

**TASK FORCE ON FAMILY DIVERSITY**

**A Report on Religion and the Family**

by  
**E.H. Duncan Donovan**  
Task Force Member

## CONTENTS

E.H. Duncan Donovan,  
"A Short Essay on Religion and the Family"

### APPENDICES:

- A. "The Family in the Judeo-Christian Tradition,"  
by Father Robert Brown, Eposcopal Diocese of L.A.
- B. "On Church Recognition of Homosexual  
Household Relationships," by Father David Duncan
- C. "Pregnant Girl Can Attend Graduation,"  
Los Angeles Times, May 31, 1986
- D. "Evangelical Women's Caucus Backs Gay Rights,"  
Los Angeles Times, July 19, 1986
- E. "Same-Sex Marriage Approved by Hartford Quakers,"  
Parents and Friends of Lesbians and Gays,  
August 1986 Newsletter
- F. "Vatican Warning Seen Against Liberal Views on  
Sexuality," Los Angeles Times, October 31, 1986

*A Short Essay on Religion and the Family*

by

*E. H. Duncan Donovan*

1. There is a general recognition that the family as a social institution is changing.

2. These changes create economic and psychological stress for individuals who could once depend on the family for benefits and protections that are no longer being provided.

3. Although the City of Los Angeles cannot replace the dwindling old family institution, good public policy would assist individuals in their search for new household institutions which can furnish the psychological and financial benefits no longer supplied by the family.

There is a general recognition that the social institution of family is changing.

Some religious leaders and some political leaders have connected this development with a perception that the United States is suffering a breakdown in personal morality. They hold that the changing reality of family structure has caused this perceived breakdown. They seek a return to traditional family structure by expansion of religious life and laws which promote a return to "traditional virtues."

The family structure is indeed changing. A household of one man and one woman, legally married, with one or two children resulting from their union is no longer a standard household. Studies indicate that this is very much a minority household.

This fact impacts on how the City of Los Angeles should relate to the people in its jurisdiction to promote public policy which is good for the entire community.

Change in family structure is not a new thing in Western Civilization. It is not possible to return to some of the older forms which would have no value for us today.

The Old Testament family in which a man's wives and children are owned by him as chattels is clearly unjust. The most ardent sexist could not seriously advocate a return to that family.

In the first centuries of the Christian Era, the Christian household could not be called "family" in any modern sense. The early Christians viewed the Roman family (which had much in common with the Victorian family) as a barrier between the individual and God. They therefore lived in communes, both sexes, all ages, without requirement of marriage or blood relationship.

How many Angelenos would advocate a return to that living style?

Professor John Boswell of the history department of Yale University has traced the first Christian rite which binds two people together. It does not come until the Middle Ages. Interestingly enough it does not bind a man to a woman, but two men together. Later editions of the church rites, keep the rite in, but with the notation that the rite is no longer used.

In spite of the First Amendment which guarantees separation of church from state, the United States went against and destroyed a family structure religiously held by the Mormons.

At an earlier time, our European ancestors went after and destroyed an American Indian family/tribal institution, the Berdache.

The nature of family has been a problem for philosophers and religious thinkers from biblical days to present time. Among philosophers there has been some agreement that a tension exists between the individual and the state. Many take the view of Aristotle that the state is a natural growth of an extended family. Others have sought more rational explanations for both family and the state. But most recognize that the family stands as a buffer between the individual and the tremendous power of the state. Under the most terrible despots, the family has been a source of love and comfort for oppressed individuals.

At different times, in different cultures and at different levels of the same society, the definition of what a family is has varied. Sometimes the definition is made by the state. Sometimes the definition is made by a church. Sometimes the definition is made by the family, itself. When the family is defined by government or by a religion, there will be no such thing unless the family, itself, agrees. If a family form no longer supports the individual, the individual will create a family form that does.

That is happening today, and it is appropriate for government to look at the new family forms, to examine what social goods they create and to see how such forms can be nurtured for the good of all society.

## THE FAMILY IN THE JUDAEO-CHRISTIAN TRADITION

In the Holy Scriptures of the Judaeo-Christian Tradition, the term "family" generally refers to "household" (Hebrew: bayith, Greek: oikia). The Psalmist strikes a basic theme: "The Lord setteth the solitary in families". (Psalm 68: 6).

What constitutes a "family" or "household" in the Scriptures? It is clear that the household consists not only of the immediate family because it includes an extended family of various relations and retainers. Membership in the household therefore surpasses the natural bonds of blood and marriage, though both are elements that constitute family relationships. Most human relations were seen in terms of the household, e.g., "the house of Israel", the extended household eventually comes to include the whole human family. The whole family in heaven and earth" are the household of a Lord who is regarded as father of all, hence all people are brothers and sisters in the human family.

In some contemporary religious rhetoric, the term "family" is used in an unbiblical restricted and exclusive sense to oppress people whose households are somehow considered non-traditional. The term "family" has come to signify a household that includes mother and father and legitimate issue of their legal conjugal union.

In stark contrast to any restricted exclusive or oppressive sense of "family" is the teaching and example of Jesus of Nazareth, presumably unmarried, celibate man who was conceived before his parents' marriage, and whose genealogy includes a list of decidedly unconventional family relations. "While he was still speaking to the people, behold, his mother and his brothers stood outside asking to speak to him. But he replied to the man who told him, 'Who is my mother and who are my brothers'. And stretching out his hand toward his disciples, he said, 'Here are my mother and my brothers'. For whoever does the will of my Father in heaven, is my brother, and sister, and mother." (Matthew 12: 46-50). Jesus carried on the traditional teaching "Honor thy father and mother" (Exodus 20: Matthew 15: 4; Mark 7: 10; Luke 18: 20). However, in jarring contrast to such traditional values he says, "I have come to set a man against his father, and a daughter against her mother, and a daughter-in-law against her mother-in-law, and a man's foes will be those of his own household." (Matthew 10:35, 36).

The religious community has by and large been supportive of family cohesiveness and household stability. In Christian tradition, this concern has concentrated on church discipline regarding marriage, church teaching about sexuality, chastity, divorce, remarriage, birth control, and celibacy need to be seen in the context of the family and by that is meant the "household".

What is the purpose of the "household"? The household is the fundamental social unit in which its members initially come to know love, mutual support in prosperity and adversity, giving and taking, serving and being served, giving and accepting love. If asked our name, we give a household (family) name because we are identified, in part, by our household. To be human is to be a person in relation to others. The first to be known as "others" are members of our household. "Incipe, parve puer, risu cognoscere matrem" - "Smile, little one, as you begin to know your mother", Virgil sang. There in the household, the child comes to know his/her

first relationship and to discover that he/she counts. Everyone whom we encounter in late life and who loves us reflects for us the love and security we have known in our household. Much that may have been warped by the inadequacy or incapacity of our households may stay with us and yet may be set aright, all the more so because there is something in our social nature that enables us to extend the circle of our household concern beyond our own family to a larger sense of household and, eventually, to the whole human family. Consequently one of the purposes of the household is to contribute to the common good of society.

When we take an honest look at our society in general, and our city in particular, we can see diverse expressions of family life, various types of "households". In a religious congregation in Los Angeles, for example, the majority of members are likely to be in such "non-traditional" categories as "single", "widowed", "divorced", "remarried", or in a household arrangement with another person to whom they are not related by blood or marriage, that is, living with a lover or friend. In some of those cases there is a real commitment to establishing and maintaining a permanent household in the fullest sense. The legal status, if any, in such "non-traditional" households (whose members are not related by blood or marriage) is ambiguous; however, there is increasing social recognition of household diversity, even in the religious community.

