

MEMORANDUM

TO: Los Angeles City Task Force on Family Diversity
FROM: David Link
DATE: December 1, 1986
RE: Status of gay and lesbian couples

The city of Los Angeles currently has no coherent, consistent definition of "family." While the broad and general ties of blood, marriage and adoption have been shown to be insufficient to encompass the varied ways in which families are actually formed in this country, MacGregor v. Unemployment Ins. Appeals Board (1984) 37 Cal.3d 205, Butcher v. Superior Court of Orange County (1983) 188 Cal.Rptr 503, City of Santa Barbara v. Adamson (1980) 27 Cal.3d 123, Moore v. City of East Cleveland (1977) 431 U.S. 494, no consensus alternative has emerged. Yet the city, particularly in its capacity as an employer, bestows certain benefits based on family status, and in using definitions of family that in two cases are underinclusive (for family sick leave and bereavement leave), and in another (for health insurance benefits), one that is in defiance of state statute, the city is provably and illegally discriminating against its gay and lesbian employees who have long term relationships which clearly fulfill the Butcher court's criteria of "stable and significant."

The courts have, in general, been reluctant to grant

benefits to unmarried couples of whatever stripe, not because of the relationships' lack of significance or stability, but because of the lack of authentication, Elden v. Sheldon (1985) 64 Cal.App.3d 745, Ledger v. Tippitt (1985) 164 Cal.App.3d 578, Hinman v. Dept. of Personnel Administration (1985) 167 Cal.App.3d 516, Norman v. Unemployment Ins. Appeals Board (1983) 34 Cal.3d 1. While this problem of proof can be overcome in the case of heterosexual couples by getting married, no such formal option exists for homosexual couples, since marriage is prohibited to them in Civil Code section 4100. Further, the courts claim that by withholding benefits from unmarried couples they enable the state to further its goal in promoting marriage. While this is unquestionably a legitimate state goal, it is, as I will show, a dangerous oversimplification of what, exactly, a government is "promoting" when it promotes marriage, an oversimplification that, in degrading stable homosexual relationships has created the environment in which AIDS has been allowed to reach "catastrophic" proportions, according to reports issued by both the National Academy of Sciences and the Attorney General's Office.

Marital status distinctions are explicitly prohibited in Government Code section 12940: "It shall be unlawful employment practice... for an employer, because of the... marital status... of any person... to discriminate against that person in compensation or in terms, conditions or privileges of employment." This stands beside 2 Administrative Code section 7286.3, describing the policy behind the Fair Employment and

Housing Commission, which states, "The public policy of the State of California is to protect and safeguard the civil rights of all individuals to seek, have access to, obtain and hold employment without discrimination because of... marital status...

Employment practices should treat all individuals equally."

Because homosexuals are prohibited from marrying a conflict arises with regard to compensation when benefits are given to the spouses of heterosexual employees that are denied to the long-term partners of gay and lesbian employees.

A growing percentage of gays and lesbians over the age of 30 are settling into committed and lasting relationships (71 percent of gay men and 82 percent of lesbians in over-30 age groups were living with a partner, according to studies conducted by the Kinsey Institute), and but for a restrictive definition of family that depends on marital status criteria, they would be able to take advantage of those benefits. The question is whether Los Angeles (or any other public employer) can legally continue to deny such couples benefits by defining family in such a way as to exclude homosexual long-term relationships.

The guiding policy in this area begins with Executive Order 54-79, issued in 1979, which explicitly prohibits any discrimination based on sexual orientation within the jurisdiction of the state's Executive branch, an order which remains in effect. This protection was interpreted as extending to local government by the California Attorney General in 1983, 66 Ops. Atty. General 486, and further extended to include the

private sector by Labor Code sections 1101 and 1102, by way of the increasingly political nature of homosexuality, per se. The city is therefore prohibited by statute from discriminating against homosexuals because of their sexual orientation, and it is prohibited from discriminating against anyone because of marital status.

The problem, up until now, has been in establishing that the nature of a homosexual couple is not only comparable, but nearly identical to the nature of a heterosexual couple. Studies are now consistently showing that all people, regardless of sexual orientation, fall in love with one another and agree to commit to forming a relationship for substantially the same reasons: companionship, affection, stability, support (see Blumstein and Schwartz American Couples (1983), Peplau, "Intimate Relationships of Lesbians and Gay Men" in Changing Boundaries: Gender Roles and Sexual Behavior (1983) McWhirter and Mattison, The Male Couple (1984), Peplau, "Research on Homosexual Couples: An Overview," Journal of Homosexuality (Winter, 1982)).

In Hinman v. Employment Development Department (1985) 167 Cal.App.3d 516, the court sidesteps this issue and simply ignores homosexual relationships, classifying all homosexuals who do not marry members of the opposite sex as single. This is to misconstrue the nature of homosexuality through heterosexual eyes, to assume that homosexuals would be heterosexual, if only they tried hard enough, and then punishing them for not making that effort. While it is true that this logic might appeal to

someone who was truly bisexual, and had a choice to make, given the extreme prejudice of the society we live in, why would anyone declare him or herself homosexual in the first place? The facts are that those who claim that marital status discriminates against them on the basis of homosexuality are bona fide homosexuals who have no such choice, and whose marriage to a member of the opposite sex, however much some members of society may wish it, would serve no one, least of all society. If the modern concept of marriage is anything, it is an intimate association between two people, and for the court to suggest that if a homosexual wants marital benefits badly enough, that he or she ought to get married in the proper (i.e. currently state-approved) manner, is to say that the state is willing to promote a certain number of marriages which are based, not on an intimate association at all, but on a lie. Whatever the state's interests are in promoting marriage this cannot be among them. Sexuality is as deeply ingrained in a person's character as anything can be; heterosexuals are aware of this fact about their own sexuality, and homosexuals wish only that it be recognized about theirs.

An argument that is sometimes used to restrict marriage to heterosexuals is that marriage has always existed as a union between people of opposite sexes. While that fact is undeniable, it must be taken in context. The first state to take an active interest in regulating the marriages of its citizens was pre-Christian Rome, and the laws that were passed make it clear that that state's interests were in: 1) delineating property

ownership; 2) tracking a child's parentage for purposes of avoiding accidental incest; and 3) establishing the citizenship status of any couple's children. (see Stocquart, "Marriage in Roman Law," 16 Yale Law Journal 303-327). In fact, these last two, regarding children, were so important, that Rome had laws governing nearly all relationships between couples of opposite gender, including concubinage. But until the sixth century A.D., there is no law governing the relationships between members of the same sex at all (including their prohibition, see Boswell, Christianity, Homosexuality and Social Tolerance (1980) 61-87); yet such relationships are documented and celebrated in nearly all aspects of Roman life. The fact is that marriage laws were not seen to apply to homosexual couples because they did not need to; homosexual relationships were beyond regulation because they did not produce children (note particularly the homosexual relationships of the all of the last 15 emperors up to Claudius, especially Hadrian, and his lover, Antinous, a relationship which was memorialized throughout Europe in art and architecture still in existence, as a model of love); the state, very simply, had no compelling interest in regulating them. When the bias against homosexuality had developed to such a degree that such regulation was attempted, under Justinian, almost two centuries after the Empire's decline, it was regulation that applied to virtually all non-marital sex, as the growing Church began exerting its influence over an anarchic and vulnerable world; this was a key step which allowed the church to co-opt morality as its private territory.

And it is this conflation of Church interest in marriage with the state's limited realm, irrevocably complicated by Gratian's Concordia Discordantium Canonum of 1140 (see Bassett, "Canon Law and the Common Law," 29 Hastings Law Journal 1383) which has come to be accepted as a legislative basis for de facto discrimination against homosexuality; this is to deliberately misread both history, and, particularly, religion (see Boswell at 91-117, for an analysis of the Biblical passages which are commonly assumed to proscribe homosexuality, and emphatically do not). In fact, church tolerance of homosexuality extends more than 500 years into the Christian era, and much of the most beautiful (and explicit) homosexual love poetry comes out of the church itself in the High Middle Ages, six centuries after the church's first, tentative foray into intolerance. In any event, bias against homosexuals is neither as inherent in religion, nor even as consistent as some today would contend, and is by no means a necessary prerequisite to religious belief; it took a long time for the church to learn how to discriminate against homosexuals.

It was not until the late 19th Century that the word "homosexual" was even invented, and this can be seen as a turning point. Especially in the 18th and early 19th centuries, prior to Kraft-Ebbing's and Havelock Ellis' pioneering work in sexuality, homosexual behavior was, along with all sexual behavior, not a topic, either for discussion or for study; sex was assumed, as part of a matrix of human activities, but did not exist as a specific kind of activity, in the way we think of it today. In

that sense, the word "homosexual," and its implied opposite, "heterosexual," recreated the world to consist of two opposing camps, or categories, based on an orientation (sexual), which had never been considered as existing before; lacking a vocabulary and a context that included sexual pleasure as one of the determinates for a relationship such as marriage, an idea like sexual orientation simply could not have made sense. Further, after the 18th century, and prior to the women's suffrage movement, ideas of gender were so firmly set as to be unchallengeable. The early 20th Century becomes a sexual testing ground, and it is in this context that the idea of gay men as effeminate, and lesbians as "butch" takes its strongest hold. This is the penultimate period of Marriage as Theatre, in which one person must "play" the husband, and one the wife, and it can be seen as a result of the polarization that the emerging concept of sexuality fostered. This tendency to overconventionalize sex roles, particularly in marriage, is most visible throughout this century, and reaches its zenith in movie and television portrayals up through the early Sixties, and has seriously affected the current debate.

It is also at the beginning of this period (the late 19th and early 20th centuries) that homosexuals begin to identify themselves as such, and this identification set up the battle lines. Despite Alfred Kinsey's work in the 40's and 50's, which demonstrated that sexual orientation was a continuum on which some were primarily homosexual, some primarily heterosexual, and most everyone somewhere in between, the idea of two mutually

exclusive categories has emerged as the dominant one, primarily because, in our romantic and exclusive vision of love as a lifetime of fidelity to one person, that one person must be of one of the two available sexes. And so, while bisexuality is an option in the sexual arena for awhile, in the realm of relationships, sexual orientation becomes decisive.

This is precisely where the current debate becomes the most heated; homosexuality is not an assault on marriage, it is a means of adapting to a world view that is now irrevocably changed. Those who are inclined to form heterosexual relationships will continue to do so, and they will continue to populate the world as a consequence of the sexual aspect of their relationships. But that world is enlarged now, it knows more, and it has made room, over the last century, for an enlarged view of how people relate to one another with regard to sex. In this view, a state's legitimate interest in promoting marriage is in no way compromised by tolerating homosexual relationships, since the two are mutually exclusive categories. The state's interest in regulating heterosexual unions continues unabated, but no purpose is served in compelling that all people unite in only that way, or not unite at all. In fact, it is reasonable to infer that the systematic prejudice which has discouraged homosexuals from forming lasting and permanent relationships has been a primary factor encouraging (particularly) gay men to remain single, and which has helped to create the climate of clandestine sex that we know has made AIDS a far worse public health problem than it would have been had that prejudice not

been practiced; if heterosexuals were discouraged from forming lasting relationships, how would their sexual habits be different from the ones homosexuals have been forced (and tacitly encouraged) to adopt? With AIDS as a context, what can possibly be gained, and what is most surely threatened, by pretending homosexuals do not, in the face of overwhelming evidence to the contrary, have the same human needs as everyone to form lasting relationships? Homosexuals will not become heterosexuals just because the state so proclaims, and by ignoring the status of gay and lesbian relationships, the state, discouraging those relationships, in fact endorses the alternative lifestyle which has created the epidemic that has been recognized as having the potential to endanger this whole country.

