

# LOS ANGELES HERALD

EXAMINER

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## Gay-bashing

Will another law end it?

**W**e're sympathetic with the intent of a bill just passed by the Legislature giving Californians the right to sue for hefty damages if they're physically attacked because they're homosexual, elderly or handicapped. But we don't really see why the bill is necessary.

There's no denying that attacks on gays, the aged and the handicapped are a problem and a particularly odious form of violence. In the case of homosexuals, it's so common that there's a slang term for such attacks: "gay-bashing." Which is why the Legislature has sent Gov. Deukmejian a bill giving the victims of such attacks the right, under state civil-rights laws, to sue their attackers for damages plus a \$10,000 penalty.

But the fact is that they — and every other Californian — essentially have that right already: Battery is already a violation of the state civil code, except in self-defense, and

victims can sue attackers for general and punitive damages. The code doesn't specify a \$10,000 figure, but there's no reason victims can't receive that much — or more — if circumstances warrant. In addition, of course, attackers can be arrested and tried on criminal assault charges.

So why the redundant legislation? Basically, it's a special-interest bill, prompted in part by the piecemeal campaign to extend to gays the civil-rights protections now afforded other minority groups. We don't object to that *per se*, as long as the legal protection clearly is needed. In this case, we don't think it is. If the possibility of criminal and civil action doesn't deter gay-bashers now, what real good will more legal verbiage do?

We're also a little taken aback by the proliferation of groups' claiming privileged — not equal, but privileged — status under the law for one reason or another. This bill is an example of that, albeit a relatively harmless one. In general, we see no reason to pass laws just for the sake of passing laws, and we won't be upset if Gov. Deukmejian vetoes this one. ■

# THOMAS F. COLEMAN

ATTORNEY AND PERSONAL RIGHTS CONSULTANT

CENTER FOR PRIVACY RIGHTS EDUCATION AND ADVOCACY  
POST OFFICE BOX 6383 • GLENDALE, CA 91205 • (213) 956-0468

September 5, 1984

Stanley W. Cloud  
Executive Editor  
Herald Examiner  
1111 S. Broadway  
Los Angeles, CA 90015

Re: Response to Aug. 30, 1984 Editorial on "Gay Bashing"

Dear Mr. Cloud:

The Herald Examiner recently published an editorial on "gay bashing" which virtually asked Governor Deukmejian to veto Assembly Bill 848. Having passed the Assembly and the Senate, that bill is presently on the governor's desk.

The Ralph Civil Rights Act was first enacted into law in 1976 after the Legislature and the Governor approved the measure. That law punishes bigots who manifest their prejudice in the form of violence. Specifically, the Ralph Civil Rights Act punishes violence which is inflicted simply because of the victim's race, religion, color, national origin, ancestry, political affiliation, sex, or position in a labor dispute. A mandatory \$10,000 fine is imposed under this law, over and above any other criminal or civil liability which might apply. The victim is authorized to collect the penalty in a civil lawsuit.

A.B. 848 amends the Ralph Civil Rights Act so that violence committed against persons because of their age, disability, or sexual orientation would be similarly punished. By passing A.B. 848, the Legislature has sent a strong and clear message to would-be attackers of elderly, disabled, and gay persons that such senseless acts of violence will not be tolerated.

The Herald Examiner could not have been more inaccurate when it called A.B. 848 "redundant legislation." The Herald Examiner should have considered the following points before criticizing the California Legislature for passing A.B. 848 and inviting the Governor to veto the bill:

1. The primary purpose of the Ralph Civil Rights Act is to punish violent behavior directed towards an individual simply because of his or her membership in a minority group. The fact that existing statutes already prohibit violence in general terms does not detract from the legislative duty to pass specific laws mandating penalties for "particularly odious" forms of violence.

2. The punishment specified by the Ralph Civil Rights Act is a mandatory \$10,000 fine. Existing law governing the imposition of punitive damages in a civil lawsuit is vague and discretionary. A.B. 848 ensures the imposition of a mandatory minimum fine, without any "if's, and's or but's."

3. The victim is assured the aggressor will be punished for such vicious activity because the victim is authorized to collect the fine in a civil action, even though the police or prosecutor fail to successfully press criminal charges.