What is meant by a "Christian household" in the broadest sense? Father David Duncan suggests, "All households, whether married, single, same-sex, or monastic, become Christian as they are sacramental: as an expression and experience of the vocation to be personal and communal 'signs' of Christ. Single-, two-, or many-person households are Christian if and only if they are formed by a commitment to Christian forgiveness, future, faithfulness, and paying the cost of others' existence, by means of hospitality and love." (Rf. Duncan, David, "On Church Recognition of Homosexual Household Relationships", privately distributed, attached.)

The purpose of the Christian household is stated in The Book of Common Prayer, in the Anglican tradition: "mutual joy . . . help and comfort in prosperity and adversity, and when it is God's will the procreation of children and their nurture in the knowledge and love of the Lord." While this statement is within the liturgy of marriage, one may assume that the purpose of a Christian household may apply, to some extent, to a Christian or non-Christian household, whether the members be related by blood or marriage, in which a relationship is a significant element or not, whether it pertains to a same-sex or different-sex couple, and whether the household consists of a single person, two persons, or a many-person household. While these elements are variable, common elements of a household include, in Father Duncan's terms, "commitment . . . forgiveness . . . a future . . . faithfulness . . . hospitality . . . and love."

What practical conclusions may be drawn from this sketchy consideration of "the family" or "household" in the Judaeo-Christian tradition?

In the Judaeo-Christian Tradition,

- 1) The "family" includes not only the immediate (traditional understanding of the) family but also an extended family of various relations and retainers.
- 2) In some contemporary religious rhetoric, the term "the family" is used in an unbiblical, restricted and exclusive sense to oppress people whose households are somehow considered non-traditional.
- 3) Jesus was a single person whose attitude toward the family was apparently ambivalent. (Contrast: Matthew 15: 4/10: 35, 36).
- 4) The religious community has, by and large, been supportive of family cohesiveness and household stability.
- 5) The purpose of the household is for mutual joy, help, nurture, and support, and it is characterized by some form of commitment to a common life, open to forgiveness and constant renewal, fidelity, hospitality, and love.
- 6) When we take an honest look at our society we can see diverse expressions of family life and various types of "households" both in the community at large and within the religious community as well.
- 7) All sorts of households may be considered authentic, and therefore entitled to social recognition and community support, insofar as they contribute to the welfare of their members and the common good of society.

Father Robert Brown  
Episcopal Diocese of Los Angeles  
Member, Task Force on Family Diversity



**Fr. DAVID DUNCAN**

**ON CHURCH RECOGNITION  
OF HOMOSEXUAL HOUSEHOLD RELATIONSHIPS**

Episcopal Church membership includes a number of gay and lesbian persons whose sexuality is as much affirmed by them as heterosexuality is affirmed by those who display an engagement ring or snap-shots of their children. However, there is as yet no official Church affirmation or blessing of homosexual household relationships. While same-sex households are socially accepted in many local congregations, they are omitted from canon law and the Prayer Book.

The reason for this omission is obvious. Homosexuality was, until recently, considered a vice. The Episcopal Church generally tolerated homosexuality if it was private, but any positive acknowledgement of same-sex households as legitimate context for or expression of Christian virtues, was out of the question.

In our day, this question does arise, namely: should the Episcopal Church acknowledge in law and liturgy homosexual household-relationships as a legitimate context for, and possibly a realization of, Christian virtues?

To begin answering this question, I will make a fundamental assumption which many would challenge, viz. that homosexuality is a natural human phenomenon. By "natural" I mean regularly occurring in the human constitution (in perhaps ten percent of the population) due to genetic codes, body chemistry, personality development or some other cause or combination of causes, but not as an aberration, mistake, or habit of uncharitable, immoral behavior. In short, I will assume for the sake of argument that homosexuality, in and of itself, is not a vice.

## I. Household as a Sacrament

(I am indebted to the Very Rev. John H. Olson for much of the content of this section, but the mistakes are my own.)

By "sacrament" I mean a paradigm of divine reality, a continuation of the life of Christ establishing an intimate relationship between humanity and God. The household is a "sign" of Christ, as he stands in relationship with humanity; a paradigm of the redemptive and reconciling community which lives toward the Kingdom.

If households are expressions of the mystery of God in relation to the human race, what are the specific characteristics of God which are expressed?

1) Faithfulness is intrinsic to God's relationships with creation; faithfulness is personally represented in Christ; faithfulness is active in the work of the Spirit. Personal faithfulness among members of a household, or in the case of a single person, the faithfulness of that person to his or her calling and friends, can express this part of God's mystery. And mystery it is, for we do not always see the point of it.

2) The future is a characteristic of God's self-revealing work, and Christian households can demonstrate that sign. The future is the dimension of "more", as in the collect: "more than we can desire or deserve except through the merits of Jesus Christ our Savior." This future is not now known; it takes commitment to growth and patient evolution. It takes willingness to change, to be surprised. At the same time, this future is God's alone, so it does not depend on our "saving for a rainy day"; but involves our sense of the continuing creativity of God: God's grace. This built-in quality of "more", found throughout creation, particularly applied to the household as the practical

place where more life occurs -- through procreation, adoption, winning of souls, building of friendships, etc. So the household becomes a sign of grace (of God's future, coming to be even now, in ways which are more than we can expect) for a world which experiences itself as bereft of grace.

3) God pays the cost of our existence as evidenced in the Passion of Christ. In fact, this dynamic may underly all the others. Persons who can live in community with one another, as Christians, only in a context of such mutuality that they bear the cost of one another's being-who-they-are. It is by doing this that a partnership or single person represents the mystical union between Christ and the Church. A most authentic sign of genuinely Christian inter-relatedness is this deep service, this root meaning of "charity" or love. "Being there" for the other person, "bearing one another's burdens", given of one's self for the future of the other, as a sign of grace for the other -- in these ways the Christian household is a sign of salvation.

4) The forgiveness of God, who knows and bears the worst in human creating, absorbing its ultimate consequences and offering, unearned, God's future in its stead -- this forgiveness which offers a future is still another aspect of the sacramental household. Forgiveness assumes a future beyond whatever hurts or outrages or defeats have happened. It employs the divine virtue of patience, and is characterized by the cardinal virtue of hope. Forgiveness is a primary characteristic of the Christian life, at the level of daily "sins" committed against one, or on the level of depth-psychology where the past must be "forgiven" in order that the future may not conform to its warped patterns. Forgiveness can be grounded only in authentic vulnerability, freed from the neurotic need either to "pay back" or to retreat into an imagined safety.

5) Finally, there is the "outward and visible-

sign" of a sacramental household: its service in the form of hospitality. In the case of the household, service which realizes faithfulness, forgiveness, the future, and "paying the cost" generally falls under the headings of openness, sociability, fellowship, generosity and perhaps even the style of hospitality can bring sacramental intentions to bear in practical ways on this or that actual situation.

All households, whether married, single, same-sex or religious, become Christian as they are sacramental: as expression and experience of the vocation to be personal and communal "signs" of Christ. Single-, two- or many-person households are Christian if and only if they are formed by a commitment to Christian forgiveness, future, faithfulness, and paying the cost of others' existence, by means of hospitality and love.

## II. Sex, Procreation, and Household Service

In the following I will use "service" as a shorthand expression for the full sacramental life of the household, outlined above. "Service" is not, perhaps, the best word, but does at least express the "outward and visible sign" of that sacramentality which is essential.

While sacramental life is essential to the Christian household, sexual activity and procreation (with the nurture of children) are not. Obviously the absence of sexual activity in religious communities is not an impediment to their service. Neither is the presence of sexual activity in secular households. On the other hand, Christian service may depend on the quality of household members' sexual life. If, in a religious community, celibacy is a frustrating burden, hospitality will suffer. Similarly, if in a secular community, sexual activity is distracting, obsessive, or violent, again hospitality will suffer.

The point is that sexual activity is not the defining characteristic of a Christian household but one of those features which helps or hinders the realization of household virtue.