The city of Los Angeles does not have jurisdiction to correct the numerous injustices homosexuals are subject to. But the city does have an interest in and jurisdiction over its own citizens, and, most specifically, its employees. In addition, it has an interest in protecting itself from adverse litigation by resolving those inequities which it does practice. Hinman is only one of a landslide of cases which homosexuals are bringing in increasing numbers; Bowers v. Hardwick (1986) 106 S.Ct. 2841, Zablocki v. Redhail (1978) 98 S.Ct 673, In the Matter of the Adoption of Robert Paul P (1984) 63 N.Y.2d 233, Donovan v. Worker's Comp. Appeals Board (1983) Cal.App.3d 323, Gay Law Students Assoc. v. Pacific Tel. and Tel. Co. 24 Cal.3d 458, Jones v. Daly 176 Cal.Rptr 130, Babets v. Governor No. 81083 (September 8, 1986) in Suffolk County, Mass. Superior Court,

Olivieri v. Ward No. 86-7479 (September 16, 1986) from the U.S. Court of Appeals for the Second Circuit; such challenges are sure to continue. In addition to this, the public, particularly in California is increasingly both aware of and sympathetic to the homosexual community. In two statewide elections voters have overwhelmingly turned down blatantly anti-gay ballot propositions, by margins of more than two to one, and in the latest, a full 71 percent of the electorate evidenced a strong willingness to help the homosexual community combat AIDS, in a vote of solidarity that is a clear indication of how deeply this issue has transcended what remains of an earlier generation's bias.

But this is only reaction, and the focus of attention is now turning toward more positive action, correcting past inequity, both as a matter of rights and a matter of public health. While the acceptance of homosexual marriage, per se, is a long way off, there are steps that can be taken to legitimize the relationships among gays and lesbians, without strictly formalizing them, that will encourage stability. Domestic partnership ordinances are one such step.

Such ordinances are already in effect in the cities of Berkeley and West Hollywood, and employers like The Village Voice newspaper and Worker's Trust Insurance Company have instituted similar policies; in addition, an extended domestic partnership plan is currently under active consideration in Madison, Wisconsin. Most of the plans have a similar format: couples who

demonstrate signs of having a stable and significant relationship that is not formally a marriage can sign an affidavit attesting to a number of characteristic facts about the relationship, and that document then entitles them to certain specified rights and privileges (usually worker benefits) previously extended only to married couples. The point of domestic partnership legislation is not to equate marriages with other kinds of significant relationships, it is to provide an avenue of access to benefits and recognition for a third class of people, who are neither married nor single, by most definitions of either term, in order to resolve the conflict between the already enunciated public policies of treating "all individuals equally," 2 Admin.Code 7286.3, without regard to marital status or sexual orientation, and the reality of the state's prohibition of marriage to gay and lesbian couples. The definition of this class must be broad enough to encompass the legitimate needs of its members, yet specific enough to prevent fraud and abuse; we are looking here for evidence of a stable and significant relationship that is both empirically evident and legally viable, without intruding unnecessarily on the privacy of the couple.

The first, and most important criterion is the domestic nature of the relationship, i.e. are the partners living together, and have they been doing so continuously for a significant length of time? This is, to be sure, a requirement not made of married couples, but its inclusion on a list of domestic partnership criteria has three advantages: first, it is a practical consideration in that living together is a step most

couples take quite seriously as a means both of merging their private lives and of making public their status as a couple -- those people who are seriously "living together" can and do use that status in a public way to tie off their relationship, effectively removing themselves from the lists of active single people, or potential dates. Secondly, this criterion is verifiable -- an insurance company or employer investigating potential fraud could easily check the claim that two people, in fact, did reside together. Which leads to the third advantage, that it can help meet concerns about abuse without being overly restrictive -- it does not inquire into the nature of the relationship, and frees administrative and investigative agencies from having to look into the partners' private (and supposedly protected) realm.

As a qualifier to the living together criterion, it might be helpful to add that the partners must share the common necessities of life. While this is not as easily verifiable as living together, it is further proof of the domestic nature of the relationship, which sets the couple apart from more casual or loosely bound associations -- roommates would be less likely to use one another's towels or shampoo than domestic partners would.

Another criterion which has several advantages is a statement of mutual obligation or support between the partners, and one declaring the exclusivity of the relationship. While these would seem to be implicit in such intimate relationships, it is recommended that an explicit declaration be included in the

proposed legislation for two reasons: first, some employers have denied benefits to gay employees for lack of just such a statement; but more importantly, this clause, in combination with the living together criterion can qualify the affidavit as a contract between the two partners. Under the court's ruling in Marvin v. Marvin (1976) 134 Cal.Rptr 815, such contracts are valid and binding. Stated plainly, signing the affidavit not only provides the partners access to certain benefits, it also incurs responsibility between them that a court could not overlook. Those who worry about couples fraudulently claiming partnership status have this extra safeguard, since it would be extremely risky to claim such a status with a partner the city employee was not fully committed to -- the employee would be, in effect, putting his present and future financial standing on the line. The degree of trust and mutual commitment involved in making such a claim is a formidable testament to -- at the very least -- the intentions and beliefs of the partners toward one another.

To further define the affidavit in contractual terms, most entities include clauses attesting to the fact that the partners are of legal age and competence to contract, and that they will notify the appropriate body within a reasonable amount of time of any changes in the sworn facts. In the event that the relationship breaks up, a statement attesting to that fact would also have to be filed which, if not signed by both members, would be required to be mailed to the non-signing party.

A stipulation that the parties not be married sounds initially superfluous, since marriage already qualifies people for the benefits in question, but if one of the parties were married to someone other than their named domestic partner, and that domestic partnership did qualify under all other criteria, the adulterous nature of the domestic partnership would almost certainly call into question, on legal grounds, if not moral ones, the validity of domestic partnerships as a class. For this reason such a criterion makes sense.

Some domestic partnership affidavits add other excluding criteria, such as that the partners not be related by blood. For certain purposes this can be useful, but it is not really necessary, and can be seen to exclude certain relationships which would legitimately benefit from domestic partnership: an unmarried child supporting an invalid parent, for example. If they qualified under all other criteria, why should they be excluded simply because of the blood relation?

Thus, a model domestic partnership affidavit would require that the partners swear, under penalty of perjury, that:

- 1) They are currently living together, and have been for a specified, significant length of time (6-12 months).
- 2) They share the common necessities of life.
- 3) They have a mutual obligation of support, and are each other's sole domestic partners.
- 4) They are both over 18, and are competent to contract.
- 5) Neither partner is married.

- 6) They agree to notify the appropriate body within 30 days if any of the above facts changes.

There should also be a very clearly worded statement advising the signing parties that the document may be legally binding on the relationship, and may have implications beyond merely providing them benefits.

With this affidavit the city will have very clearly delineated the class of relationships that can qualify for benefits in a way that is fair, reasonable and responsible. The first, and most easily extended benefits would be family sick leave and bereavement leave. They are both allowed for in Administrative Code section 4.127, and permit an employee's absence from work for a maximum of five working days in the case of the former, and three working days for the latter, if the employee has already accrued that amount of unused leave time. In both cases the only change would be adding the category of Employee's Designated Partner to the already existing definitions of family.

In extending health benefits to domestic partners of city employees, the City Council, or one of its executive committees, sets basic policy decisions with the Mayor, and those policies are implemented by the City Administrative Officer in his negotiations with the various unions, as they arrive at Memoranda of Understanding, which, when approved by the Council, take effect, and the Employee Benefits Administrator negotiates with

the health carrier to provide the required coverage. So far, only one union, representing the City Attorneys, has proposed extending health benefits to domestic partners, but that was five years ago, before anyone had attempted such a move, and the proposal, which was far more ambiguous and amorphous than the present one, was not approved. However, the Employee Benefits Administrator, at that time, did ask the city's health-care providers if they would provide such coverage, and all but one (Kaiser) responded that they would, if the class were clearly defined. Since Kaiser must compete with other potential providers to the city, and since city contracts are large ones, it is likely that in the intervening years, and with the specific criteria recommended, they would reconsider their position. The Council's recommendation of a strong and specific policy on domestic partnerships, in conjunction with the considerable bargaining power of the several unions would almost certainly overcome any potential barriers to covering this class of employees adequately.

In addition, it is precisely here, with regard to health benefits, that the city is currently most vulnerable to lawsuits. While section 12940 (a) expressly prohibits discrimination on the basis of marital status, Cal. Admin. Code, tit. 2, section 7292.6, which allows fringe benefits to be extended to individuals other than the employee, specifies that benefits may be extended to an employee's spouse. Because gay and lesbian couples are prohibited from attaining that status, a heterosexual employee with a wife or husband of six months can be much more

generously compensated than a homosexual employee who has been in a relationship for six years. Boyce Hinman has calculated that this discrepancy can amount to \$97,000 in retirement benefits alone ("Advocates for Gay and Lesbian State Employees Newsletter," July 1983). Stated another way, these two sections, together with Civil Code section 4100, prohibit discrimination because of marital status, prohibit homosexuals from attaining marital status, and permit a higher level of compensation to those with spouses. This is a direct conflict, in which an administrative agency has contradicted the express wishes of the state legislature, and in which the state legislature has contradicted itself. While it will take some time and effort to straighten this situation out at the state level, a clearly written domestic partnership ordinance can resolve these conflicts quickly, reasonably and effectively for the city.

A rough estimate of the cost of these proposals from the City Administrative Officer, in March of 1985 was from \$1.7 - \$3.4 million for health insurance, plus some unspecified costs for sick and bereavement leave. This sounds like a reasonable estimate, though mention of the binding nature of the affidavit may keep some people from signing up. In any event, however, the costs, especially those for family sick leave and bereavement leave are currently little more than money the city saves by exploiting a legal ambiguity regarding the status of the relationships of some of its employees, all of whom are currently bearing the cost of that benefit system (some for years, even decades), without having access to its rewards. It is inhumane

of the city to continue willfully ignoring the needs (particularly) of its gay and lesbian employees at such distressing and emotional times as the illness or death of a loved one, while, at the same time making that gesture an explicit part of its benefit policy for all other workers who have relationships that are at present different only in that they are better-defined in the law. Worker benefits were never intended, and should not be used as a sort of punishment and reward system, encouraging workers to engage in some kinds of activities and relationships, and avoid others. They are, and ought to be nothing more than another kind and part of compensation; it is not the city's policy to pay workers differently based on arbitrary criteria which have nothing to do with the worker's job, yet this is exactly what they are doing right now. People who are in relationships that meet the criteria mentioned above are not single, and should not be treated as if they were in terms of compensation. These three benefits in particular are benefits the city provides its employees for times of crisis and need. Those crises and needs do not confine themselves to only those relationships which have been traditionally recognized, and a sense of humanity and equity compel an explicit policy in accordance with that reality.

THE PHILOSOPHICAL DEFINITION

OF "FAMILY"

by

MR McDonald

for

RIGHTS OF DOMESTIC PARTNERS

Thomas Coleman, Prof.

USC Law Center

December First, Nineteen Eighty-Six

1986

INTRODUCTION

There are a many approaches that could be taken to write a paper on the "Philosophical Definition of Family." I have decided not to do a compilation of comments on the family by great philosophers, though this would make interesting reading. I have decided not to indulge in a Marxist analysis of family, and the role it plays in our economic and political system, though no comments on the family that do not take account of the historical and political background can have much meaning. I have also decided not to attempt to construct any over-arching definition of "family" of my own, though I will add an observation or two. What I have decided to do is to briefly describe and then apply some of the machinery of contemporary philosophical analysis, particularly that of Ludwig Wittgenstein, probably the most important twentieth-century philosopher, to the problem of the concept of "family." My hope is that this analysis will help make clear what sort of a concept "family" is and what sort of relationship that concept has to the entity known as the "family" to which it is applied.