4. In some cases, the criminal law may not be used to punish acts of violence. For example, an assault conviction cannot be predicated upon an intent only to frighten. [See: People v. Marceaux (1970) 3 Cal.App.3d 613, 619] A defendant may not be convicted of assault with a deadly weapon if a loaded gun is pointed with a mere intent to frighten, or fired without the intent to score. [See: People v. Spence (1970) 3 Cal.App.3d 599] Only last year, the California Supreme Court ruled that under our state's criminal assault laws, "a conviction for assault may not be grounded upon intent only to frighten." [See: People v. Wolcott (1983) 34 Cal.3d 92, 99] The Ralph Civil Rights Act fills a gap which exists in criminal law because it punishes an aggressor who threatens a victim with violence simply because of the victim's status. Obviously, in cases involving threats of violence, A.B. 848 is far from being "redundant legislation."

5. The Ralph Civil Rights Act increases the likelihood of punishment by sidestepping various procedural obstacles inherent in criminal proceedings. Unlike a criminal prosecution where guilt must be established "beyond a reasonable doubt," punishment for a violation of the Ralph Civil Rights Act only requires proof by a preponderance of evidence because it is imposed in a civil forum. Also, unlike a criminal case where a unanimous jury verdict is required, here, the judge must impose a mandatory penalty when 9 out of 12 jurors find that the defendant committed an act of violence or threatened to commit violence simply because of the victim's minority status.

6. The prospect of punishment through civil prosecution is increased when a minimum judgment of \$10,000 is guaranteed in factually strong cases. The assurance of such an outcome encourages attorneys to represent victims on a contingent fee basis, rather than demanding payment in advance of an hourly fee of \$100 or more. Without an attorney's services on a contingent

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fee basis, most victims financially could not afford to bring a civil suit against the wrongdoer.

The Herald's editorial did not question the frequency of attacks on gays, the aged and the handicapped. Indeed, the Herald called the problem "a particularly odious form of violence." Problems which are "particularly odious" call for particularly punitive laws in response. Far from being "redundant legislation," A.B. 848 is an expression of public policy addressing this disturbing manifestation of violence in no uncertain terms.

When Governor Deukmejian voted in favor of the Ralph Civil Rights Act as a state senator in 1976, he recognized the need to mete out stiff penalties to combat several particularly odious forms of violence. Should he retreat from this position merely because the Legislature has now seen fit to expand the Ralph Civil Rights Act to punish "gay bashers" as well as those who would attack their victims simply because they are elderly or disabled and thus are perceived to be easy prey?

Will passing another law stop "gay bashing?" Probably not. After all, murder continues despite death penalty laws. But the persistence of such violence should not cause hesitation in the legislative trend expanding our arsenal of legal weapons to curb violent behavior.

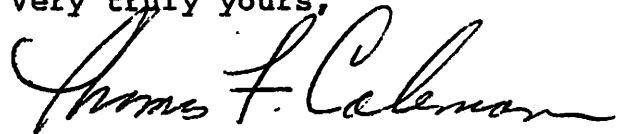
Soon after he became the state's chief executive officer in 1982, Governor Deukmejian publically stated that freedom from violence and the fear of violence is a basic human freedom and that it was the first responsibility of government to protect individuals against this evil. The Legislature has acted to fulfill its responsibility by passing A.B. 848. The bill has the strong support of California's chief law enforcement officer, Attorney General John Van de Kamp. The only remaining question is what action the Governor will take on the bill.

A veto of the bill could pose a clear and present danger to the physical safety and well being of elderly and disabled persons, as well as lesbians and gay men. A new wave of "gay bashing" and other senseless violence could be triggered by such an insensitive move. A veto would cause public confusion regarding the official policy of this state concerning such violence. The Governor should approve the measure as a signal that Californians are united in their resolve to curb violence.

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The Legislature did not pass this law "for the sake of passing laws." It was passed in response to reports of increased violence against individuals because of their perceived "status." The existence general laws on the subject of violence has never -- and should never -- discourage the Legislature from taking a specific stand against a "particularly odious" form of violence. The fact that one of the groups protected by A.B. 848 is politically or socially unpopular is even more reason for the Governor to sign the bill into law.

Very truly yours,



THOMAS F. COLEMAN  
Commissioner, California  
Attorney General's Commission  
on Racial, Ethnic, Religious  
and Minority Violence

cc: California Governor George Deukmejian  
California Attorney General John Van de Kamp  
Los Angeles County Human Relations Commission



# California needs stronger laws against bigots who resort to violence

By Thomas F. Coleman

The Herald Examiner recently published an editorial (Aug. 30) on "gay bashing" which virtually asked Gov. Deukmejian to veto AB848. Having passed the Assembly and the Senate, that bill is currently on the governor's desk.

