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CIVIL RIGHTS AMENDMENTS ACT OF 1979

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HEARING

BEFORE THE

SUBCOMMITTEE ON

EMPLOYMENT OPPORTUNITIES

OF THE

COMMITTEE ON EDUCATION AND LABOR

HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

SECOND SESSION

H.R. 2074

TO PROHIBIT DISCRIMINATION ON THE BASIS OF AFFECTION-
AL OR SEXUAL ORIENTATION, AND FOR OTHER PURPOSES

HEARING HELD IN SAN FRANCISCO, CALIF.,
OCTOBER 10, 1980

Printed for the use of the Committee on Education and Labor

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CIVIL RIGHTS AMENDMENTS ACT OF 1979

FRIDAY, OCTOBER 10, 1980

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES,
COMMITTEE ON EDUCATION AND LABOR,
San Francisco, Calif.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 1194, California State Building, 455 Golden Gate Avenue, San Francisco, Calif., Hon. Augustus F. Hawkins (chairman of the subcommittee) presiding.

Members present: Representatives Hawkins, Phillip Burton, and Weiss.

Also present: Representative John Burton.

Staff present: Susan D. Grayson, staff director; Carole Schanzer, legislative associate; Clemon Williams, counsel; and James M. Stephens, minority associate labor counsel.

[Text of H.R. 2074 follows:]

96TH CONGRESS
1ST SESSION

H. R. 2074

To prohibit discrimination on the basis of affectional or sexual orientation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 8, 1979

Mr. WEISS introduced the following bill; which was referred jointly to the Committees on the Judiciary and Education and Labor

NOVEMBER 8, 1979

Additional sponsors: Mr. WAXMAN, Mr. MITCHELL of Maryland, Mr. CLAY, Mr. McCLOSKEY, Mr. ROSENTHAL, Mr. RANGEL, Mr. MILLER of California, Mr. STARK, Mr. SABO, Mr. AUCOIN, Mr. BARNES, Mr. BINGHAM, Mr. BELLENSON, Mr. BRODHEAD, Mr. JOHN L. BURTON, Mr. PHILLIP BURTON, Mrs. CHISHOLM, Mr. CONYERS, Mr. DELLUMS, Mr. DIGGS, Mr. DIXON, Mr. EDGAR, Mr. EDWARDS of California, Mr. FAUNTROY, Mr. GRAY, Mr. GREEN, Mr. HAWKINS, Ms. HOLTZMAN, Mr. LEHMAN, Mr. LELAND, Mr. LOWRY, Mr. MARKEY, Mr. MINETA, Mr. MOFFETT, Mr. OTTINGER, Mrs. SCHROEDER, Mr. SHANNON, Mr. STUDDS, Mr. WEAVER, Mr. YATES, Mr. SCHEUER, Mr. STOKES, Mr. RICHMOND, Mr. MIKVA, Mr. MCKINNEY, Mr. CARR, Mr. CORMAN, Mr. DUNCAN of Oregon, Mr. PANETTA, and Mr. NOLAN

A BILL

To prohibit discrimination on the basis of affectional or sexual orientation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 That this Act may be cited as the "Civil Rights Amendments
2 Act of 1979".

3

PUBLIC FACILITIES

4 SEC. 2. Section 301(a) of the Civil Rights Act of 1964
5 (42 U.S.C. 2000b(a)) is amended by inserting after "reli-
6 gion," the following: "affectional or sexual orientation,".

7

FEDERALLY ASSISTED OPPORTUNITIES

8 SEC. 3. Section 601 of the Civil Rights Act of 1964 (42
9 U.S.C. 2000d) is amended by inserting after "color," the fol-
10 lowing: "affectional or sexual orientation,".

11

EQUAL EMPLOYMENT OPPORTUNITIES

12 SEC. 6. (a) Sections 703(a), 703(b), 703(c), 703(d),
13 703(e), 703(j), 704(b), 706(g), and 717(a) of the Civil Rights
14 Act of 1964 (42 U.S.C. 2000e-2, 2000e-3, 2000e-5,
15 2000e-16) are amended by inserting after "sex," each place
16 it appears the following: "affectional or sexual orientation,".

17 (b) Section 717(c) of such Act (42 U.S.C. 2000e-16) is
18 amended by inserting ", affectional or sexual orientation,"
19 after "sex".

20 (c)(1) Section 703(h) of such Act (42 U.S.C. 2000e-2) is
21 amended by inserting after "sex," the first place it appears
22 the following: "affectional or sexual orientation,".

23 (2) Such section 703(h) is further amended by inserting
24 ", affectional or sexual orientation," after "sex" the second
25 place it appears.

1 INTERVENTION AND PROCEDURE

2 SEC. 7. Section 902 of the Civil Rights Act of 1964 (42
3 U.S.C. 2000h-2) is amended by inserting after "sex" the
4 following: ", affectional or sexual orientation,".

5 HOUSING SALE, RENTAL, FINANCING AND BROKERAGE

6 SERVICES

7 SEC. 8. (a) Section 804 of the Act entitled "An Act to
8 prescribe penalties for certain acts of violence or intimidation
9 and for other purposes," (42 U.S.C. 3604), is amended by
10 inserting after "religion," each place it appears the following:
11 "affectional or sexual orientation,".

12 (b) Section 805 of such Act (42 U.S.C. 3605) is amend-
13 ed by inserting after "religion," the following: "affectional or
14 sexual orientation,".

15 (c) Section 806 of such Act (42 U.S.C. 3606) is amend-
16 ed by inserting after "religion," the following: "affectional or
17 sexual orientation,".

18 PREVENTION OF INTIMIDATION

19 SEC. 9. Section 901 of the Act entitled "An act to pre-
20 scribe penalties for certain acts of violence or intimidation,
21 and for other purposes," (42 U.S.C. 3631), is amended by
22 inserting after "religion," each place it appears the following:
23 "affectional or sexual orientation,".

1

DEFINITION

2 SEC. 11. As used in the amendments made by this Act,
3 the term "affectional or sexual orientation" means male or
4 female homosexuality, heterosexuality, and bisexuality by
5 orientation or practice.

6

TO PREVENT MISINTERPRETATION

7 SEC. 12. No amendment made by this Act shall be con-
8 strued to permit or require—

9 (1) the determination that discrimination exists to
10 be based on any statistical differences in the incidence
11 of persons of a particular affectional or sexual orienta-
12 tion in the general population as opposed to in the ac-
13 tivity wherein such discrimination is alleged; or

14 (2) the fashioning of any remedy requiring any
15 sort of quota for the activity wherein such discrimina-
16 tion is alleged for persons of any particular affectional
17 or sexual orientation.

Mr. HAWKINS. This hearing of the House Subcommittee on Employment Opportunities is called to order.

Today we are here to solicit testimony on a bill, introduced by my colleague from New York, Congressman Ted Weiss, which addresses the unjust discrimination against homosexual men and lesbian women. The purpose of this bill is simply to guarantee that an irrelevant factor, such as one's sexual orientation, will not be a criterion used to deny housing, access to public facilities, or used to fire or refuse employment to an otherwise qualified individual. This bill merely guarantees basic civil rights—rights taken for granted by most of us.

Today's hearing holds a special significance in that it is the first to focus on Federal legislation to deal with the problem of discrimination against homosexuals. However, I am sure that with the continued support of Congressman Weiss and one of the bill's cosponsors, Congressman John Burton, it will surely not be the last.

At this time the Chair would like to call on my colleague, the Honorable Ted Weiss, for an opening statement.

Mr. WEISS. Thank you, Mr. Chairman.

I want to welcome all of you here today to this hearing on H.R. 2074, the Civil Rights Amendments Act of 1979.

First, I want to express my appreciation and sincere thanks to Congressman Augustus Hawkins, the distinguished chairman of the Subcommittee on Employment Opportunities. Mr. Hawkins, who represents part of Los Angeles County in this State and is a cosponsor of H.R. 2074, is responsible for scheduling this hearing.

I am proud to say that I coauthored this legislation with my good friend and colleague Henry Waxman, who also represents part of Los Angeles in Congress. Today we have over 50 cosponsors of the bill.

This bill, which would prohibit discrimination on the basis of sexual and affectional orientation in housing, employment, education, and public accommodations, represents the culmination for me of a long involvement in the struggle for gay civil rights. In fact, it has been 9 years since I introduced the first gay rights bill in New York City as a member of the city council there. It is gratifying to be involved on the national level as well.

It is very appropriate that this first field hearing is being held in San Francisco, a city whose citizens have been at the forefront of the gay rights movement in a State that demonstrated its fundamental sense of fairness on this issue just 2 years ago. I refer, of course, to the defeat of the infamous proposition 6, which, if passed, would have prohibited homosexual individuals from teaching in public schools.

Yet protection of the civil rights of gay men and lesbian women remains unfulfilled. H.R. 2074 would close that gap, addressing the most fundamental rights we enjoy in a democratic society: The rights to an education, decent housing, and a job.

An estimated 20 million people in this country are homosexual. But unlike other minorities, there is still no nationwide standard guaranteeing their rights to be free from discrimination, though local laws do exist in some areas, such as San Francisco. In too many parts of this Nation, an individual may meet every reasonable criterion for renting an apartment or getting a job, yet may be

denied employment or a home simply because of sexual or affectional orientation.

I believe that most Americans oppose this form of bias just as strongly as they reject discrimination against a religious or racial minority.

Congressional action on H.R. 2074 is urgently needed. Every citizen's involvement is critical to its success. I urge continued effort in its behalf from all of you. Together, I believe, we will help make concrete the promise of equal opportunity for all Americans.

Thank you.

Mr. HAWKINS. Thank you, Mr. Weiss.

The gentleman seated to my immediate left is the majority counsel, Mr. Clemon Williams; next to him to his left is Mr. Jim Stephens, the minority counsel. Counsels for both majority and minority will participate in any questioning that takes place today.

The Chair would like to indicate that the procedure will be to hear from the witnesses in the order in which they have been scheduled. The witnesses have been cautioned that in order to conserve time, they should confine themselves to the highlights of the written statements. It is unnecessary to actually read the entire statement. The statement will be entered into the record in its entirety. This way we will conserve time for questioning.

The committee will not take the usual break for lunch, but will continue straight through in order to accommodate travel schedules. This way, I believe we can listen adequately to all the witnesses who have been scheduled to testify. Depending on time, others who may not be included on the witness list will, to the extent possible, be called upon.

With that brief explanation of the procedure, let me, therefore, call on the first witness, the Honorable Art Agnos of the California State Legislature.

We welcome you to the hearing this morning. We recognize your position inside a body that I have had the opportunity of serving in for 28 years. You probably might say that is much too long.

STATEMENT OF ART AGNOS, CALIFORNIA STATE ASSEMBLY

Mr. AGNOS. No; I hope I serve as long.

Mr. HAWKINS. We are delighted to have you as the first witness.

Mr. AGNOS. Thank you, Mr. Chairman. I welcome you to San Francisco, and am delighted to participate in these historic hearings. With that in mind, my remarks are not aimed at the supportive people in the audience, but to the Congress of the United States, whose Members have not had as much an opportunity to be as sensitized as those of us in San Francisco.

The reason we have worked so hard on this issue, in this city and in this State, is because we believe that no request is more legitimate in our society than the freedom to live and work in peace and dignity, free from discrimination.

Six years ago, the California State Legislature passed—and the Governor signed into law—Assembly Bill 489, the Consenting Adults Law, which gave homosexual gay citizens the right to live.

Three years ago, I introduced A.B. 1, which would assure homosexual Californians the right to earn a living; because we were

living in a State where it is legal to discriminate against adults for a legal, private act.

The first question I have always been faced with is: "What do we need this kind of law for?" I always reply: "For the same reason that it has always been legal to be black in this country." But it required in 1964 the passage of a civil rights law to protect the rights of the blacks in this country. It is for the same reason we need to pass this kind of law, to protect the civil rights of gays.

Homosexuality has only recently been openly spoken about in our society, and certainly in legislative bodies, because of the imagined bad political side effects.

Since we are politicians as well as legislators, I have done some research in this area, and I have found in California's political history, no candidate has ever been defeated for voting for a civil rights issue involving gay Californians. No campaign has even raised the specter of a vote for gay rights in any of these bills that have been going through the California State Legislature.

So I think it is a political myth that this somehow can hurt you in your reelection, and I hope this is carried through to your colleagues in the Congress.

So what this kind of legislation does is allow people to work, not to proselytize, not to recruit or politicize, but simply to work and live free of discrimination.

If we are not ready to accept the notion that 10 percent of our population has that simple right, then perhaps it should follow that to go along with aid to the agencies for the blind or other categories, we would create a special category for aid to homosexuals, because we would have to devise some way for people who comprise 10 percent of our society to live.

I believe your committee can get more votes for the right to work for gay people, than the right to a new welfare category.

In my opinion, this legislation would also protect heterosexual single or even married men who are slight of build, have certain mannerisms thought to be effeminate, or have a personal appearance which corresponds to the stereotype "of what homosexuals look like."

I am glad to welcome the senior Congressman from San Francisco and a long-time supporter of this issue. I feel as though I am carrying coals to Newcastle when I talk about this issue, but I hope this legislation is as important for nongay people, because it is not unusual in our society to have those people who fit the stereotypes of what our society believes homosexuals to be. The slight, effete man, or the woman who does not wear makeup and who is slightly muscular in appearance and is conceived to be a lesbian, suffers the same kind of discrimination as a gay or lesbian would who is not that way.

During my time in Sacramento, I found a number of myths and facts. The first, the facts indicate that all the research done in the last 75 years, including the most famous Kinsey study of 1948, support the estimates that some 10 percent of our society is gay. Over 20 million people in the United States are gay. The myth is that there is no discrimination because there are no statistics to prove it. The fact is, many businesses refuse to hire, or promote once on the job, gay people. Gays, once discovered on the job

through any indirect or direct means, are often harassed into quitting or somehow discriminated against.

The National Institute of Mental Health study showed that 16 percent of all gay people in this country have employment difficulties, with over 9 percent losing their jobs because of their sexual orientation and for no other reason.

Yesterday, the Governor of this State, by executive order, created a special commission on personal privacy whose focus will be to explore and measure discrimination.

However, in San Francisco, which has had a gay rights ordinance since 1977, the Human Rights Commission has documented the following cases of employment discrimination because of one's sexual orientation: 1977, 180 cases; 1978, 330 cases; 1979, 74 cases.

We hope this will end some of the argument which claims there really is no discrimination on the job.

Here in San Francisco we have had a gay rights ordinance since 1977, and there is documented evidence you will hear today, so I will not take time in my testimony to cover it.

Another myth we hear so often and especially most recently from various religious groups is the espousing that homosexuality is a sin. It depends on your religion. I will not argue whether the U.S. Constitution clearly upholds the division between the church and State. So, what we must do as legislators is differentiate between crime and sin.

Some religions claim it is a sin to drive a car; still others say it is sinful to eat pork; still others say it is sinful to drink Coca-Cola, tea, or milk. Yet despite that, no one is denied the right to work because of that activity.

Even Rev. Jerry Falwell, leader of the Moral Majority, states in a recent newspaper interview:

I think we can certainly be for the civil rights of homosexuals without condoning their lifestyle . . .

I have no objection to a homosexual teaching in the public classroom as long as that homosexual is not flaunting his lifestyle.

That is what the legislation is all about: Protecting the rights of gay citizens.

The myth persists that this would open the door for people with prior criminal records involving children to work in schools, summer camps, child care situations, hospitals, and other areas of work where children can be harmed.

The existing law is very replete with protections without this legislation wiping any of that out.

The fact is—and perhaps this is the most sensitive that I have found—that all scientific research in this area of child molesting indicates that it is a straight or heterosexual problem, not a homosexual problem. The great majority of statistics overwhelmingly prove this.

Educators, penologists, police, psychiatrists, and psychologists, all agree that the child molester is a straight or heterosexual male, usually married, middle-aged man familiar with the child victim or family relative on a friendly basis.

In San Francisco, the Division of Child Protection Services reported (1976):

"Of all cases referred on child abuse, only one involved a homosexual act."

San Francisco, which has the highest percentage of gay people, ranked way below most counties in the incidence of child molestation: Los Angeles, Orange County, Kern County, Sacramento, San Bernardino, San Diego. All had higher incidences.

Nevertheless, the myth persists that if we grant gay people the right to work without fear of discrimination, they will somehow molest children or recruit them to homosexuality.

Homosexuality is not taught—it is felt.

The idea that children or adults will become homosexuals by having gay teachers or by associating with gay people is as silly as suggesting children will become Catholic by having teachers who are Catholic or by associating with people who are Catholic.

No one proposes that we solve the problems of racism by making everyone white. We will not solve the problem of job discrimination for the homosexual by making them heterosexual.

Gay people are neither evangelists for their sexuality—nor are they rapists.

Sexual orientation does not comprise one's character, it only states one's sexual relationships with members of one sex or the other.

This antidiscrimination legislation will not license bad conduct in the classroom, the office, squad car, hospital, or anywhere else.

Gay people—like straight people—are just as capable of separating their private lives from their public behavior.

Wherever gay rights legislation has been passed at the State, county, or city level, there have been no aftereffects—on adults or children.

A number of school boards in California and the country have passed antidiscrimination ordinances for gay teachers with no problems afterwards.

In fact, the city where you all work, Washington, D.C., has had an antidiscrimination order for gay teachers since May 12, 1972. I checked in New York City, for example, and in the entire history of the New York City school system, there have been many cases of female children being bothered by teachers, but only one case of molestation by a male.

Marion Barry, the past president of the Washington, D.C. Board of Education, states: "Washington, D.C. has nearly 5 years of experience with regulations which prohibit discrimination against gay citizens—I know of no cases of homosexual child molestation."

As you may know, teachers' organizations are in support of employment rights for gay teachers: California Federation of Teachers; American Federation of Teachers, AFL-CIO (Union); National Education Association; United Teachers of Los Angeles (Union); and San Mateo County Teachers Association.

The myth is that this legislation would require companies to hire quotas of homosexuals in affirmative action.

Fact: This concept is irrelevant to work discrimination for gay people because they are already represented in proportionate numbers.

The need for legislation is two-part: One, protect jobs and human dignity of those already employed, and two, allow gays to work if

competent and qualified. No one should be forced to reveal their sexual orientation, or to suffer any consequences as a result of any suspicion about it.

Fact: Employers would not be required to hire any certain number of gay people any more than they are required to hire a certain number of a religious group.

The fact is that many private enterprises have nondiscrimination employment policies: American Telephone & Telegraph; International Business Machines; Bank of America; Procter & Gamble; Avon Products; McDonalds; Honeywell; American Airlines; Eastern Airlines; Columbia Broadcasting Co.; and American Broadcasting Co.

These are only a few. Of the members of the Fortune 500, 130 respondents to a nationwide poll have indicated that their companies have established policies against discrimination based on sexual orientation.

As human beings—all of us share the basic needs of personal freedom to live in peace and economic sustenance.

There are gay people in every racial and ethnic group known to mankind. There always have been, there always will be, in every land, in every society, and in every generation.

H.R. 2074 will give the last unprotected part of American society the right to work and earn a living free from discrimination.

[The prepared statement of Art Agnos follows:]

PREPARED STATEMENT OF ART AGNOS, ASSEMBLYMAN AND DEMOCRATIC CAUCUS
SECRETARY, ASSEMBLY, CALIFORNIA LEGISLATURE

It is a privilege to participate with you in this first hearing in the history of our country on the subject matter of HR 2074.

No request is more legitimate in our society than the freedom to live . . . and work . . . in peace and dignity . . . free from discrimination.

Six years ago, the California State Legislature passed . . . and the Governor signed into law . . . Assembly Bill 489—the Consenting Adults Law which gave homosexual gay citizens the right to live.

Three years ago, I introduced A.B. 1 which would assure homosexual Californians the right to earn a living; because we were living in a state where it is legal to discriminate against adults for a legal, private act.

Someone has asked me: "We passed the Consenting Adults Bill, why do we need this?"

For the same reason that it has always been legal to be black in this country . . .

But in 1964 it was necessary to pass a civil rights law to protect civil rights of black people.

Homosexuality is a subject which, until recently, was not openly spoken of in our society and certainly in legislative bodies because of the imagined bad political side effect.