DEFINITION

A "definition" of family is not apt to be very useful in philosophical analysis. The reason we want definitions in fields like the law is to provide rigid classifications to help judges and administrative personnel distribute benefits and burdens to the proper classes of persons. The Constitution, through the Due Process clause, requires that the respective classes of persons be specified. These persons are entitled to notice. To avoid discriminatory enforcement of the law the trier of fact must apply objective standards. The Constitution also provides, through the Equal Protection clause, that persons similarly situated receive equal treatment. But for this to be practical we must know the basis of the class that we are protecting.

None of these considerations play much of a role in a philosophical inquiry. Of course we have to know what the terms we use mean, but to accomplish this through a definition is almost always too much an exercise of brute power. We want to be very attentive to what the terms really mean and not overly concerned about applying defined terms in a strictly consistent way.

When one defines a word one posits an equivalence between the term to be defined and the term or terms by means of which the definition to be accomplished. There are many different types of definition. The short list below is intended to give an idea of the many roles that a definition can play. There is no such thing as THE definition of a word.

Normative definition--this is how the term is generally used in the language (or dialect). Dictionaries often give a good normative account of a word.

Stipulative definition--here it is just by fiat that the term is to be understood as equivalent to the other terms. Stipulative definitions often take the form, "For the purposes of the present discussion the term should be understood to mean _____."

Introductory definitions--these definitions are often employed when a new term is being introduced into the language. An example is when the term "quark" was first used. Here was a new scientific entity, but we needed a name for it, so one was introduced.

Analytic definitions--here it is claimed that a term just simply means (has the identical extension as) the defining terms. The classic example of an analytic definition is, "Bachelor means unmarried man." (We will see later that in actuality the concept "bachelor" is much more complicated than that.) Analytic definitions are often called "tautologies."

There are other kinds of definitions as well. For instance, if we are trying to define "life" there might be competing (and not totally compatible) biological, political, religious, chemical, functional, legal, etc. definitions. And all of those kinds of definitions could be either stipulative, normative, introductory, analytic, etc. Definitions provide a criss-crossing web of rival uses, purposes, and levels of discourse.

When we are trying to understand a term as elusive as "life" or "family" definitions tend to constrain us too tightly. They often keep us from understanding, since they put blinders on us, which force us to see only part of the picture.

CONCEPTS

I suggest that instead of attempting to define "family" we probe the concept of "family". The major problem with the concept of "family" is that it is a concept in the process of gaining its extension. A hundred years ago the concept of family was not very problematic. There were probably some peripheral groupings that we might not have been happy as having to classify as families, but the concept was pretty well set. But today the concept is fractured. (I will say more about this fracturing when I discuss the sort of entity a family is, below.)

"Family" is not a single criterion concept. The idea behind a single criterion concept is that there is an exceptionless "law" associated with the noun, such that the noun is associated with the relevant thing "if and only if" there has never been a counterexample. That is, something is a bachelor if and only if it is not married; something is a vixen if and only if it is a female fox. Putnam says,

...[T]his exceptionless law has ... two important characteristics: (1) that no other exceptionless "if and only if" statement is associated with the noun by speakers; and (2) that the exceptionless "if and only if" statement is

a criterion, i.e. speakers can and do tell whether or not something is a bachelor by seeing whether or not it is an unmarried man; whether or not something is a vixen by seeing whether or not it is a female fox." Realism and Reason: Philosophical Papers Vol. 3, p. 89.

Putnam contends that there are only a few hundred words in a natural language having this exceptionless feature and that all clear cases of analyticity involve these special few hundred words.

"Family" is clearly not one of these "single criterion" concepts.

Maybe "family" is an analytic concept. An analytic statement is one that can be turned into a truth of formal logic by substituting synonyms for synonyms. A more colloquial notion of analyticity is to say that a statement (or a term or concept) is analytic if there are necessary and sufficient conditions for its truth. We need not be limited to the single criterion, as above. Here there can be any (reasonably) finite set of conditions. To be a bachelor it is necessary that something be a man, but that is not sufficient; there are married men. To be a resident of the United States it is sufficient that one be a resident of California, but that is not necessary. One can be a resident of the United States by being a resident of Delaware; that is also sufficient.

Leaving aside the metaphorical usages, it might be sufficient for something to be a family that it consists of people. That, however, is far from being a sufficient condition. The Law Center consists of persons (and a physical plant) but

that is not sufficient to make it a family. One could try to construct the necessary and sufficient conditions for something's being a family, but such a project would be not much more than a game (and would surely come to grief).

Anyway, it is not clear that even such a famous example of an analytic concept as "bachelor" is analytic in the straightforward sense. Instead, it seems that what we want to call a bachelor is informed more by some stereotypical idea of what we think it means to be a bachelor than by any application of so-called necessary and sufficient conditions, e.g. "unmarried male." This can be illustrated by running through a short list of hypotheticals that will test our intuitions concerning bachelorhood.

1- Alfred and Sue have been married for ten years, have a child and live in Glendale.

2- Albert was married twenty-five years ago, but only lived with his wife for two days before she left him. There are no children. They live on different continents and never see each other. Albert behaves like all his unmarried friends.

3- Bob is fifteen years old, lives with his parents, goes to high school and has never dated a girl.

4- Robert is fifteen years old, left home at ten, has made lots of money as a drug dealer, has a Corvette and dates models and starlets.

5- Duane and Darrell have lived together for seven years, have pooled their assets, never date any women and have gone through a "marriage" ceremony that the state does not recognize.

6- Faisal, from Kuwait, has twenty-four wives in his native country, but has come to Los Angeles to find number twenty-five. He frequents night clubs, race tracks etc.

7- Father Gregory of St. Mark's Catholic Church has never been married, is forty-eight years old and is known for his devotion to the monastic way of life.

Who are the bachelors? I would say that Albert, Robert and Faisal are the bachelors, though for some purposes they are not and for some purposes some of the others are. The point is that bachelorhood seems to be given content more by an idea of the bachelor life-style or sense of someone's availability for marriage, though that is not all, than by reference to the criterion "unmarried male." What we would call "families" would follow an even more disappointing course, since with "family" there is not the initial presumption that we are involved with an analytic concept.

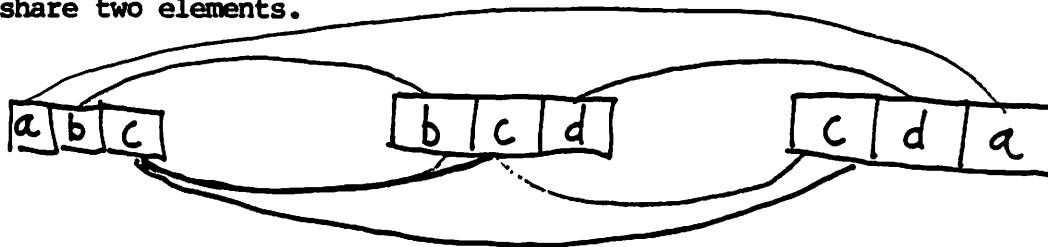
A better attempt, in fact I think it is the best, to come to grips with what is involved in understanding a concept like "family" is the "family resemblance" concept. The classic expression of family resemblance theory comes from Wittgenstein on pages 31-2 of his Philosophical Investigations:

"Consider for example the proceedings that we call "games". I mean board-games, card-games, ball-games, Olympic games, and so on. What is common to them all?—Don't say: "There must be something common, or they would not be called "games"—but look and see whether there is anything common to all.—For if you look at them you will not see something that is common to them all, but similarities, relationships, and a whole series of them at that. To repeat: don't think,

but look!—Look for example at board-games, with their multifarious relationships. Now pass to card-games; here you find many correspondences with the first group, but many common features drop out, and others appear. When we pass next to ball-games, much that is common is retained, but much is lost. —Are they all "amusing"? Compare chess with noughts and crosses.[Tick-tac-toe.] Or is there always winning and losing, or competition between players: Think of patience. In ball games there is winning and losing; but when a child throws his ball at the wall and catches it again, this feature has disappeared. Look at the parts played by skill and luck; and at the difference between skill in chess and skill in tennis. Think now of games ring-a-ring-a roses; here is the element of amusement, but how many other characteristic features have disappeared! And we can go through many, many other groups of games in the same way; can see how similarities crop up and disappear. And the result of this examination is: we see a complicated network of similarities overlapping and criss-crossing: sometimes overall similarities, sometimes similarities of detail.

"I can think of no better expression to characterize these similarities than "family resemblances"; for the various resemblances between members of a family: build, features, colour of eyes, gait, temperment, etc. etc. overlap and criss-cross in the same way.—And I shall say: "games" form a family."

And I think that we could well say: "families" form a family. To form a "family" in Wittgenstein's sense no one element that makes up the concept is, or needs to be, common to the concept. In the diagram below, where a,b,c and d are all (for the sake of simplicity) considered equally relevant, notice that no grouping has the same elements (members) and yet they all share two elements.



We do not need to inquire into any particular reason for calling them all, e.g. "families" or "games". That is the point of family resemblance concepts: there is nothing that they all have to have in common that defines them as families or games, yet they are all families or games and have much in common with one another.

A famous challenge to Wittgenstein's characterization of family resemblance is that of Maurice Mandelbaum, "Family Resemblances and Generalization Concerning the Arts" (American Philosophical Quarterly II, 1965, pp.219-228). Mandelbaum contends that there presumably is some reason that families have in common such traits as build, gait, temperament etc. such that they resemble each other, namely, some genetic heritage. This is not a good criticism for two major reasons. First, it only goes to Wittgenstein's metaphor, not to his point. Second, genetic causation would not have to hold of many of the resemblances. For instance, children adopted into the aristocracy early enough could very well "pick up" ways of behaving, such as gait or temperament. Aristocratic mein comes surely not solely from genes!

A more serious problem might seem to be that of applying or determining the weight of the various elements in the concept (the a,b,c and d in the above diagram). It will be quickly granted that some elements are more important than others, but it is to misunderstand the Wittgensteinian insight to insist that definite, discreet values have to be given to the elements of a

concept like "game" or "family" for that concept to be meaningfully, deftly, even precisely used. But what it takes for these concepts to be used meaningfully is more than the application of a set of criteria, no matter how precise. It takes something like verstehen, i.e., being within a culture is necessary to understanding. We must generally know something about the work the concept is to do, what role it plays in the culture, the background against which it arises.

A Martian (a creature with our perceptual apparatus and with our cognitive potential, but not familiar with any of our cultures or societies) would not be able to pick out the people who were to be grouped into "families" from those not to be so grouped. The concept "family" is not like the concept "gold". Gold is all and only those molecules or atoms that have a certain, definite atomic structure, or atomic weight. Though not all cultures will be able to correctly recognize gold from iron pyrites and not all cultures will even have a role for gold to play, there is a determinable answer as to whether, and to what extent, something is gold. A Martian could be given instructions such that he could make the differentiation. What the Martian has to do is set up or notice a one-to-one correlation between the criteria on his list of instructions and some entity in the world. No such set of instructions could be given him concerning families. When something counts as a family it does so for certain reasons. Not every culture has a concept or word for family, e.g. the Cheyenne have no such word. Were an

anthropologist to describe certain Cheyenne goings-on as "family" we should understand that this is not necessarily how the Cheyenne would understand it. What would the Martian make of it?

Notice that when Wittgenstein was introducing the notion of the "family resemblance" he did so by means of a series of examples. Some general things can be said about families or games that are true, perhaps, for the most part, but the best way to get someone to understand the notions is to provide examples. These examples are more than just a list. They are a list through which, hopefully, one "catches on" to what the concept is about. Families are more than just an interrelated set of cases. The interesting thing about Wittgenstein is that he does not just begin his analysis with a list of examples, but ends his analysis there, too.

