anticipated; namely the assault on the Gay community by John Briggs and Anita Bryant.

It is important not to negate the strides made by Gay people through open support and endorsements of various political candidates. The use of Gay money, clout and votes in 1976 afforded an opportunity for high visibility, credibility and the establishment of bargaining power with the persons they helped to elect. These "campaign tactics" were later to be used in conjunction with the more collaborative approach. Having politicians who recognize the importance and power of the community was to become

extremely significant in 1977 and 1978 with the unanticipated backlash.

#### INCREASED VISIBILITY CREATES INCREASED CONFLICT

For the greater part of 1977, the California Gay community split its attention between state and local issues and the developments in Dade County, Florida. The mainstream political climate shifted again as exemplified in an article in News West (April, 1977). Covering the Los Angeles municipal elections, the newspaper reported that candidates were disavowing endorsements from the Gay community. They described Joy Picus and Bob Ronka's feelings about the Stonewall Democratic Clubs endorsement, as the "kiss of death".<sup>13</sup>

While candidates were reluctant to have openly Gay backing, Gays did manage to move into increasingly influential positions within the more liberal wing of the Democratic Party. Appealing to the liberals around the neo-fascist tactics of the "Save Our Children Foundation," Gays made inroads into the California Democratic Council, the Los Angeles City Council and the Los Angeles Board of Supervisors.<sup>14</sup>

Several of the supporters of change through the executive refocused their energies from direct activities on securing an executive order to more tangential activities. Further connections were established with the Pennsylvania Council, several articles were published in the Sexual Law Reporter about working with the executive branch, and contact was initiated with the Oregon Task

Force on Sexual Preference. Basically, 1977 was a time of reassessment, internal conflict and struggle.

Proposition 6 provided the catalyst to unite numerous factions in the Gay community, as well as providing an opportunity for Gays to call in some of their outstanding debts with politicians they had helped to elect just two years earlier. Once again it was an election year, and this time the Governor was running for re-election.

In the narrow context, Proposition 6 dealt with the right to employment opportunities. While all energies were directed toward the objective of defeating Proposition 6, the issue of rights and protections in employment became a salient issue throughout Gay and non-Gay political circles.

Almost without warning, discussion began to surface among the Gay Democratic Clubs and elsewhere about the possibility of an executive order. Brown was questioned on the topic at the California Democratic Council (CDC) Convention. Brown indicated that he was considering issuing such an executive order.<sup>15</sup> As so often happens, the primary actors in the initial support of an order read Brown's statement in the Los Angeles Times, in a story covering the convention. It appeared that, after two years, the idea was catching on. Unfortunately, the timing was incorrect. Gays and Gay supporters were in a battle for survival over Proposition 6, and the politicians and the California polity were not about to take chances until the victor was known.

Once Proposition 6 was defeated and the conservatives had failed to get the necessary signatures to place an initiative on the ballot



to repeal the Willie Brown Bill, the politicians saw the signs clearly, that indicated the level of power and influence emanating from the Gay community. There was no longer any question that this constituent group had become a viable interest group. That Gay issues had gained legitimacy and high salience was undeniable. It was also apparent that the general public was willing to be more progressive than previously thought, as long as Gay issues were presented in the "proper" frame of reference.

#### GAY EMPLOYMENT ISSUES COME OF AGE

In Brown's State of the State message and in his Inaugural Address, he mentioned his support of AB1, the resurrected version of the original ~~Per~~ <sup>of</sup> Gay Employment Bill. AB1 was sponsored by Assemblyperson Agnos, who was an adversary of Brown's, and a com-patriot of Assembly Speaker McCarthy. It can be speculated that this move by Brown may have been directed toward smoothing over the conflict between himself and McCarthy, on the other hand, it might have been a way to notify the Gay community that he, Brown, was serious about his comments on Gay employment issues. In any event, Gay activists took these statements to mean that Brown was ready to make a "binding commitment."