From this point of view, the Church can accept current and future advances in techno-biology (by which I mean scientific procedures for generational renewal, from genetic engineering to surrogate mothering), foster household virtues, and foster sexual virtue in that household context, not necessarily in the context of procreation alone. Let me explain. Sex and procreation have been separated by technology, e.g. "the pill". In a world where people may "clone" or order babies from the factory, where "husband and wife" is the exception rather than the norm, where already 20% of births are to un-wed mothers, the Church may foster household virtues through leading its members to build sexual relationships not for their own sake (vice), nor necessarily for procreation (given techno-biology), but as an important part of the household, as that feature of household life which expresses the love and faithfulness of God, and "grounds" the daily round of household activity in actual affection. Again, we can place sexual activity within the scope of Christian virtue by associating it with household, not procreation alone.

### III. Household Virtue and Sexual Virtue

It seems to me that there is a hierarchy of virtues. In other words, some virtues fall under the headings of "larger" or more important virtues. For example, punctuality is a virtue, but only under the heading of respect for fellow members of society, and sometimes the giving of respect may demand lateness. Similarly with sexual activity. It may be virtuous (or vicious) in so far as it conduces to the fulfillment of other virtues. I suggest that the larger category of virtues under which sexual activity falls is that of the household virtues: mutual support, safety, hospitality, learned conversation, social celebrations, and, often, the procreation of children and their growth in the knowledge and love of the Lord. So that sexual

activity is virtuous which advances household virtues, and that activity is vicious which undermines the household.

One clear corollary of this is a Christian modesty or suspicion about sexual relations apart from household formation. In the case of current social forms of homosexual life, this would present a clear distinction between secular and Christian gay and lesbian lifestyles. The venerable word "chastity" might be used here. I think it means a contextualization of sexual activity, in this case as physical expression of love in a sacramental household, rather than sex-for-sex's-sake.

Another corollary of this is that sexual activity is positively encouraged (as it is in Judaism and Islam) because of its positive role in household formation. I suspect that a "healthy sex life" is conducive to harmony in the household. On the other hand, as we have already seen, sexual activity is not essential and there are many virtuous Christian households (single person or religious community) which are celibate.

The "bottom line" is that same-sex activity may be virtuous or vicious as it contributes to or detracts from a Christian household. If it conduces toward mutual support, safety, social celebrations, hospitality, and, perhaps, the growth of children in the knowledge and love of the Lord (by adoption or technological means), then the Church should find some form of blessing such households, including the commitment of its leading partners to love, care for, and be faithful to each other, as signs of Christ in a world which feels bereft of grace.

---

**Editor's Note:** Because the subject of Fr. Duncan's article is still a somewhat controversial matter, The Clarion invites supporting comments and rebuttals. If sufficient interest is aroused, we would consider devoting an entire issue to the subject.

**Archbishop Steps In**

# Pregnant Girl Can Attend Graduation

By DEAN MURPHY, Times Staff Writer

Emphasizing that the church considers abortion an "unacceptable" option for pregnant teen-agers, Archbishop Roger M. Mahony announced Friday that a pregnant 17-year-old honor student at Mary Star of the Sea High School in San Pedro can participate in the school's commencement Friday.

Lisa Martinez, a straight-A student and vice president of the student body, had been barred from graduation by the private Roman Catholic school because she is 6½ months pregnant and unmarried.

In announcing his decision, which came just one day after he set up a committee to look into the situation, Mahony praised the girl for "resisting the pressure to conform to the unacceptable 'abortion option.'" Mahony said the church needs to assist—not alienate—pregnant girls like Lisa.

"She has chosen to respect the dignity of the human life she now carries and nurtures," Mahony said. "She is now a participant with God in the creation of a new and a unique human person."

Students at the high school applauded, screamed and jumped out of their seats when the archbishop's statement was read to them during a special assembly at the adjacent Mary Star of the Sea Catholic Church. Students from all four grades at the school—380 of them in all—attended the assembly.

**'Just Really Happy'**

"Everyone was just really happy," said Nicole Scandalisto, 16, a junior. "Everyone wanted her to graduate. No one thought it was right that she went to school here the whole time and then couldn't go to graduation."

Lisa, who has not been in school since last week, has been in Canada on vacation with her family, friends said. She was unavailable for comment Friday, but in an earlier interview she expressed faith in the church and its handling of the situation.

"I have been going to Catholic school since the first grade," she said. "I have nothing against the Catholic church. I am sure if Jesus

Please see STUDENT, Page 6

## STUDENT

Continued from Page 1

were here, he would let me graduate. They've always taught us that forgiveness is very important."

School officials said Principal Carolyn Quijano, who originally decided to exclude Lisa from the graduation services, was not available for comment Friday. Msgr. Patrick Gallagher, head of the Mary Star of the Sea Parish, did not return phone calls.

In his statement, Mahony said Quijano and Gallagher "were following in total good faith" the guidelines of the archdiocese when they decided to bar Lisa from graduation. The archbishop, however, called the guidelines "inadequate" for young people today and asked that the archdiocese and its school board formulate new ones by the end of the summer.

In choosing to permit Lisa to participate in the graduation ceremonies, Mahony said he was not condoning premarital sex, which is forbidden by the church, but rather recognizing that "wounded human nature is vulnerable to failure and to sinfulness."

"Each one of us is a sinner," he said. "Each one of us has gone to our merciful Lord often seeking both his pardon and his healing in our lives."

Organizers of a demonstration planned for Sunday outside the Mary Star of the Sea Catholic Church cancelled the demonstration Friday.

- 2) Same Sex Marriage approved by Hartford Quakers. This item received from Amherst, MA parents: "Minute approved by Ministry and Counsel, March 1986: The meeting affirms the goodness of committed, loving relationships and offers recognition and support to those who share this ideal and desire to enter into a permanent relationship based upon it. By tradition, the meeting recognizes committed union in a celebration of marriage under the care of the meeting. The same loving care and consideration should be given to both same-sex and heterosexual applicants as outlined in Faith and Practice."
- 3) Yale U. Approves GAY RIGHTS (via GNIC Network). "In response to a request from the Yale Gay and Lesbian Cooperative, Yale University has changed its equal opportunity statement to ban discrimination on the basis of sexual orientation... The new policy will mean that gay students on the campus will be free from fear"...
- 4) "In the wake of New York City's Gay Rights Bill comes news that three other municipalities across the nation also enacted similar ordinances: Sacramento and Davis, California, and Atlanta, Georgia (from newsletter Parents FLAG, Central PA).

\*\*\* REGIONAL ACTIVITIES:

Thanks to the Directors and to Harriet Dart for their reports of Chapter/Regional activities. The editors found them most helpful in preparing this newsletter.

\* PACIFIC NORTHWEST - Director, Thelma MacDonald of Portland (covers WA, OR, MT, ID, UT, AK and Western Canada). Portland Chapter elected officers for new fiscal year... Thelma MacDonald and Vince Lipe are Convention Co-Chairs. Program of workshops and other Convention activities implemented.

\* METROPOLITAN LOS ANGELES - Director, Adele Starr of Los Angeles: Focus of activities: to help defeat Proposition 64 (the La Rouché Initiative now on the California ballot in November) which, if passed, could isolate and deprive persons with AIDS and ARC of their civil rights and their freedom ... still answering flood of mail initiated by Dear Abby and Ann Landers mention of Parents FLAG ... Letter of thanks from Fullerton CA (typical of many we get) said, "As you know so very well, nothing good comes easy, and what you are doing is very good..."