"One gives examples and intends them to be taken in a particular way.—I do not, however, mean by this that he is supposed to see in those examples that common thing which I—for some reason—was unable to express; but that he is now to employ those examples in a particular way. Here giving examples is not an indirect means of explaining—in default of a better. For any general definition can be misunderstood too. The point is that this is how we play the game. (I mean the language-game with the word "game".) Philosophical Investigations p.34.

The point is that we play the game. We are all members of human societies. Game and family play a role in the practice of our culture. To become a participant in a practice is to enter a form of life and there is no recourse to explanations beyond "forms of life". "What has to be accepted, the given, is—so one could say—forms of life." Id. p. 226. But the idea of "forms of life" is one of the most abstruse in all of Wittgenstein's

work. To pursue it further here would fall beyond the purview of this paper. I mention it to indicate in some fashion how Wittgenstein's project of "family resemblance" concepts is to be completed.

THE ENTITY

One reason that there is so much conceptual confusion about families today is that the entity to which the concept is referring is itself confusing. Not only is the family culturally bound, that is, what counts as a family in India may not do so in Indiana, but it is sensitive also to its historical position. What follows in this paragraph is my very short summary of some of the things Engels says about the family in his The Origin of The Family. There used to be matrilinear communal societies. These were followed by "primitive" societies featuring group marriages. These were followed in turn by "barbarian" societies with paired marriage and "civilized" societies with monogamy supplemented by adultery and prostitution. There was total sexual freedom in the tribe. There was a consanguine family, that is, marriage groups separated according to generation, with a prohibition on incest. This was succeeded by the "gens", a firm circle of blood relations in the female line among whom marriage was prohibited. Men came from outside the circle. In the age of "barbarism" men found their own children disinherited. Thus the male line of descent and inheritance

began to prevail. This led to monogamy: man was supreme in the family and propagation of heirs and wealth were indisputably his own. But gens was the institution common to barbarism until the entry into civilization—even afterward. "Gens" is all persons who form descendants of a particular ancestral mother. Finally, the division of labor led to increasing drive toward government of territory rather than kinship.

I do not vouch for the historical accuracy of everything in Engels' survey. What I think is useful to see is the various ways that people have treated their involvement in families—common groups, tribes, gens, etc. Today almost no one considers him or herself in the same family as someone else due solely to some common ancestral mother.

But today one's involvement in a family can be incomparably more complicated. We have now fractured formerly secure concepts. When a family (i.e., a husband and wife) avails itself of artificial insemination through a sperm bank, who is the "father", the husband or the donor of the sperm? The legal father or the genetic father? Who decides? The resulting child when it comes of age? Or who is the "mother" if a woman for whom it would be dangerous (or even just undesirable) to actually bear a child has her eggs fertilized and then carried by a surrogate, the genetic mother or the surrogate mother? In these cases third or even fourth parties have intruded into the paradigm of husband-wife parenting. While their presence is not necessarily a bad

thing it does complicate greatly what counts as a family. The reproductive unit is no longer the traditional mother-father. The possibilities for confusion increase when we consider frozen embryos and totally artificial wombs. A person could come into the world from the artificial insemination donor, a third party egg, and an artificial womb. What would its family be? Also, science today offers the promise of cloning. Since, theoretically, each cell of the human body contains all the genetic information (each cell has the DNA code) it is possible to produce a whole person from just one cell. There may be some problems with this due to the particular sort of cell (skin, hair, internal organ) involved; it has been done with salamanders. My clone has the same genetic code that I have. Does it have the same family I have? It surely does not have the same wife or mother. These techniques blur family and kinship relations. Since adopted children have no Constitutional right to learn their genetic and gestational roots (Alma Society, Inc. v. Mellon, 601 F.2d 1225 (2d Cir.), cert. denied, 444 U.S. 995 (1979).) it is unlikely that children born of surrogacy, embryos or gametic donation would have the right to learn of their genetic or gestational origins, even if the records of such roots existed.

This uncertainty as to what a family is today is part of the reason that the concept "family" is so fractured. But the fracturedness of the concept in turn helps provide some of the uncertainty as to what families are. Concepts generally provide

us with some sort of guidance in our dealing with entities. Concepts do not just refer to or designate the entity. Concepts relate to the underlying entity in a more dialectical manner. As we struggle with the concept we have a better idea what the entity we are trying to get at really is. As we see more clearly what the entity really is, the more we know what we are doing when we apply the concept. When we are talking about family, for instance, we wish to say what it is that we want to say, rather than finding ourselves saying what our concepts or theories force us to say. The problem with some of these new fracturings is that we do not yet know what we want to say about them. Their role in our society has yet to be determined. We need more experience with them to inform our concepts of "family" and "parent" before our intuitions are sound guides.

As the California Supreme Court said in Moore Shipbuilding Corp. v. Industrial Accident Commission 185 Cal. 200, 207, 196 P. 257 (1921) "family" may mean different things under different circumstances. We have to know or at least have something relevant to say about what it is in a particular circumstance that makes us want to apply "family" to it or not.

[Also, today people are living together in arrangements that are not limited to the so-called "nuclear" family. Since our course focused on these arrangements I will not take time in this paper to discuss them. The Task Force on Family Diversity surely does not need a short survey either. I will just say that what constitutes a domestic partner relationship or a permanent member

of one's household or a spouse, or whether homosexual marriages will be recognized or Marvin-style partnership rights will be extended is still very much to be determined. Whether such arrangements are "family" arrangements will have a lot to do with how we see the concept "family", what work that concept does in our society, why we think it does that work, and what difference it makes that it does that work.]

CONCLUSION

"Don't say: "There must be something in common, or they would not be called ["families"]"—but look and see whether there is anything common to all.—For if you look at them you will not see something that is common to all, but similarities, relationships, and a whole series of them at that."

Being related has something to do with being a family—most of the time, but not always. Being a family is not solely a matter of being related. We are all related. Scientists believe that all life derives from an original instance of life. So humans are related not just to each other, but to the cactus and the horse-fly as well. That is not what we mean. Anyway, how do we get related? I am related to my brother through blood, by wife through marriage, to her family through marriage. People also become related through adoption. Being related is not the simple matter it might have seemed.

Living together has something to do with being a family.

But my mother is family and I have not lived with her for fifteen years. I have not lived with my brother for longer than that. Living together is not necessary. If living together is not necessary, then neither is having an intimate, mutual interdependence within a single home or household.

I have relatives in Sweden. My father discovered them while doing some work on our family genealogy. The families wrote. They visited us. My father's sister visited them. I would be welcome in their home if I went to Sweden. We are all members of the same family, I would say. Why? Because we accept each other as such, and there is the genetic link. However, I might very well have other relatives in Sweden, who care nothing for any lost American branch, and in whose home I would not be welcome. Are they still family? I think not. The genetic link would be the same, but we do not accept each other as family. The mutuality in recognition is lacking. Sometimes this mutuality is the key ingredient in the family pie. But it alone can never be enough. Some of the other ingredients must be present. Two family units cannot simply decide to be part of one larger family unit by saying that they are, but doing nothing else.

All of these elements, and others, like perhaps taking one's lover as one's spouse whether the state recognizes such ceremonies or not, can help us to decide that there is a family, but no particular arrangement of these elements is necessary. If we are approaching the subject of families philosophically, we must not insist on the sort of objective standards for the

application of the concept that we require in the law. There are similarities and criss-crossing relationships, and a whole series of them at that. We must always keep in mind what we think is at stake when we say that a group of people, or in some circumstances a single person, is a family.



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TASK FORCE ON FAMILY DIVERSITY:

Insurance Discrimination

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INTRODUCTION

This report is a discussion of the types of protection and remedies provided to persons discriminated on the basis of sexual orientation and/or marital status in the terms of their insurance contracts. For the purposes of this paper, the reference to "non-traditional family unit" includes those persons with non-traditional sexual orientation and/or marital status.

This paper is divided into two main sections. The first part contains discussion regarding the types of protection California law provides to the non-traditional family unit against discrimination. The second part contains discussion regarding the City's authority in enforcing these laws.

Moreover, the first section focuses on two issues. The first issue is the Insurance Code and its applicable rules. The second issue deals with the applicability of the Unruh Civil Rights Act to insurance companies.

I. WHAT PROTECTION DOES CALIFORNIA LAW PROVIDE
TO THE NON-TRADITIONAL FAMILY UNIT AGAINST
DISCRIMINATION?

California law provides two avenues of relief to the non-traditional family unit against discrimination by insurance companies. One is the State Insurance Code and its applicable regulations, such as Title 10 of the California Administrative Code, Section 2560.3, and the other is the Unruh Civil Rights Act.

A. The State Insurance Code and Title 10 of the
California Administrative Code, Section 2560.3

Pursuant to the Insurance Code, Section 790.10, which gives the Insurance Commissioner authority to issue regulations, the Commissioner issued a key regulation prohibiting any person or entity engaged in the insurance business to refuse to issue, cancel or decline to renew an insurance contract due to sex, marital status, or sexual orientation of the insured or prospective insured. CAL. ADMIN. CODE §2560.3.

There are two ways in which an Insurance Commissioner may enforce California Administrative Code, Section 2560.3. One way is through the disciplinary procedures outlined in the Insurance Code. The other way the Commissioner can enforce it is through the regulation of trade practices in the insurance business outlined in Insurance Code, Section 790, et seq.

1. Disciplinary Procedures

The Insurance Commissioner has the authority to suspend or revoke a permanent license on any grounds set forth in Article 6 of the Insurance Code. Article 6 lists the qualifications for which an applicant (holder of a permanent license) may obtain a license or for which the Commissioner may deny an application. CAL. INS. CODE §1738.

Moreover, in some circumstances, the Commissioner may suspend or revoke any licensee without notice or hearing. These include circumstances where an applicant has committed a felony, committed a misdemeanor denounced by the Insurance Code, or had a previous application denied, suspended or revoked for cause within five years before filing an application again. CAL. INS. CODE §1669.

With the exception of the grounds set forth in Section 1669, the Commissioner may suspend or revoke a license after notice and hearing, and must follow the disciplinary procedures stated in Chapter 5, Part 1, Division 3, Title 2 of the Government Code (§11500).

An adjudicatory hearing, pursuant to Government Code, Section 11500, is a state agency hearing involving the "granting or revocation of an individual's license." The procedures governing such a hearing includes, but is not limited to, all of the following: (1) testimony under oath,

(2) the right to cross-examine and to confront adversary witnesses, (3) the right to representation and, (4) the issuance of a formal decision. An adjudicatory hearing does not include any formal factfinding or formal investigative hearings.

Moreover, in lieu of a license suspension or revocation, the Commissioner may permit a licensee to elect in writing to pay a specific monetary penalty within a specified time. The money is paid to the Commissioner for the use of the State of California. The sum specified may not exceed: (a) \$1000 for each offense, (b) \$5000 in the aggregate for all offenses in any one proceeding, (c) 30% of the gross commissions on insurance during the preceding calendar year, or (d) any amount proven or admitted and retained by licensee as a rebate. CAL. INS. CODE §1748.

The Insurance Commissioner clearly has the power to refuse, revoke or suspend a license, or impose a fine. Grounds for revocation or suspension include: a licensee's lack of qualifications; a licensee's violation of the acts set forth in Section 1669; accusation, charging licensed life insurance agent with misrepresentation, dishonest conduct and untrustworthiness, Steadman v. McConnell, 149 Cal. App. 2d 334, 308 P.2d 361 (1957); and mistatement in application, Jones v. Maloney, 106 Cal. App. 2d 10, 234 P.2d 666 (1951).