The fact is that most people personally feel tolerant toward homosexuality.

The public is more ready than we think.

Indeed, in 1978 4 million voters of this state defeated Proposition 6 that would have barred gay people from teaching in schools, by an overwhelming percentage of 58 percent against, and only 42 percent in favor.

No member of either house of the Legislature who voted yes on the Brown bill, A.B. 489, and/or Foran bill, A.B. 633 (similar A.B. 1), was defeated in a bid for reelection. For that matter, no bill ever became an issue in any campaigns.

After the passage of A.B. 489—Consenting Adults Law by Brown—the 2 repeal referendums never got off the ground.

So what HR 2074 does is allow people to work . . . earn a living without fear of losing their job for what someone does in the privacy of their bedroom.

For, if we are not ready to accept that simple right for 10 percent of our population, then perhaps it follows that we should add another category to welfare.

So, to go along with aid to disabled; aid to blind; aid to aged; we should have a new category called "aid to homosexuals".

I believe your committee can get more votes for the right to work for gay people . . . than the right to a new welfare category.

In my opinion, this legislation would also protect heterosexual single or even married men . . . who are slight of build . . . have certain mannerisms thought to be effeminate . . . or have a personal appearance which corresponds to the stereotype "of what homosexuals look like".

For these straight or heterosexual men are also vulnerable to employment discrimination more than the average male homosexual.

Why?

Because the average male or female homosexual doesn't fit the stereotype.

The stereotype is women who are mannish in appearance, cut their hair short, don't wear make-up, or who are assertive—are lesbians.

Often heterosexual women who fit this stereotype suffer discrimination.

The only visible gay people the average heterosexual person sees are a small tip of the iceberg.

WHO ARE THE GAYS—MYTH AND FACT

Myth. There are only a small number of homosexual people in our society and they live on the fringes of society.

Fact. 75 years of research—including a Kinsey study of 1948—support estimates that 10 percent of our population is homosexual (2.2 million in California).

Myth. There is no discrimination against homosexuals because no one can produce any statistics.

Fact. 1. Many business and government agencies refuse to hire or promote gay people despite competency.

2. Gays on the job, if discovered, may be fired, not promoted or harrassed into quitting.

Fact. A National Institute of Mental Health study showed:

1. 16 percent of all people have employment difficulties.

2. 9 percent lose jobs because they are gay (Fed pub. #72-9132)

Fact. There are few discrimination statistics because no one will keep them in the government.

Yesterday, the Governor of this State by Executive Order, created a special Commission on personal privacy whose focus it will be to explore and measure discrimination.

1. However, in San Francisco, which had had a gay rights ordinance since 1977, the Human Rights Commission has documented the following cases of employment discrimination because of one's sexual orientation:

Year:	Cases
1977	180
1978	330
1979	74

Myth. Homosexuality is a sin.

Fact. It depends on your religion. I will not argue what anyone's particular religion says homosexuality is in this hearing. The U.S. Constitution upholds the division between Church and State. So we must differentiate between crime and sin.

Some religions claim it is a sin to drive a car. Still others to eat pork. Still others to drink liquor, coffee, tea or coke . . . yet despite those "sins" they are not denied the right to work.

Even the Rev. Jerry Falwell, Leader of the Moral Majority states in a recent newspaper interview.

"I think we can certainly be for the civil rights of homosexuals without condoning their lifestyle. . . .

I have no objection to the homosexual teaching in the public classroom as long as that homosexual is not flaunting his lifestyle".

Myth. This kind of legal right would let gays with prior records into schools, summer camps, and other situations where children can be harmed by them.

Fact. Current legislation specifically protects against an applicant with a prior history of criminal violation.

Fact. All scientific research on this subject agrees that child molestation is primarily the activity of pedophiliacs . . . the great majority of whom are heterosexual.

Educators, penologists, police, psychiatrists and psychologists, all agree that the child molestor is a straight or heterosexual male, usually married, middle aged man familiar with the child victim or family relative on a friendly basis.

In San Francisco, the Division of Child Protection Services reported (1976): "[O]f all cases referred on child abuse, only 1 involved a homosexual act".

San Francisco which has the highest percentage of gay people, ranked way below most counties in the incidence of child molestation: Los Angeles, Orange County, Kern County, Sacramento, San Bernardino, and San Diego.

All had higher incidences.

Nevertheless, the myth persists that if we grant gay people the right to work without fear of discrimination, they will somehow molest children or recruit them to homosexuality.

Homosexuality is not taught—it is felt.

The idea that children or adults will become homosexuals by having gay teachers or by associating with gay people is as silly as suggesting children will become Catholic by having teachers who are Catholic or by associating with people who are Catholic.

No one proposes that we solve the problems of racism by making everyone white. We will not solve the problem of job discrimination for the homosexual by making them heterosexual.

Gay people are neither evangelists for their sexuality . . . nor are they rapists.

Sexual orientation does not comprise one's character . . . it only states one's sexual relationships with members of one sex or the other.

This anti-discrimination legislation will not license bad conduct in the classroom, the office, squad car, hospital or anywhere else.

Gay people—like straight people—are just as capable of separating their private lives from their public behavior.

Wherever gay rights legislation has been passed at the State, county or city level, there has been no aftereffects . . . on adults or children.

A number of school boards in California and the country have passed anti-discrimination ordinances for gay teachers with no problems afterwards.

1. Washington, D.C., Board of Education, May 12, 1972.

In the entire history of the New York City School System, there have been many cases of molestation of females, but only one case of molestation of a male.

Marion Berry, the past president of the Washington, D.C. Board of Education states: "Washington, D.C. has nearly five years of experience with regulations which prohibit discrimination against gay citizens . . . I know of no cases of homosexual child molestation."

As you may know, Teachers Organizations in Support of Employment Rights for Gay Teachers:

1. California Federation of Teachers.
2. American Federation of Teachers, AFL-CIO (Union).
3. National Education Association.
4. United Teachers of Los Angeles (Union).
5. San Mateo County Teachers Association.

Myth. This legislation would require companies to hire quotas of homosexuals in affirmative action.

Fact. This concept is irrelevant to work discrimination for gay people because they are already represented in proportionate numbers.

The need for legislation is two-part:

1. Protect jobs and human dignity of those already employed, and
2. Allow gays to work if competent and qualified.

No one should be forced to reveal their sexual orientation . . . or to suffer any consequences as a result of any suspicion about it.

Fact. Employers would not be required to hire any certain number of gay people anymore than they are required to hire a certain number of a religious group.

The fact is that many private enterprises have non-discrimination employment policies:

1. AT&T—American Telephone & Telegraph.
2. IBM—International Business Machines.
3. Bank of America.
4. Procter & Gamble.
5. Avon Products.
6. McDonalds.
7. Honeywell.
8. American Airlines.
9. Eastern Airlines.
10. CBS—Columbia Broadcasting Co.
11. ABC—American Broadcasting Co.

These are only a few. Of the members of the "Fortune 500," 130 respondents to a nation-wide poll have indicated that their companies have established policies against discrimination based on sexual orientation.

As human beings . . . all of us share the basic needs of personal freedom to live in peace and economic sustenance.

There are gay people in every racial and ethnic group known to mankind.

There always have been . . .

There always will be . . .

In every land . . .

In every society . . .

In every generation . . .

H.R. 2074 will give the last unprotected part of American society the right to work and earn a living free from discrimination.

Mr. HAWKINS. Thank you. The Chair would like to interrupt before the questioning at this time to introduce two of our distinguished colleagues who have joined us: Congressman Phillip Burton of San Francisco, and next to him, Congressman John Burton, who will also be one of the witnesses.

At this time, I would like to thank both our distinguished Congressmen, on behalf of the committee, for the cooperation they have extended to us in helping with the preparations for the hearing being conducted this morning.

Mr. Phillip Burton may wish to make a statement at this point.

Mr. PHILLIP BURTON. Art, I regret not being here before you started, because it would have been a personal pleasure to me to welcome you to our subcommittee hearing.

It is with a great deal of pride and joy and approval that I note that your aggressive and untiring efforts on behalf of eliminating all injustices—be it racial, economic, or social. This trait has been a hallmark of your legislative career. I suspect there is no one that has any better record than you have established in your magnificent services to our city and State.

How is that for an opener? And you don't even need it.

Mr. AGNOS. It is a curious thing that we politicians often express our affection for each other in public forums like this. Let me say, as one who is participating in these historic hearings being held for the first time in our country, that it is a personal milestone to be appearing before you two leaders in our community. I followed in your footsteps. When I was a social worker, everywhere I went, people said: "If you have troubles, go see the Burtons, John and Phillip."

I am delighted to be appearing before you. It is an honor for me, personally.

Mr. WEISS. You should know, Mr. Agnos, whenever I have problems and ask people what to do, they also tell me to go to the Burtons.

I very much appreciate your testimony. I think it is extremely important to deal with the so-called myths, as you have. Our experience at both the city level in New York and Washington, when you get into a detailed discussion, the underlying problems deal with people's real concerns, not with the problem of the legislation. They tend to deal with the myths, as you say. Those are the hardest things to confront, because they are fantasies, they are fictions.

I wonder again, with the experience that you have had in the California State Legislature, if you can recount some of the efforts that have been made and how you were able to overcome the myths that I am sure were as prevalent in California as they are in Washington or New York.

Mr. AGNOS. We have had our ups and downs in this area, and an up-front visible lobby representing the gay community. By their personal presence, the men and women who represent that lobby every day, as well as the factual evidence they present, is one of the ways to break down the lobbying relations that occur.

Also, we have presented in all our hearings before the various committees, the people who I believe make up the real gay community: The doctors, workers, be they teamsters, editors, et cetera.

Many of the legislators do not think that gay people have parents, for example. The myth is they spring up from the ground. Whenever I brought a mother or father who says "I love my child; I want them to be as successful as any straight child," it blows away that myth, because it blows away the notion that this part of our society is not a natural part.

That is the way we have been trying to deal with some of the parts of the question you have been asking.

Mr. WEISS. I want to commend you for your work here in San Francisco. Although our efforts in New York were still the first effort, we are still operating on the basis of executive order. The State legislature, I think, is going to wait, in fact, until we have action at the local level.

In Washington, the legislation we have tailored, takes the Civil Rights Act of 1964 and 1968 and adds to the areas of race, religion, national origin, sex, the area of sexual affectation and orientation. There cannot be discrimination on those grounds. Those who are for civil rights in those areas and know how fairly those efforts have worked will know this legislation extends to one of the last unprotected areas.

Mr. AGNOS. I find this area of employment discrimination is far more difficult to pass than the consenting-adults laws, which merely decriminalize or take away any kind of connotation of any sexual activity between consenting adults, because somehow that is perceived to be OK in the privacy of their bedroom. But when it comes to the work force, it is more the myth, that gays are threatening to them on the job, whereas they are not if it is contained in the home.

So, I think this will be a lot more difficult than the experience we have had in the past with consenting-adult laws.

Mr. HAWKINS. Mr. John Burton?

Mr. JOHN BURTON. I have no questions. However, I am very proud to have Art Agnos representing the district in San Francisco that I was honored to represent for so long.

Mr. HAWKINS. Which of you is representing this district at this time? Mr. Phillip Burton.

Mr. AGNOS. I want to tell you in public, I love you, too.

Mr. HAWKINS. Mr. Stephens?

Mr. STEPHENS. I think that people who would tend to oppose this legislation would not only be concerned about or influenced by myths which you are now in the process of debunking, but they are also concerned about what the entire political agenda is of the gay community.

I have a booklet I obtained back in April. It is entitled "Gay Rights, A Libertarian Approach." It lists a number of items that I think one is controversial—the repeal of legislation prohibiting unions between members of the same sex.

In other words, what is sought is the legalization of homosexual marriages. I think this is an issue which has come up recently with some frequency.

In my research I have found the issue has been litigated in five cases throughout the Nation, most recently in *Adams v. Howerton*, 486 F. Supp. 1119 (C.D. Calif. 1980). As a matter of fact, I found a law school text written in 1975 by Eleanor Holmes Norton and others entitled "Sex Discrimination and the Law: Causes and Remedies." One of the things she notes at page 180 is that "the effect that the Equal Rights Amendment will have on discrimination against homosexuals is not yet clear. The legislative history suggests that it was not the intent of Congress to prohibit such discrimination. On the other hand, it is hard to justify a distinction between discrimination on the basis of the sex of one's sexual partners and other sex-based discrimination."

Thus, we have a statement by the Chair of the EEOC suggesting that in connection with the ERA, our society may face the prospect of endorsing homosexual marriages.

My question is, as a State legislator, could you make a distinction between prohibiting discrimination in the workplace, on the one hand, and continuing, on the other hand, the historic prohibition against homosexual marriages?

On a principled basis, could you support the employment legislation? However, if there were a bill introduced in the State legislature which would authorize homosexual marriages, could you support such legislation?

Mr. AGNOS. Yes. I think that will take the same kind of educational process we are having to deal with now about the mythology that involves gay people in employment. I think that extends into other areas.

What gay marriages really mean, as I understand it, is an expression of affection—that is what homosexuality is all about—for someone of the same sex. It is a kind of predetermined, in my judgment, natural preference. I think that marriage is merely the ultimate expression of that kind of love.

In our traditional society, when one chooses to get married they are choosing a lifetime partner. This is a part of gay life as well. The only institutions available to them in our society to give public, and I might add legal, expression because there are many other side effects to not being able to achieve that kind of union, inheritance taxes for example. They choose the institution of marriage to achieve the social, religious and economic union. I don't think that is wrong or illegal. If that troubles people, then they have to understand where gay people are coming from originally.

Mr. STEPHENS. One other point that I noted in your testimony is the analogy to the experience of the blacks in this country. Recently the Supreme Court in the *Weber* decision had occasion to recount the origins of the Civil Rights Act of 1964:

Congress' primary concern in enacting the prohibition against racial discrimination in Title VII of the Civil Rights Act of 1964 was the "plight of the Negro in our economy." * * * Before 1964, blacks were largely relegated to "unskilled and semi-skilled jobs." Because of automation the number of such jobs was rapidly decreasing * * *. As a consequence "the relative position of the Negro worker was steadily worsening. In 1947 the non-white unemployment rate was only 64 percent higher than the white rate; in 1962 it was 124 percent higher." * * * the goals of the Civil Rights Act—the integration of blacks into the mainstream of American society—could not be achieved unless the trend were reversed.

So you have a situation where blacks are really suffering economic hardships.

In looking at the gay rights issue, however, I read an article in Business Week, dated December 3, 1979, which summarizes a study which was commissioned by The Advocate. I suppose it is a gay organization.

Mr. AGNOS. It is a gay newspaper.

Mr. STEPHENS. It conducted a survey. The average income is \$23,000, about 50 percent above the national average. Seventy percent are college graduates, 97 percent are employed, and 76 percent are regular voters. Projections suggest that gays control 19 percent of the spendable income in the United States.

My question is, is it correct to analogize the plight of the blacks in this country with the gays when you have here such a disparity in economic conditions?

Mr. AGNOS. I was not trying to draw comparisons. What I was trying to analogize is the legal distinction, where it is legal to be black but in order to exercise that right we had to pass a law protecting their civil rights. That is what I am saying about the gay people.

I am not sure about those statistics but nevertheless I will yield to that. Those same people are vulnerable to the kinds of discrimination this legislation would wipe out. My analogy to the blacks is not to create the historical comparisons, but the legal comparisons.

Mr. HAWKINS. At this time the Chair would like to add commendation to your presentation this morning. I think you have indicated that the hearing here in San Francisco is well timed.

On behalf of the committee and your own Congressmen, we add commendation.

Mr. PHILLIP BURTON. My mentor in the legislature was Gus Hawkins, but after about 4 months he disavowed that.

Mr. HAWKINS. I am proud of you now.

Mr. PHILLIP BURTON. How long did it take you in the State legislature, from the date you began the effort for FEPC—your first introduction of the legislation—until you were able to pass it? Have you a recollection of the time frame?

Mr. HAWKINS. It took 17 years from the time the first bill was introduced before we were able to have one passed. On the State Housing Act, I think that was somewhere in the neighborhood of 8 to 10 years. Similarly, the first full employment bill introduced by the Chair was in 1945 in the State assembly and we didn't pass a full employment bill in the Congress until 1978. So sometimes it takes a long time to pass such measures.

That is why we need people like you to stay in a long time. We hope this struggle will not be as long, and with such advocates as yourselves I am sure it will not. The same goes for both Phil and John Burton.

Mr. WEISS. Mr. Chairman?

Mr. HAWKINS. Mr. Weiss?

Mr. WEISS. I wonder if I might comment briefly on a couple of the questions Mr. Stephens asked. Again, I am concerned that when the record is complete, that we will have lost some loose ends which will then become part of the myth considered by some who have not been present.

Regardless of one's view of the issue of marriage among gays, it has nothing at all to do with this specific piece of legislation. I think we want to be sure that we don't find that cropping up at the next hearing as one of the reasons to oppose this legislation.

Second, I have had occasion to read through the Libertarian Party's stand on gay rights. The one thing you have to say about the Libertarians is that they have been very, very consistent. They take the logic of their position to wherever it will lead them. But it is sometimes hard for those who support one or other parts of their proposals to be taxed with whatever the Libertarians decide to take on. They have their own political philosophy not only as to gay rights but on all societal concerns.

A comparison between the rights of the black community in this country, the Civil Rights Act of 1964 and the rights of gay men and lesbian women, again, though Mr. Agnos is correct, a direct historical analogy can be drawn. The fact is in my experience in New York it was very, very clear that people in the gay community were not able to exercise their full civil rights. That is the concern I have; that there would, in fact, be adverse economic consequences.

So regardless of what numbers may or may not be, there are legitimate economic reasons why equal rights should be extended to everyone regardless of sexual orientation, religion or any of the other areas that are currently protected.

So I hope we don't simply take the position that, well, the blacks were worse off economically, therefore they were entitled to their civil rights. But another group which may not be economically as bad off should not be entitled.

Mr. AGNOS. I appreciate the questions very much because they are right on target and unless we deal with them we won't be successful.

I just received a note from the editor of the Advocate and he told me what I suspected as I started to make my response to Mr. Stephens' questions, that that survey was only of their readership. More magazine subscribers tend to be more affluent and so I would respectfully recommend that it be amended because it is really reflective of their readership and subscribers rather than the entire gay community.

I appreciate your questions and I have enjoyed being here.

Mr. HAWKINS. The next witness will be John Burton.

STATEMENT OF HON. JOHN BURTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. JOHN BURTON. I would like to say that Willie Brown and I first, and I believe it was in 1966, introduced the law concerning private sexual conduct between consenting adults, which took 8 years to pass the State legislature. So the fights are not always easy.

I would also like to point out that the people in the State of California had a chance statewide to express their point of view on whether a gay person should be entitled to be a schoolteacher or not and resoundingly rejected the Briggs amendment. Statistics pointed out there were more heterosexual molestations of children than there were of the other kind.

Putting first things first, I believe it is outrageous that people can lose their jobs in the United States because of their private sexual preference. It is a real shame that in 1980 Federal legislation is needed to protect a basic civil liberty of American citizens. Unfortunately, unless we get such legislation passed, people will lose their jobs based on their private lives.

The Constitution applies to all people, whether employed or not employed. So I don't think it is a relevant thing that some members of the gay community happen to be economically well off. I would like to submit an article printed in a California magazine that I had put in the Congressional Record which originally appeared under the name of John Murtha of Pennsylvania, but was corrected the following day.

Mr. WEISS. By John Murtha I will suspect.

Mr. JOHN BURTON. Yes.

Mr. HAWKINS. Without objection, the document will be inserted in the record.

[The information follows:]

[From the Congressional Record, Oct. 1, 1980]

GAYS IN BUSINESS: THE PREJUDICE AND THE POWER

(By Hon. John L. Burton of California)

Mr. JOHN L. BURTON. Mr. Speaker, I would like to share with my colleagues a recent article from the San Francisco magazine, entitled "Gays in Business: The Prejudice and the Power."

Recognition of their achievements in our society is long overdue inasmuch as many people do not realize that gays are an integral part of the business world. They own construction companies, financial institutions, publishing companies, and legal practices.