\*\*\* PACIFIC SOUTHWEST - Director, Jean Hansen of Sacramento (covers CA, NV, AZ, HI) Appeal made by Phoenix AZ for funding of AIDS Information Line switchboard. It has received over 11,000 calls. The nationwide referral resources helpline for lesbians and gays is (800) 221-7044. The Mid-Peninsula newsletter reports that a benefit held at Stanford University raised \$30,000 for AIDS research and support services in Santa Clara County.... A column for "Seniors" in the Peninsula Times Tribune was reprinted with the newsletter. The subject discussed was GLOE, the Gay and Lesbian Outreach to Elders, phone number-(415) 626-7000... The Las Vegas newsletter reports that the San Francisco Gay Pride parade is second in size only to the Rose Bowl Parade .... On 16 June, the University of California, Davis, sponsored a conference on "AIDS: Public Policy and Social Concerns" at the State Capitol. Parents FLAG was represented on the Planning Committee by Merrill Follansbee.

\* MOUNTAIN PLAINS - Director Elinor Kirby of Denver (covers WY, ND, SD, NE, KS, CO, NM)

NEBRASKA-Lincoln/Omaha: "Parents Deal With Homosexual Children", an article featuring Errol Brunhouse and Lincoln Parents Pres. Jean Durgin-Clinchard, who was also pictured, appeared in the Sunday Journal-Star, 22 June (Nebraska Section).

S-5624.

COLORADO-Denver: A picture of Denver Pres. Nancy Keene accompanied an article by Phil Nash entitled "Bridge Over Troubled Waters". Profiling the Denver group, the story appeared in



## Religion Notes

# Evangelical Women's Caucus Backs Gay Ri

By JOHN DART, *Times Religion Writer*

The 12-year-old Evangelical Women's Caucus International, a 650-member organization promoting the equality of women and men in theologically conservative churches, expects to have a rough year ahead after passing a resolution at its recent national conference in support of homosexual civil rights.

Dogged for years by accusations from other evangelicals that it is a "lesbian support group," EWCI delegates last week in Fresno nevertheless approved the resolution, 80 to 16, with 23 abstentions, after about two hours of debate.

The Minnesota delegate indicated that her chapter would not be able to host the next biennial convention because of misunderstandings that would inevitably arise in many churches.

After a post-convention meeting of the group's officers, Britt Vanden Eykel of Glendale, the caucus' national coordinator, said: "Our primary purpose is still the same, but many people felt that Christ calls us to speak out for justice.

"We've been operating out of fear for a number of years and decided it's time to confront that fear," Vanden Eykel said.

The resolution reads:

"Whereas homosexual people are children of God and because of the biblical mandate of Jesus Christ that we are all created equal in God's sight, and in recognition of the presence of the lesbian minority in Evangelical Women's Caucus

International, EWCI takes a firm stand in favor of civil rights protection for homosexual persons."

Ann Eggebrotten of Costa Mesa, who wrote and introduced the resolution, said: "We have not said that theologically that homosexual behavior is OK with God; we took a stand on civil rights."

Eggebrotten, a founding member, said that lesbian members may number 20 to 30 women in the organization, less than 5% of the membership.

The reason for referring to them in the resolution, she said, was that "they feel very rejected by the group and all of evangelical Christianity. We are just acknowledging that they are there and we are not going to kick them out or not have them as speakers."

The July 6-10 conference in Fresno had 80 workshops on topics such as non-sexist names for God, church history, pornography's impact on women's image, biblical studies, Christian life style and spiritual growth.

While adhering to evangelical tenets that the Bible is the inspired, infallible guide for Christian faith and life, the caucus also maintains in its literature that "the Bible, when properly understood, supports the fundamental equality of the sexes." In addition to injustices against women by society, "the church especially has encouraged men to prideful domination and women to irresponsible passivity," according to a general statement of the caucus.

The organization has not taken official positions before on social or political issues except to endorse the ill-fated equal rights amendment. But the homosexual rights resolution was presented to delegates in Fresno after they had earlier approved relatively uncontroversial statements condemning bias against black women and violence against women in the home.

The fear surrounding the homosexual rights statement, Vanden Eykel said, is that "the evangelical church might presume more from the resolution than it actually says." The 1988 conference is scheduled to be held at Bethel College in St. Paul, Minn., affiliated with the strongly conservative Baptist General Conference. "We need to be careful about judging

[prematurely] whether Bethel College will allow us to meet there or not," she said.

Much of the time at the EWCI officers' meeting last weekend was spent studying Scriptures to discuss whether "it was God's will for us to take a stand or whether we were threatening the unity of the organization," Vanden Eykel said.

"We're trying to be palatable to the Christian church," she said. "We feel that many chapters are going to be re-evaluating their positions, largely because of this

resolution."

□

The Jehovah's Witnesses are holding a four-day meeting at the Los Angeles Coliseum through Sunday. The Los Angeles area and Santa Barbara district convention, expected to draw more than 10,000 people, is one of the largest regional meetings of the group, scheduled for the summer by the Branches and Watch Tower Bible and Tract Society.

## Evangelists Sharpen Skills at Billy Graham Conference

AMSTERDAM (AP)—From throughout the world, 8,000 itinerant evangelists have assembled here to hone their preaching skills at a training conference sponsored by American preacher Billy Graham.

Marked by stringent security, Graham opened the international conference here last Saturday with an impassioned speech against the nuclear arms race.

The 67-year-old evangelist is taking an active part in the numerous workshops of the nine-day multid denominational conference, which its organizers claim is the largest of its kind in the history of Protestantism.

Although Graham departed from his prepared address to warn that "there are many scientists who believe we have enough weapons to blow the world up; we don't have to have more," he stressed that the conference is mainly a school for evangelists, dealing with the basics of evangelistic work.

Participants have come to the Dutch capital from 175 nations and territories—75% of them from Third World areas, according to the organizers.

"I'm learning a lot here," said Emmanuel Anim Nketia, whose journey from central Ghana to the Netherlands was sponsored by the Canadian branch of the Billy Graham Evangelistic Organization.

"I meet many folks from places from all over the world to share experiences and views," the Methodist evangelist said at Amsterdam's convention center.

The conference, the cost of which is covered by churchgoer donations in the United States, was marked by the use of modern technology in both aids and security procedures.

Evangelists filing in were checked by portable stationary scanners, wear non-removable identification bracelets.

For the duration of the conference, Graham is traveling in a bullet-proof car, accompanied by security men.

Conference spokesman Goosmann said the speakers were considered low priority because of the lowing recent terror attacks in Western Europe.

Graham, who arrived in Amsterdam last week for final planning, told reporters that itinerant evangelists are "on the cutting edge of the faith. They're out there doing the job."

The 26-year-old Nigerian evangelist, for example, has been preaching in the jungles of central Africa for four years, termed his work as "the Lord's shock troop."

## Church Seeks OK to Rebuild Old Center

ISTANBUL, Turkey (AP)—The Ecumenical Patriarchate says it expects permission soon from the Turkish government to rebuild the dilapidated, old center of the world's 250 million Eastern Orthodox Christians.

Patriarch Dimitrios, "first among equals" of Eastern Orthodox leaders in various countries, now works with his staff in cramped, crumbling stone buildings. Relations between the Eastern Orthodox church and Turkish authorities have been strained over the years.

# Vatican Warning Seen Against Liberal Views on Sexuality

By DON A. SCHANCHE, Times Staff Writer

VATICAN CITY—The Vatican's latest condemnation of homosexual acts, issued Thursday, was seen by some churchmen here as another in a series of blunt warnings to European and North American Catholics to abandon their increasingly liberal views concerning sexuality and other social issues.

Conservative Cardinal Joseph Ratzinger, head of the Sacred Congregation for the Doctrine of the Faith, instructed bishops to stamp out pro-homosexual views within the Roman Catholic Church and to oppose any attempt to condone homosexuality through legislation or other means.

Ratzinger, in a letter endorsed by Pope John Paul II, reiterated the church's view that although "the particular inclination of the homosexual person is not a sin," homosexual acts are "an intrinsic moral evil." "Intrinsically disordered" and "self-indulgent."