In addition, the Commissioner may use as a basis for disciplinary action violation of any rules and regulations applicable to the Code.

For example, pursuant to Section 1812 of the Insurance Code, the Commissioner may make reasonable rules necessary, advisable, or convenient for the administration and enforcement of the provision of the Code pertaining to bail licensees. In the case where the Commissioner did issue rules pertaining to bail licensees, it was held that the Commissioner shall enforce such rules. Although these rules were not directly a part of the Insurance Code, the rule is in being by reason of the express authority granted in the Code giving the Commissioner the power of enforcement. 8 Op. Atty Gen. 271.

Moreover, Section 383.5 of the Insurance Code provides that the Commissioner may make reasonable rules and regulations in furtherance of the Code to prevent fraud or mistake in connection with the transaction of insurance covering motor vehicles. The section further provides that any violation of the section is subject to disciplinary proceedings by the Commissioner. It was held that since the rulings are under the authority of the same section, a violation of these rules is also subject to disciplinary action under the section. 2 Op. Atty. Gen. 359.

Similarly, since Section 2560.3 is a valid rule issued by the Commissioner pursuant to the authority granted by

Section 790.10 of the Insurance Code, a violation of this rule is subject to disciplinary action by the Commissioner.

2. Insurance Code, Section 790, et seq.

The second way an Insurance Commissioner can enforce Section 2560.3 is through Section 790, et seq. of the Insurance Code.

The purpose of Section 790, et seq., is to regulate trade practices in the business of insurance. It applies to all persons engaged in the insurance business, including agents and brokers. CAL. INS. CODE §790.01.

An insurer is prohibited from engaging in unfair methods of competition or an unfair or deceptive act or practice in the business of insurance which has been defined as such, or determined pursuant to the article pertaining to unfair practices (Article 6.5). CAL. INS. CODE §790.02.

The Commissioner has the authority to examine and investigate person engaged in the insurance business to determine whether such person has, or is, involved in such unfair practices prohibited by Section 790.03 of the Insurance Code,⁽¹⁾ or determined pursuant to the article to be an unfair practice. CAL. INS. CODE §790.04.

Section 790.03 defines the prohibited acts. Moreover, pursuant to Section 790.10, the Commissioner has the power

to issue regulations necessary to administer this article regarding unfair practices. As mentioned earlier, one rule issued pursuant to Section 790.10 is Section 2560.3, which makes it an unfair practice to discriminate upon sex, marital status, or sexual orientation in the terms and conditions of insurance contracts.

The power vested in the Commissioner in Article 6.5 is in addition to his other powers to enforce penalties, fines or forfeiture, denials, suspensions or revocation of licenses or certificates authorized by law with respect to the methods, acts and practices declared unfair or deceptive. CAL. INS. CODE §790.08.

In sum, the Insurance Commissioner has the power to enforce any acts declared unfair or deceptive, either by definition or by determination pursuant to Article 6.5. Section 2560.3, issued pursuant to the article, determines that discrimination on the basis of sex, marital status, or sexual orientation by insurers is an unfair practice. Thus, the Commissioner may enforce any acts by insurers which discriminate on the basis of sex, marital status, or sexual orientation.

B. The Unruh Civil Rights Act: Does It Apply to Insurance?

The second avenue of relief to the non-traditional family against discrimination is the Unruh Civil Rights Act ("Act"). The main difference between the relief provided by the Act and the relief provided by the Insurance Code is that violation of the Act is enforceable by the City. Violation of the Insurance Code, on the other hand, is only enforceable by the Insurance Commissioner.

The Unruh Civil Rights Act prohibits "all business establishments of every kind whatsoever" from all types of arbitrary discrimination.⁽²⁾ CAL. CIV. CODE §51.

The Act specifically states:

"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."

1. Scope of the Unruh Civil Rights Act

The Act bars all types of arbitrary discrimination by business establishments. Although the Act refers to particular basis of discrimination, such as sex, color, race, religion, ancestry or national origin, the list is only illustrative and not restrictive. In Re Cox, 3 Cal. App. 3d 205, 90 Cal. Rptr 24, 474 P.2d 992 (1970).

The broad scope of the Act is illustrated in several state court cases. For example, in Koire v. Metro Car Wash, 40 Cal. App. 3d 27, 219 Cal. Rptr. 133, 707 P.2d 195 (1985), the California Supreme Court held that a car wash which prohibited discounts to women and not to men, was prohibited from offering such discounts by the Act. The Koire Court stated that the Act's prescription is broad enough to include within its scope "sex-based" discounts. Following this line of reasoning, insurance companies or insurers who provide insurance at lower rates to some, and not to others, on the basis of their sexual orientation or marital status, may fall within the scope of the Act.

In another case, the state Supreme Court held that the owner of an apartment complex violated the Act when he refused to rent any of its apartments to a family solely because the family includes a minor child. Marina Point Ltd. v. Wolfson, 30 Cal. 3d 721, 180 Cal. Rptr. 496, 640 P.2d 115 (1982). The fact that the owner discriminated against children and families with children, rather than a specific racial or religious group or some other classification specifically involved in prior judicial decisions, did not place the exclusionary practice beyond the reach of the Act. Marina Point, supra, 180 Cal. Rptr. 496 at 498.

The Marina Point Court stated that the Act prohibits a business enterprise from excluding an entire class of

individuals from its services based on a generalized prediction that the class as a whole is more likely to commit misconduct than another.

Although insurers which discriminate on the basis of sexual orientation or marital status do not exclude classes of individuals due to a generalized prediction of their "misconduct," they are nonetheless excluding an entire class of individuals from their services.

The owner in Marina Point argued that his exclusionary policy was "reasonable," rather than "arbitrary" because children are "rowdier, noisier, more mischievous than adults."⁽³⁾ Marina Point, supra, 180 Cal. Rptr. 496 at 509. Thus, by excluding children, he was seeking a legitimate interest in a "quiet and peaceful residential atmosphere." Marina Point, supra, 180 Cal. Rptr. 496 at 509.

However, although the Court did not deny that entrepreneurs possess the authority to protect their enterprises from improper behavior, it noted that under the Act, entrepreneurs must "generally exercise this legitimate interest directly by excluding those persons who are in fact disruptive." Marina Point, supra, 180 Cal. Rptr. 496 at 508.

Similarly, an insurer's policy excluding a class of persons from its services may also be considered "arbitrary," and does not serve a legitimate state interest, where the excluded class has not in fact shown any type of conduct from which an insurer may deny its services.

Although the scope of the Act is broad, one must keep in mind that businesses may uphold discriminatory practices only when there is strong public policy in favor of such treatment. Marina Point, supra, 180 Cal. Rptr. 496 at 509.

For example, excluding children from bar or adult book stores are not protected by the Act. The reason is that it is illegal to serve alcoholic beverages or to distribute "harmful materials" to minors. This sort of discrimination is not arbitrary because it is based on a compelling social interest.

On the other hand, discriminating against those persons with a different sexual orientation or marital status is not based on a compelling social interest. There is nothing illegal with insuring a class of person with a non-traditional sexual orientation or marital status.

2. What Constitutes a Business Establishment?

Although the type of discrimination practiced by insurers may fall within the scope of the Act, one must next question whether insurance companies are "business establishments" covered by the Act.

The word "business establishment" as used in the Act, must be construed in light of legislative purpose and design. Curran v. Mount Diablo Council of Boy Scouts of America, 147 Cal. 3d 712, 195 Cal. Rptr. 325 (1983)

The legislature used the words "all" and "of every kind whatsoever" without any exception and without speci-

fication of particular kinds of enterprises. Thus, the term "business establishments" was used in the broadest sense possible. Rotary Club of Duarte v. Board of Directors of Rotary International, 178 Cal. 3d 1035, 224 Cal. Rptr. 213 (1986).⁽⁴⁾

The broad interpretation of the term is shown in O'Connor v. Village Green Owners Associations, 33 Cal. 3d 790, 191 Cal. Rptr. 320, 662 P.2d 427 (1983). The California Supreme Court in O'Connor concluded that a non-profit homeowner's association was a business establishment within the meaning of the Act. It invalidated as violating the Act a condominium developer's restriction against residents under the age of 18. The Court held that the association had sufficient "businesslike" attributes to fall within the scope of the Act.

The attributes sufficient to characterize the homeowners' association as a business establishment included a board of directors which employed a professional management firm, the obtaining of insurance for the benefit of its owners, and the maintenance and repair of all commercial areas and facilities. In brief, the association performed all the customary business functions. Thus, the Court in O'Connor inclined toward a "functional" definition of business establishment.

Moreover, the Boy Scouts was held to be a business establishment falling within the scope of the Act and

prohibited from arbitrary discrimination against homosexuals in provision of its services. Curran, supra, 147 Cal. 3d 712 at 717. The plaintiff in Curran claimed he had been expelled and excluded from the Boy Scouts because he was homosexual. The Court stated that the word "business establishment" means all commercial and non-commercial entities open to and serving the general public. The Boys Scouts organization also had certain business-like attributes, namely, a retail franchise which sold Boy Scouts goods.

An international non-profit organization was also held to have attributes sufficient to render it a business establishment subject to the Act. Rotary Club of Duarte, supra, 224 Cal. Rptr. 213 at 216. For example the organization's structure included administrative and financial concerns.

Lastly, the state Supreme Court held that a Boy's Club was a business establishment covered by the Act. Isbister v. Boys Club of Santa Cruz, 40 Cal. 3d 72, 219 Cal. Rptr. 150, 707 P.2d 212 (1986).

The Isbister Court held that the Boy's Club violated the Act when it excluded girls from the facility.

In conclusion, the term "business establishment" has been held to mean an entity with sufficient business-like attributes, an entity with administrative and financial concerns, a commercial or non-commercial entity, and a non-profit organization. The broad interpretation of a business establishment, thus, would probably include an insurance company, which has "business-like attributes."

II. GIVEN THESE LAWS, WHAT CAN THE CITY DO
TO ENFORCE THEM?

The Insurance Commissioner clearly has the power to enforce any violation of the Code and its applicable rules and regulations. The Commissioner may enforce through disciplinary action or through Section 790, et seq. of the Code regarding unfair practices.

However, there are remedies which an individual or City Attorney may bring to deter an insurer's conduct. For example, whoever denies, aids or makes any discrimination on account of sex, color, race, religion, ancestry, national origin, or any other arbitrary basis, contrary to the Act, is liable for actual damages. CAL. CIV. CODE §52.

Moreover, whenever there is a reasonable cause to believe that any person or group of person is engaged in a pattern or practice of denying any of the rights prescribed in the Act, the Attorney General, any district attorney, or city attorney, may bring a civil action. CAL. CIV. CODE §52(c). The complaint may include a request for preventative relief, with an application for a permanent or temporary injunction, or a restraining order against the person responsible for such a pattern or practice.

CONCLUSION

As discussed earlier, there are two avenues of relief for the non-traditional family against discrimination. One is the Insurance Code and its applicable rules and the other is the Unruh Civil Rights Act.

If the insurer violates the Code or any of its applicable regulations, only the Commissioner has the authority to enforce. However, the City can still take an active role in enforcing these violations by referring instances of insurance discrimination to the Commissioner and encouraging the Commissioner to take the appropriate action.

Moreover, the City may also file an action under the Unruh Act. Since discrimination on the basis of sexual orientation and marital status fall within the scope of the Act, and insurance companies are "business establishment" subject to the Act, the City may enforce any discriminatory practices by insurers under the Act.