Yet, they continue to suffer from discrimination. One recent example is the House deletion of Legal Services Corporation funds for poor people who happen to be gay. As I said at the time this amendment was offered on the floor, "I believe it is outrageous . . . the citizens in my district who happen to be gay are business people. They pay as much taxes as many of us here." Hopefully, the Senate will be able to delete this discriminatory amendment during their deliberations on the bill.

The article follows:

GAYS IN BUSINESS: THE PREJUDICE AND THE POWER

(By Joe Flower)

Yale is written all over him—the bow tie, the white shirt with blue pinstripes. Balding, intense, compact, his owlish eyes blinking over Cy Vance half-glasses that make him look much older than 32, he leans over the desk making his points with an extended forefinger. Over his shoulder, out the 27th-floor window, I can see the afternoon sun cutting across the jumbled flanks of Russian Hill. He is detailing his story—the childhood winters in Maine, the high class standing, the stint on the Yale Law Journal, the service with Naval Intelligence in Vietnam, acceptance into one of the oldest and most prestigious law firms in the City, steady growth in anti-trust, copyright, and trademark work, rapid rise to partner. It is a story of a controlled, brilliant, and ambitious man.

Two days later, over coffee in the Noe area, I am talking with the owner of an accounting firm. Charming and ebullient, she is also a partner in three night clubs and a director of a savings and loan association. The breeze ruffles the curtains while she talks of the rough and tumble of business, her upcoming trip to the East Coast, and the vagaries of a tumultuous career.

The next day, cold beer in hand, I sit propped against the mast of a catamaran bobbing at its moorings in Sausalito. The boat's owner, fit and tanned, sits across from me, talking about his work. He is a broker, president of a successful and growing commodities firm with branch offices throughout the West.

The three have more in common than they seem to. They are three of the thousands of gays who have established thriving careers in business in the Bay area.

America seethes with gay backlash in 1980. Preachers pledge their souls against drug addiction, promiscuity, and homosexuality; local citizens vote their fears against anti-discrimination laws; television networks produce documentaries that slyly link gay political power to sado-masochism and public excess.

The turmoil is a reaction to the many gays that have decided to be honest about their sexuality and "come out of the closet." This recent openness has begun to reveal the extent of the gay presence in the straight business world. To the surprise of many, gays do more than run hair salons and nitsy boutiques. They own construction companies, financial institutions, publishing companies, and legal practices. Whether they openly acknowledge or are clandestine about their sexual preference, there is no field of endeavor in which gays are not involved.

Last year a Houston councilman referred to gays as "oddwads," and promptly lost his seat. I mentioned this to the vice president of a shipping firm I have met at a Financial District gay bar. He pulls out a napkin and begins to make a list: queers, dykes, faggots, perverts, queens, nellies, swishes, pansies, lulus, fairies, inverts . . . "They have names for us, all right," he says.

"It's as natural to me as breathing," says the man from the real estate syndicate. "It never bothered me a bit."

"Gay men have high moral standards," says the businessman itching to turn politician, "and I'm proud of our contributions to society."

Spray painted on a construction trailer at Market and Duboce: "If God had meant faggots to exist, he would have created Adam and Bruce." Spray painted just below: "He did! He did!"

Jerry Berg leans across the desk and asks how he can help me. The office is crisp, fresh, just out of the wrapper. His expanding legal practice has been here a week. Six feet to my right, the picture window view spills 10 stories down to Union Square, the St. Francis, cable cars, and one banjo player about to be arrested for cruelty to folk music.

Berg doesn't fit the gay stereotype. In fact, few of the scores of gays I am to meet will "look gay." They will be business people, lawyers, stockbrokers, professionals, and they will look like professionals (though one lawyer will dismiss this three-piece, 14-pocket Post Street suit as "my court drag").

Berg used to guard his privacy. Interviews like this are difficult for him. In fact, he kept his homosexuality a secret until the spring of 1977, when Anita Bryant began assuring the world that homosexuals were dangerous, child-molesting perverts who should be banned from public employment if not burned at the stake. "She did the movement a great service," says Berg. "She motivated the mainstream, the professionals who hadn't been willing to deal with it."

When John Briggs imported Bryant's ideals for the Proposition 6 campaign (which would have allowed the firing of teachers who were thought to be gay), those mainstream professionals organized a statewide coalition of straights and gays to oppose it. The coalition raised nearly a million dollars, garnered endorsements from many churches and politicians (even Jerry Ford and Ronald Reagan), and won.

Berg was Northern California co-chair of the Concerned Voters of California then, so when CBS came to town to do a CBS Reports on "Gay Power, Gay Politics," George Crile spent most of a day interviewing Berg and two friends in his office. Last May, it hit the tube. There was Berg's face on network hookup, his carefully considered words interspersed with beefcake, Beaux Arts Ball drag queens, rent-a-rack torture stores, and grainy, badly focused shots of people in Buena Vista Park engaged in something that the announcer identified as public sex.

"A few days before it aired I got hold of a script," Berg recalls. "I was agonized. I really went crazy. I thought, there go all of my straight clients." He stops for a moment, his light eyes steady and brilliant. "The response amazed me. I got more letters. I have one client, a manufacturer in Ohio, straight as can be. He was at the top of my list, the first to go, I thought. The show was on a Saturday, and on Tuesday I got a letter. The guy had seen the show, with his family, yet, wife and kids. And he had sat down at the home typewriter and tapped out two pages, single-spaced, telling me how impressed he was. How grateful he was for my courage. How he supported me. He said he'd be in California next week; he didn't have any legal business to talk over, but he'd like to take me to lunch. There was great support, some of it from places I would never have expected."

"We are everywhere." It's the most recent slogan of gay liberation. It sounds like a prickle-your-skin, stage whisper out of a 50s zombie movie, the reverb cranked all the way up, the killer triffids coming up your street in gen-u-wine 3-D. Unlike many slogans, though, this one is literally true. They are everywhere. Sex researcher Dr. Alfred Kinsey's oft-repeated statistics are now 30 years old. Years of careful research using methods later examined and praised by the American Statistical Association established that 10 percent of American male are, in his words, "more or less

exclusively homosexual." He found lesbianism harder to track; his estimates for females fell in the 3 to 5 percent range.

Using the figures straight across yields an estimate of 350,000 homosexuals in the Bay Area. But we cannot use the figures straight across. For one thing, the creation of a feminist value system and female role models by the women's movement has allowed many more women to realize their homosexuality. And of course San Francisco is not Sparks, Nevada, but something of a gay Mecca. So the figure for the Bay Area is probably closer to a half-million gays.

They are everywhere. The man across from me spent 18 years in the trust department of a bank. At 46, Burleigh Sutton is ruggedly handsome and muscular. His silvery gray hair and mustache give him just the look you would expect of a bank vice president relaxing between jobs. He resigned earlier this year, three months after his Chartered Bank of London merged with the Union Bank. We sit and sip coffee in deep, elegant chairs of a Twin Peaks interior so well designed that I am tempted to take notes for future reference. Sutton tells me that in his 10 years at his last job he multiplied the assets of the trust department 28 times. Did they know he was gay? It didn't matter.

"When you're over 40, reasonably attractive, unmarried, and they never see your girlfriends, in this City they know. After 1975 I didn't make any effort to conceal it. The day after Harvey Milk was killed I came out to my boss; I told him I was going to take a more active role in the movement."

Sutton's homosexuality was "never that traumatic" for him, and it never hindered his career. There is a fantasy still alive somewhere in which we all sit down together as brothers and sisters and treat each other with R-E-S-P-E-C-T, but it's not here yet. I ran across another man in Sutton's position, a vice president in charge of a trust department in Florida, who was 86'd without a day's notice at the height of the Bryant craziness, charged with being seen "in the company of known bisexuals." He was a profitmaker, too. If they'd had their druthers they would have probably kept him around, but with animal zanies like Bryant and her crowd loose in the woods, well they just thought it would be safer for all concerned if he disappeared.

Stories like that abound, and they make gay professionals a cautious lot. As one computer systems designer put it: "There's just no agreement out there that being a gay is all right." Everyone has a set distance that he or she will travel beyond the safety of the closet: "No picture, but you can use my name"; "No name, but let me tell you a story"; "Why the hell do I have to talk to the press anyway? I wouldn't ask you those kind of questions."

Media sorts love gays. They're good copy. Time's special issue on gays grabbed the magazine's all-time number two spot for sales. The networks and big Eastern slicks do a few serious stand-ups with Responsible Gay Leaders, then mix them up with what Sutton calls "the obligatory transvestite sequence"—the guys with snakes wrapped around their heads and fairy wings. Never mind the accuracy of the thing. Never mind that the leather torture fantasy store in the film has a mostly straight clientele. Never mind that the "glory holes" have as much to do with the average gay as topless bars do with the average straight.

That's what happened to one rather retiring, almost diffident guy who lives alone in a small house in Sausalito's "banana belt." He is vice president of a publishing company. He also works with the Human Rights Foundation, a group whose major project is bringing selected gays into the schools simply to answer questions, to "demystify" homosexuality, to cut down on the fear-and-agony quotient. And there he was on the CBS special, his project characterized as one that "would frighten many heterosexuals" and finally identified as "teaching homosexuality in the schools." A fine line was crossed, and suddenly the HRF, the most moderate of groups, came across a clique of gay brown-shirts goose-stepping the youth of America into the nearest gay bar.

His mother, in Iowa, had seen the show, with all its beefcake and drag queens. The next time he visited her she spirited him inside as if he were a fugitive. She asked: "Is that what you do in California?" She was afraid of what the neighbors might think. He told her: "They probably didn't think anything." He recalls being very open and clear and close with her, and that she stopped worrying. When someone asked her what she had done with her weekend, she said, "I visited with my son. It was the best weekend I have ever had."

Gays in business always have to decide for themselves how to handle that narrow choice between hiding ("The energy for that could be put to better use," according to a major executive) and being A Responsible Representative of Homosexuals Everywhere. Some will not put up with it. They have work to do; businesses to build.

"I am a representative of myself," Bob Hunter tells me. He has just traced for me his own business odyssey—nine years of globehopping for a medical division of

Johnson and Johnson as director of corporate development, resigning for philosophical reasons ("The medical business is invested in sickness, not health"); nine months of working with Bill Graham's organization; finally founding Travel Space, Inc., a broad-based travel organization with grand designs and plans for rapid growth. "I represent myself, and the next guy represents himself." A visitor in his office chimes in: "So I happen to like men's bodies instead of women's. That doesn't run my life. I go about my business." Hunter nods his agreement.

John Schmidt takes the opposite tack: Make it your business. We are seven floors up in the world's skinnest office building, the 21-foot-wide curiosity at 130 Bush. The owner of Schmidt & Schmidt, a thriving insurance firm, is handling me a thick prospectus for a new savings and loan association, Atlas Savings and Loan. It is aimed at the gay market. John Schmidt is listed as chairman of the board. "I wanted to do all I could to change the stereotypes," he says. "Besides, two women together or two men together should feel comfortable asking for a loan. At too many banks they sort of look over their glasses at you and say, 'You're both going to live there?'"

Besides the ideals involved, does he feel that such a venture will turn a profit? "Oh, yes. It is, first and foremost, a good investment."

Yes, a good investment. Last year Business Week reported that projections from a Los Angeles-based study suggested that gays control 19 percent of all spendable income in the United States. In 1977 the Advocate, the national gay bimonthly, commissioned L.A.'s Walker and Struman Research Inc. to survey its 73,000 readers. Among their findings: The average household (1.4 persons) had an annual income of \$23,600, about 50 percent higher than the national average. The 79 percent that use commercial airlines rack up an average of four trips per year. College grads: 70 percent. Employed: 97 percent. Regular voters: 84 percent (double the national average). It begins to add up.

It is four o'clock on a Sunday afternoon. Trinity Place, a little side canyon among the financial canyons downtown, is blocked off. Halfway along, marked only by a lantern over the door, is Trinity Place, the cavernous, two-story gay hideaway watering hole. The tribes have already begun to gather. Pure Trash and the Bottom Line Dancers are setting up. It's party time for the GGBA 500. The Golden Gate Business Association, the City's gay Chamber of Commerce, is welcoming its 500th member. (Earlier, when I mention this to a skeptical neighbor, he asks, "Can there be 500 hair salons and antique stores in San Francisco?" We checked the most recent GGBA buying guide and found only six hair salons and three antique shops. On the other hand, we found 19 lawyers, 13 contractors, 11 printing firms, two dozen real estate firms, four savings and loan associations—Atlas, Continental, Fidelity, and United Federal—and such corporate members as Holiday Inn and United California Bank.)

Schmidt, one of the founders of the GGBA, has told me "Despite the current rise in fundamentalism, I am optimistic. I put my hopes in economic power." But the current master of this celebration, Arthur Lazere, a CPA in private practice who displaced Schmidt as president of the GGBA and has now been elected vice president of the gay National Association of Business Councils, seems to represent a new, more aggressive era in gay leadership. Founded in 1974, the GGBA in its first years played it a little quiet. A lot of gay businessmen, the older ones especially, had gotten along by a kind of creative camouflage, and here they were, actually putting their names down on a list of gays.

That era is over. Lazere sees the GGBA as "building bridges to the straight community," and the GGBA brochure urges gays to put their mouth where they money is.

Five hundred is an impressive number but, as one publishing executive commented: "For every one person in the organization, there are many who would not want to see their names on a list." Looking around Trinity Place, it is clear who at least some of the missing people are: women. Of the five hundred gay businesses in the GGBA, less than three dozen are owned by women.

It has been hard to find women to interview. Donna Hitchens, a lawyer working with the Lesbian Rights Project, estimates that there may be 5,000 working lesbian professionals in the Bay Area. By the third week of phone calls I have not found even one lesbian in a management position in a large firm to talk to me, even anonymously.

With help from the women that I did talk to, I can guess why. First, as one woman said, "Who needs the risk? It is hard enough for a woman to be successful in the business world without the added burden of the prejudices that people have against homosexuals." And the list of contacts that I could use is skimpy. Most of the lesbians that I do talk with tend to think of themselves as feminists first, as

homosexuals second, they are wary of predominantly male organizations like the GGBA.

There are, in fact, at least two social organizations of lesbian professionals in San Francisco, and several others scattered throughout the Bay Area. They are clandestine. Their membership lists and telephone trees are kept secret, the name tags worn at their events carry first names only.

Karen Anderson Ryer says, "The law is theatre." She is a lawyer, a partner in Oakland's Ryer & Ginsberg. We are at my office on a Sunday afternoon, having coffee and fresh blackberry muffins. Ryer mentions that 90 percent of the clients for her general civil practice are straight. But her lesbian clients and her friends sometimes criticize her appearance. "Normally I wear a suit, or pants and blazer. But in the more conservative courts, and before judges who don't know me, if I think it will help I will wear a dress, heels, earrings, make-up. I'm a lawyer, and I do what is necessary to win the case."

She does what is necessary. But it is her practice, just her and her partner, and they run it their way, which happens to be a kind of humanist law—low cost, low overhead, spend time with the client, get the client into the process, demystify the whole thing, serve the people.

Independence: I hear the same tune from other lesbians. Lanky Pat Fincher folds herself onto her couch in Daly City. I sip coffee that her friend Jean Shaw has poured for me. The room is decorated with figurines from West Africa, a chest from Shanghai, tokens of her and Shaw's obsession: They are "travel junkies." Fincher is an agent for Allstate Insurance. She works for someone else, true, but in a business where performance is measured objectively by sales. As Fincher puts it, "In this society, the only thing that we will agree on is money."

Independence: Shaw herself is moving out of Academe, where results are hard to show and success depends upon the subjective judgment of others. She is moving into insurance and real estate. She says, "One of the things that I like most about being a lesbian is that there are very few rules and regulations about my behavior."

That's a tune that Charlotte Coleman would understand. She was booted out of the Internal Revenue Service when Ike was still in the White House. "It was the best thing that ever happened to me," she says now. Now she owns an accounting firm and an interest in two bars and a disco, and she serves on the board of Atlas Savings. Up in her place above Noe where it peaks between Noe Valley and the Castro, she sits back and relives it like someone's more-alive-than-you'll-ever-be grandma.

"I liked being an auditor. I liked paper work and numbers. I was up for a grade raise, and they had some investigators with time on their hands, I guess. When they finally confronted me with the evidence the file was three inches thick. They had followed me for over a year. They had talked to all of my neighbors. They had the names and addresses of all my friends. Every time I had gone out of town, to Santa Cruz or Sacramento, they had gone along for the weekend. They had spied on every party. Friends later told me that they had found piles of cigarette butts under their windows."

The IRS allowed her to resign.

At the same time, Congress was passing a resolution of special commendation for a select few civil servants recognized as superior workers. Charlotte Coleman was one of them. The congressional citation arrived at her department two weeks after she had left.

So she resumed her life in business, doing what she had wanted to, helping to build up organizations like Society for Individual Rights, Pride, Operation Concern, and the Tavern Guild.

Involvement of that kind plays a necessary counterpoint to independence. As a prominent gay executive put it, "We have to help make the City work." So he works with the Human Rights Foundation, as do Sutton, Berg, and Ryer. Lazere devotes time to the GGBA and its national counterpart, as do Fincher, Hunter, and Schmidt. At the same time, gays work in dozens of community organizations that have nothing particular to do with gay liberation.

The Upper Market Street Association, which lobbies for traffic improvements on Market beyond Castro was founded by Fred Brothers, president of Brothers Construction Company. Six years ago Brothers was fired as a construction executive by a major Los Angeles firm because of his homosexuality. Now he is president of his own growing firm. He has just founded the Castro Times. He allows modestly that "my friends call me the Mayor of Castro." He is itching to take on Harry Brit.

Bernard Pechter, on the other hand, worked on Britt's campaign. He's a stockbroker. Here at his "SHAD" (Summer Home of Architectural Distinction), hung off the shoulder of Mount Tam, we are sunning poolside over wine and Italian sausage.

"Come on up for lunch," he said. "We'll have to rough it a bit, though. I'm one of the five faggots in San Francisco who can't cook. Blame it on latent heterosexual tendencies.") He says that he has left two firms in the past three years over the issues of advertising in the gay press. "Nobody is tapping that market. My ads in the Advocate have brought me a lot of commissions."

Pechter has served on the boards of ACT and the Performing Arts Service. He has had a play produced at ACT and has labored in the political trenches, but the most important thing, he says, in his adult life was his founding four years ago of Sha'ar Zahav, the gay synagogue (with a gay rabbi, Allen Bennett). "Some Saturday nights we have more people there at the Jewish Community Center than at any other congregation in town.

"When I was younger, I was agonized about my homosexuality. I finally decided to confide in my rabbi. I said, 'I have a problem.' He said, 'You can tell me.' I said 'I am a homosexual.' He said, 'Drop by Thursday night. We have a singles group. You'll meet a nice Jewish girl and settle down.' I said, 'I don't think you understand. I am a homosexual.' He said, 'Come Thursday night. . .'" So first he was a Jew. Then he was a homosexual. Not until Sha'ar Zahav did he feel that he could be both.

"We got a lot of flack from other synagogues at first. They said, 'Gays are welcome here.' I'll know gays are welcome when the rabbi will make an announcement like, 'Congratulations on their 10th anniversary to Larry and Frank! Mazel tov!'"

The fog coming through the Golden Gate has beaten a momentary retreat. Beyond Richardson Bay and Alcatraz I can see the City—so like someone's fairy tale city in the clouds, filled with unbelievably powerful and benign beings. But this city, for all its magic reputation, harbors a great many secret people.

There is no reason to think that homosexuality is any rarer among the people who occupy the higher rungs of business. Images of gays as introverted, ineffectual, or unambitious are so much poppycock. Pechter has said that he knows dozens of gay stockbrokers, even gay board chairmen, and in this he echoes everyone else that I have talked to. But people at the peak of their careers are usually older, schooled in an earlier era in which sexuality of any stripe was not a fit subject for discussion, and a revelation of homosexuality could mean public disgrace and imprisonment. The more successful have more to lose, at least financially, if their fears of "coming out" prove true. And the more successful are usually more willing to submerge "personal considerations" for the good of their companies and their careers.