Early in 1979, Assemblyman McCarthy spoke at a Municipal Election Committee of Los Angeles (MECLA) fundraiser. MECLA is a pro-Gay political organization that is courted by politicians because of its financial resources and power. The organization examines politicians on their stance toward Gay issues before committing Gay support. McCarthy mentioned in his speech the need for an executive order. Tom Coleman was in the audience that night. After

listening to McCarthy on the issue, he decided it was time for another attempt at impacting the Governor and, ultimately, the entire executive branch.

Coleman sent a letter to Brown reporting on McCarthy's speech, outlined what needed to be in an executive order, sent copies of an article on "Securing Gay Rights Through the Executive Branch," and requested a response.<sup>16</sup> Several weeks later Coleman received a phone call from Tony Kline, the Governor's Legal Affairs Secretary. The Governor had read the letter and was preparing to issue an executive order. Brown had requested that Kline check the wording of the order with Coleman.<sup>17</sup> This opportunity affords an example of expert power.

As an attorney, Coleman was fully aware of the subtleties involved with language and the potential legal ramifications if wording is not precise. Instead of using sexual preference in the order, which implies choice over one's conduct, Coleman was opting for the use of sexual orientation, which implies no choice, and gives Gay people the same status as other minority groups. Kline was hesitant about the more definitive language. Coleman decided not to exert his full power. He was worried that the entire order might be abandoned if he pushed too diligently. A compromise was reached, and in the order both terms are used.

In analyzing this interaction, it would appear that Coleman may have given in too quickly. If in fact the use of certain terminology has critical implication for litigation, then this might be a serious drawback to the order. On the other hand, this event represented the culmination of a three year effort and the trade-off may have seemed minor.

On March 26, 1979, the Los Angeles Times reported, in a very small article, that Brown was to act on Gay job rights.<sup>18</sup> On April 4, 1979, the Governor signed the Executive Order. Nowhere in the above-ground press was this covered. The Governor's office had strategically timed the signing and release of the Order to coincide with Brown's departure to Africa with Ms. Linda Ronstadt. Since the establishment press was so involved in covering that story, it provided a convenient buffer to any potential criticism. The entire event went virtually unnoticed by the press, state agencies and, to some extent, even the Gay community. It was left to the Gay advocates to issue press releases. They were the ones to make sure each state agency received a copy of the Order. And finally it was left to the Gay community to educate and disseminate information to Gay people about the existence and impact of the Order.

One might question Brown's underlying commitment to the Order and to Gay people in general, if it were not for a few other little known factors. One can never fully assess an individual's motivation, but Brown has actively recruited Gay men and Lesbians into state government over the past several years. He has also hired the public relations firm of Mixner and Scott, both of whom are openly Gay individuals, to run the Brown presidential campaign.

It is this author's assessment that Brown is committed to Gay people and Gay issues. It is also this author's opinion that Brown is highly aware of timing and of "framing his messages" in such a way as to support those interest groups with which he is

aligned, without jeopardizing his overall political future. In this instance, one can speculate that Brown felt the Order was more important than risking flack from the public, the press and state agencies. He therefore effectively removed the issue from the political arena by careful planning and timing.

#### WHAT IS IN AN EXECUTIVE ORDER?

The Executive Order covers only those agencies, departments, commissions, boards and divisions directly within the executive branch under the Governor. It's specificity is in its directive to remand discrimination cases that fall under its jurisdiction to the State Personnel Board. A question might be asked of those who lobbied for it regarding the limitations of coverage. State employees who are in the University of California system or under the State College Board of Trustees for example, are not protected. The actual mechanisms for implementation and enforcement are left unaddressed. The vagueness of the mandate has provided leeway for innovation and input from the community strategists. The difficulty of course is that it requires an ongoing commitment from advocates to insure development of implementation procedures. Further, the procedures developed will require continuing monitoring and oversight activities. It happens that, in California, there are individuals willing to vigorously pursue an implementation strategy that will hopefully maximize the Order's impact on the people it was developed to protect. From a policy standpoint, this lack of direction from the mandate is seen as a serious drawback.

Another essential limitation of the Order is the absence of provisions for funding administrative activities by the Personnel

Board. While this problem has been temporarily resolved, this is also seen as a policy limitation.