FOOTNOTES

1. Whenever the Commissioner has reason to believe that any person engaged in the insurance business is involved in any unfair practice which is not defined in Section 790.03, he may issue and serve upon said person an order to show cause of alleged unfair practice and give notice of hearing to be held within 30 days after service. CAL. INS. CODE §790.06. If any of the causes are justified, the Commissioner may require the person to cease and desist from engaging in such unfair practice. CAL. INS. CODE §790.05
2. The Act also prohibits all types of arbitrary discrimination associated with housing. However, due to the paper's focus on "business establishment," the Act as applied to housing will not be discussed.
3. The idea that children are "rowdier, noisier, more mischievous than adults" was based on a lower court finding.
4. Certiori granted. 55 U.S.L.W. 3306 (1986).

RUNAWAYS: A SOCIAL PROBLEM

A Research Investigation
compiled for fulfillment
of Sociology 498, AEE, CEE

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December 12, 1986

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Thousands of teens run away each year. Most leave their homes that have been disrupted by divorce, separation or violence. Many flee their homes to escape physical or sexual abuse. Most shocking, however, is that almost half of these children leave home involuntarily. These teens are among the growing number of the homeless people in the United States. Growing numbers of families are also living on the streets, in parks, cars, and under freeways. "Homelessness", according to Buhr's book Skid Row, is a condition of detachment from society characterized by the absence or attenuation of affirmative bonds that link settled persons to a network of interconnected social structures. It is clear that runaways and homeless children both fit into this definition of homelessness. ✓

Teens living on the streets reflect larger social problems. A large percentage of teen runaways leave their homes because of physical abuse and neglect by their parents or their caretakers. Forty-six percent of runaways are actually pushed out of their homes. Rothman and David found in a recent study that large numbers of teens are encouraged to leave home by their parents.¹ Twenty-six percent leave because they are sexually abused, and thirty-nine percent because they are physically abused.² Brother Phil of Angel Flight told us in an interview that mothers choose a boyfriend over their own child. Other sources, from Sylmar Juvenile Hall and Stepping Stone Shelter, also confirmed the rapid growth in the "push out child". There are some 1,000 runaway teens coming to Los Angeles each week.³ One can find 3,000 to 4,000 runaways living in Hollywood at any given time.⁴ One-half of

¹"Psychology Today", December 1986, No Place Like Home.

² Ibid.

³ Teen Magazine, January, 1986, Teen Sex For Sale

⁴ Ibid.

Hollywood's homeless "street kids" turn to prostitution.⁵ These thousands of runaways are a part of the growing number of the homeless.

Homeless children have no legal status. They are often separated from their parents and become subjected to conditions that cause them to runaway. Families without permanent addresses are not eligible for AFDC. Families are broken up to create funding for children. These homeless children, like teen runaways, are not attending school. All of these youngsters fall far behind in their schooling. If these children are not educated, we can do little to help them in their struggle for survival. Homeless children are passed from one surrogate to the next; these children become familiar with horrors that are a part of the system. Neglect and abuse are common in their silent journeys. Runaways fall into the hands of pimps, drug dealers, and porno film makers.

These runaway children come from all over the United States. They come from out of their respective states and from across the borders to find a better life. All of these children want to escape the horrors of their homes. Teens who are on the streets have few resources. It is not the social workers or psychologists who meet them at the bus stations. They are met by the users of society. Experts say little is being done to prevent runaways from falling victim to pimps and porno makers. There are far too few available shelters for all of these teens on the streets. There are only forty-one shelter beds provided by the city, and private organizations offer only twenty more.⁶ Homeless children have fewer resources.

Life on the streets is hazardous for both types of children. Once a family goes over the edge to homelessness, the process of disenfranchisement

⁵ Ibid.

⁶ Homeless Kids: Forgotten Faces. Newsweek Magazine, January 1986, Pg. 20.

is accelerated. They become more and more alienated from the rest of society. No shelters exist for entire families. Runaways and homeless children suffer from a loss of identity. Relationships with other people are poor or non-existent.

A number of recommendations can be made. There is a need for regional centers for screening, evaluating and placing runaways. Many feel that a program, something like the DARE program, needs to be established in schools. We also see the need for education in the areas of parenting and reach-out programs at community levels to recognize and help families in trouble. The establishment of long-term transitional living facilities is also important. Most teen runaways want and need a home, love, and understanding. They need to feel they belong somewhere. For homeless children, we must provide and create housing for the whole family. There is a need for national education concerning the housing crises in the United States. There is a need to create, develop, and encourage innovative approaches to making shelters. Jobs are needed even if they are created by Federal and City Governments. While doing our research, we ran across this quote by the author, Mary Smith: "The biggest disease today is not leprosy or tuberculosis, but rather the feeling of being unwanted, uncared for, and deserted by everybody." This is certainly true of the teen who runs away and children who are homeless. ✓

INTERVIEWS

Along with our literature review, we, too, conducted a number of personal interviews. This we found to be probably the most interesting part of our project. It enabled us to see and feel the stark reality of these poor people. These interviews were both in person and by telephone. ✓

The project began with a number of phone calls to various agencies looking for answers to the many questions we had; they included Project Heavy, Stepping Stone, Juvenile Hall (Sylmar), Shelter Care, Team Canteen, Angel Flight, Sunlight Mission, and Hotline. Some agencies were very cooperative; they returned our calls and were eager and interested in helping us in any way they could. Others stated they were not allowed to, but offered the little information they could. Perhaps the "funniest" (though it really is not something to laugh about) calls made were those calls made to Runaway Hotline. We made several attempts to ^{reach} this hotline, but each time we got a recording stating that the number was no longer in service. It was our plan to call this number pretending to be a youth, desperate and in need of this service. We were attempting to see what help they could offer us, but obviously they were no help at all. We laughed about it, but we wondered about all of the youths who were serious in calling this number hoping for some help and were bitterly disappointed. *yes, indeed -*

We had several interviews that were conducted by phone. These interviews all basically were short and overall stated the same thing. Of these agencies interviewed, they included Team Canteen Drop-In Center, Sunlight Mission, Stepping Stone, and Project Heavy. All were in agreement that this indeed is a crucial problem that continues to expand in our society. The basic problem that needed to be looked at and improved upon was that of resources.

There simply is not enough money to help these youths. Some of the major problems that these organizations have to contend with are that of lack of governmental support, lack of facilities to house these youths, lack of funds, and lack of awareness from society itself. ✓

Perhaps the most successful of our interviews were those conducted on a person-to-person basis. These included an interview with parole officer counselor at Sylmar Juvenile Hall and Angels Flight Director, Brother Phil. Both of these gentlemen were very helpful.

Mr. Fernando Rodriguez, a parole officer and counselor at Sylmar Juvenile Hall, stated that, "An alarming percentage of youths at this facility would indeed fall into the throw-out or push-out category." In counseling these youths, he found that they (well over 85% of them) come from terrible family situations. One youth in particular turned to crime in hopes of being caught because he had no where to turn for food and shelter. This young boy was on his own since age twelve. Mr. Rodriguez emphasized the need for programs such as the DARE program being developed for these needy youths. Juvenile Hall really has no program to combat this problem, but he stated maybe it is about time someone initiated such a program. ✓ *Should be in the Tank Force report*

Another even more extensive interview conducted was that of Angel Flight with Brother Phil. This two-hour interview covered every possible aspect of this problem. Brother Phil, a most gracious and loving man, told us how he himself got into this type of work and how this non-profit organization got started.

The program was started four years ago. It came about when Cardinal Manning would take his usual daily walk and it was during this time he would continuously run into the runaway youths. He saw the extreme necessity that something had to be done. He then gave the initial funding for the Angel

Flight facility.

The program Angel Flight offers is simply a place for youths to turn to with no commitments involved. It offers them food and clothes and a place to turn to for help if they want it. Angel Flight does not believe in forcing a youth into anything he or she does not want. Instead, they offer love and support and a place to turn to in time of need.

Angel Flight is a unique program that does not only wait for these youths to come to them, instead they attack the problem and go after them. There is a crew of workers who actually go out looking for these runaways and tell them what Angel Flight has to offer. Brother Phil stated that their primary target is what are referred to as "baby runaways." These are youths who are new runaways, less than two weeks. After two weeks, these runaways become "streetwise" and at this stage, it is usually a hopeless situation. The second target are those youths who "have reached the end of the spectrum and have nowhere else to turn to." Their third target are those youths who are somewhere in the middle of the two previously mentioned. These youths are still in a frenzy and actually "enjoy" the situation they are in. These youths are commonly involved in drugs and prostitution and, thus, do not need financial help from anyone nor do they seek it.

Brother Phil emphasized the urgent need for more funding as well as more facilities to aide these youths. He claimed "that with so few facilities in existence, it is impossible to combat this severe problem in our society." We too would like to stress the pressure it was to interview this compassionate man.

Along with interviews, we also viewed the film "Streetwise". This was a film documentary exhibiting the lives of several youth runaways. It

demonstrated exactly how these youths survived by means of panhandling, drugs, and primarily prostitution. This film is an excellent documentary which allows one to feel and understand the pain suffered among these tragic youths. ✓

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Very good

The Los Angeles City Council
Task Force Group on Diverse Families

"Senior's Issues"

by

Lori Hasemann
C.S.U.N.

ABSTRACT

Various issues and resources of senior citizens were researched in order to determine the greatest problems which seniors face. Lack or inadequacy of various services necessitated a focus on issues pertaining to: escort and companion services, recreation programs, adult day care, foster grandparent programs, long-term care, in-home care, elder abuse, transportation programs, housing, city and corporate programs, elderly minorities and immigrants, case management, poverty, and information and referral services.

First of all, the major areas of concern for seniors are focused on from the viewpoint of senior citizen service providers. This includes a discussion of literature from the Department of Aging and a discussion of results from a telephone survey of key persons from Senior Citizen Multipurpose Centers. Next, the areas of concern are focused on from the viewpoint of senior citizens themselves. This also includes a discussion of literature from the Department of Aging, in addition to the findings of personal interviews done with seniors themselves.

Overall, the major areas of concern are determined to be social security, housing, adult day care, and transportation. Social security payments are too low and must be increased so that the quality of life for seniors may be increased. There is a tremendous demand for affordable housing. As a result, rent subsidies must be made avail-

able to seniors. Adult day care is in great demand also, particularly for those suffering from Alzheimer's disease. Funding is needed to build more of the day care centers. Finally, transportation services are inadequate to keep up with the demand as well. Current transportation programs for seniors must be expanded and made more flexible so that seniors may become more mobile.

✓

Issues regarding senior citizens are of great concern, due to the large number of seniors who live in Los Angeles. Specifically, there are close to 550,000 seniors currently living in Los Angeles. One-fifth to one-quarter of the population of Los Angeles is comprised of senior citizens.

A determination was made as to the type and availability of resources for seniors. The following services are currently available in Los Angeles:

Senior Citizen Multipurpose Centers - There are 15 senior centers funded by the city of Los Angeles, in addition to ten others which are privately funded. Services vary a great deal. They include: recreation, meals, health screening, case management, transportation services, escort services, legal assistance, counseling, and information and referral.

Health Care - The Sylvia Oshan Health Clinic and the U.C.L.A. Geriatric Ambulatory Assessment are both geared for senior citizens. The multipurpose centers offer periodic health screening, as well as five of the adult day care centers which provide full health care. In-home health care is provided by approximately 90 various government agencies, hospitals, non-profit agencies, and for-profit companies. Long-term care is provided by retirement hotels, residential care homes, convalescent homes, and nursing facilities.

Mental Health Care - There are several mental health offices in L.A., but nothing specifically for seniors. However, some of the day care centers provide mental health services.

Adult Day Care - There are 18 adult day care centers which provide social/recreational activities, health care, and psychiatric care.