I recall an earlier conversation, this one with another stockbroker, another evening at Trinity Place. He said, "Coming out is power. If every gay person in America came out, in business, among the politicians and the judiciary, in the churches and the schools, on the police forces, in the military, if every last one, tomorrow, simply told his or her friends, family and co-workers, 'I'm gay'—just that—there would be no 'homosexuality problem' in America."

Mr. JOHN BURTON. We all remember the disgraceful vote of the House of Representatives on the McDonald amendment of that stand in Congress. Gays are even denied legal services.

The citizens in the district I represent who have differing sexual preferences pay as much taxes as any of us. We even have a fair amount of Basque people in our community. They pay taxes equally.

To discriminate against people because of their sexual preference is like discriminating against someone because the color of their hair is black, curly, or whose hair is receding, or because their foot is size 6 instead of a size 7.

The Federal Government has the absolute duty to protect the civil liberties of all Americans regardless of their sexual preference.

Lastly, I think there should be an expression by this subcommittee that the President immediately sign an executive order eliminating sexual preference as a condition of immigration into this Nation. There is legislation in the House of Representatives on that issue. The administration has endorsed the bill. With one stroke of the pen, the President could erase that blot from our American way of life.

With that, I thank you for allowing me to testify. I have one short appointment in my office, then I do intend to stay with the committee through the length of these hearings because I feel they are not only historic but they will be informative. Hopefully, we can pass this type of legislation in a shorter period of time than it took you, Gus, to get the FEPC bill through Sacramento, than it took Byron to get the fair housing bill through Sacramento.

I will be happy to address any questions if you have any.

Mr. HAWKINS. Thank you, Mr. Burton.

Could the Chair prevail on you to forego questions at this time. I understand you will be returning.

Mr. JOHN BURTON. Yes. I intend to stay with these hearings because I feel it is a matter of great national importance.

In our community one of the television networks in one of the most outrageous displays of irresponsibility sought to betray the gay community in this town in a light that is ill-befitting anyone. I find it kind of ironic that I represent a district which has had two national television networks take a look at the people I represent. They showed the people in Marin County as being nothing but hedonists, interested in peacock feathers. They showed the people I represent, who happened to be gay, to be interested in nothing but leather whips and chains.

I believe in free speech. I don't believe we should in any way censor what is being put on television, but I believe they have the responsibility to show all the characteristics of a community, plus and minuses, if any.

But the distortion given our city by that network, and I think my brother can confirm this, led to 3 weeks of nothing but questions and jibes from our colleagues. The comments on the television special on Marin County only lasted 2 weeks, while the comments on the gay community lasted 3 weeks.

Thank you for allowing me to testify and I will be back.

Mr. HAWKINS. Mr. Burton, as a special favor to the Chair, may I ask you to indicate if you could take the Chair. Because of serious illness in the family, I must go to Los Angeles.

Mr. JOHN BURTON. I will be here until the hearings conclude.

Mr. WEISS. Before you leave I just want to express publicly my appreciation to you and acknowledge the leadership role that you have played in fighting the McDonald amendment and attempting to turn that situation around. Sometimes we tend to think we support what our constituents want and feel, that it is that way in Congress as well.

You know all too well that right now the sentiment is not running in favor of this legislation. It is running with the McDonalds of the Congress. It takes a special kind of courage and leadership to maintain the steadfast support you have given to your convictions in this area and I thank you for it.

Mr. JOHN BURTON. Thank you. And that is another reason why I feel it is important for the President to sign an executive order on sexual preference as far as immigration is concerned. If the House of Representatives is going to adopt something as outrageous as the McDonald amendment and if President Carter is serious about what he says, he should pick up his pen today and sign an executive order.

Mr. HAWKINS. The next witness is Rev. Charles A. McIlhenny. [The prepared statement of Charles A. McIlhenny follows:]

PREPARED STATEMENT OF REV. CHARLES A. MCILHENNY, PASTOR, FIRST ORTHODOX PRESBYTERIAN CHURCH, SAN FRANCISCO, CALIF.

Once upon a time there was an old vain Emperor who was approached by some clever philosophers. They suggested to the Emperor that they could weave a magical cloak that could discern who was wise and who was foolish. Although the cloak would be expensive for what it could do it would be worthwhile. Because of the magical makeup of the thread only the wise and sophisticated could see it. The Emperor ordered the weaving to be done only to realize that he himself was foolish and unsophisticated for he saw nothing as they fitted him with his new cloak. Not wishing to embarrass himself and reveal his stupidity he expressed his delight in such a wonderful garment. On the day of the royal procession the whole town came out to praise the Emperor for his new and glorious garment. Everyone joined in admiring the magical cloak, lest they be branded fools and unsophisticated themselves. Then a little boy in his childish way cried, "The Emperor has no clothes." The little boy had told the truth and revealed his foolishness. The Emperor and the crowd were exposed by the unsophisticated remark of the boy.

We would love to have a magical garment or magical glasses that we could put on and discover the wise from the foolish. There is no such magical apparatus. The Bible plainly says that homosexuality is immoral. I am here to say that the Gay Rights Movement has no clothes on.

To be sophisticated and avoid political suicide you must bow to the latest cry of "discrimination". The word itself has become the shibboleth of political wisdom and expedience. The cry of "discrimination" is like the Emperor's magical garment. Those that see it are wise—those that don't are foolish. Those that kowtow to it get elected; those that don't—fade away. The Gay Rights movement has no clothes on. It is a hoax—perpetrated to protect the special interests of a single group of people who have chosen an immoral lifestyle.

San Francisco is known by the homosexual community all over as the Gay Capital of the World, so it is interesting that such proposed federal legislation be discussed here. We had a "Gay Rights" ordinance for our city in 1978. In the preface it states, "the Board (of Supervisors) finds further that such discrimination poses a substantial threat to the health, safety and general welfare of this community. Such discrimination foments strife and unrest, and it deprives the city and county of the fullest utilization of its capacities for development and advancement."

It is peculiar that a city like San Francisco with its reputation for free and tolerant attitudes and with a homosexual population estimated at 150,000, that such an ordinance is really needed. The phrase that has puzzled me has been: "that such discrimination poses a substantial threat to the health, safety, and general welfare of this community". After studying the ordinance and its official documentation, there was no documentation included to prove that "such discrimination poses a substantial threat to . . . health, safety, and general welfare". Such discrimination may cause emotional upset and inconvenience but a "substantial threat to health and safety"? And to the city at large?

It is my contention that homosexuality, itself, poses a substantial threat to the health, safety, and general welfare of the city.

LET US LOOK AT THE HEALTH RECORD

UPI—San Jose Mercury News article, dated April 24, 1980, entitled, "High VD Rate Vexes San Francisco". It states that: "Officials do not know for sure why the venereal disease rate is so high in San Francisco. They just know that it is. The rate of syphilis last year (1979) in the entire U.S. was 11 cases per 100,000 residents. For California, the rate was 18.6 cases per 100,000, and for Los Angeles it was 40 cases per 100,000. For San Francisco it was 240—more than 20 times the national average . . . and they know the number of cases of gonorrhea in the city was second only to Washington, D.C., and was about five times the average for the rest of California. But they continue to puzzle over why the rates are so high. They suspect the "city's high proportion of homosexuals is a factor".

Dr. Irwin Braff, director of the City Clinic states, "the problem is due to generally active people having multiple sex partners. As expected, VD infects single people having sexual contact with a variety of partners more than one-partner individuals such as married persons". Dr. Mervin Silverman was quoted as saying, "We see a very large rate of venereal disease in the homosexual community."

Dr. Irena Heindl, a public health medical officer with the State Department of Health, agreed. She states, "when you get crowded into situations such as in San

Francisco that creates problems . . . you have the Gay communities. They tend to have more sexual partners, they are not as particular about their partners and they tend not to take precautions. She cited San Francisco statistics for the first three months of this year (1980) to back up her contention that a "growing number of homosexual males in San Francisco has contributed to the increasing rate."¹

Just to verify these statistics I wrote Dr. Braff and Dr. Heindl. Dr. Braff responded in a letter saying that he "frankly did not know what they represent." But he added that the statistics from the UPI article "are not of the magnitude indicated".² Dr. Heindl's reply stated that the figures reported "were essentially correct".³

In another article, "Vaccine Offers Hepatitis Immunity", it stated that a test group of 1,083 homosexuals were used because the "homosexuals have been found to a risk of developing hepatitis B that is ten times greater than any other group".⁴

In another article, "Many 'New' Venereal Diseases", stated there are "at least 20 different disease agents that can be transmitted by sexual contact, posing a major public health problem for the 1980's". Dr. King Holmes of the University of Washington and head of the infectious diseases section, said that, "there are 'new' diseases being recognized because of improved laboratory techniques and because of recent changes in sexual behavior. Increasing sexual activity . . . can expect a continued epidemic of sexually transmitted diseases in the 1980's".⁵

In another news article, "Sharp Increase in Hepatitis and Dysentery in San Francisco", it stated, "that a substantial rise in the incidence of hepatitis and dysentery this year (1979)—much of it transmitted by intimate sexual contact among males—reported by the San Francisco Health Department. The Bureau of Disease Control had received reports of 744 cases of hepatitis up to mid-November (1979). The average number of cases for the past three years was 400-500 a year. Amoebic dysentery is also on the sharp increase; for the past three years it was about 130 cases annually while this year 220 cases. Although both sexes are equally susceptible, the incidence of the disease was 8 to 10 times greater in males between 20 to 40 years of age than the rest of the population".⁶

It is strange that our city health officers do not know why there is a sharp increase in venereal disease in the San Francisco when the Scriptures plainly say that the "wages of sin is death". The ultimate answer to such an epidemic is not more costly vaccines but prevention altogether. God's plan for sexual relations re-established and promoted—not bandage affairs. Prevention by abstinence from promiscuous sex is free. It costs the taxpayer nothing.

If "discrimination" against homosexuals "poses a substantial threat to the health . . . of this city", will being indiscriminate maintain the health of our city?

LET US LOOK AT THE ECONOMIC AND SOCIAL STATUS

Does the economic and social picture of the homosexual community warrant them to be among the underprivileged ethnic groups?

A brief definition of homosexuality: A gay political primer states that scientists reject the idea that homosexuality is caused by genetic or constitutional factors. So far as it was concerned, sexuality must be learned.⁷ The Bible said that over 3,000 years ago. Homosexuality, according to the three major religions in the world which find common roots in the Old Testament, is an immoral sex act between consenting persons of the same sex. (Leviticus 18:22; 20:13)

Knowing that a homosexual sex act is a matter of choice, not like an involuntary muscle reflex, what does it mean to protect by governmental legislation, someone's preferences (be they sexual or emotional)? Consider the economic and social status according to recent news surveys:

1. The average income of the average gay household of 1.4 persons equals \$23,600.
2. The income of a gay household is roughly 50 percent above the national average.
3. 70 percent of the gay community are college graduates.
4. 97 percent of the gay community are employed.
5. 84 percent of the gay community are regular voters.

¹ "High V.D. Rate Vexes San Francisco Experts," San Jose Mercury, April 24, 1980, U.P.I.

² Letter from Dr. Ervin Braff, Bureau of Disease Control and Adult Health.

³ Letter from Dr. Irena Heindl, Public Health Medical Officer, V.D. control program.

⁴ News article, San Francisco Chronicle, Sept. 29, 1980, "Vaccine Offers Hepatitis Immunity."

⁵ News article, San Francisco Examiner, Jan. 15, 1980, "Many 'New' Venereal Diseases," U.P.I., Washington.

⁶ News article, San Francisco Chronicle/Examiner, 1979, "Sharp Increase in Hepatitis and Dysentery in San Francisco."

⁷ Gay Activists Alliance, "20 Questions About Homosexuality, A Political Primer," 1979.

6. Homosexuals control 19 percent of the spendable income in the United States.⁸

According to another Gay magazine, their readership being polled revealed these statistics:

1. 79 percent of the gay community use commercial airlines an average of nearly 4 trips per year.
2. 80 percent of the gay community own at least one car.
3. 80 percent of the community order drinks by brand names.⁹

The Chairman of the Board of Blueboy, Inc., states that the homosexual community has "more discretionary income because they seldom have family obligations".¹⁰

WHERE IS THE DISCRIMINATION?

According to Business Week magazine, dated September 3, 1979, it states, "homosexuals have established dozens of Chambers of Commerce and other business and professional organizations to further one another's economic interests—which run the gamut from auto repairs to tax consultants". Says the publisher of the Advocate, "we're everywhere, and we're the most affluent of any minority".¹¹

One Savings and Loan branch manager in San Francisco remarks that "with 100,000 or more gays in the city, it would be foolish not to go after the market".¹² Foolishness is to discriminate against such buying power. The owner of a research company acknowledges that "gay discretionary spending power is incredible".¹³ Gays reportedly spend an average of \$500.00 per year on clothes.¹⁴ Homosexuals have the money and so the power to influence the economy. Only a poor, bigoted businessman would ignore such a market. That could pose a substantial threat to the health of his business.

San Francisco has a homosexual telephone directory for two years running. It has approximately 80 pages filled with from 500 to 600 Gay owned/managed and pro-gay businesses in the Bay Area. It is said by the newest Gay Area Directory that the "Gay press in San Francisco is powerful and prolific, with more Gay publications per capita than anywhere else on earth . . . they are a major source of progress, power, and prosperity Gay people have achieved here".¹⁴

The Gay business world is not only profitably expanding but intends to expand into more areas of the city. An ad in the 1980-81 Gay Area Directory states that the Castro (better known as the Gay ghetto) in a very few short years has become "primarily gay & affluent". Not just a few shops and businesses but a few blocks catering almost exclusively to the homosexual clientele. The intent, to expand the gay business community to the Haight, Fullmore and Russian River areas.¹⁵ It has been the aim of the Gay Community to make the Castro area the model for gay communities everywhere—a prototype.¹⁶

As to the services available to the Gay Community here:

1. 11—Gay & pro-gay legal services
2. 10—medical services
3. 40—organizations
4. 13—gay religious organizations
5. 10—gay political organizations (including Republican and Democratic clubs)
6. 9—gay youth organizations
7. 14—real estate businesses.

The economic power being what it is has also produced "gentrification", the return of the gentry into the city. "In San Francisco the gays are the cutting edge of gentrification".¹⁷ A black section of the city known as the Western Edition, geographically aligned north of the Gay ghetto in the Castro, has been slowly bought up by gay landlords, renovated and upgraded. The results have been the migration of gays into the black neighborhoods and the corresponding immigration of blacks out of the city. "Some black leaders estimate that the black population . . . of the Western Edition has already been cut from 64 percent to 33 percent. They estimate that 70 percent of the remaining blacks live in housing projects in the flats . . . near City Hall".¹⁸

⁸ U.S. News and World Report, Apr. 14, 1980.

⁹ Same article but reported from the "Advocate" in 1977.

¹⁰ Same article as footnote 8.

¹¹ Business Week, Sept. 3, 1979.

¹² Business Week, Sept. 3, 1979.

¹³ Business Week, Sept. 3, 1979.

¹⁴ Gay Area Directory—1980-81, front color page No. 3.

¹⁵ Gay Area Directory—1980-81, front color page No. 4.

¹⁶ Gay Area Directory—1980-81, front color page No. 6.

¹⁷ "Gentrification," San Francisco Examiner, Sept. 1, 1979.

¹⁸ San Francisco Examiner, Sept. 1, 1979, "The Gay Migration Into Black Neighborhoods."

With the economic clout the homosexuals have here and across the country, the cry of discrimination makes one wonder what real substantial threat this is.

LET US LOOK AT THE POLITICAL SCENE

The political power of the homosexual community was seen recently in the election of our mayor. She was not able to win the election until the Gay candidate which carried 10 percent of the vote conceded and cast his support to her. As the Gay candidate he held the balance of power between two candidates only 2 percentage points apart.

According to the Los Angeles Times, The Caro Foundation says "Gays appear to be spearheading the New Politics in the Democratic Party. It is more than a special interest group; it is an active growing sub-culture in American Urban Life".¹⁹

According to the Task Force on Sex Preference, compiled by the State of Oregon Department of Human Resources, homosexuals:

1. Have no particular lifestyle.
2. Whatever the social group, there are likely to be homosexuals in the group.
3. Homosexuals are represented in all occupations.
4. Homosexuals are represented in all social and economic classes, ethnic groups, and religions.²⁰
5. No clear picture of what a homosexual is like.²¹
6. The 150,000 homosexuals in Oregon have had a homosexual orientation for at least 3 years of their adult lives.²²
7. There is no real evidence that homosexuals try to recruit.

In a recent Davis, California newspaper article, entitled, "Lesbians Invite City to Celebrate", it stated that "the number of lesbians has waned since the city's 2 to 1 vote against the gay rights initiative and so the need to recruit 'is the only answer'". A spokeswoman for the lesbians said that their goal was to recruit more lesbians.²³

WHERE IS THE DISCRIMINATION?

The Final Report did consider the matter of morality in its report. It found that for some, homosexuality was immoral but for others it was not. However, four of the ministers on the Commission pointed out that believing homosexuality to be immoral or not does not preclude the civil rights of the person.²⁴ The obvious error is that the Gay Rights movement is not a Civil Rights Movement as historically understood. Homosexuals, whatever their religion, race, creed, color or sex have all the civil rights now that anyone has.

There are no documented cases of heterosexuals or bisexuals demanding their civil rights. There is no documented evidence to date that heterosexuals and bisexuals have been discriminated against as to their sexual orientation. The report confuses the issue of morality and government with separation of Church and State. The First Amendment does not separate morality and state. Such separation is impossible. Every law is an expression of morality.²⁵ Even this proposed legislation believes that it is right for gays to have certain heretofore denied rights. The Task Force believes that to maintain a morality stance on homosexuality from a political standpoint is not proper. "No doctrine of any particular religion (is) to be transplanted into government policy which will effect citizens of many different religions".²⁶ Instead the government should ignore the rights of religious people and discriminate on the basis of religious belief and morality.

The Task Force report also surveyed a number of state personnel. They "were asked whether they would feel comfortable working with co-workers or supervisors who were homosexual."

1. 65 percent said comfortable with co-workers.
2. 63 percent said comfortable with supervisors.

¹⁹ News article, Los Angeles Times, Sept. 7, 1980, "Ethnic Gays Are the Cities Emerging Political Power."

²⁰ "Final Report of the Task Force on Sexual Preference," State of Oregon Department of Human Resources, Dec. 1, 1978, page 11.

²¹ Same as above: F.R.T.F., page 12.

²² Final Report of the Task Force on Sexual Preference," State of Oregon Department of Human Resources, Dec. 1, 1978, page 19.

²³ News article, "Lesbians Invite City To Celebrate," the Davis Enterprise, Oct. 2, 1980.

²⁴ F.R.T.F., page 25.

²⁵ R.J. Rushdooney, "Freedom of the Church", Chalcedon Position Paper No. 6; 1980, Chalcedon, P.O. Box 158, Vallecito, California 95251.

²⁶ F.R.T.F., page 25.

3. Two-thirds said they had a generally positive attitude toward homosexuals and 53 percent said their attitude had improved as a result of knowing someone who was homosexual.²⁷

Only 15 percent responded negatively to any information classes on homosexuality and 7 percent felt uncomfortable working with known homosexuals. With such a positive survey like this, what is the need of this kind of legislation? Where is the real—not imagined—discrimination? There is as much heterophobia in the homosexual “community” as there is homophobia in the heterosexual “community.”

WHAT IS A HOMOSEXUAL?

A homosexual is a heterosexual. The Task Force report mixed oranges and apples when it tried to compare homosexual statistics with heterosexual statistics. One can not legitimately compare homosexuals with heterosexuals. The statistics on child molestation compares the fact that there are more heterosexuals indicted than homosexuals. However, heterosexuality has never been considered immoral or psychopathic as homosexuality has and is. No one ever got arrested for being heterosexual. No one ever got arrested for being homosexual. Homosexual acts were outlawed. Heterosexuality encompasses many legitimate as well as illegitimate sexual expressions. Adultery, fornication, incest, bestiality, pedophilia, necrophilia, transvestitism, sado-masochism, and bisexuality are all species of the genus heterosexuality. Homosexuality is not a genus with numerous species. Homosexuality itself is a species of heterosexual behavior. There are not two kinds of sexual expression hetero and homo, there is also autosexualism. To compare a species with a genus and conclude that the species has far less perversions in it than the genus, is to compare two entirely different categories.