The 12-page "Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons" exhorted church leaders to minister to gays as they would to other Catholics but only after "clearly stating that homosexual activity is immoral."

The letter, dated Oct. 1 and made public Thursday, accused gay rights organizations of "deceitful propaganda" and trying to gain a foothold in the church. "Increasing numbers of people, even within the church, are bringing enormous

pressure to bear on the church to accept the homosexual condition as though it were not disordered and to condone homosexual activity," it said.

The Sacred Congregation for the Doctrine of the Faith is the church's watchdog of doctrinal deviation and a powerful force within the church.

Ratzinger's letter was interpreted by several respected Roman Catholic scholars here as another in a series of warnings to the American and Northern European churches, several of whose theologians and bishops have been punished in recent months for their liberal views.

"For the Americans, it completes a Bermuda Triangle of condemnation," said one liberal theologian, citing Vatican condemnation earlier this year of Father Charles Curran, an American Catholic theologian at Catholic University in Washington, and Archbishop Raymond G. Hunthausen of Seattle, both of whom were accused by Ratzinger of holding unacceptably liberal views on human sexuality, including homosexuality. "It's a triangle of Hunthausen, Curran and Ratzinger," he said.

Hunthausen, an archbishop since 1975, was stripped of much of his authority in the Seattle archdiocese in September because of liberal practices that included allowing the first-ever homosexual Mass in a Catholic cathedral. Curran was

banned from teaching moral theology after he refused to disavow views that included respect for homosexuals who develop stable sexual relationships.

Another Catholic scholar here accused Ratzinger, a German, of being "like the Red Baron, shooting down people who are different from him."

Church scholars and others contacted for reaction to the Ratzinger letter agreed to talk only on condition that they remain anonymous because of the sensitivity of the subject.

### 'Intrinsic Moral Evil'

"Ratzinger's letter means that in his and the Pope's view, all homosexuals are predestined by nature to perpetual virginity since acting out their inclinations is reprehensible, while heterosexuals are free to enjoy sexual relations in marriage," said another critical priest.

The Ratzinger letter explained that current debates "inconsistent with the teaching of the Catholic Church" made this an opportune time to reiterate the views first expressed in a declaration of the congregation in December, 1975. That document noted "the distinction commonly drawn between the homosexual condition or tendency and individual homosexual actions" and called such acts "intrinsically disordered."

Discussion of the 1975 document led to "an overly benign interpre-

tation" of homosexuality, "some going so far as to call it neutral, or even good," said the new letter.

This interpretation made it necessary for the congregation to reassert its view that "although the particular inclination of the homosexual person is not a sin, it is a more or less strong tendency ordered toward an intrinsic moral evil, and thus the inclination itself must be seen as an objective disorder."

"Even when the practice of homosexuality may seriously threaten the lives and well-being of a large number of people, its advocates remain undeterred and refuse to consider the magnitude of the risks involved," Ratzinger wrote in an apparent reference to the epidemic of AIDS and venereal diseases that has affected the homosexual community.

The letter totally rejected the view that homosexuals are born with specific sexual preferences. "What is at all costs to be avoided is the unfounded and demeaning assumption that the sexual behavior of homosexual persons is always and totally compulsive and therefore inculpable," the Ratzinger letter said.

The cardinal stressed in the letter that bishops should beware of gay rights and pro-homosexual organizations that try to "manipulate the church by gaining the often well-intentioned support of her pastors with a view to changing

civil statutes and laws."

"Increasing numbers of people today, even within the church, are bringing enormous pressure to bear on the church to accept the homosexual condition as though it were not disordered," Ratzinger wrote. He urged them to withdraw their support from such people and organizations and not to allow the use of church facilities or schools for their meetings.

But he stressed that homosexuals are still welcome in the church and that "violent malice in speech or in action" against them is to be condemned. But he added, "Christians who are homosexual are called, as all of us are, to a chaste life."

The letter cited a number of biblical references to support its view that homosexual acts, in themselves, are sinful.

Concerning gay rights legislation such as the March, 1986, New York City law banning discrimination in employment and housing against homosexuals—which the church opposed—the letter stated:

"When such a claim is made and when homosexual activity is consequently condoned, or when civil legislation is introduced to protect behavior to which no one has any conceivable right, neither the church nor society at large should be surprised when other distorted notions and practices gain ground, and irrational and violent reactions increase."

LOS ANGELES CITY TASK FORCE ON FAMILY DIVERSITY  
RESEARCH TEAM ON INSURANCE DISCRIMINATION

Submitted by:

Jeff Vopal  
Louis Verdugo, Jr.  
Thomas F. Coleman

May 20, 1987

## TABLE OF CONTENTS

|   | PAGE(S) |
|---|---------|
| I INTRODUCTION  | 1-2     |
| II SUMMARY OF RECOMMENDATIONS   | 2-3     |
| III DISCRIMINATION BY THE INSURANCE<br>INDUSTRY AGAINST THE NON-TRADITIONAL<br>FAMILY UNIT OR LIFESTYLE DISCRIMINATION  | 3-5     |
| IV RECOMMENDATIONS CONCERNING WHAT THE<br>CITY OF LOS ANGELES CAN DO TO CURB<br>DISCRIMINATION AGAINST THE NON-<br>TRADITIONAL FAMILY UNIT BY THE<br>INSURANCE INDUSTRY | 5       |
| A. Current Regulatory Practices<br>and Existing Law   | 5-11    |
| B. Recommendations  | 12-14   |

## I INTRODUCTION

While many forms of discrimination which are alleged to be engaged in by the insurance industry were suggested for study by various members of the Task Force, the team members concluded that the scope of their inquiry should be limited by the mandate of the Task Force which is to focus on issues of family diversity. As such, although worthy of study, topics such as "redlining," and the effect that the skyrocketing of insurance rates has on the availability of affordable and quality childcare services in the City of Los Angeles, are not the subject of this report.

Given the Task Force's mandate that "family is a broad and expansive concept, capable of encompassing a wide range of committed relationships" and that "government itself should not foster discrimination against families nor should it tolerate unfair private discrimination against families," it was decided to focus this report on discrimination against the non-traditional family unit by the insurance industry. While a non-traditional family unit may include a variety of "committed relationships," this report is further focused on what is commonly referred to as "lifestyle" discrimination. Lifestyle discrimination, for purposes of this paper, means discrimination against a domestic partnership, other than a married couple. This could include gay and lesbian couples and heterosexual couples living together but unmarried. The terms lifestyle discrimination and discrimination against the non-traditional family unit are used interchangeably in this report.

In order to prepare this report, testimony was taken at the public hearings conducted by the Task Force. Those who testified included Leonard Graff, Legal Director of the National Gay Rights Advocates, who addressed the topic of illegal practices and legal recourse which is presently available to combat lifestyle discrimination. Also testifying was Tonia Melia, President of the National Business Insurance Agency, who addressed the topic of lifestyle discrimination in homeowners, renters, automobile and business insurance. Lastly, Brendt O. Nance, President of Concerned Insurance Professionals for Human Rights, addressed the topic of lifestyle discrimination in life, health and disability insurance policies. A representative from the State Insurance Commissioner's Office, although invited to the public hearings, could not attend. In any event, information regarding that office's handling of lifestyle discrimination complaints was provided to this team by Special Consultant to the Task Force, Thomas F. Coleman, who spoke with representatives from that office regarding lifestyle discrimination. Additionally, team

member, Jeff Vopal, though his contacts in the insurance business, collected a variety of complaints alleging lifestyle discrimination.

Lastly, it should be acknowledged that University of Southern California Law Center Student, Ida Kan, provided the team with legal research and a report which was of assistance to the team in preparing this paper. Her assistance was greatly appreciated.