In-Home Support - Services are provided by all of the Los Angeles City Multipurpose Centers. The L.A. County Department of Social Services also provides in-home supportive services to low-income seniors and those who are disabled.

Transportation - Programs specifically for seniors include Dial-A-Ride, VALTRANS, and taxi-cab coupons.

Companion Services - Escorts are provided by the County of Los Angeles Department of Social Services to seniors who are in physical danger, abused, or exploited. Also, there are some special services at several of the Multipurpose Centers.

Housing - Very few subsidized rentals are available. The Alternative Living Center for the Aged in West Los Angeles tries to match roommates to cut costs. Assistance with home maintenance can be received by the United Community Housing Development Corp's Handiman Program.

Information and Referral - This service is performed

by all of the Multipurpose Centers. Other information and referral services are located at the City of L.A. Department of Aging, the L.A. County Area Agency on Aging, and INFOLINE. There are also several bilingual agencies with information and referral services.

Case Management - This service is provided by all of the Multipurpose Centers, in addition to most other agencies which work with seniors.

Nutrition Programs - There are a total of 87 sites which provide meals. They are sponsored by: The L.A. Department of Parks and Recreation, The San Fernando Interfaith Council, Jewish Family Services, People Coordinated Services, The Watts Labor Community Action Committee, and The International Institute of Los Angeles.

Legal/Advocacy - These needs are met mainly by the Multipurpose Centers, both by having professionals occasionally come into the center, and by helping out on an informal level.

The purpose of the task force group was to determine where these resources are lacking. To do so, both the viewpoint of senior citizen service providers and the viewpoint of seniors themselves were considered.

Two methods were utilized in order to determine the needs of senior citizens from the viewpoint of those who provide services to senior citizens. First, literature

was reviewed from a 1985 study sponsored the the Department of Aging, in which various senior citizen service providers were surveyed in order to identify the unmet needs of seniors. In addition, a telephone survey was conducted in which key persons from Senior Citizen Multipurpose Centers were also asked to identify the key unmet needs of seniors.

The study from the Department of Aging identified various problems associated with services for senior citizens. However, the greatest unmet needs were determined to be associated with transportation, housing, case management, long-term care, and day care.

Transportation was identified as being the greatest unmet need for seniors due to its many limitations. The transportation resources available specifically for seniors only provide service within specific boundaries, do not allow subscription trips where a senior can reserve the same time slot every week, and many times require several days advance notice in order to reserve a ride.

The key problem associated with housing is that there is a constant demand for affordable housing. Many seniors are on a fixed income and so they cannot afford a decent place to live.

Case management services must be expanded and upgraded. Case management services are provided to those seniors who do not have a support system or guardian to assist them in fulfilling their needs. Instead, they are assigned to one person who identifies and coordinates the services

which they require. It is felt that professional social workers must be utilized for case management services. Social workers are more qualified in recognizing unmet needs, and therefore may raise the quality of service.

The problems associated with long-term care include in-home care and institutionalized care. First of all, there is very little in-home care available which is geared for the long-term patient. ✓ In-home medical care is primarily geared towards those recuperating from temporary illnesses. In addition, even in institutions geared towards long-term care, many will not accept hard-to-care for clients.

Day care centers are considered to be tremendously useful for older adults, but they are in short supply because they are costly to run. It is also felt that Alzheimer's victims are under-served by the day care centers.

The telephone survey touched on a variety of problems affecting seniors as well, but there was a general consensus that poverty, affordable housing, transportation, and adult day care are the most urgent concerns. This is similar to the findings of the Department of Aging Survey.

Poverty is of great concern to those interviewed because it affects so many facets of life. Two of the persons spoken to cited low social security payments as being a major problem. One of these persons was from a center in a low-income area, while the other person was from a center in a much more affluent neighborhood. This shows that the problem affects different types of areas. ✓ In addition,

because of low-income, affordable housing is a widespread problem for seniors. It was stated that rent subsidies must be made available in order for the elderly to obtain decent living conditions.

Various comments were also made regarding transportation and day care. Three persons from two different areas stated that there are not enough transportation services available for the elderly. Two of the centers are currently working on obtaining more escort cars to take seniors to their appointments. This was stated as being particularly necessary for the frail elderly. In addition, one interviewee thought that many seniors do not go to the Multipurpose Center due to lack of a means to get there.

In terms of adult day care, two interviewees felt that there are not enough day care services available. They are deemed especially necessary for Alzheimer's victims who need more attention. The level of care required by the family of an Alzheimer's victim is very great, and creates a great deal of pressure which must be alleviated by the use of day care centers. This is seen as a preventive measure against elder abuse and unnecessary institutionalization. ✓

In order to determine what senior citizens view as their greatest unmet needs, two sources were utilized. First, information was reviewed from a telephone survey of the

elderly, sponsored by the Department of Aging. Also, interviews of seniors were conducted as well, in order to determine directly from seniors what their specific problems are.

The Department of Aging survey found no major areas of unmet need for the general senior population, but there are needs which must be met according to specific areas. The city of Los Angeles was broken down into the areas of Valley, Central, East, West, and Harbor, with the unmet needs discussed for each.

The Valley has a continually growing senior population. As a result, several areas of general service must be expanded. These services include information and referral, transportation, in-home care and services, housing assistance, and day care.

The Central area has the largest number of elderly who are minorities, poor, or very old. They also tend to feel that their neighborhoods are not very safe. For these reasons, the services which need to be expanded in the Central area include case management, housing assistance, transportation, meal programs, escort services, physical and mental health care, day care, and long-term in-home care.

The East area has a declining population overall, except in terms of the minority elderly. Therefore, the only changes in services necessary in this area are to increase service personnel who are bilingual and to increase service personnel who are sensitive to language barriers.

The West and Harbor regions also have a small overall increase in the demand for services, except for those pertaining to the very old. This includes an increase in the demand for transportation, nutritional, and health care services.

The interviews conducted with seniors focused upon those who are living in a lower-income neighborhood of the Valley. However, only one interviewee complained about the small amount of social security that he receives. He cited the fact that he does not like living in Southern California in the summer because he cannot afford to run his air conditioner. In addition, he says that he really relies on a weekly bag of groceries given out by the center.

Another one of the seniors was very concerned about having enough free activities available at the center. She particularly is interested in doing arts and crafts but she says that they are lacking enough to keep her busy.

All of the seniors stated that they only seek health care if there is a problem. They do not go to the doctor for check-ups, although only one stated that she was not covered by any health plan and had to pay cash.

The overall thread running through the interviews was that all had some sort of support system and were to a large degree dependent on friends or relatives.

Although the senior citizens themselves were found to be relatively happy, both of the samples were quite limited, and so the service providers are probably in a better po-

sition to judge what the greatest unmet needs are. A few issues came up repeatedly, namely low social security payments, lack of affordable housing, and the great demand for adult day care. These issues must be resolved. We must strive to raise social security payments, create more rent subsidies, and obtain funding for more day care centers.

In addition, I believe the single most important issue to be that of transportation. Every available form of transportation is inadequate. For example, of the senior citizens who can still drive, many of them cannot drive at night. For those who attempt to use the city bus lines, they many times must wait well over an hour to get a few miles away. Seniors who utilize the transportation available specifically for seniors must make appointments well in advance, and medical trips have priority, making it difficult for seniors to get other needs met. Possibly a new bus line may be added to accomodate these routine trips. There are also not enough volunteer ride services available either. As a result, senior citizens overall are severely limited in their mobility. Transportation programs must be expanded in size and flexibility in order to accomodate the various needs of seniors.

I found it difficult to interview persons, particularly the directors of the Senior Citizen Multipurpose Centers. I attempted to be very nice and polite^d) to them so as not to inconvenience anyone. I told them that I only needed 5-10 minutes of their time, and if they were busy^y at that time, I could try calling back later or they could return my call at their convenience. However, this was not too effective. Many times, I had promises of return phone calls which never came, and when I called persons back, I repeatedly was put off. From these experiences, I learned that, for telephone interviewing, you must be very assertive and almost demand their time. You also must act like a professional so that you sound credible.

Another realization made from interviewing the directors is that some of the persons at these centers are not very in touch with the field and are not too knowledgeable about seniors. When questioned about various issues, many times they had not really heard about them or had not given them any thought. In addition, I was struck by the apathy of some. They were not very concerned or interested in what I was doing or with the fact that my main objective is to help the senior citizens, who they presumably should care about.

The senior citizens were easier to interview, but the setting was not conducive to interviews. Because persons at the center would not act as a liaison and help set up interviews for me, I had to catch the seniors one day at

lunch time. Generally, the seniors at this center eat their lunch and then leave. I did not want to interrupt anyone while eating, so I waited until they were finished. However, when I did interview them, they were preparing to go home and sort of rushed through the questions. In addition, other persons were within earshot of the interview. As a result, in-person interviewing should be done in a quiet, private area where there are no distractions and plenty of time. ✓

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CITY EMPLOYEE FRINGE BENEFIT SURVEY

FOR THE

COMMITTEE ON CITY EMPLOYEE BENEFITS

OF THE

FAMILY DIVERSITY TASK FORCE

STEVEN A. BROOKS

SOCIOLOGY 498AEE/S

DR. WAYNE PLASEK

DECEMBER 12, 1986

The survey that I have constructed for the City Employee Fringe Benefit Committee of the Family Diversity Task Force has several aims. Its primary aim is to assess the need for, and potential utilization of, expanded Los Angeles City Employee fringe benefits in two different areas. The first area of interest is fringe benefit extension to domestic partners of City employees.. The second covers fringe benefit extension to non-traditional (non-legally related) children residing with City employees. Three different types of fringe benefits currently available to spouses and children of employees are examined. These include: paid time off for illness and death in the family, health plan benefits, and spousal-type retirement survivorship benefits.

A secondary aim of this survey is the assessment of interest in a "cafeteria" style fringe benefit plan. Such a plan is well suited to the coverage of non-traditional dependents. It is also attractive to the entire spectrum of employees because of the additional services and choices it makes available to them. In addition, it appeals to City management because of the fixed cost basis for fringe benefits it provides per employee. Also, single employees should find such a plan attractive because unlike the current system, it provides an equal value of benefits to them in relation to employees with dependents. For these reasons, a "cafeteria" plan is the most promising method envisioned for the extension of benefits to hitherto uncovered parties. Hence, the need to assess interest in such a plan. As part of this process, the relative importance to employees of different types of "cafeteria" plan benefits is evaluated by the survey.

One of the difficulties that I encountered when constructing the survey was the likely lack of familiarity of the survey population with terms such as "domestic partner", "non-traditional child" and "cafeteria plan"; I attempted to counter this problem by explaining terms and concepts where necessary. It is hoped that this will make the survey into an educational experience. If nothing else, it should promote an awareness of alternative family lifestyles and their attendant needs among City employees.

Realizing that an employee's interest in an added option for fringe benefit extension may not necessarily translate into an actual current need for utilization of such an option, I have differentiated between the two in the survey in an attempt to provide a more accurate estimate of potential increased cost to the City.

The survey has not yet been administered. However, several promising possibilities for its administration are currently being explored. These include its being subsumed into upcoming surveys to be conducted by the Commission On The Status Of Women and the City Personnel Department. The women's survey is to examine the needs of female City employees in general and the personnel survey is to examine the interest of all City employees in flexible benefit plans. If neither of these two avenues pan out, it will be necessary for the Task Force to administer the survey to a sample of employees in order to attain results from which to generalize. It is, of course, preferable that all City employees be surveyed by either or both of the City departments due to the difficulty that the Task Force would encounter in estab-

lishing a representative random sample of employees. No cover letter has yet been devised for the survey. However, one will be added once the body to administer it has been determined. This letter will include a general explanation of the nature and purpose of the study and will express appreciation for the respondent's participation.