It is essential to the overall understanding of the implementation process to report on one additional event. On May 31, 1979, the California Supreme Court handed down a decision in the case of the Gay Law Students vs. Pacific Telephone and Telegraph and the Fair Employment Practices Commission. In this case <sup>THIS HELD</sup> the judges ruled that no state agency could discriminate in employment based on sexual orientation.

"In analyzing this constitutional contention, we begin from the premise that both the state and federal equal protection clauses clearly prohibit the state or any governmental entity from arbitrarily discriminating against any class of individuals in employment decisions."<sup>19</sup>

This decision fills one of the gaps in the Executive Order, for it broadens coverage to all state employees. It also provides an additional state policy which strengthens enforcement potential of the Executive Order. Furthermore, if at some point a new administration rescinds the Executive Order, the supreme court decision remains operative. This has further legitimated the efforts of those outside government seeking to implement the Order. While the overall court decision was anticipated, the particular piece expanding coverage was not. It has provided additional impetus to otherwise reluctant state employees who are both responsible for, and affected by, the Executive Order.

At this writing the mechanisms for implementation are just about in place, but the program development activities are yet to begin.

Therefore, it will be impossible to critique the gaps between the intentions of the mandate and the actual programs set up to implement. Instead, what will be covered is the process by which development has occurred and some discussion will be presented on various possible outcomes.

#### IMPLEMENTATION STRATEGY

Immediately following the signing of the mandate, the process of implementation began. This is attributed to the National Committee's "watch-dog" approach. Tony Kline arranged a meeting between the State Personnel Board and statewide Gay community representatives, at the request of the Committee. The National Committee enlisted the expertise of Tony Selvestry, head of the Pennsylvania Council, and he helped to develop strategy. During the meeting the advocates raised numerous issues about policy, budgets and services affected under the Order. They stressed the Board's responsibility for enforcement of both the Executive Order and the court decision as co-equal state policies. The purpose of this strategy was to gather essential information from board members about the various divisions under their auspices, impress upon them the importance and implications of the Order and begin to educate board members who would be enforcing the Order, of the myriad complexities involved with Gay employment issues.

The Board was extremely responsive, by all reports, but one major factor apart from the advocates strategy plays an important role. It seems that the Little Hoover Commission had recommended that the State Personnel Board be abolished and plans were in the

works for the Industrial Relations Board to assume the responsibilities of the Board. Undoubtedly, the State Personnel Board members saw an opportunity to take on an additional function, which was of an especially sensitive nature. If the Board became knowledgeable in the area of Gay employment issues, it is thought unlikely that they will be phased out.

There are five divisions under the Board's purview: management services, public employment and affirmative action, policy and standards, local government division and the appeals division. A second meeting was held with the heads of each of these divisions. At this meeting, information was shared about a grant that had been applied for under the Public Employment and Affirmative Action Division, to fund a position to conduct the activities of implementation. The community representatives were irate.

They had stressed with the Board and in individual conversations with division heads that they were to be used for resource and consultative purposes on any internal activities around the Executive Order. Additionally, a memo was issued under the Policy and Standards Division, to all state agencies and employee organizations, outlining the same procedures that are currently in operation for handling discrimination charges. Nowhere in the memo did it refer to the supreme court decision which would effectively include all agencies.<sup>20</sup> Finally, the representatives had been expressing an interest in establishing a council or task force similar to Pennsylvania's as a way of implementing and enforcing the Order. This was now impossible.

The lack of coordination between inter and intragovernmental divisions seems to be a real issue here, as does a breakdown in communication between the divisions, the Board and the community people. It also calls into question the "real" power of the advocates.

Just prior to this second meeting a group calling itself Advocates for Gay State Employees came to the attention of the Committee. This group had members throughout state government, some of whom were in high positions with the Board, the Governor's office and the divisions. Immediately a communication network was set up to supply information to the Gay representatives involved in negotiating with the Board and the divisions. This group facilitated the Advocates' understanding of the various agencies and divisions.