The Scriptures teach that homosexuality along with the other sexual perversions are perversions precisely because of the person's natural sexual expression. Homosexuals are condemned in Scripture because they are expressing their heterosexuality toward those of the same sex. Bestiality is a perversion because the heterosexual expresses his natural sexuality toward animals. The same with all other sexual perversions. Incest is not a genus with certain species of perversion. It is perversion. The categories of incest and homosexuality can be compared but not the genus, heterosexuality, and the species, homosexuality. The Biblical definition in Leviticus 18:22 is, “Thou shalt not lie with a man as you do a woman . . .” The sex act is described against the background of the normal sex relationship.

Every Bible scholar—liberal or conservative—agrees that the prohibition of Leviticus 18:22 et al. refers to homosexuality. The disagreement is not over what the text condemns but whether it is applicable for today. If homosexuality as condemned thousands of years ago is not psychiatrically uncondemned, how does that change its moral standing? If homosexuality is no longer considered relevantly immoral, then what of bestiality (Leviticus 18:32) and incest (Leviticus 18:1-21)? The argument to legitimize homosexuality will also legitimize incest and bestiality. Whether this will ever legally be done (?) the argument for the one perversion adequately suits the other. When will the American Psychiatric Association erase incest from its list of mental disorders? When enough voices of the incest lobby protest? Are mental and spiritual disorders decided by majority vote?

When Kinsey reported that homosexual activity was normal sexual activity, was he giving a value judgment as a scientist or merely describing what people do? War is a normal phenomenon in that all nations get around to doing it sooner or later. But does that “normal” express approval? If the scientist is to be objective and valueless in his observations, then mere description posits no approval or disapproval.

It is my contention that the scientist is not valueless—not morally neutral in any of his observations. He is a human being made in the image of God who can not in reality divorce his moral system from his powers of observation. To make such a neutral, valueless observation is in effect to consider irrelevant value judgment and morality; that in itself is a “good” scientist—that is a value judgment. No scientist can escape moral evaluations by ignoring them. He has in fact asserted a value judgment about value judgments. To describe homosexual acts as “normal” may mean a value judgment. If “normal” does not mean approval or disapproval, then the work “normal” is contentless—except to give an average number of cases. The scientist, however, is not valueless himself—although his statement may not immediately relate to a value judgment.

²⁷ F.R.T.F., page 56.

The Task Force reported that teenage male prostitutes have a heterosexual orientation but in fact practice homosexual sex acts for money²⁸—an interesting observation by the Task Force but by such a *modus operandi* how could one define a homosexual or heterosexual? If a person can have a heterosexual orientation yet commit homosexual acts what then becomes of the significance of "orientation" or even the term "preference"? What is condemned in civil law and Scripture is homosexual acts regardless of "orientation." What would it mean to have a homosexual preference or orientation and yet practice bestiality or incest or adultery? How would one identify a legitimate "orientation" in order to claim discrimination when at the same time one practices another kind of sex act? The law could then protect the individual because of his supposed homosexual orientation when in fact he never commits homosexual acts. And by the definition in the report he would not have to prove his orientation—just claim it.

Let's just keep it straight: homosexuals are actually heterosexuals. Gay men and women have a heterosexual orientation—they just practice homosexual acts for "whatever" reasons.

Homosexuality not heterosexuality poses a substantial threat to the health of this city, the moral as well as physical health. This ordinance in San Francisco has cost me and my church approximately \$100,000.00 in terms of a lawsuit defending our Constitutional right to discriminate. This is a moral issue and it puts an unjust burden upon individuals, businesses, and organizations that believe that moral issues should not be legislated against. I, for one, would discriminate against immorality; but whether I chose to or not, it is not the province of the state government to dictate what moral matters I consider relevant or not. God's Word alone dictates moral matters. It is the responsibility of Government and its citizens to uphold morality and decency. In this matter or sexual preference I have a Constitutional right protected by the 1st Amendment to discriminate against immorality.

I respectfully urge the members of this committee to reject this proposed legislation.

Respectfully submitted.

The Reverend CHARLES A. McILHENNY.

**STATEMENT OF REV. CHARLES A. McILHENNY, PASTOR, FIRST
ORTHODOX PRESBYTERIAN CHURCH, SAN FRANCISCO, CALIF.**

Reverend McILHENNY. I have prepared statements and attachments, which I wonder if they could be included in the record?

Mr. HAWKINS. Without objection, so ordered.

Reverend McILHENNY. My task today is not an easy task, because I happen to be in the gay capital of the world. Let me also say, first off, as a Christian, I am not against civil rights, anybody's civil or human rights. I begin this statement with a little story.

Once upon a time there was an old vain Emperor who was approached by some clever philosophers. They suggested to the Emperor that they could weave a magical cloak that could discern who was wise and who was foolish. Although the cloak would be expensive for what it could do, it would be worthwhile.

Because of the magical makeup of the thread, only the wise and sophisticated could see it.

The Emperor ordered the weaving to be done only to realize that he, himself, was foolish and unsophisticated, for he saw nothing as they fitted him with his new cloak. Not willing to embarrass himself and reveal his stupidity, he expressed his delight in such a wonderful garment.

On the day of the royal procession, the whole town came out to praise the Emperor for his new and glorious garment. Everyone joined in admiring the magical cloak, lest they be branded fools and unsophisticated, themselves.

Then a little boy in his childish way cried, "The Emperor has no clothes." The little boy had told the truth and revealed his foolish-

²⁸ F.R.T.F., page 40.

ness. The Emperor and the crowd were exposed by the unsophisticated remark of the boy.

We would love to have a magical garment or magical glasses that we could put on and discover the wise from the foolish. There is no such magical apparatus. The Bible plainly says that homosexuality is immoral. I am here to say that the gay rights movement has no clothes on.

To be sophisticated and avoid political suicide, you must bow to the latest cry of "discrimination." The word, itself, has become the shibboleth of political wisdom and expedience. The cry of discrimination is like the Emperor's magical garment. Those that see it are wise; those that don't are foolish. Those that kowtow to it get elected; those that don't, fade away. The gay rights movement has no clothes on. It is a hoax, perpetrated to protect the special interests of a single group of people who have chosen an immoral lifestyle.

San Francisco is known by the homosexual community all over as the gay capital of the world; so it is interesting that such proposed Federal legislation be discussed here. We had a "Gay Rights" ordinance for our city in 1978. In the preface it states, "the Board of Supervisors finds further that such discrimination poses a substantial threat to the health, safety, and general welfare of this community. Such discrimination foments strife and unrest, and it deprives the city and county of the fullest utilization of its capacities for development and advancement."

In order to better analyze the proposed Federal legislation, let's not only examine the proposed legislation but also see existing legislation and its current effect on San Francisco.

Homosexuals are not a bona fide minority. Implicit in the House of Representatives bill, H.R. 2074, is the assumption that homosexuals are a bona fide minority. They are not. Blacks, browns, Asians, and other racial minorities, cannot change their color, or national origin, or sex. It is not practical or wise for such minorities to change their God-given qualities to avoid job discrimination. On the other hand, homosexual behavior can be changed if the individual really desires such a change.

Contrary to what many people say, even a homosexual periodical on politics admitted that homosexuality is not caused by a constitutional genetic, glandular, or hormonal factor. It is a learned behavior. No such evidence exists to prove the presence of any physiobiological impairment in transvestism, incest, bestiality, or pedophilia, either.

If, then, homosexuality is a learned behavior pattern, then the proposed legislation sets a new and dangerous precedent: The protection of a form of behavior as a civil right.

In a recent election dealing with homosexual rights legislation in the university city of Davis, Calif., no support for the homosexual position was forthcoming from the racial minority groups. They seem to feel that calling homosexuals a minority takes away from many of their own legitimate causes, especially in the area of affirmative action programs. No such affirmative action programs are scheduled with this "gay" proposal. Granting special legislation to groups because of behavior—let alone immoral behavior—opens the floodgates to almost any group that wants minority status.

Merely because some people choose to be homosexuals is no reason for special rights for them. In California, homosexuality has been decriminalized. Homosexuals in California enjoy the same protection of the law as any other heterosexual resident of the State. No heterosexuals have complained of discrimination, yet the proposed legislation would encompass them, too. The proposed legislation plainly caters to the behavior pattern of a single sexual community.

As to job discrimination, when individuals claim job discrimination, it is supported by pertinent facts to demonstrate the economic status of the individual. Let's look at the economic status of the homosexual community.

Recent articles in U.S. News & World Report and Business Week have stated:

(a) Average income of average gay household of 1.4 persons equals \$23,600;

(b) The income of a gay household is roughly 50 percent above the national average;

(c) Seventy percent of the gay community are college graduates;

(d) Ninety-seven percent of the gay community is employed;

(e) Eighty-four percent of the gay community are regular voters;

(f) Homosexuals control 19 percent of the disposable income in the United States.

Where is the discrimination? Another gay magazine poll of its subscribers:

(a) Seventy-nine percent use commercial airlines an average of nearly four trips per year;

(b) Eighty percent own at least one car.

The chairman of the board of Blueboy, Inc., states that the homosexual community has more discretionary income because they seldom have family obligations.

From Business Week, 1979, an article states that "homosexuals have established dozens of chambers of commerce and other business and professional organizations to further one another's economic interests—which run the gamut from auto repairs to tax consultants." Says the publisher of the Advocate, "We're everywhere, and we're the most affluent of any minority."

Where is the discrimination? One savings and loan branch manager in San Francisco remarks that with 100,000 or more homosexuals in the city, it would be foolish not to go after the market. The owner of a research company acknowledges that gay discretionary spending power is incredible.

In San Francisco, we have our own Gay Area Telephone Directory, which lists between 500 and 600 gay-owned/managed, and pro-gay businesses, organizations, and professionals. The directory stated that the gay press in San Francisco is powerful and prolific, with more gay publications per capita than anywhere else on Earth—they are a major source of progress, power, and prosperity.

Once again, my question is: Where is the discrimination?

As to gay and pro-gay services in the homosexual capital of the world:

(a) Eleven gay and pro-gay legal services;

(b) Ten gay and pro-gay medical services;

(c) Forty gay organizations;

- (d) Thirteen gay religious organizations;
- (e) Ten gay political clubs;
- (f) Nine gay and pro-gay youth organizations;
- (g) Fourteen gay and pro-gay real estate businesses. This is only a partial listing.

San Francisco also has a health problem. In the San Francisco sex orientation ordinance, it states that "discrimination—based on sex orientation—poses a substantial threat to the health, safety, and general welfare of the city and county. . . ." After reviewing the actual documentation, I found no evidence presented that proves that discrimination poses a substantial threat to the health, safety, and general welfare. . . ."

As a matter of fact, it is the homosexual community that poses a substantial health, safety, and general welfare threat to the city. In recent newspaper articles:

(a) "High V.D. Rate Vexes San Francisco." The syphilis rate nationwide as of 1979, 11 per 100,000 cases; in California, 18.6 per 100,000 cases; in Los Angeles, 40 per 100,000 cases; and 240 per 100,000 in San Francisco—"more than 20 times the national average." San Francisco is only second to Washington, D.C., as to the rate of gonorrhea. The city health officials continue to puzzle over why the rates are so high. They suspect the city's high proportion of homosexuals is a factor.

(b) In another article, "Vaccine Offers Hepatitis Immunity," it stated that a test group of 1,083 homosexuals were used because the homosexuals have been found to have a risk of developing hepatitis B that is 10 times greater than any other group.

(c) In another article, "Sharp Increase in Hepatitis and Dysentery in San Francisco," it stated that there is a substantial rise in the incidence of hepatitis and dysentery this year—1979—much of it transmitted by intimate sexual contact among males—reported by the San Francisco Health Department. It said: "Although the disease of amoebic dysentery is equally transmittable among females—males have 8-10 times greater chance of contracting this between the ages of 20-40 than the rest of the population."

It is strange that our city health officials do not know why there is a sharp increase in venereal disease in San Francisco when the Scripture plainly states that the "wages of sin is death."

The ultimate answer to such an epidemic is not more costly vaccines and research, but simple prevention—altogether. God's plan for sexual relations reestablished through the family and legally protected, is the answer. Prevention of such dreaded disease by mere abstinence from promiscuous sex is free. It costs the taxpayer nothing. Instead, clinics around the city are offering free inoculations for the current outbreak of hepatitis, at the University of San Francisco, and as a result of contaminated food in other parts of the city. That costs somebody.

If discrimination against homosexuals poses a substantial threat to the health of this city, will being indiscriminate maintain the health of the city?

A homosexual is a heterosexual so far as the Scriptures are concerned. The Scriptures describe homosexual activity—whether mental or physical—as the perversion of what is natural. "For even their women did change the natural use into that which is

against nature: And likewise also the men, leaving the natural use of the woman, burned in their lusts one toward another; men with men working that which is unseemly . . ."—Romans, 1: 26, 27. A homosexual is a heterosexual who has changed the natural God-created use of sexuality for perversion, just like all the other sexual sins are heterosexual perversion of their sexuality with children, with family members, animals, and by marital swapping.

Homosexuality poses a substantial threat to the real meaning of civil rights. It places an unfair burden on those who endeavor to be moral by forcing them to accept such immoral behavior. Homosexuality is a moral issue which this proposed legislation ignores, thus ignoring the rights of multitudes of individuals to decide business and employment matters on a moral basis. It is unjust to impose on the citizenship of our country a law which discriminates against morality. The Government will now decide what is relevant morality.

I, for one, would discriminate—and have, and have been sued as a result—against immorality. God's word alone dictates moral matters. It is the responsibility of government and its citizens to uphold morality and decency. In this matter of sexual preference, I have a constitutional right protected by the first amendment to discriminate against immorality. I respectfully urge the members of this committee to reject this proposed legislation.

Mr. HAWKINS. Thank you Reverend McIlhenny.

I am a little curious as to the questions raised by your statement in asking just where is the discrimination. On page 4 of the statement you indicate several things and I am just picking out several parts of the statement which have relevance to historic developments. You indicate that since there are 14 gay real estate businesses, there is no discrimination against gays in real estate.

Reverend McILHENNY. I am raising the issue.

Mr. HAWKINS. Are you attempting to imply there is no discrimination because of the number of pro gay real estate businesses?

Reverend McILHENNY. I question that.

Mr. HAWKINS. Are you aware of the fact that at the time the Supreme Court struck down restrictive covenants that there were proportionately more black real estate brokers than whites in those areas and you might say with the same degree of presumed fashion shall support, that because blacks were real estate brokers, that restrictive covenants against blacks owning certain properties was an indication there was no discrimination.

Would that be as logical?

Reverend McILHENNY. I am not an expert on business law. I just know, living in San Francisco, there is such discrimination, and that they have ways of dealing with that discrimination.

Mr. HAWKINS. I am trying to locate some discrimination for you since you have raised the question with the committee. Would you conclude there is no discrimination in the armed services against gays?

Reverend McILHENNY. I have no idea of those acts.

Mr. HAWKINS. Would you conclude there is no discrimination in the field of education, against gay teachers or those alleged to be gays?

Reverend McILHENNY. Like I stated, there is an amount of discrimination. What is the percentage of that discrimination?

Mr. HAWKINS. Whatever the degree, do you conclude there is?

Reverend McILHENNY. Yes, I would conclude there is discrimination against morality. As a matter of fact I have discriminated against someone who is immoral, a homosexual person took me to court.

Mr. HAWKINS. In the *Walker v. the First Orthodox Presbyterian Church of San Francisco*, does that sufficiently identify the case in which you were sued?

Reverend McILHENNY. Yes.

Mr. HAWKINS. Did the court rule with you?

Reverend McILHENNY. Yes, the judge ruled in our favor, that we have a constitutional right to discriminate.

Mr. HAWKINS. Did not the court rule that you had discriminated on the individual's being a gay?

Reverend McILHENNY. There was no argument on that.

Mr. HAWKINS. Does that not indicate that in the First Presbyterian Church there is discrimination?

I was chagrined that you would raise the question where is the discrimination when there are so many cases where we disagree with the merit of it. To raise the question where is the discrimination seems to be a self-evident fact from the testimony you have given to the committee.

Reverend McILHENNY. I was only dealing with substantial discrimination.

Mr. HAWKINS. Mr. Weiss.

Mr. WEISS. I am not sure I follow your reasoning. Perhaps you can help me.

Is it your position that because in your judgment, homosexual behavior is immoral, that therefore, it is legally proper for there to be discrimination against homosexuals?

Reverend McILHENNY. I think I have a constitutional right to base my business practices on morality. If that means it conflicts with someone else's lifestyle, yes, I have a right to discriminate.

Mr. WEISS. I do not know what you mean by lifestyle. Supposing someone simply tells you that, in fact, they are gay men or lesbian women, does that by itself lead you to believe that it is appropriate for you or anybody else to discriminate against that person?

Reverend McILHENNY. No automatic discrimination because someone tells me they are immoral. It is for the government to come in and legislate on what I think is immoral or moral.

Mr. WEISS. If you say it does not give you the automatic right to discriminate.

Reverend McILHENNY. I did not say that.

Mr. WEISS. I thought what you said—

Reverend McILHENNY. It does not mean that I would discriminate.

Mr. WEISS. In your judgment, is there an automatic right to discriminate?

Reverend McILHENNY. In those areas, especially in the area of religious organization.

Mr. WEISS. Suppose it is a real estate company that has housing that is built with Federal assistance, mortgage guarantees, but it is

built by a private developer. Somebody comes in and the manager concludes that in fact, the party who wants to rent is a homosexual; and in fact asks and the person says, "Yes."

Does the manager have the right at that point to deny renting an apartment to that person?

Reverend McILHENNY. At this point, he does.

Mr. WEISS. Do you feel the Government should not interfere?

Reverend McILHENNY. Yes. What I am dealing with is, does the Government have a right to legislate whether I can have a moral issue or not. I think in this legislation, that is what is being done.

Mr. WEISS. Do you think the same thing applies as far as employment, that you have the right as a private business person, the right to discriminate with the right to hire or fire someone if in fact you conclude that person is a homosexual?

Reverend McILHENNY. Yes, I believe they should have that right. Why not?

Mr. WEISS. I assume that you base this on the Scripture. You mentioned something to do with the Scripture?

Reverend McILHENNY. Yes, that authority has to come from the Scripture.

Mr. WEISS. If the Scripture in your reading of it authorizes discrimination on the basis of race, do you think that in fact becomes justified?

Reverend McILHENNY. If that was scriptural, yes.

Mr. WEISS. Have you in the reading of the Scripture found justification for discrimination on the basis of race?

Reverend McILHENNY. No.

Mr. WEISS. On the basis of sex.

Reverend McILHENNY. Yes.

Mr. WEISS. Do you believe that discrimination is justified?

Reverend McILHENNY. Yes, I have I might add. No one has ever said that the Bible was against race, blacks or Asians. People have concluded certain statements about various minority groups but the Scriptures themselves ban racial groups as themselves immoral—

Mr. WEISS. I thought we were discussing sex. I am trying to get an idea as to the breadth of the discrimination which in your judgment is authorized or justified by the Scriptures.

Do you believe that in fact the Scripture justifies discrimination on the basis of sex?

Reverend McILHENNY. Yes. That is I would not allow for a woman to be a pastor because the Scriptures indicate that fact. So there is a case for discrimination.

Mr. WEISS. Do the scriptures in your view justify discrimination on differing religious convictions?

Reverend McILHENNY. Yes.

Mr. WEISS. In all those instances where you believe there is justification, it is your feeling that not only the religious sector but the commercial sector of our country has the right to deny people housing, jobs or access to public accommodation?

Reverend McILHENNY. Based on morality, yes.

Mr. WEISS. Everything in the Bible is in fact ipso facto based on morality or immorality?

Reverend McILHENNY. Yes. The word of God is the basis of constitutional law, et cetera.

Mr. WEISS. You have made a statement as to the rights guaranteed to you under the first amendment of the United States.

Reverend McILHENNY. I understand the first amendment, yes.

Mr. WEISS. You said there were certain rights guaranteed to you.

Reverend McILHENNY. Yes.