Below, this team will set forth a summary of its recommendations, a summary of its findings regarding lifestyle discrimination, a summary of the laws which might be utilized to combat lifestyle discrimination, and its recommendations.

## II SUMMARY OF RECOMMENDATIONS

1. IT IS RECOMMENDED that the City Attorney carefully evaluate the possibility of using the Unruh Civil Rights Act and/or Business and Professions Code section 17200 et seq. to combat lifestyle discrimination in insurance opportunities.
2. IT IS RECOMMENDED that the City Attorney seek to establish a cooperative relationship with the State Insurance Commissioner for the referral to the City Attorney's Office of complaints lodged with the Commissioner by Los Angeles residents wherein discrimination on the basis of lifestyle is alleged.
3. IT IS RECOMMENDED that the City Attorney seek to establish a cooperative relationship with both the Attorney General's Office and the Los Angeles County District Attorney's Office for the exchange of information regarding complaints of lifestyle discrimination by the insurance industry which are lodged with each agency.
4. IT IS RECOMMENDED that the City Attorney seek to establish a cooperative relationship with the Department of Fair Employment and Housing for the exchange of information regarding alleged instances of lifestyle discrimination by those engaged in the insurance business in the City of Los Angeles.
5. IT IS RECOMMENDED that the City Attorney seek to establish working arrangements with local civil rights organizations to exchange information regarding complaints of lifestyle discrimination by the insurance industry

6. IT IS RECOMMENDED that if the City Attorney concludes, after a careful analysis of applicable law, that the issue of lifestyle discrimination in insurance opportunities can be addressed through the Unruh Civil Rights Act and/or Business and Professions Code section 17200 et seq., and the City Attorney finds that a person or entity in the insurance business is engaging in a pattern or practice of unlawful discrimination against insureds or applicants for insurance on the basis of lifestyle, that he or she bring an action against that person or entity for violation of the Unruh Civil Rights Act and/or an action for unfair business practices under California Business and Professions Code section 17200 et seq.

III DISCRIMINATION BY THE INSURANCE INDUSTRY  
AGAINST THE NON-TRADITIONAL FAMILY UNIT  
OR LIFESTYLE DISCRIMINATION

Several witnesses testified at the Task Force's public hearings that insurance companies do engage in lifestyle discrimination.

For example, in his public hearing testimony, Tony Melia, President of National Business Insurance Agency (NBIA), told the Task Force of lifestyle discrimination by insurance companies in property and casualty insurance.<sup>1/</sup> In the area of homeowners coverage, some companies are refusing to issue one joint policy in the names of both same-sex householders, as their interests may appear, even though joint policies are issued routinely to married couples. When it comes to automobile insurance, most companies will not offer a family discount to an unmarried couple who live together and share cars, even though such discounts are offered to blood relatives or married couples. Some companies are discreet in the way they discriminate. Others are more blatant. One company wrote to NBIA and complained that the agency was writing too many policies for unmarried persons.

Additionally, Brendt Nance, President of Concerned Insurance Professionals for Human Rights, documented lifestyle discrimination in health, life, and disability

---

<sup>1/</sup> Public Hearing Transcript, p. 189.

insurance.<sup>2/</sup> In the area of life insurance, he reported that some companies refuse to issue a policy if the consumer names a beneficiary who is not related by blood, marriage, or adoption. When it comes to health insurance, he gave an example of marital status discrimination in rate setting. He said that one major carrier charges two unmarried 35-year-olds a total of \$213.60 per month for basic coverage, while a married couple can purchase the same coverage for \$197 per month.

Lastly, Leonard Graff, Legal Director for National Gay Rights Advocates (NGRA), recounted numerous cases of lifestyle discrimination against gays and lesbians.<sup>3/</sup> He told how NGRA has received complaints concerning automobile insurance, homeowner and renter policies, umbrella or excess liability policies, and health insurance. Some of the complaints have to do with outright denial of coverage, others have to do with the naming of beneficiaries, but most pertain to rate discrimination against unmarried couples.

Mr. Graff explained how NGRA was able to convince the Automobile Club of Southern California to extend family discounts for automobile insurance coverage to unmarried couples. Previously, the discount was available only to married couples. Some companies have followed AAA's example, but others persist in extending family discounts only to married couples. However, the AAA reform only applies to insurance and not to membership in the Auto Club. The Automobile Club of Southern California continues to maintain membership discount practices which discriminate against unmarried couples. A married couple gets preferred pricing, with one master membership and a discounted associate membership. An unmarried couple, on the other hand, must pay for two master memberships. The issue of discrimination was raised last year at AAA's annual membership meeting. Members complained that preferred discount rates for married couples

---

<sup>2/</sup> Public Hearing Transcript, p. 196.

<sup>3/</sup> Public Hearing Transcript, p. 114.



violated state and local laws against marital status and sexual orientation discrimination by business establishments in the City of Los Angeles. In view of changing demographics and family structures in Southern California, the Auto Club created an internal AAA Task Force to review membership rating practices and to recommend possible revisions to the Board of Directors.

Lifestyle discrimination also occurs in the area of renter's insurance. Renter insurance protects occupants of an apartment of house against property damage or liability. Most insurance companies will not issue one policy to an unmarried couple renting an apartment. They require two policies, which, of course, requires the payment of two premiums. A married couple, however, can save money by obtaining a joint policy.

According to NGRA, in the area of homeowner, renter, and automobile insurance, lifestyle discrimination does not usually involve outright denial of coverage--rather, it involves the setting of higher rates for unmarried couples than married couples. In other words, lifestyle discrimination is primarily rate discrimination on the basis of marital status or sexual orientation.

#### IV RECOMMENDATIONS CONCERNING WHAT THE CITY OF LOS ANGELES CAN DO TO CURB DISCRIMINATION AGAINST THE NON-TRADITIONAL FAMILY UNIT BY THE INSURANCE INDUSTRY

##### A. Current Regulatory Practices and Existing Law

Before making recommendations as to what the City of Los Angeles might be able to do to curb discriminatory practices engaged in by the insurance industry against the non-traditional family unit, current regulatory practices and existing law should be examined in order to determine whether the City can use existing law to participate in the identification and prosecution of such unlawful discrimination.

While at first glance the issue of discrimination by those engaged in the insurance business in this state is a matter for statewide rather than local concern, as will be set forth below, existing law may provide methods by which local entities, who seek to protect their residents from such unlawful and discriminatory practices, can address the issue.

##### The State Insurance Commissioner

The State Insurance Commissioner and the State Department of Insurance (hereinafter collectively referred to as the

"Commissioner") are primarily responsible for the regulation of those engaged in the insurance business in this state. As such, it is appropriate that this paper examine the Commissioner's authority to take action against those who engage in lifestyle discrimination against applicants for insurance and/or insureds.

Pursuant to Insurance Code section 12921.3 any person may file a written complaint with the Commissioner concerning the "handling of insurance claims by insurers" or "the alleged misconduct by insurers or production agencies." The Commissioner is required to investigate such complainants, to acknowledge receipt of such complaints in writing, may seek to mediate complaints, and is required to notify the complainant of the final action to be taken on his or her complaint. (Ins. Code §§ 12921.3 and 12921.4(a).) Moreover, the Insurance Commissioner is required to "ascertain patterns of complaints and periodically evaluate the complaint patterns to determine what additional audit, investigative, or enforcement actions which may be taken by the Commissioner . . . ." (Ins. Code § 12921.4(b).) Can a victim of lifestyle discrimination file a complaint with the Commissioner under the above-described statutory scheme? The answer to this question would appear to be Yes.