One of the problems with this group of state employees is their own amorphous configuration. No one is aware of who the members are, and most of the members are reportedly fearful of "coming out" (being known publicly as Gay). One can assume that even though the Executive Order is operative, it has had little effect on reducing the fear and paranoia of Gay state employees. One wonders how effective the Order will be if the attitudes of Gay people about themselves do not change first. A policy is only as affective as the use made of it.

Gay advocates met with some of the Gay state employees to review the substance of the grant proposal. It was determined that creating a position would provide a locus of coordination and would establish a forum for the issues.



Several problems were identified with the grant: 1. The placement of the position within the bureaucratic hierarchy was insufficient, 2. the funding requested was insufficient and, 3. the newly created position was to be located in the Affirmative Action Division, the least powerful of all the divisions under the Board.

Seemingly a fourth issue should have been of concern. The position is funded for only one year. Advocates feel this is not a problem. They are quite convinced that the position will be absorbed into the budget of the division after the grant terminates.

This author's familiarity with state department grant positions indicates that this is not always the case. Given the budgetary cutbacks in state government, and the political climate which dictates a "no-growth in government attitude," it is suspected that the advocates might run the risk of losing their ombudsman and visibility. Further, persons occupying grant positions under these conditions, rarely command as much authority as permanent employees. Additionally, it usually takes between four to six months for a new person to acquire enough information, build sufficient contacts and develop a substantive program so that, often by the time all the preliminary work is completed the funding is terminated and results are limited. In implementation, as in politics, the trade-offs must be assessed. The community advocates opted to lobby for changes in the status and location of the position, rather than to fight for their original intentions, which involved creating a permanent council.

Resistance within the state was confronted when the grant came up for approval by an intergovernmental review panel. The National

Committee learned through the underground Gay information network that Alice ~~Liddle~~<sup>Lytle</sup>, acting secretary of the State Consumer Services Agency, had circulated memos against ABl and against Gay housing cases that had come under her jurisdiction, as prior head of the Industrial Relations Department. Ms. ~~Liddle~~<sup>Lytle</sup> had final sign off on the review committee's recommendations for funding.

While it is fairly clear that the representatives were experiencing difficulties in establishing their credibility with the divisions, they still had adequate power with the Governor's office. Tony Kline was contacted. The problems and issues with regard to Ms. ~~Liddle~~<sup>Lytle</sup> were explained. The potential ramifications to Brown's support from the Gay community around his presidential bid were intimated to be in question if something was not done to secure Ms. ~~Liddle~~<sup>Lytle</sup>'s approval. Senator Roberti was also called. It came to light that Ms. ~~Liddle~~<sup>Lytle</sup> was to begin confirmation hearings on her new appointment. The Senate had the power to block confirmation, and Roberti was willing to support this if the Governor's office did not come through. This vignette provides an excellent example of maximizing ones power resources. Brown was already experiencing difficulties with his appointment, (note the problems with Jane Fonda's confirmation hearings). Needless to say, pressure was brought to bear and the grant was approved.

Subsequently, the advocates, in conjunction with Ron Kurtz, head of the Board, were able to upgrade the position, and remove it from the Affirmative Action Division. It was moved to the Policy and Standards Division where it will carry more prestige and status.

The rationale for this move includes the more direct relationship

between the head of the Board and this Division, a more receptive atmosphere to Gay issues from this Division, and more perceived power and influence of this Division in the intra and interorganizational arrangements of state government.

The final thrust of the advocates has been in recruiting the best candidate for the position. At the time of this writing it appears that the National Committee has been able to hand pick the person. He is an individual who has a long history with the F.E.P.C., a person with contacts throughout the California Gay community, and is openly Gay himself. He also possesses the necessary linkages with state agencies and has a vast knowledge of employment issues. The job will become available on March 1, 1980 and at that time serious program development and enforcement will begin.

#### WAHT NEEDS TO BE DONE

One of the most difficult realities for any type of movement oriented group to struggle with is the fact that the values inherent in the issues are never enough to stimulate all the changes that are needed. The dilemma becomes one of what can realistically be accomplished versus what needs to be done. The State Personnel Board, in consultation with the advocates, have identified some preliminary areas of needed change. Documents and publication indicating bias based on sexual orientation will be re-written. Exam bulletins, informational leaflets, interview instructions will all undergo review and revision.