Mr. WEISS. You do agree the first amendment provides very clearly for separation of church and state?

Reverend McILHENNY. Yes. There is a confusion people bring in when they start talking about Christians confusing issues of church and state. I come as a private citizen but there is no authorization in the legislation which mandates a separation between state and religion. Man's morality is the basis for the law. A man's religious convictions whether formal in terms of the established church or his own particular church, I do not think anyone can separate law from religion or law from the moral position of an individual. The Government cannot do that. That is not real life. The separate institution of the church and the state, that is what we stand for.

Mr. WEISS. Would you define a theocracy?

Reverend McILHENNY. Where the word of God rules in a society.

Mr. WEISS. Do you believe we are a theocratic society?

Reverend McILHENNY. I believe all societies are. As to which word of God rules.

Mr. WEISS. If there is a conflict between the Constitution of the United States and your interpretation of the scriptures, you would then say which rules?

Reverend McILHENNY. On any new legislation? The word of God.

Mr. WEISS. On any existing legislation.

Reverend McILHENNY. The scriptures have to rule.

Mr. WEISS. That is clear enough. I thank you very much.

[Applause from audience.]

Mr. HAWKINS. May the Chair remind the audience that although the audience is constituted as guests of the committee, rules of the House prohibit demonstrations although we have permitted latitude. I would like to caution the audience against verbal demonstration. The Chair is obligated to say this although obviously we have allowed some latitude.

Mr. Burton.

Mr. PHILLIP BURTON. What is your own estimate of the portion of the American society that is homosexual?

Reverend McILHENNY. I only know what the statistics have already stated. Twenty percent of the population is homosexual.

Mr. PHILLIP BURTON. What is your estimate of the proportion, therefore, of the taxes paid to run our Government which are paid by homosexuals?

Reverend McILHENNY. I have no idea.

Mr. PHILLIP BURTON. I gather that you believe that homosexuals per capita have a higher earning record.

Reverend McILHENNY. That is what they state in their literature.

Mr. PHILLIP BURTON. Do you tend to believe that?

Reverend McILHENNY. Yes, I see no reason for them to lie about it.

Mr. PHILLIP BURTON. So without accepting the accuracy of these estimates, it would be fair to state that those who consider themselves homosexuals pay something more than a very minor amount of the tax required to run our Government. Is that a fair statement?

Reverend McILHENNY. I am not sure of your statement. I do not see how that follows that because you have a large salary that you also pay a large amount of taxes.

Mr. PHILLIP BURTON. Would it be fair to say the homosexual community pays in excess of 10 percent of the taxes?

Reverend McILHENNY. I do not know what their estimate is.

Mr. PHILLIP BURTON. That would not seem unfair or unreasonable on the face of it, would it?

Reverend McILHENNY. No.

Mr. PHILLIP BURTON. You left the only reasonable inference to be drawn from your statement that because of this income, discrimination in employment was not really quite demonstrably relevant as it relates to homosexuals. Did I misunderstand you?

Reverend McILHENNY. No, I was saying that on the basis of the San Francisco city ordinance in homosexuality poses a substantial effect on the health and welfare.

Mr. PHILLIP BURTON. I am led to believe that women control more than a majority of the income and pay more than a majority of the taxes. One could not conclude from that there is no discrimination in terms of women.

Reverend McILHENNY. Granted.

Mr. PHILLIP BURTON. Similarly as to homosexuals I think it is self-evident.

Reverend McILHENNY. I will repeat again, that I have a right to discriminate on the basis of morality or immorality.

Mr. PHILLIP BURTON. You have made reference to our Constitution. Do you agree with the following statement, that when our Founding Fathers set up the Constitution they set up a charter for these Thirteen Colonies and shortly thereafter, spelled out constitutional arrangements by which our society would be run. They realized there were not adequate safeguards, therefore they limited the activity of the Federal Government in the Bill of Rights. The reason for the Bill of Rights was to protect the various minorities in our society, which at that point in time represented a number of religions and some nonbelievers, hence the first amendment and the prohibition in terms of the Federal Government to establish a religion. I would submit that in our constitutional arrangements, our Founding Fathers had very clearly in mind the Government take no action that would permit the discrimination against one or another who might be classified in the minority situation because our country was founded by a collection of minorities of one kind or another. One reason, if we consider religion, our Founding Fathers were determined that no religion, even if they represented a majority could oppress a minority point of view. Is that your understanding?

Reverend McILHENNY. That is basically my understanding and that is what I am urging the committee to do, take no action.

Mr. PHILLIP BURTON. Consistent with that basic thrust, the American Congress over the years has put into statutory form, an

affirmation of these basic underlying principles which are contained in our basic document, the Constitution. Hence we have dealt with the issue of abuse of child labor by limiting the work of children, stopping if you will, child labor under improper conditions. We have moved in the areas of employment, access to public accommodations, the various body of laws which provide Federal moneys to sustain various housing programs, we have decided as a national act, to give meaning to this basic constitutional arrangement and have proscribed legislation against those enumerated in the basic statute.

Reverend McILHENNY. I have no quarrel with that.

Mr. PHILLIP BURTON. In the Federal statute we do proscribe discrimination based on sex.

Reverend McILHENNY. I would have problems if they wanted to force it upon the church.

Mr. PHILLIP BURTON. My best estimate of that is correct, but we are not talking in this legislation about affecting churches.

Reverend McILHENNY. Right, we are talking about immorality. This is the first time the Constitution deals with morality.

Mr. PHILLIP BURTON. You stated you felt there was a basis in the Bible to justify discrimination based on sex. I am not trying to trap you but only to explore in detail—you then said you did not dispute the fact and desirability of banning discrimination in housing, public accommodation, what have you—based on sex.

Reverend McILHENNY. What I was referring to, in the scriptures, being a woman or man is not immoral, but being homosexual is immoral because we are talking about a behavior act. A woman cannot change that. An Asian cannot change his national origin, a black cannot change his racial background and the Constitution rightfully protects that.

Mr. PHILLIP BURTON. Can a person change his religion?

Reverend McILHENNY. Yes, but would you be equating religion with homosexuality in that case?

Mr. PHILLIP BURTON. I am only equating that we have recognized there can be no false basis upon which people are denied equal access to the fruits of their labor or expenditures of moneys expended in the total society. In that context I could not fathom discrimination from other areas of outlawed discrimination.

Reverend McILHENNY. The protection of the Constitution deals with things that people cannot change that is their being and religion. But when it gets to the area of homosexuality. Now the Government is saying they will determine moral issues.

Mr. PHILLIP BURTON. Were you in the State at the time that Congressman John Burton mentioned, when the legislature decriminalized the conduct of consenting adults in private?

Reverend McILHENNY. Yes.

Mr. PHILLIP BURTON. Do you think that to be a desirable act?

Reverend McILHENNY. Not in my view, no.

Mr. PHILLIP BURTON. Was it desirable in that the Government did not intrude upon consenting adults as to their personal private behavior?

Reverend McILHENNY. I cannot adequately comment on those questions. All I can say is that I have a personal conviction on it but to defend it from a legal standpoint, I am not prepared for.

Mr. PHILLIP BURTON. If someone were seeking employment and did not have the benefit of a religious or state ceremony recognizing the marital relationship, if you had an unmarried adult person engaging in heterosexual activity would that form a basis upon which that person should be denied employment, housing, access to restaurants.

Reverend McILHENNY. If it is private, but if it is public then I and others have a right to take a stand and discriminate when it becomes public.

Mr. PHILLIP BURTON. What is your view about permitting religious ceremony or act of state, or judge, to sanctify marriage of the same sex?

Reverend McILHENNY. I am opposed to that because it is contrary to the word of God.

Mr. PHILLIP BURTON. If one happens to be a homosexual you oppose their ability to marry one another?

Reverend McILHENNY. I would not oppose their ability, just the right.

Mr. PHILLIP BURTON. You would oppose legalizing the marriage—

Reverend McILHENNY. Yes. Homosexual marriage.

Mr. PHILLIP BURTON. But if they are not married and adults engaging in sexual activity and are not married, that is immoral?

Reverend McILHENNY. And that would prohibit them from jobs, housing, Federal housing loans. If the Government is saying I cannot make a decision on the basis of morality, then the Government is discriminating against me which is a conflict of the first amendment.

Mr. PHILLIP BURTON. Your religion is certainly not the majority religion.

Reverend McILHENNY. Not in San Francisco.

Mr. PHILLIP BURTON. Not in the country. I am talking by the more narrow definition, your religion. You are not suggesting that the Federal Government delegate to the majority religion to impose their view of morality?

Reverend McILHENNY. No. There is no such individual who can be so neutral and independent, according to the Bible.

Mr. PHILLIP BURTON. Let me conclude by observing we have a great variety of laws on the books which proscribe, make illegal, make criminal, killing someone without adequate justification such as self-defense. We have laws on the books making it criminal to steal another person's property. We have laws in every State which makes illegal, makes criminal, public conduct that offends the sense of collective morality. So this legislation has nothing to do with repealing those laws. This legislation only proposes that the access to the various elements of our working society not be denied a person because of sexual orientation or preference. So in this sense, heterosexual activity on Van Ness and Market Street at high noon is proscribed just as would be homosexual activity of the same guilt. This legislation has nothing to do with legitimizing that.

Reverend McILHENNY. Take the certain area homosexuality and the Government is saying you cannot rule on the basis of a moral issue. That is mixing up the separation of church and State.

Mr. WEISS. Will the gentleman yield?

Mr. PHILLIP BURTON. I yield.

Mr. WEISS. You had said the reason homosexuality is not entitled to the constitutional safeguards which other areas of our society receives is because race and sex and I suppose ethnicity are things people cannot change but homosexuality is something that an individual can change. That is your belief?

Reverend McILHENNY. Yes.

Mr. WEISS. That is your premise for excluding homosexuality?

Reverend McILHENNY. One premise.

Mr. WEISS. Is not religion the same?

Reverend McILHENNY. We are then putting religion and homosexuality together and I would wonder what government is doing getting involved in it.

Mr. WEISS. There is a gentleman named Falwell who in the course of the last 2 weeks suggested that Jews who pray have no reason to believe that their prayers will be listened to because by reason of the scriptures He hears only those who pray through Jesus Christ.

Reverend McILHENNY. My question is, Are you then equating religious conviction with homosexuality?

Mr. WEISS. It depends not only on religious conviction or homosexuality. It depends on a society that is not allowed to discriminate regardless of whether a person has religious convictions which the majority or minority may not agree with or sexual orientation preference which may not be agreed with; or be of a race or ethnicity which is a minority which the bulk of the society may look upon. I wonder if we can follow it through a logical extreme and take the morality and immorality bases and everybody would have the right not to hire or fire the homosexual. What happens to those people in our society? Do we then create a Federal program to feed homosexuals who no longer have the right to hold jobs?

If housing is denied to homosexuals, do we then force them to live out in the streets or do we develop a Federal program to house homosexuals. It seems to me, the direction in which you are taking us creates a logical absurdity that you yourself would not want to be identified with.

Reverend McILHENNY. I agree with you, logical absurdities are ridiculous. But I seem to recall a statement that if it is in the school it will promote children to be homosexuals, that of course is a might. But taking it to its logical conclusion, you will create little teeny-weeny homosexuals coming out. Neither of us accept that because it is an absurdity.

Mr. WEISS. Thank you.

Mr. HAWKINS. Mr. Stephens.

Mr. STEPHENS. I just want to clear up one distinction here. With respect to your position which you base on Scripture, I had an occasion to talk to an Episcopalian minister about this. He made a distinction which I am wondering you would agree with. He cites from the Gospel of Matthew, chapter 19, verse 12, which states:

For there are eunuchs who have been so from birth, and there are eunuchs who have been made eunuchs by men, and there are eunuchs who have made themselves eunuchs for the sake of the Kingdom of heaven.

The minister interpreted this passage to mean that Scripture acknowledges that someone may have a homosexual disposition but that Scripture distinguishes this from homosexual behavior.

Reverend McILHENNY. No law condemns homosexuals. It condemns homosexual behavior. The opposite of homosexuals is heterosexual which has never been condemned. Heterosexual activity deals with many things. Homosexuality is a species of the genus, heterosexuality. What is condemned is the act, whether it is done by heterosexuals or anybody. So it is the behavior which is distinguished.

Mr. STEPHENS. So you are concerned about the fact that this legislation may require you to accept someone who is a homosexual and in that connection have to accept his behavioral pattern, even though that behavioral pattern may have an adverse impact on the job?

Reverend McILHENNY. Seems like a logical conclusion.

Mr. STEPHENS. Is that not what was involved in your lawsuit where you had the organist who was a homosexual? Were you concerned that his homosexuality was in conflict with your views of what is involved in the Christian ministry?

Reverend McILHENNY. Yes. It is in conflict to what the scripture feels. It was not the fact that the fellow said I am a homosexual. Anybody can say they are such and such, it is their contention that they continue to act as such.

Mr. STEPHENS. By their actions they would serve as a role model as a reflection of your religious principles?

Reverend McILHENNY. They would be in effect teaching.

Mr. STEPHENS. When you were sued under the San Francisco Police Code for discharging this person because of their sexual preference, your situation will not be unlike what an employer would have to face under this legislation if he is sued.

Can you tell me what costs and burdens were imposed upon you as an employer in defending this?

Reverend McILHENNY. It came to about \$76,000, we only have 46 members.

Mr. STEPHENS. And the ultimate result was that the superior court here found that your first amendment free exercise rights insulated your church from government intervention in the form of this police code, is that right?

Reverend McILHENNY. Yes.

Mr. STEPHENS. It costs that much to vindicate your constitutional rights.

Mr. HAWKINS. The next witness has to leave by 11:30, I wonder if Dr. McIlhenny might let us go on to the next witness and if he will remain at this time, then we will continue the questioning of both of you. The two of you were to have been a panel; however, the Chair made a mistake by calling one and not the other. Then we can continue with further questioning from Mr. Stephens. We appreciate your testimony.

The next witness is Rev. Cecil Williams. You may proceed.

STATEMENT OF REV. CECIL WILLIAMS

Reverend WILLIAMS. Thank you very much.

I am very delighted to have the opportunity to come at this time to speak to you about my concern. I am black, I am a minority person, and I am here to advocate for the bill.

I have 3,000 people at my church. It is multicultural, multiracial, and multisexual; 16 years ago this church had more to do with initiating the thrust of the gay movement in the bay area than any one institution because it was there we brought together what is called the Council on Religion, and the Homosexual.

From that, we began a journey with the gay community, we began a direction with the gay community. It has been my opportunity to be involved on all levels in regard to civil rights, in regards to private rights, in regards to societal rights, in regards to community rights for the gay community and I have found it a fascinating and interesting journey.

It has been mine also to be involved in what may be called a theological journey, a religious community journey. I would, therefore, like to say first of all and foremost, that in regard to religion and in regard to theology, it is pluralistic. Therefore, because of the training—and I have been to three seminaries—because of my training and because of the orientation of what I have come through as a black person, I find it most difficult to engage in any kind of projection by which any of my brothers or sisters are excluded, no matter what their sexual orientation, race, or no matter what their condition in life.

If I rightly understand what good news is all about, if I rightly understand it from the Judaic-Christian prospective of being the good news for everybody. Therefore, I find it very difficult to exclude any person, no matter what they are, as it relates to their rights of expression and their rights of interpreting the meaning of their lives in this day and time.

I am not a literalist, I am not a fundamentalist. I come from that school of thought in the Christian faith which says every man and every woman and every person has the opportunity and the right to be and receive a part of the abundant life.

Therefore, I come as one who has not had the abundant life in many ways, but am struggling to make sure everybody is.

To be a fundamentalist—that is a group of people who necessarily selects from the Scripture those words and those Scriptures which best suit and fit a given meaning to their own experiences of life.

A literalist tends to often take Scriptures, not looking at what we call in theological terms as exegesis, which has to do with root words and what writers and people perceived at that time, what they call the word of God, the root words and what they meant as you then look at a given Scripture and the total story. Literalists don't do that. They select certain words and certain Scriptures to benefit their own meaning.

I would disagree with the previous speaker when he alluded to the fact that it was possible that Scriptures hadn't been used by church people to keep racial minorities, for instance, in their position of being slaves or being second-class citizens or whatever the case may be.

There is a Scripture, for instance, in the New Testament, which was used against a lot of us who are minorities or ethnic people,

slaves be obedient to those who are your earthly masters, Ephesians 5.

As I grew up, I found I was in a segregated church which I couldn't understand in many ways. Anytime we went through the white churches we were relegated to the back doors, the side doors. Every once in a while on race relations day we were given credence that we existed, but we better make sure we stayed in our slave places.

Many Christian communities took these phrases out of their context, to the degree they could use whatever biases they wanted to. I can stand up here and tell you I know what the word of God is and I would be lying, and anybody who stands up here and said that would be lying.

As the critters did, they had conflicts, they were trying to prove a point at the time they wrote these interpretations. Therefore, they had biases also. So those of us who try to interpret must look at conditions, places, writers, and circumstances, if we are to rightly understand the interpretation.

Therefore, I would say to you, that one of the most important things for those of us who are not literalists, I would like to use conditions, is that the Bible is not the word of God, but the word of men in which the contemporary word of God comes to men.

I don't rule out the fact that the spirit of the word of God didn't come to us at this time. But then there were people who wrote those words and if we don't understand it, we get into trouble. If we say it is all the word of God, you see, it excludes anybody else's interpretation.

I would raise the question, who in fact has the word of God and if we are honest, none of us has, we are all in search of that word, we are always in discovery of that word.

Second, a Bible passage is to be interpreted in terms of experiences, and third, we must see the Bible in light of our contemporary experience and knowledge. At the time the writers first wrote, they were under certain conditions. This is a new day and time. If they made mistakes, we ought to correct those mistakes.

Many of the critters' answers are time caught as our answers are time caught.

Therefore, I wish I could spend a lot more time. I wish I had been able to prepare a paper. I was not told to prepare a paper. I would have had a heck of a paper. We have three books at the church, one is Loving Men and Loving Women, by Sally Gebhardt, a doctor at one of the hospitals here, with Bob Johnson, a very important book. I want to be sure to get those books over to you this afternoon. We have practical books written by lesbian women. Therefore, we would like to make sure you get these books.

I hope your office lets me know the next time there is a hearing. If you will let me know where or notify me you need a paper and exactly where I need my forces, because I would have crowded out the place.

Last, but not least, let me say this: I suffered at the hands of what the Bible could do to destroy a group of people. I know what it is to experience the interpretations of those who proclaim to have the word, because that word excludes those who they don't want to be included and they can continue to operate under the

word to the extent that so many people are denied the right to work, to live, to the opportunity of recreation, and to the opportunity of full expressions of all the freedoms that are supposedly enjoyed by the people of our democratic society.

I would venture to say if you could go with me this afternoon, you would see that I would be counseling homosexuals and heterosexuals and one thing I have discovered is that they both have the same problems. In many ways, when one talks about the diversions or the fact that homosexuals or gays may in fact be sick, I find the same sickness among heterosexuals. Therefore, I would like to say to you, that it is important for this bill to make sure that the rights of the gay and lesbian community and people of any sexual orientation are, therefore, moved as quickly as possible so we can at this particular time, enjoy the pluralism that we so espouse, the democratic participation that we so affirm, and the Constitution as well as our religious rights that we so affirm.

I don't have to believe like others believe because they say that I have the word of God. I must say now that at this particular time, I am proud to be a black person speaking on behalf of the rights of gays, lesbians, and other people whose sexual orientation is not the same as mine. I will continue to advocate for gays and lesbians and for poor people who don't have a voice, and I will continue to advocate and this is morale to me, and certainly my decision to be a part which says you have a right to determine the destiny of your life no matter who you are.

I would like to thank you for this opportunity.

Mr. HAWKINS. Do you have any time at all?

Reverend WILLIAMS. I will take a few seconds.

Mr. HAWKINS. It seems to me that both you and Mr. McIlhenny can both be questioned with the understanding that if either you must leave, he can exit. But I think it is only fair that both of you be given the opportunity to respond to questions. The Chair will commend both of you on the quality of your presentations.

Mr. STEPHENS, do you care to direct any questions to Reverend Williams or with Reverend McIlhenny?