Insurance Code section 790 et. seq. provides for remedies available through the Commissioner for unfair practices engaged in by those in the business of insurance. (Ins. Code §§ 790.01-790.02.) Included in the unfair practices prohibited by this statutory scheme is discrimination on the basis of marital status and sexual orientation. Title 10, California Administrative Code section 2560.3, a regulation promulgated by the Commissioner pursuant to Insurance Code section 790.10, provides in relevant part:

"No person or entity engaged in the business of insurance in this State shall refuse to issue any contract of insurance or shall cancel or decline to renew such contract because of the sex, marital status or sexual orientation of the insured or prospective insured."<sup>4/</sup>

---

<sup>4/</sup> A copy of this regulation is Appendix 1 to this paper.

The Commissioner has the power to conduct investigations of alleged unfair practices, including those prohibited by regulation section 2560.3 (Ins. Code § 790.04), and, where appropriate, may commence an administrative action against the alleged violator. (Ins. Code § 790.06.) If, after an administrative hearing, the Commissioner determines that a violation has occurred, he or she may issue a written report so declaring. (Ins. Code § 790.06(a).) If the person or entity does not thereafter cease from engaging in the unfair practice, then the Commissioner, through the State Attorney General, may seek a court order restraining the person or entity from continuing to engage in such practice. (Ins. Code § 790.06(b).) A recalcitrant person or entity who defies a court order which enjoins the unfair practice, in addition to a contempt proceeding, faces fines and possible suspension of his, her or its license or certificate to engage in the insurance business. (Ins. Code § 790.07.)

From the foregoing it would appear, therefore, that the Insurance Commissioner may address instances of lifestyle discrimination brought to his or her attention through the complaint procedure authorized by Insurance Code sections 12921.3-12921.4 for violation of Insurance Code section 790 et seq. and Regulation section 2560.3. However, testimony presented to this Task Force indicates that Regulation section 2560.3 is currently interpreted by the Commissioner to provide protection against lifestyle discrimination only insofar as coverage is denied on such basis, but not insofar as a person is charged a higher rate for coverage because of the lifestyle in which he or she is engaged.<sup>5/</sup> (See testimony of Leonard Graff before Task Force on February 6, 1987 at page \_\_\_\_.) Accordingly, to the extent that lifestyle discrimination exists with respect to the rates charged by insurers, the Insurance Commissioner apparently does not currently provide any relief.

---

<sup>5/</sup> The correctness of this interpretation of Regulation section 2560.3 is not challenged herein as the interpretation of a regulation by the agency charged with its enforcement is entitled to great weight. (Judson Steel Corp. v. Workers Comp. Appeals Bd. (1978) 22 Cal.3d 658, 668 and Gay Law Students Assn. v. Pacific Tel. & Tel. Co. (1979) 24 Cal.3d 458, 491.)

## The Unruh Civil Rights Act

The Unruh Civil Rights Act, California Civil Code section 51, as will be discussed below, may provide a mechanism for the eradication of lifestyle discrimination which may not be addressed by the Insurance Commissioner. Civil Code section 51 states in relevant part:

"All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, or national origin are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever."

The Unruh Act bars all forms of arbitrary discrimination, and those protected by the Act are not limited to members of the classes which are specifically enumerated therein. (In re Cox (1970) 3 Cal.3d 205, 216.) For example discrimination on the basis of sexual orientation, which is not specifically mentioned in the Act, has been held to be covered by the Unruh Act. (Rolon v. Kukwitzky (1984) 153 Cal.App.3d 289.) The Unruh Civil Rights Act is the codification of California's common law doctrine that enterprises affected with a public interest may not discriminate arbitrarily. (In re Cox, supra, 3 Cal.3d 205; 212.)

The phrase "all business establishments of every kind whatsoever" in Civil Code section 51 has also been expansively and liberally construed. (See for e.g., O'Connor v. Village Green Owners Assn. (1983) 33 Cal.3d 790, 793-794 and Marina Point Ltd. v. Wolfson (1982) 30 Cal.3d 721, 731.)

In Burks v. Poppy Construction Co. (1962) 57 Cal.2d 463, 468-469, the Supreme Court stated:

"The Legislature used the words "all" and "of every kind whatsoever" in referring to business establishments covered by the Unruh Act (Civ. code, § 51, and the inclusion of these words, without any exception and without specification of particular kinds of enterprises, leaves no doubt that the term "business establishments" was used in the broadest sense reasonably possible. The word "business" embraces everything about which one can be employed, and it is often synonymous with "calling, occupation, or trade, engaged in for the purpose of making a livelihood or gain." (See Mansfield v. Hyde, 112 Cal.App.2d 133, 137 [245 p.2d 577]; 5 Words and Phrases (perm. ed. 1940) p. 970 et seq.) The word "establishment," as broadly defined, includes not only a fixed location,

such as the "place where one is permanently fixed for residence or business," but also a permanent "commercial force or business," but also a permanent "commercial force or organization" or "a permanent settled position (as in life or business.\*)" (See Webster's New Internat. Dict. (2d ed. 1957) p. 874; id. (3d ed. 1961) p. 778.)' . . . ."

Factors such as the number of persons employed, physical facilities maintained, fees charged, advertising solicited or sold, collection of royalties, and the performance of other "customary business functions" may identify an entity or person as a "business establishment" within the meaning of the Unruh Act. (Curran v. Mount Diablo Council of Boy Scouts (1985) 147 Cal.App.3d 712, 730 and Pines v. Tomson (1984) 160 Cal.App.3d 370, 386.) Moreover, the term "business" has been held to include both commercial operations and noncommercial entities which are public accommodations or affected with a public interest or which have businesslike attributes. (Pines v. Tomson (1984) 160 Cal.App.3d 370, 385, 386.) Finally, the Unruh Act not only covers the arbitrary exclusion of persons from a business establishment or service, but with also business practices which result in the unequal treatment of patrons or those who wish to use services provided by a business establishment. (Koire v. Metro Car Wash (1985) 40 Cal.3d 27, 29.)

While no reported case has ever specifically applied the Unruh Act to arbitrary discrimination by any entity or person who is engaged in the insurance business, given the broad and expansive interpretation which has been given the term "all business establishments of any kind whatsoever," the applicability of the Unruh Act to those engaged in the insurance business is almost certain. Moreover, since the Act prohibits all forms of arbitrary discrimination, arbitrary discrimination based upon lifestyle may also be held to be prohibited by the Act. Assuming both of the above issues of first impression would be resolved as indicated above in an action filed by the City Attorney, one major obstacle to successfully prosecuting a case to curb discrimination on the award of lifestyle exists. A "business establishment" may avoid liability under the Unruh Act if it can establish that there are "reasonable department regulations that are rationally related to the services performed and facilities provided," which justify the otherwise discriminatory conduct. (In re Cox (1970) 3 Cal.3d 205, 217 and Marina Point Ltd. v. Wolfson (1982) 30 Cal.3d 721, 737.) This defense would have clear applicability in the case of discrimination in rates charged by insurance companies. As such, in any case brought to curb lifestyle discrimination, a major factual and legal issue would no doubt be whether the particular form of

lifestyle discrimination can be justified under this "reasonable business regulation" defense.

This brings us to the next question. Who is responsible for the enforcement of the Unruh Act? First of all, violations of the Unruh Act can be redressed through a private action brought by the person aggrieved by a discriminatory practice or action. (Civ. Code § 52(a).) Such aggrieved person is entitled to treble his or her actual damages, but in no case less than \$250, and attorney's fees. Injunctive relief is also available.