The Ralph Civil Rights Act was first enacted in 1976. It punishes bigots who manifest their prejudice in the form of violence — specifically, violence inflicted simply because of the victim's race, religion, color, national origin, ancestry, political affiliation, sex or position in a labor dispute. A mandatory \$10,000 fine is imposed under this law, over and above any other criminal or civil liability which might apply. The victim is authorized to collect the penalty in a civil lawsuit.

AB848 would amend the Ralph

*Thomas F. Coleman, a Glendale attorney, is a member of the California Attorney General's Commission on Racial, Ethnic, Religious and Minority Violence.*

Civil Rights Act so that violence committed against persons because of their age, disability or sexual orientation would be similarly punished. By passing AB848, the Legislature has sent a strong and clear message to would-be attackers of elderly, disabled and gay persons that such senseless acts of violence will not be tolerated.

The Herald Examiner could not have been more inaccurate when it called AB848 "redundant legislation." It should have considered the following points before criticizing the California Legislature for passing AB848 and inviting the governor to veto the bill.

The primary purpose of the Ralph Civil Rights Act is to punish violent behavior directed toward an individual simply because of his or her membership in a minority group. The fact that existing statutes already prohibit violence in general terms does not detract from the legislative duty to pass specific laws mandating penalties for "particularly odious" forms of violence.

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tory \$10,000 fine. Existing law governing the imposition of punitive damages in a civil lawsuit is vague and discretionary. AB848 ensures the imposition of a mandatory minimum fine, without any ifs, ands or buts.

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criminal prosecution in which guilt must be established "beyond a reasonable doubt," punishment for a violation of the Ralph Civil Rights Act only requires proof by a preponderance of evidence, because it is imposed in a civil forum. Also, unlike a criminal case in which a unanimous jury verdict is required, here the judge must impose a mandatory penalty when nine out of 12 jurors find that the defendant committed an act of violence or threatened to commit violence simply because of the victim's minority status.

The prospect of punishment through civil prosecution is increased when a minimum judgment of \$10,000 is guaranteed in factually strong cases. The assurance of such an outcome encourages attorneys to represent victims on a contingent fee basis, rather than demanding payment in advance of an hourly fee of \$100 or more. Without an attorney's services on a contingent fee basis, most victims could not afford to bring a civil suit against the wrongdoer.

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on gays, the aged and the handicapped. Indeed, the Herald called the problem "a particularly odious form of violence." Problems which are "particularly odious" call for particularly punitive laws in response. Far from being "redundant legislation," AB848 is an expression of public policy addressing this disturbing manifestation of violence in no uncertain terms.

When Gov. Deukmejian voted in favor of the Ralph Civil Rights Act as a state senator in 1976, he recognized the need to mete out stiff penalties to combat odious forms of violence. Should he retreat from this position merely because the Legislature has now seen fit to expand the Ralph Civil Rights Act to punish "gay bashers" as well as those who attack the elderly or disabled simply because they are perceived to be easy prey?

Will passing another law stop "gay bashing"? Probably not. After all, murder continues despite death-penalty laws. But the persistence of such violence should not cause hesitation in the legislative trend expanding our arsenal of legal weapons to combat violent behav-

ior. The Legislature has acted to fulfill its responsibility by passing AB848. The bill has the strong support of California's chief law-enforcement officer, Attorney General John Van de Kamp. The only remaining question is what action the governor will take on the bill.

A veto could pose a clear and present danger to the physical safety and well-being of elderly and disabled persons, as well as lesbians and gay men. A new wave of "gay bashing" and other senseless violence could be triggered by such an insensitive move. A veto would cause public confusion regarding the state's official policy concerning such violence. The governor should approve the measure as a signal that Californians are united in their resolve to curb violence.

The Legislature did not pass this law "for the sake of passing laws." It passed it in response to reports of increased violence against individuals because of their perceived status. The fact that one of the groups protected by AB848 is politically or socially unpopular is even more reason for the governor to sign the bill into law. ■

610 Tamarac Drive  
Pasadena, Ca. 91105  
September 13, 1984

Dear Mr. Coleman,

I want to congratulate you on your article in the Herald Examiner regarding stronger laws against bigots. I had not heard of AB848 and thus am surprised that anyone would commit an act of violence against the aged and disabled.

Including the homosexuals with the above certainly puts Governor Deukmejian between a rock and a hard place. Putting homosexuals down seems to be a national past time verbally and physically. Since I am gay I would appreciate you sending me your Glendale business card because perhaps I will need your services at some future date.

Very truly yours,

*Don Watson*

Donald E. Watson