Mr. STEPHENS. Let me ask questions of Reverend Williams.

I think it unfortunate that you have experienced the prejudice and discrimination that you have and that people have been prejudicial to you in the name of the Scriptures. I, too, think it is abhorrent. But one thing which concerns me is the distinction between the behavior of people and what Scripture teaches. Are there certain moral absolutes which don't change from era to era?

Reverend WILLIAMS. There are no absolutes. All absolutes have to be looked at, criticized, reinterpreted, revised. That is why you have revised versions of the Bible. It is to reestablish, redirect, make relevant, the word in a different time and at a different condition and in different circumstances. That is merely one way of looking at it. There are no absolutes that should not and cannot be reinterpreted and redefined as well as to create different responses for the times during which people live.

Mr. STEPHENS. The only comment I would make to that is if you go back to the Old Testament and you look at the First Commandment, it says, "You shall have no other Gods but me." That sounds

to me to be rather absolute. It seems to me under your answer that would be open to doubt.

Reverend WILLIAMS. My interpretation of God is quite different from his interpretation and theologians and lay people all over America have different interpretations of God. There is no one interpretation of God.

Mr. STEPHENS. There is not necessarily one God?

Reverend WILLIAMS. It all depends on the interpretation.

Mr. STEPHENS. Let me just translate that into the legal area, and I have noticed this from the comments which have come out from the previous testimony. There seems to be the suggestion that we should compartmentalize morality on one side and law on the other side, and the two shall never mix.

What do you do in a situation where you have private consensual, sado-masochistic behavior in which an individual submits himself to physical abuse. Would you say as a matter of law that the person inflicting punishment on the victim should not be punished by the law because it is not immoral?

Reverend WILLIAMS. Are you talking about a situation where the two persons consent?

Mr. STEPHENS. Yes.

Reverend WILLIAMS. If two persons consent to the act, it seems to me unless one party goes to the police department and says look, I have been brutally beaten and the other says but you submitted to it, then you have a bind you find yourself in.

Mr. STEPHENS. What if the victim is killed?

Reverend WILLIAMS. Then you have the commission of a crime.

Mr. JOHN BURTON. Did the same thing apply to a heterosexual relationship?

Reverend WILLIAMS. Yes.

Mr. PHILLIP BURTON. The legal definition of a battery is the unconsented touching of another person without further justification. If you get any situation where you are inflicting serious bodily harm, that is a crime in the absence of consent or self-defense.

Reverend WILLIAMS. That is why I raise the question, if both parties consented.

Mr. PHILLIP BURTON. This bill has nothing to do with that at all.

Mr. STEPHENS. A basic premise of Reverend Williams' position is there is a distinction of what somebody does in public and private life and that a person's private life is of no concern to society. Yet our laws refute that position. We have the Mann Act which prohibits the transportation of any woman for purposes of prostitution and "any other immoral purpose." 18 U.S.C. 2421. In the area of State law, there is the case of *Commonwealth v. Appleby*, 402 N.E. 2d 1051 (Mass. 1980), where a person was brutally beaten in what was described as a sado-masochistic incident.

The defense in that case argued that a person had a constitutional right to engage in that conduct because it was private. The court rejected this argument, holding that consent was not a defense. Underlying this holding was the recognition that the law recognizes, and incorporates certain moral principles of conduct. Where society determines where an individual is harmed by someone else, or if he harms himself, the law has a responsibility to step in.

Mr. JOHN BURTON. Will you yield?

Mr. STEPHENS. Yes.

Mr. JOHN BURTON. That is relevant to this bill. If my wife says it is all right for me to shoot her, that is a crime. If I were gay and my lover says it is all right to shoot me, it is a crime. So it has nothing to do with sexual preference, but with crime.

Mr. HAWKINS. Gentlemen, the Chair has been rather lenient. It seems to me the subject is getting rather far afield.

Mr. JOHN BURTON. Well, in San Francisco, we are like that.

Mr. HAWKINS. But we are limited as to time. Reverend Williams has indicated he has to leave. I think it would be more than fair that Reverend Williams should be excused at this time. If you have further questions of Reverend McIlhenny, we will call him back to the stand.

Mr. Phil Burton?

Mr. PHILLIP BURTON. On behalf of the subcommittee, I would like to thank you for your thoughtful and penetrating testimony, and I am sure everyone in the audience knows but for the benefit of our subcommittee, Reverend Williams is truly a leader in our total community in addition to his religious activity.

Mr. JOHN BURTON. I have always been grateful to Cecil for one thing, he never filed against me.

Mr. PHILLIP BURTON. That would have been tough.

Mr. JOHN BURTON. He is a leader and respected person in our community for every cause.

Mr. HAWKINS. Reverend Williams and Mr. McIlhenny, the record will be open for a minimum of 2 weeks. So if either of you wish to file additional documents, you may do so. At this time, we will excuse you.

Mr. HAWKINS. Are there any further questions? Reverend McIlhenny, do you care to make any additional statement?

Reverend MCLHENNY. Coming from a minority opinion in this discussion, I would like to state I am not against homosexuals, I want to minister to them. The salvation of Jesus Christ is just as much for them as for any other sinner, they are welcome in my church and I would encourage them to respond and trust in Jesus Christ.

I want to thank you for that brief opportunity.

Mr. HAWKINS. Thank you.

The committee will take a 5-minute recess at this time.

[A short recess was taken.]

Mr. HAWKINS. The committee will come to order.

The next witness is Mr. Grant S. Mickins, Executive Director, Human Rights Agency of San Francisco.

We welcome you to the committee and look forward to your testimony. The prepared statement in its entirety will be printed in the record at this point. You may proceed.

**STATEMENT OF GRANT MICKINS, EXECUTIVE DIRECTOR,
HUMAN RIGHTS AGENCY OF SAN FRANCISCO**

Mr. MICKINS. I wanted to say I am sorry I was not able to participate in the foregoing theological debate. About 30 years ago as a theological student, I was recruited by a gentleman named Phillip Burton and Charles Warren, to work in the campaign for

Helen Gahagan Douglas. As a result of that, I gave up theology and went into politics and other areas.

I feel I have changed my course and was able to gain something which went before.

Mr. PHILLIP BURTON. Let the record reflect, Mr. Mickins always voted on the right side.

Mr. MICKINS. Mr. Burton was right then and continues to be.

I am Grant S. Mickins, director of the San Francisco Human Rights Commission, and I wish to thank you for this opportunity to speak in support of H.R. 2074, introduced by Congressman Weiss, which would prohibit discrimination on the basis of affectional or sexual orientation.

Major Dianne Feinstein of your host city has asked me to represent her at this hearing. As you know, she has served as a strong proponent of this legislation and she indicates that but for her schedule, she would be here today.

First, let me review briefly the history of the city of San Francisco's official stance passed in 1974 as chapter 12A and 12B of the San Francisco Administrative Code including sexual orientation—our terminology does not include the term “affectional”—as one of the protected classes under our nondiscrimination policy legislation. We have followed that mandate very rigorously from 1974 until today and before I finish, I hope to give you statistics on what our results have been.

Additionally, article 33 of the police code, which became effective May 11, 1978, prohibits discrimination in employment, housing, and public accommodations based on sexual orientation. It also names the HRC as the agency empowered to investigate and mediate complaints filed with it by individuals. In December of 1978, the human rights commission gay liaison worker, a staff position we insisted be provided and which still exists on the HRC, reported on the effectiveness of the first 6 months of enforcement of article 33 of the police code.

Ms. Jo Daly, who was the HRC gay liaison worker in 1978, reported prior to passage of article 33, that the HRC's enforcement employment discrimination was limited to its jurisdiction under the provisions of section 12B of the administrative code, and was related only to cases involving city contractors. She is currently one of the police commissioners.

The HRC had kept records since 1975, approximately the time when there began the emergence and public recognition of a gay community as a political, social, economic, and moral force in the life of San Francisco. In the 3 years, 1975 to 1978, and in the first 6 months of the existence of article 33 of the police code, discrimination in employment was the major type of complaint recorded by the HRC, with housing in second place. Denial of the use of public accommodations ranked third, and complaints involving the police department-citizen relationships were fourth. Three-quarters of the complaints have been resolved out of court. We try to avoid courts if there are other means of resolving the problems.

Under the police code section 33, there are three remedies, which involve a reference to the human rights commission, where we might mediate it under an informal procedure.

Under the second, there is a civil remedy available to the aggrieved party and under that process, the aggrieved party may utilize the city attorney or his own private attorney.

The third remedy is that he may then resort to the district attorney's office for injunctive relief and therefore enjoin the employer from the continuation of engaging in this prohibited form of conduct.

I might also point out that the Human Rights Commission has supported legislation on the State level, A-B-1, and Senate bill 18, over the past year, which failed passage, and we also supported H.R. 2074, which I understand is a reintroduction of that legislation.

We have, on the other hand, condemned the House Concurrent Resolution 166, which as we understand it, in its language, tended to detract and diminish the rights of the homosexual community, as we saw it.

I would think though the bill has not been presented to our commission as it is a part of the same bill and I would say our commission would again support it and work rigorously to see that it receives passage at some early point.

I might give you some statistics on what we found in our case-load from the inception of enforcing the gay right ordinance as one of the early forerunners of municipalities with ordinances in this area.

In 1973, we started with three cases. It was due to the three cases, however, that in 1977, we received out of nearly a thousand complaints total, 292 cases dealing with employment, but primarily housing. I would say three-quarters of those were recorded complaints.

In 1978, which is the year the board of supervisors added article 33 of the police code, we had 330 complaints. More than a third of the complaints were complaints by members of the gay community concerning employment discrimination.

In 1979, there was a dramatic drop in those statistics. The number of complaints handled in employment primarily were 74. We attribute that to the wide publicity given to the enactment of article 33 of the police code. Employees were quite interested. They all asked for copies. All the industrial groups asked for copies. They wanted to know what their obligations were and we assessed that as being one of the reasons why there was such a tremendous drop in those complaints.

Also, it would indicate the enactment of the law served as a preventive measure which is the intention of most laws. Because as you know, it is virtually impossible to adjudicate every possible case and prevention is our ultimate goal.

Basically, those are some of the factors which we have currently in our records to indicate what our success rate has been in this area. I would think we are either the first or nearly the first municipality to enact laws in this area. We have worked with other municipalities to instruct them in how to enact and implement the proper legislation.

Recently, members of the Governor's staff came to our office and asked about the procedure for investigating sexual orientation complaints as it differed from the usual kind of complaint. I was a

little surprised because it is felt by persons in the field that there is another approach you use for investigating this kind of complaint.

I would say you treat this type complaint the same as you would on a disability, racial complaint, or any others. The same kind of factors are involved. You need to do your investigative work thoroughly. Once your class is identified, the same investigative techniques come into play. So there is not really that much of a difference in that whole process.

So, again, let me thank you for the honor of speaking. We would restate the official, formal support of the HRC for H.R. 2074 when notified by your subcommittee sponsor, and would work with you to secure support for its passage by the House. Thank you.

Mr. HAWKINS. Thank you, Mr. Mickins.

I assume the Human Rights Commission of the city and county of San Francisco, has jurisdiction over other acts and activities. Broadly, can you describe just what is the work of the Commission? What enforcement power and type of coverage does the Commission have?

Mr. MICKINS. I would be pleased to. The Human Rights Commission serves two basic functions. No. 1, we serve as the Office of Contract Compliance. We enforce equal opportunity and affirmative action contracts for the city of San Francisco, which is a major function in our area.

Second, we serve as an office of dispute rulings for individual complaints of discrimination and community disputes. We bring them in for conciliation and mediation and solutions to those problems if they are based on any of the six or seven protected classes.

Mr. HAWKINS. Has the addition of this responsibility in any way diluted the enforcement of the other acts that you also have responsibility for enforcing?

Mr. MICKINS. It has not. I personally have knowledge of the need that existed for this type legislation before it was enacted. I served as assistant to the former director 10 years ago.

At that time we were receiving 10 to 20 complaints a month because of being terminated, being refused employment or promotions because of their lifestyle.

At that time there was no protection. In some cases we tried to mediate but without enforcement powers, we were handicapped in that aspect.

But, to your question, it has not diluted it. True, any agency, certainly as you add additional work you need staff, but apart from that mechanical problem—

Mr. HAWKINS. Has it in any way improved the enforcement by the commission?

Mr. MICKINS. It has strengthened it. Basically the gay community, as earlier speakers indicated, are not of one creed. We have complaints in our office from black persons who are being fired probably for better reasons. We have also disabled people who are gay and feel that they are being discriminated against.

Mr. HAWKINS. What sanctions or penalties do you have available?

Mr. MICKINS. We can order sanctions against an employer, once a finding is eschewed by myself as director. Once that is done we can order a penalty of \$50 a day against an employer until it is rectified.

We are in a position to terminate their contract holding them not to be a responsible contractor for future contracts.

Mr. HAWKINS. Would the same penalties which you now have available, let us say, for the contract compliance, be applicable in the instance of gay behavior?

Mr. MICKINS. Indeed it would. In fact, we invoke the same penalty, the same as we have with respect to race or sex and it has been equally effective.

Our affirmative action thrust has been for two protected classes, race and sex. The gay community and the National Gay Task Force have told us repeatedly they are not seeking to be included in the affirmative action class though they are included in the nondiscrimination protection class.

Under that they can invoke all the powers of the committee for that purpose.

Mr. HAWKINS. Thank you.

Mr. WEISS. Your testimony is very important and valuable.

Is it only your agency which is involved in the civil enforcement of the particular code provision or is there any other agency involved?

Mr. MICKINS. The district attorney's office is the other office involved under article 33. The complaint is filed both with us and the district attorney. If the party doesn't want to use their own private attorney, they may ask the city attorney or district attorney to file an action for injunctive relief.

Mr. WEISS. That is in the nature of civil remedy.

Mr. MICKINS. Yes.

Mr. WEISS. Would you know what staffing increase there was when the administrative code provision went into effect for your agency?

Mr. MICKINS. As it stands now, we will be able to operate up to this time with CETA, with persons funded under the Community Development Act, but we have not had a tremendous increase in staff. That speaks to the fact we haven't needed it, but speaks to the physical condition of the city.

Mr. WEISS. For the most part, you may do it with what you had on board previously?

Mr. MICKINS. Yes.

Mr. WEISS. You indicated most of the complaints were in the employment area; the second as to housing.

Would you give us a general overview as to the kind of housing complaints the commission receives?

Mr. MICKINS. Basically the primary complaint has been, with the increase of the gay population in San Francisco, certainly there has been a great demand on the housing market. Many realtors and many landlords have just, based upon their observations, refused to rent to two persons coming up who they suspect as gay on the basis of their interpretation.

That is also prohibited in the ordinance.

We have mediated scores of complaints in this area.

There has been some public accommodation cases although there have been less of those in the last 2½ to 3 years.

Mr. WEISS. In listening to your testimony, I get the impression as people get more and more familiar with not the legislation but the community's determination as to what is appropriate behavior, there is more adherence. That could be the reason why your complaints are falling off; that because in fact the number of violations is going down.

Mr. MICKINS. Correct. There was extensive publicity as to enactment and practice which alerts the employer as to illegality of discriminating on this arbitrary basis. That has served to reduce the number of complaints.

Mr. WEISS. Thank you.

Mr. HAWKINS. Mr. Burton?

Mr. JOHN BURTON. Did you find after the television show or as a result of the verdict in the case involving the deaths of Harvey and George where violence is never justifiable, but certainly venting of emotion was obvious, that there became a backlash and a slight increase in complaints on gay people? As long as I have been around, and when I was a bartender working on California Street, there were gay saloons. People were accepted.

You find some kind of backlash either after the TV show which you think the people of San Francisco would have known as not the fact, or definitely after the violence which occurred after the killing of Harvey and George.

Mr. MICKINS. Based upon the reactions, I think the areas that became most noticeable was in the police area, where they felt the police activity was increased, or the working relationship between the gay community and the police was increased by those incidents.

Mr. JOHN BURTON. Talking about the gays, on our police commission we have Jo Daly who I believe has dropped 40 pounds. She used to be a little heavy. I saw her and I said, "You are looking good, Josephine," what is going on? She said as a matter of conscience, she couldn't continue sitting on a commission herself, being overweight, and say, "You are too fat to be a cop."

She said, "I feel if I have to tell somebody that you are over the weight requirements, I, myself, ought to get down to the right requirements," which I think shows a sensitivity which a lot of heterosexuals might not have.

She said, "I would have felt like a fool saying 'You are too fat to be a cop' when I am sitting up here the way I am."

I think it shows that kind of sensitivity and shows a great sensitivity on the part of the mayor, where they would put Jo Daly or a person like her on the police commission and I think her actions in just that way shows that she took her job very responsibly.

Mr. MICKINS. She is a person of high integrity.

Mr. JOHN BURTON. I can't think of anybody else doing that. That showed me a high degree of sensitivity.

In other words, "I can't tell people they are overweight if I am sitting there overweight myself."

Mr. MICKINS. I would say, Congressman Burton, she probably has contributed a lot to why the police department is now integrated both with people from the gay community in that area, as well as any other person.

She realized down the road for a policeman to be really understanding, they need to perceive within their own ranks.

Mr. JOHN BURTON. You have to know people as people to understand they are different in every way, shape and form.

I divide people into two categories; the good people and the jerks, and that is it. It has nothing else to do with color, age, skin, hair, weight. I think if we could get people down to that category, we would have a better place to live.

Thank you.

Mr. HAWKINS. Now that we have established that people are people—

Mr. JOHN BURTON. That is hard to accept.

Mr. HAWKINS. Mr. Stephens?

Mr. STEPHENS. Mr. Mickins, was your office involved in drafting the police code on title 33?

Mr. MICKINS. Correct.

Mr. STEPHENS. I notice the code doesn't contain an exemption for religious organizations. That is different from section 702 in the Civil Rights Act, which exempts churches and religious organizations.

Can you tell me why there was no exemption made in this legislation for churches?

Mr. MICKINS. Basically while we worked with the city attorney on aspects of the drafting, it was drafted by the city attorney's office and members of the board of supervisors.

Mr. STEPHENS. Do you know whether the issues of exemption for religious institutions came up?

Mr. MICKINS. No.

Mr. STEPHENS. I would like to look—

Mr. JOHN BURTON. The question was, religious institutions were exempted from provisions of the statute?

Mr. STEPHENS. They are now, under section 702. However, under the San Francisco Police Code, section 33, there is no exemption.

Mr. JOHN BURTON. Having dealt with legislation of that sort, probably the religious community doesn't feel a need for it.

Usually you are always hearing from the Seventh Day Adventists and whatever to be exempt from this coverage or that coverage.

I was not present, but I assume there was no persuasive argument given. That is just a guess. I wasn't there.

Mr. MICKINS. Maybe somebody could send a statement to the committee.

Mr. STEPHENS. We can get a statement in the record; that will be suitable.

Mr. HAWKINS. The record will show that some gentleman in the audience was shaking his head.

Mr. STEPHENS. Let's move on to bona fide occupation qualification, BFOQ's, similar to that in title VII.

The principle underlying that concept is that there may be reasonable grounds for engaging in discrimination based on sexual preference.

Have you had an employer claiming that he had a BFOQ defense which was recognized?

Mr. MICKINS. Yes. One of the prime questions is, do we have to hire somebody in drag?

Mr. STEPHENS. For the record, would you explain that?

Mr. JOHN BURTON. Do you watch M.A.S.H.? It is a man wearing a dress.

Mr. STEPHENS. All right.

Mr. MICKENS. What we have done, we have indicated if an employer has a bona fide dress code, we will certainly look at it on a case-by-case basis, to determine whether or not this kind of conduct conflicts with his general requirement as it applies to his total work force in order that he not single that one aspect out.

But you do get persons with the allegations that somebody has dressed arbitrarily and they didn't hire them for that reason.

It would depend on the job and the factors involved. I don't think you can make a blanket statement on that.

Mr. STEPHENS. Tell us whether you have ruled whether an employer has discriminated on the basis of a BFOQ where an employee came in drag.

Mr. MICKINS. We have complaints where we mediated where employers objected to persons and the way they were dressed. In at least half those cases, it didn't involve homosexuals at all, but persons that I didn't like their beard or rather unique attire at the time.