One of the areas the advocates wanted to avoid, was the concept of affirmative action. The whole point of the Order is the

right to private or public acknowledgement of ones sexual orientation without fear of discrimination. Therefore, the traditional approach to implementing non-discrimination mandates, through quota's, was ruled out as a possibility, (it has also been ruled illegal).

Some of the other concerns center around educating state agency personnel departments, and disseminating information of the Order's existence to Gay people at large. Thus far, no mention has been made of what type of accountability mechanisms will be built into the program to monitor these activities. The issue of accountability will be extremely sensitive, given that latent homophobia is difficult to assess, the reluctance of Gay people to come forth with blatant discrimination greivences, and the problems with reaching "closeted" Gays, many of whom do not belong to any segment of the Gay community, nor do they read The Advocate, America's largest Gay newspaper.

#### CONCLUSION

The issues that have been identified, are enough to keep anyone busy developing and implementing strategies and programs, but there are many more. Just to list a few, there are issues around benefits, who can share in them. For instance, retirement funds, and release time for attending a lover's funeral. Sharing health insurance benefits is another. The issuance or withholding of licenses from individuals who have been charged with lewd conduct which may have no bearing on their professional abilities. Some of these issues will require additional legislative changes, but others can be addressed by establishing coalitions with employee unions, and by

using an old Gay tactic of enlarging the issue, to include all single state employees, providing a larger base of support.

The Executive Order is seen by most in the Gay community as a beginning. It will be interesting to follow the developments over the next year to see what type of impact the Executive Order and the programs designed to implement and enforce it have on the agencies of state government, and the Gay community.

Footnotes

- <sup>1</sup>Copy of Order in Appendix A.
- \* <sup>2</sup>This meeting was held in the Governor's office in Harrisonburg, PA.
- <sup>3</sup>Brown received this letter in March, 1976. By that time the Pennsylvania Task Force had been renamed - Council. *See letter attached.*
- <sup>4</sup>The National Committee For Sexual Civil Liberties is an information gathering and pressure tactic, Network Organization. Its members are prominent professional people and they remain anonymous with regard to their affiliation with this group. The National Committee's top priority is gay issues, though they represent the entire spectrum of sexual civil liberties. All representatives of this group also belong to more overt groups and represent themselves as members of those entities when an affiliation is required. The Committee's power has derived from its covert operations.
- <sup>5</sup>California Fair Employment Practice Act is a part of the California Labor Code, Section 1420. The particular section of importance is Subsection D which authorizes the F.E.P.C.
- <sup>6</sup>News West. November 12-26, 1976, p.9.
- <sup>7</sup>Each of these arguments were eventually addressed in the Supreme Court case, Gay Law Students Association vs Pacific Telephone and Telegraph Company, S.F. No. 23625, May 31, 1979.
- <sup>8</sup>News West. October 1-15, 1976, p.2.
- <sup>9</sup>News West. October 1-15, 1976, p.3.
- <sup>10</sup>News West. October 1-15, 1976, p.3.
- <sup>11</sup>News West. October 1-15, 1976, p.12.
- <sup>12</sup>Changing Human Service Organizations. 1978, pp. 104-150.
- <sup>13</sup>News West. April 1-15, 1977, p.4.
- <sup>14</sup>News West. March 18-20, 1977, p. 17.
- <sup>15</sup>Los Angeles Times, April, 1978.

<sup>16</sup>Several articles, all relating to Gay issues and the Executive had appeared throughout 1977, 1978, 1979, in The Advocate, The Sexual Law Reporter and "News West."

<sup>17</sup>Phone call was made on April 3, 1979.

<sup>18</sup>Los Angeles Times. March 26, 1979. Part I, p.3.

<sup>19</sup>Supreme Court Decision, Gay Law Students Assn. vs. PT&T, p. 467.

<sup>20</sup>See Appendix B. for copy of memo.