Second of all, a victim of a practice which violates the Unruh Act can seek redress through the Department of Fair Employment and Housing. Complaints may be filed with the Department (Gov. Code §§ 12948 and 12960-12976.) The Department will then investigate the complaint (Gov. Code §§ 12963), attempt to conciliate the complaint if (Gov. Code § 12963.7), and in its discretion, may institute an administrative action against the offending party. (Gov. Code § 12965.) Such an administrative action, if filed, would be tried before the Fair Employment and Housing Commission which eventually would render a decision in the case and would take "such action . . . [a]s in its judgment . . . would effectuate the purposes of Part 2.8 of Government Code.<sup>6/</sup>

Lastly, but most importantly for purposes of this paper, the Attorney General, District Attorneys and City Attorneys are authorized to bring injunctive relief actions to enjoin a "pattern or practice" of violating the Unruh Act. (Civ. Code § 52(c).) The extent to which the Unruh Act has been used by the Attorney General, the Los Angeles County District Attorney and the City Attorney, however, to combat discrimination in the insurance industry is unknown.<sup>7/</sup>

---

<sup>6/</sup> Government Code section 12948 which makes a violation of the Unruh Act a violation of the Fair Employment and Housing Act, Government Code section 12900 et seq., is included in Part 2.8.

<sup>7/</sup> Civil Code section 52(c) authorizes "preventive relief" which includes injunctive relief. The term preventive relief has never been judicially defined. Accordingly, some creativity can be used in formulating the type of relief to be requested when prosecuting patterns or practices of violations of the Unruh Civil Rights Act.

Business and Professions Code Section 17200 et seq.

Business and Professions Code section 17200 et seq. prohibits unfair competition in this state. Unfair competition is defined to include "unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising." (Bus. & Prof. Code § 17200.) This definition, however, is not restrictive. (Athen's Lodge No. 70 v. Wilson (1953) 117 Cal.App.2d 322, 325.) The prohibitory reach of this statutory scheme is not limited to deceptive or fraudulent conduct but extends to any unlawful business conduct. (Perdue v. Crocker National Bank (1985) 38 Cal.3d 913, 930 and Children's T.V. Inc. v. General Foods Corp. (1983) 35 Cal.3d 197, 209-210.)

Accordingly, there is potential, to extent that lifestyle discrimination can be termed "unfair" or "unlawful" to bring a civil action against those engaging in lifestyle discrimination for unfair competition under Business and Professions Code section 17200 et seq.

As is the case with the Unruh Civil rights Act, the Attorney General, District Attorneys and City Attorneys may bring an action for injunctive relief to enjoin the act of unfair competition.<sup>8/</sup> (Bus. & Prof. Code § 17204.) Moreover, the Attorney General, District Attorneys, and City Attorneys may seek civil penalties of no more than \$2,500 for each violation against those who engage in unfair competition. (Bus. & Prof. Code § 17206.)<sup>9/</sup>

---

<sup>8/</sup> City Attorneys from any city having a population over 750,000 have the right to bring these actions. (Bus. & Prof. Code § 17204.)

<sup>9/</sup> It is important to note that the remedies provided by Business and Professions Code sections 17200 et seq. are cumulative to other remedies provided by law. Accordingly, an Unruh Act claim may be joined with a claim under Business and Professions Code section 17200 et seq. (Bus. & Prof. Code § 17205.)



## B. Recommendations

As discussed above, the City Attorney may seek to address the issue of discrimination against the non-traditional family unit by the insurance industry by filing actions under the Unruh Civil Rights Act, Civil Code section 51 and/or Business and Professions Code section 17200 et seq. However, in order to prosecute such cases the City Attorney must first have access to information and evidence which documents such unlawful discrimination. In order that the City Attorney maximize his/or her effectiveness, yet minimize the taxing effect on the resources of the City Attorney's Office, the following recommendations are made with regards to the investigation and prosecution of those engaged in the insurance business who discriminate against the non-traditional family unit:

1. IT IS RECOMMENDED that the City Attorney carefully evaluate the possibility of using the Unruh Civil Rights Act and/or Business and Professions Code section 17200 et seq. to combat lifestyle discrimination in insurance opportunities. The question of whether either of these statutory remedies can be used to combat lifestyle discrimination which is engaged in by the insurance industry encompasses many issues of first impression. As such, a careful and more thorough legal analysis than the one contained in this paper should be done to ensure that these statutes do indeed provide viable remedies.
2. IT IS RECOMMENDED that the City Attorney seek to establish a cooperative relationship with the State Insurance Commissioner for the referral to the City Attorney's Office of complaints lodged with the Commissioner by Los Angeles residents wherein discrimination on the basis of lifestyle is alleged. Pursuant to Insurance Code section 12921.5, the Insurance Commissioner may meet with "persons, organizations and associations interested in insurance for the purpose of securing cooperation in the enforcement of the insurance laws of this state" and "may disseminate information concerning the insurance laws of the State . . ."<sup>10/</sup>

---

<sup>10/</sup> The Commissioner also has the duty to advise the District Attorney of the relevant county when he or she finds that an insurer, its officers, agents or employees are violating any of the penal provisions of the Insurance Code or of "other laws" (Ins. Code sec. 12928).



The City Attorney should request that the Insurance Commissioner exercise his or her powers under this statute and provide the City Attorney with appropriate information.

3. In order for the City Attorney to prosecute an action under the Unruh Civil Rights Act, "a pattern or practice of discrimination" must be established. One way of gathering information regarding patterns or practices of discrimination occurring within the City of Los Angeles would be to exchange information regarding claims of unlawful discrimination engaged in by those in the insurance business with other prosecutorial offices within the Los Angeles with jurisdiction to enforce the Unruh Civil Rights Act. Accordingly,

IT IS RECOMMENDED that the City Attorney seek to establish a cooperative relationship with both the Attorney General's Office and the Los Angeles County District Attorney's Office for the exchange of information regarding complaints of lifestyle discrimination by the insurance industry which are lodged with each agency. The sharing of this information will assist in identification of patterns or practices of discrimination by those engaged in the insurance business within the City of Los Angeles.

4. Pursuant to Government Code sections 12930(f)(2) and 12948 the State Department of Fair Employment and Housing is authorized "to receive investigate, and conciliate complaints alleging a violation of [Unruh Civil Rights Act]." (Gov. Code § 12930(f)(2).) As is the case with the Attorney General and the Los Angeles County District Attorney, the Department may have information concerning alleged lifestyle discrimination by the insurance industry which occurs in the City of Los Angeles. Accordingly, IT IS RECOMMENDED that the City Attorney seek to establish a cooperative relationship with the Department of Fair Employment and Housing for the exchange of information regarding alleged instances of lifestyle discrimination by those engaged in the insurance business in the City of Los Angeles.
5. To further increase the effectiveness of the City Attorney in enforcing the Unruh Civil Rights Act, information must be obtained and exchanged with local civil rights organizations within the City of Los Angeles. Often these groups are unaware of the remedies available under current laws. Thus,



IT IS RECOMMENDED that the City Attorney seek to establish working arrangements with local civil rights organizations to exchange information regarding complaints of lifestyle discrimination by the insurance industry. The recommended organizations would include, but not be limited to: American Civil Liberties Union; Concerned Insurance Professionals for Human Rights; and the Los Angeles Urban League.

6. Discrimination in insurance opportunities against the non-traditional family unit may have a severe economic impact on many residents of this City. As stated by Brent O. Nance in his testimony before the Task Force on March 16, 1987:

"In our society insurance has become an integral part of our culture. It is often the only practical means available for the majority of us to protect ourselves and families against the financial ruin created by death, disability or serious medical problems. Indeed, insurance has become a basic financial necessity for most Americans."

Accordingly, in order to ensure that Los Angeles City residents, regardless of lifestyle, have equal access and opportunity to insurance services, IT IS RECOMMENDED that if the City Attorney concludes, after a careful analysis of applicable law, that the issues of lifestyle discrimination in insurance opportunities can be addressed through the Unruh Civil Rights Act and/or Business and Professions Code section 17200 et seq. and the City Attorney finds that a person or entity in the insurance business is engaging in a pattern or practice of unlawful discrimination against insureds or applicants for insurance on the basis of lifestyle, that he or she bring an action against that person or entity for violation of the Unruh Civil Rights Act and/or an action for unfair business practices under California Business and Professions Code section 17200 et seq.