I have several personal concerns involving the politics of the City's granting of benefits outside the established bounds of marriage and family. First, will married and/or religious people view this as weakening the traditional family? Second, will employees in traditional family situations feel that their benefit levels are threatened? Third, will unions support these proposals if they feel that they may involve collective bargaining tradeoffs? Fourth, is the City Council prepared to grant benefits to a minority group if there is potential political fallout associated with such a move? Fifth, and finally, how open to these ideas are the City policy makers themselves (City Council members, union leaders, etc.) irrespective of outside influences?

I hope the Task Force will be sensitive to the need for extensive educational and lobbying campaigns in addition to its official final report and recommendations. Without such follow-up efforts, my fear is that many of its recommendations may never be acted upon.

My involvement in this field study course has been helpful to me in several ways. It has allowed me to become involved in a real world project that is at the leading edge of progressive social thinking and that is of great potential benefit to the community at large. It has caused me to improve my sociological survey skills. I have been able to

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observe the inner working mechanisms of grass roots community involvement in government policy making. I have also developed a greater appreciation for the difficulties that the sociologist encounters when attempting to assess and solve problems in the real world. This project has left me with an enthusiastic outlook regarding citizen participation in government. I now have a better feel for how the sociologist can fit into this process.

**FAMILY DIVERSITY
AND
TELEVISION**

**Michael S. Jones
Sociology 498S
Dr. Flasek
Los Angeles City
Council Task Force
On Family Diversity**

My internship for the Sociology Department at California State University, Northridge was with the Los Angeles City Council Task Force on Family Diversity. I decided to work with the media sector (team) of the Task Force, with Chris Uzsler and Karen Ishizuka. I decided to work with the media team for a semester because I have an interest in the mass media, particularly in television, the medium on which I had focused upon. Since the average American spends more time watching television than anything else besides sleeping, and since prime time TV draws the largest number of viewers at one time, this was what I had focused upon.

My activities for the internship consisted largely of library research, obtaining materials requested by Chris and Karen as well as finding relevant material on my own. At the very start I culled some information regarding television programs which are family related (single programs reviewed, not the related issues or trends - yet) like The Cosby Show and Valerie. Later, the October, 1986 Task Force meeting turned out to be a brainstorming session for myself, the Task Force members, and even the two co-chairpersons. We were trying to figure out what aspects of family diversity to focus upon and define family-related terms. Later, after some of this was ironed out, the Task Force members lined up some areas for me to research.

The first thing on the agenda was to copy all of the Fall Preview issues of T.V. Guide magazine from 1980 to 1985 and make a list of the various types of families the programs had portrayed. The types of TV families I listed were similar to those listed on Councilman Woo's mandate (item #3), plus the traditional nuclear family. There were more shows listed which depicted the nuclear family than any other kind of family form. Single parent families came in second in number. The fam-

ily forms least represented were gay and lesbian couples, unmarried couples, and families with senior or disabled members.

Then afterward I began to work on what turned out to be the bulk of my research. From here on in I extracted information on related issues of family diversity portrayal on television. I had come across these related issues during my journey through the various essays, commentaries, and pieces of research. I hadn't terminated my research until only two days before the December 1, 1986 Task Force meeting at the U.S.C. Law center.

I began the above-mentioned phase of my research by citing the related info on family diversity portrayal in a number of indexes and guides like the Social Sciences Index, the Humanities Index, the Communication Abstracts, the Reader's Guide to Periodical Literature, and a computer subject-search tool called the Infotrac Database which helps students find information once the subject is punched in the computer. The related issues regarding family diversity portrayal on TV included: Homosexuality and television, women on TV, old age and TV, and workplaces on TV.

There are a number of gaps between families on TV and those in reality. On television, all families with single mothers are either in the middle class or wealthier, but in real life 69% of all families headed by women are below the poverty level. There were not any black children (except those in The Cosby Show and 227) who live with their natural parents, and 80% of all black children are in the upper middle class or are better off, In reality, black children live in a variety of family settings, and half of all black kids live in poverty. Two-thirds of all television children live with one parent, step-parents, or legal guardians. In reality, four out of five children live with both parents. Also, more than half of all TV children live with their fathers, who experience no difficulties in raising their kids. How-

ever, ninety percent of all children in single-parent homes live with their mothers, who earn less than \$9,000 a year on the average.

The homosexual lifestyles as they exist today have never been reflected on TV (except on television news programs, which usually just show gays in groups). This is a controversial subject which has been dealt with by various pressure or lobby groups such as the right-wing Coalition For Better Television and gay lobby activists and gay rights groups. The networks, meanwhile, have been sandwiched in between, along with the advertisers, who frequently worry the networks with routine cancellations of their ad spots from programs they feel are too controversial or inappropriate. The right-wing groups have been known to boycott some companies who sponsor shows which do not meet the group's approval rating.

If there is a gay character on television, usually what happens is his or her identity is already known, or the character will admit it and there is reaction by the others in the show. The gay character usually does not have any lovers present on the show. For example, in the made-for-TV movie An Early Frost, there were not any indicators of a loving relationship between the dying AIDS victim and his roommate. There were no hugs, no tears, no indication whatsoever that the two had a close relationship. TV does not want to portray this because it is too controversial. In the TV series Love, Sidney the character played by Tony Randall was homosexual so he would not have a relationship with the woman whom he lived with (who happened to have a child). He vowed to take care of the two. His (perhaps former) homosexuality was characterized by an unobvious photo of his former lover placed on a sidetable. Los Angeles does have a thriving homosexual community. However, one does not learn much about it from prime-time television programming.

Television has also been an "Ageist" medium, and until recently its portrayal of elderly people and aging in general has not been favorable. Advertisers aim at the 18-to-55 age bracket, saying this bracket comprises the largest body of viewers. Youth is stressed in commercials, where looking young is the ultimate goal of many. In prime time programming, however, there has been a change in this, with older main characters over the age of 55 leading their own series. Examples include Murder, She Wrote; Crazy Like A Fox; The Equalizer; The Golden Girls, and The Equalizer (where actor Christopher Hewerr is over 67).

Television has also been representing the social classes unequally. The middle class, whose heads of households are professionals have been quite overrepresented; while lower class households and blue collar families have been underrepresented. Affluent families have been portrayed more often than the working class. In fact, from 1955 to 1971 the television networks did not introduce a single situation comedy depicting a lower class family. The series which broke the trend was All In The Family, which slowly became a controversial hit, taking a few months for 1971 audiences a few months to get used to the blunt, outrageous humor of the show. However, the harsh realities of economic hardship are almost never portrayed in prime time, while a more saccharin version of the working class has been shown. The 1986-87 prime time showed no poor families on television.

Women have had an increasing number of leading roles in TV series. Television has increased its exposure of women earlier than it did with the elderly, perhaps because of the women's movement. Now there are more shows about women which are aimed at women than there ever used to be. Examples of such shows include Cagney & Lacey, Scaresrow And Mrs. King, Kate & Allie, Cheers; now-axed recent shows like Remington

Steele, Foley Square, Cover Up, and Jessie; plus new fall (1986) replacements like Easy Street, My Sister Sam (which is mostly run by women), and Designing Women.

There have been a number of shows which show the main character primarily at his workplace, as opposed to his life at home, and the main character's boss (unless he is it) and co-workers comprise the "Family". Examples include The Mary Tyler Moore Show plus Mary, Hill Street Blues, Cheers, M*A*S*H, Taxi, Lou Grant, Barney Miller, and The White Shadow. Programs like these make those older family shows like Ozzie And Harriet, The Dick Van Dyke Show, Leave It To Beaver, and Father Knows Best seem quite dated. The family has become more diverse, with the emphasis of the workplace or worklife on the increase. What sociologists call the expanded has expanded to the point where it has displaced the natural family.

For the past eight years so there have been prime time soap operas depicting upper-class families (often in turmoil). The family members try to undo one another and yet still eat together at the dinner table. This all began with Dallas, followed by Flamingo Road, Dynasty, and Falcon Crest. These families stick together no matter how bad things get. Viewers can root for their favorite characters like sports fans their favorite players. They can choose among the workaholics, the alcoholics, the double-dealing scions, the evil moguls, and other related characters or family members who get at everyone and anyone else on the show. These families are united by divorce, bitterness, different lifestyles and sexual preferences. What I find peculiar is that TV depicts the poor as happy and satisfied (or at least somewhat so) and the wealthy as miserable and unharmonious. Not many would like to be wealthy if they had to live like this.

All of these issues and aspects comprise a part of a medium which has more impact than any other form of mass media, and the impact of television on the various family forms (as well as its portrayal of them) is important not to be overlooked. What I had learned from doing this research is to look at television with a more critical eye, and one that is less believing (in terms of its claim to reality). Television, putting it in sociologist Erving Goffman's terms, tries to project the definition of the situation (what is going on) and to foster its impression of reality. The television set can be regarded as another item in the house (like a stereo or refrigerator), existing for entertainment or convenience. However, a family (regardless of form) can formulate alternative activities if there is "nothing on TV" and not rely upon its visual teachings as the prime socializing agent or the true reality. It need not be regarded as being the last truth.

Television is intended to entertain, not to teach. However, teaching is what it does, perhaps what one sees on the screen is believable. It talks to us in a human voice (or voices), and the pictures produce what looks like real objects or people. Then the viewer can easily believe that what is on the screen is the "reality". Perhaps this is true also because TV shows already understood meanings symbols and pictures. Sociologist C. Wright Mills has said that the entertainment industry produces "synthetic excitement", offering no release from alienation from one's work and establishing no deep common values. This may be true to some extent with television, because it tells you what to wear, what car to drive, and how "wonderful" certain people are. The flickering screen portrays the ideal situation, thing, or person; while it tries to eradicate many deep common values with its programming and its commercials as it es-

establishes them with its public affairs spots and news segments.

The primary thing for the viewer to remember is that television is a business. It deals with stereotypes when it creates characters for its prime-time programs. The station sends its signals over airwaves, and they are licensed by the Federal Communications Commission to do so. The stations have to demonstrate to the FCC their service to the community's interests and necessities. They do so by airing special segments on local TV news programs and public affairs announcements. Besides this obligation, television operates free of government control (in terms of programming). The name of TV's game is to attract the largest possible number of viewers, who are potential buyers of products manufactured by the sponsoring advertiser. So television, unlike motion pictures, has two markets—the viewers and the advertisers. The programs are produced not by the networks but by independent production companies. They are the ones with the responsibility of creating television's characters, producing its prime-time programs, and submitting the programming to the networks who in turn supply their affiliates with programming. As a result, more than one "production house" are responsible for the program's content.

In discussing these related issues of family diversity, I have tried to give an example of what hasn't aired (because of controversy) or what has been underrepresented (perhaps because of lack of popular concern) as what has been overrepresented. For example, I did not learn about poverty from prime-time television. However, television does seem to change over time because of societal changes (remember Jack Paar's walkout when NBC censors cut out his "water closet" joke without telling him and contrast that to what Johnny Carson can joke about today on his show). Another example can be seen in shows depicting the nuclear family. Those in the earlier days of television depicted the parents largely at

home, while today's nuclear family TV shows parents work. However, there are still some things that will not air on TV because of controversy (but yet exist in real life). I have read that if a script of even remotely gay, a script consultant or censorship expert will review it. Los Angeles has become a melting pot with many nationalities, immigrants and minorities who bring with them different customs, values, and family forms. As a result, there are probably many more different living situations and lifestyles than ever before. It would be interesting to see more of these in television programming.

I think that the Task Force on Family Diversity is a very good idea which has not come too soon. I am interested in the results of the other teams' research and the final reports. It was nice to help out a good group of people.