It had nothing to do with any specific form of dress. But it may be a bona fide BFOQ if we look at all the factors and look at the work force.

Mr. STEPHENS. I am not sure the record is clear on that. Can you describe a concrete situation in an employment setting where somebody coming in drag could be discriminated against?

Mr. MICKINS. We have not had a case that went beyond the conciliation stage.

Mr. STEPHENS. What has been the result of those mediations?

Mr. MICKINS. In two of the cases, the employer recanted and allowed the person to stay. In at least one, the person left the employment.

Mr. STEPHENS. When the employer allowed that person to stay, was it accepted as part of the settlement that the employer could determine what was proper dress?

Mr. MICKINS. In one case the employer transferred the person to another section where dress was unimportant.

Mr. JOHN BURTON. Has there been a case where somebody showed up in drag?

Mr. MICKINS. No. I have only had inquiries from employers who have the phobia in their mind that that will be a problem.

Mr. STEPHENS. Aside from coming in drag, are there other practices that have come to the attention of your agency?

Mr. MICKINS. Not beyond what I mentioned earlier.

Mr. JOHN BURTON. What we are saying is, if they are qualified to do the job, that is what is really most important. When women were allowed into the highway patrol, they were hired because they could do the job.

The same with the police department. If she could run with a 50-pound sack or jump over a hoop—the standard has not changed and we see no need to make changes.

Mr. HAWKINS. Are you getting the answer from the witnesses you desire or is Mr. Burton leading the witness?

Mr. JOHN BURTON. I am not leading him. The questions have to be based on what the law is. The law is universal. An employer is not going to let me show up in shorts and I am straight. The ordinances go across the board. The activities are the same.

Mr. HAWKINS. I am just trying to keep our record straight so we get clarity in the record.

Mr. STEPHENS. I want to raise one more question.

It might be a realistic situation. I read in today's paper, the San Francisco Chronicle, October 10, 1980, an article on page 3 on an ice cream establishment which apparently sent out a number of containers of contaminated ice cream, contaminated with hepatitis.

There was this little article, side article which makes the comment on hepatitis.

Homosexual communities, where hepatitis is widely transmitted by sexual conduct, are considered high risk groups for both the common types of disease. In San Francisco the hepatitis rate has been soaring. Dr. Selma Kretz, assistant director of the city's Bureau of Communicable Diseases, said that about five percent of all hepatitis A cases are food handlers and two-thirds of those food handlers are gay men.

Suppose after reading this article the businesses involving food handling decide they have in their employ a number of people who are gay and based on this historical experience, there is a probability that many may have a form of hepatitis. What sort of lawful employment practice could an employer adopt to make sure he is not having in his work force workers who are contaminated with this communicable disease?

Mr. MICKINS. I would say the health code applies to everybody universally and the employer should be concerned that all office employees are uncontaminated, whether they are gay or whoever.

Certainly—

Mr. STEPHENS. How would it strike you if an employer, during the interview of an applicant says, "What is your sexual preference?"

And the individual says, "I am gay."

And the employer says, "We have an employment policy, in view of the historical record of high incidence of hepatitis among food handlers, that you must have a gammaglobulin shot."

That question is not asked of a heterosexual person or, if the question is asked and he says, "I am heterosexual," he doesn't have to get the shot. Would you say that is discrimination?

Mr. MICKINS. There are two areas of unlawful activity.

It would be unlawful to ask whether the person—if there is any reference to his race or his sexual preference, that would be an unlawful question.

Universally he might say, I have all my health-handling employees go to the health department and come back with proof that they are not contaminated.

That would be acceptable if he did this universally for everyone.

Mr. STEPHENS. So the way for an employer to comply with the law is to hire the applicant, then you ask him, "Can you provide us with a certificate of health?"

Mr. MICKINS. As a condition of employment, he might ask for this. If it is discovered an applicant has a communicable disease, then the employment policy would be you have to have it treated.

I would think as a matter of the health code I would have to have it treated. Certainly the employer would make sure he is treated before he is brought on.

Mr. WEISS. It seems just asking the question and making the judgment based on the answer doesn't deal with the problem.

It seems to me a person asked the question will become sensitive so the tendency would be to say, "No, I am not."

If the employer is bound by that response and says you don't have to take the health test, that is a disservice.

Mr. STEPHENS. If the problem covered under title 33, a homosexual shouldn't have the fear he is going to be discriminated against.

Mr. WEISS. Assuming that an employer decides on his own to ask the question I don't think he will get an honest answer.

Mr. HAWKINS. In the enforcement of the act, here is an instance where you enforce more than a part of the law pertaining to gay rights. You have not found any situation which compels you to do anything different than enforcement of the act pertaining to gays that you won't find in other parts of your general enforcement powers. The same conditions would apply in each of the instances.

The same exceptions would apply. The same occupational exceptions would apply in both instances and you find no practicable distinction that would prevent you from enforcing the law with regard to gays that you won't find in the rest of your enforcement powers. Is that generally true?

Mr. MICKINS. That is my position and that is the way the law is implemented.

Mr. STEPHENS. Suppose you are working with a situation where the medical condition can't be discovered.

As I recall, with the two types of hepatitis, type A and type B, type B has some 2 to 6 months of incubation period and it is difficult to diagnose whether somebody has it during that period.

Suppose an employer is faced with a situation in hiring someone who at this point, if he goes to a doctor, it can't be ascertained whether or not that person has hepatitis?

It seems to me it would be important to know whether or not that person might have hepatitis.

At that point it would be appropriate to ask him, are you a member of the gay community?

Mr. MICKINS. The statistics you gave indicated 5 percent of the food handlers are gay and 2.5 percent of 100 percent of the people working in the industry won't be a factor which would establish the ground for the probability statistic?

Mr. STEPHENS. I am referring now to the October 3, 1980, Sentinel; it advertises itself as San Francisco's largest and most widely read gay newspaper.

In an article on page 9, it states the "risk of contracting disease among gay persons is approximately ten times that of persons in the general population."

It seems to me there is a correlation then between someone's sexual preferences and the probability of carrying a communicable

disease which, under the hypothetical I raised, may not be diagnosable, particularly as to matters of public health.

Mr. MICKINS. If an employer is concerned, he might ask the question of all the persons he screens, but I don't think there would be opposition to asking a person if he is gay. Maybe one would admit it and the other won't. That would be a poor way of establishing the existence or absence of the condition you suggest.

The proper way would be to establish a general requirement that all the employees have to have an examination—

Mr. STEPHENS. Even if you give him a health examination, under the existing state of medical arts that condition can't be diagnosed? What is an employer to do with that situation?

Mr. MICKINS. That is not the only disease that doesn't reflect itself during the incubation period. If we are to make a rule that we exclude all persons—

Mr. STEPHENS. I am not saying that you exclude them; I am asking how you deal with that situation?

Mr. MICKINS. I would just say that all employers should treat each individual freely and not use that statistic in determining.

Mr. STEPHENS. In a sense you have not really given a lot of help to that food handler in San Francisco who now reads this article in the paper and may be told by the medical community that it can't diagnose certain communicable diseases. The employer may then be faced with the prospect of hiring that individual in any event and not taking into account the health hazards. That is all I have to say.

Mr. HAWKINS. You are proposing a new body of law. You will be dealing with individuals as a group.

Mr. STEPHENS. That is what the BFOQ exception is.

Mr. HAWKINS. It doesn't make any difference what group the individual belongs to, if he is being discriminated against, you have discrimination.

Because of economic situations, does it make any difference whether the person is wealthy or poor as to whether a person is discriminated against?

In the same way you are indicating that because statistics indicate certain things as to health—

Mr. STEPHENS. This is nothing new.

Mr. HAWKINS. I don't think title VII would deal with it thusly.

Mr. STEPHENS. The case I had in mind was under the Age Discrimination and Employment Act, involving the rule that pilots when they reach age 60 they can no longer fly commercial airlines.

Mr. HAWKINS. But you have a specific exception to the law stated and there is no exception to the law which would deal with gays differently than other individuals who go before the commission.

Yet you bring in statistics which indicate that certain groups did have a greater percentage of a particular disease in this instance and you will judge an individual going to the commission on the basis that he belongs to that group.

It has been stated in some instances that blacks have more gonorrhoea than whites. That means a black is going to charge he has been discriminated against and you will handle that case on the basis that he is black and therefore that discrimination is supposed to be less onerous than any other. You are not going to be

dealing with an individual on an individualistic basis, but as a group, which is defeating to our jurisprudence.

Mr. STEPHENS. The courts have had to utilize statistics in determining whether a BFOQ exception is valid. So as a legal proposition the use of statistics is pertinent. I don't think I am suggesting anything new or radical.

I am just taking an existing principle and applying it to this point.

Mr. MICKINS. I might add the Chair had pointed out the question that under title VII and other titles, it is the interpretation title VII gives to those cases.

Mr. STEPHENS. I think the BFOQ is drawn from title VII.

Mr. HAWKINS. You have a separate law with regard to age discrimination than you do to title VII. Title VII is closer to the example being stated here by the commission. Each case is decided on its own merits, and not on the basis of the group with which the individual is affiliated.

You may disagree with that, but I think that pretty much is the pattern. At least I think the commission here agrees with that interpretation.

Thank you Mr. Mickins. We appreciate your testimony. The Chair would like to apologize for having to leave. Mr. Weiss will be the chairman for the rest of the day and will be joined by Mr. John Burton to reinforce the provision that we have two members at the hearing at all times.

I would like to thank the audience for having maintained this wonderful decorum. It is with some degree of regret we could not continue for the rest of the day. Mr. Weiss will be the chairman at this point. Mr. Hartman, we have your statement.

Mr. HARTMAN. It is relatively short. I have tested it and I would like to read it.

Mr. WEISS. All right.

STATEMENT OF RAYMOND W. HARTMAN, ESQ., REPRESENTING GAY RIGHTS NATIONAL LOBBY

Mr. HARTMAN. It is both a pleasure and an honor to be permitted the opportunity to testify today in support of H.R. 2074, a bill which if and when enacted, will go far to alleviate the burden of enormous injustice and discrimination which continues to be borne by countless millions of people in our country.

My remarks will focus on two areas of significance which I believe will be of major interest to this subcommittee and all Members of the House when considering H.R. 2074: One, the "political safety" of supporting gay civil rights, and two, the substantial and growing support for nondiscrimination based on "sexual orientation."

From a practical viewpoint, as both elected officials and politicians, you have understandable and legitimate concerns regarding the effect your support for civil rights for gay people will have on your constituents, especially when, as voters, they cast their ballots on election day. If you are concerned that positive association with this issue will be tantamount to political suicide, then invocation of the fundamental principles of fairness, equality, and moral justice may well fall on deaf ears.

Recent studies show, however, that such concerns find no basis in fact. For example, the Gay Rights National Lobby has released a study which should allay most fears of this nature. It provides documented evidence, from all parts of the Nation, that civil rights for gays, rather than being the "kiss of death" for public officials, is increasingly becoming an issue which may well rebound to the unmistakable benefit of supportive elected officials.

The study has told us, on both the local and national levels, that most challengers have not even raised the issue in their campaigns to unseat elected officials who have supported gay civil rights. Furthermore, in those instances where challengers have raised the issue, the study shows in striking fashion that such challenges almost unanimously have been overcome, and often dramatically.

Accordingly, the issue of gay rights has emerged with the distinct appearance of a "nonissue". We attribute this appearance to a number of phenomena. First, in recent years, there is considerable evidence of a growing public tolerance; witness, for example, the ever-changing and improving portrayal of gay people in the national media and by the entertainment industry. Secondly, we have found that voters are likely to make a distinction between their own views on gay rights and those espoused by candidates at election time. This is best demonstrated in those localities which overturned gay rights ordinances and then reelected officials who prominently advocated gay civil rights. Two prominent cases are a mayor of Minneapolis, Minn., and a supervisor of Dale City.

Thirdly, even though we heard of talk regarding "single-issue" politics, gay rights does not appear to be one of the litmus-type issues which may swing significant numbers of voters to one candidate or another. It is not abortion; it is not gun control; it is not busing. As Senator Baker has stated: "I think it is one of those issues that has a high quotient of emotionalism, but does not deeply divide this country."

Actually, there is one group of people who may well cast its ballots with a special eye toward candidates' views on gay civil rights: gay people themselves. And as such pertains to the issue of "political safety," I bring good news for those candidates who support this issue.

Among many other reports of like kind, a December 1979 issue of "Campaigning Reports" asserted: "The gay vote is now so important in national politics, and in some local races, that no serious politician can afford to ignore or ridicule it."

Begin, if you will, with the fact that there are some 20 million gay Americans. Recognize, further, that these Americans have both the time and the money to contribute to sympathetic candidates, incumbents or challengers, that they do so contribute, and that they vote in very high numbers. Gay Americans have an obvious interest in rewarding such individuals for their support, and they will especially rally to the defense of officials who may come under attack for such support.

Equally, gay Americans have an abiding interest in working for the defeat of politicians whose views are decidedly hostile, and toward this end the record will show enormous successes by the gay community and its supporters. In Los Angeles, due primarily to the opposition of gay rights supporters, a president of the city

council was forced into a runoff and, although ultimately reelected, lost sufficient political support among his colleagues so as not to be renamed to the presidency. Just last November, in Houston, following a campaign which focused to a considerable extent on the inflammatory remarks made about gays by a 20-year incumbent of the city council, the incumbent was defeated and his challenger, who supported gay civil rights, was victorious.

Most recent studies provide dramatic and convincing evidence from major cities around the United States that gay people are becoming an important, powerful and valued voting bloc. And contrary to one mythical belief, it is not merely a New York or San Francisco phenomenon. The news of success from Seattle and Los Angeles is as notable as that from Boston, Philadelphia and the District of Columbia. In the context of yet another popular misconception, that dealing with the character of the South, I would respectfully submit that the successes in Houston, the South's largest city, is especially striking.

With great confidence, I tell you today that, despite possible concerns for your political safety and future, you have much more to gain than to lose by supporting gay civil rights. For every voter who may vote against you because of it, there will be many times more who will vote for you because of it. And 20,000,000 votes is only a beginning, for we have friends and families who love us, who support us, and who will stand with us.

Interestingly, and somewhat strangely, the fear that support for gay civil rights is politically dangerous seems primarily to be based on the misconception that the American public does not support such legislation.

To the contrary, national polls, including those conducted by Gallup, Harris and NBC/Associated Press, have consistently shown that a majority of Americans do support protecting the civil rights of gays in the areas of housing and employment.

To cite but one example, NBC/Associated Press released a poll in May of this year that speaks directly to the legislation proposed by H.R. 2074. The question asked was: "Should fair employment and fair housing laws be extended to cover homosexuals?"

The results are as surprising as they are significant, not only when viewing the total survey response—49 percent in favor, 37 percent against, and 14 percent no opinion—but as well upon consideration of the differing perspectives of the individuals who were polled.

While the issue of gay civil rights has traditionally been associated with "liberal" politics—and, indeed, a full 69 percent of those who identified themselves as "liberals" support the extension of civil rights to gays—those identifying themselves as "moderates" support such legislation by a margin of 50 percent to 36 percent. Even among "conservatives," fully 34 percent support the extension of civil rights to gays—the proposition being opposed by only 53 percent of this category.

Further, among those polled who ranged in age from 18 to 34 years—clearly a key voter group now and in the coming years—a significant majority—57.5 percent—was found to be strongly in favor of civil rights for gay people—with 34 percent opposed, and 8.5 percent without opinion. We believe that the results of this poll, and others, confirm our opinion that the issue of gay civil rights is one whose time has come.

Mr. Chairman, Members of the Subcommittee, we recognize that one poll, no matter how positive, could be dismissed, and we understand that the examples cited in our study, if they were isolated instances, could be ignored. But virtually all national polls show that Americans favor fair employment for gay people, and the examples found by our study are not isolated. Instead, there is a clear and consistent pattern showing that Americans do not punish their elected officials for supporting equal justice and civil rights.

We urge your support for H.R. 2074, we appreciate your serious consideration of these thoughts, and we thank you for the opportunity to present this testimony today.

Thank you.

[The prepared testimony of Raymond Hartman follows:]

PREPARED TESTIMONY OF RAYMOND W. HARTMAN, ESQ., COCHAIRPERSON, GAY RIGHTS NATIONAL LOBBY, INC.

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POLITICAL SAFETY

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Interestingly, and somewhat strangely, the fear that support for gay civil rights is politically dangerous seems primarily to be based on the misconception that the American public does not support such legislation.

To the contrary, national polls, including those conducted by Gallup, Harris and NBC/Associated Press, have consistently shown that a majority of Americans do support protecting the civil rights of gays in the areas of housing and employment.

To cite but one example, NBC/Associated Press released a poll in May of this year that speaks directly to the legislation proposed by H.R. 2074 (see Attachment "A"). The question asked was: "Should fair employment and fair housing laws be extended to cover homosexuals?"

The results are as surprising as they are significant, not only when viewing the total survey response (49 percent in favor, 37 percent against, and 14 percent no opinion), but as well upon consideration of the differing perspectives of the individuals who were polled.

While the issue of gay civil rights has traditionally been associated with "liberal" politics—and, indeed, a full 69 percent of those who identified themselves as "liberals" support the extension of civil rights to gays—those identifying themselves as "moderates" support such legislation by a margin of 50 percent to 36 percent. Even among "conservatives", fully 34 percent support the extension of civil rights to gays (the proposition being opposed by only 53 percent of this category).

Further, among those polled who ranged in age from 18 to 34 years—clearly a key voter group now and in the coming years—a significant majority (57.5 percent) was found to be strongly in favor of civil rights for gay people (with 34 percent opposed, and 8.5 percent without opinion). We believe that the results of this poll, and others, confirm our opinion that the issue of gay civil rights is one whose time has come.

Mr. Chairman, Members of the Subcommittee, we recognize that one poll, no matter how positive, could be dismissed; and we understand that the examples cited in our study, if they were isolated instances, could be ignored. But virtually all national polls show that Americans favor fair employment for gay people, and the examples found by our study are not isolated. Instead, there is a clear and consistent pattern showing that Americans do not punish their elected officials for supporting equal justice and civil rights.

We urge your support for H.R. 2074, we appreciate your serious consideration of these thoughts, and we thank you for the opportunity to present this testimony today.

Thank you.

[ATTACHMENT A]

NBC/ASSOCIATED PRESS POLL RESULTS—"SHOULD FAIR EMPLOYMENT AND FAIR HOUSING LAWS
BE EXTENDED TO COVER HOMOSEXUALS?"

[In percent]

	Yes	No	No opinion
Liberal.....	69	23	8
Moderate.....	50	36	14
Conservative.....	34	53	13
No ideology.....	47	35	18
18-24.....	55	39	6
25-34.....	60	29	11
35-49.....	48	39	13
50-64.....	42	42	16
65 plus.....	35	37	28
Grade school.....	31	46	23
High school.....	39	44	17
High school grad.....	46	40	16
Some college.....	56	34	10
College grad.....	54	33	13
College plus.....	57	25	8
Total survey.....	49	37	14

Mr. WEISS. Thank you very much. I understand that Dr. Marmor, past president of the American Psychiatric Association, has to catch a plane. Will you stand aside for a moment.

Mr. HARTMAN. Yes.

Mr. JOHN BURTON. Is it not safe to say that all gay groups across the political spectrum are not all Democrats, or Republicans, or liberals but it is a community such as all others and belong to a lot of different persuasions?

Mr. HARTMAN. It is a melting pot of the Nation and representative of everything we have in our country.

Mr. WEISS. Dr. Marmor, we apologize to everyone. We are running rather slow but we want to give full opportunity to everyone wanting to testify. Your statement will be entered in full in the record without objection.

**STATEMENT OF JUDD MARMOR, M.D., PAST PRESIDENT,
AMERICAN PSYCHIATRIC ASSOCIATION**

Dr. MARMOR. I will not read my statement because of the pressures of time. I have to catch a 2 o'clock plane. I was of the assumption I would be called before noon.

In my statement, I point out the American Psychiatric Association, representing more than 25,000 American psychiatrists, has gone on record as saying:

Homosexuality per se implies no impairment in judgment, stability, reliability, or general social or vocational capabilities: Therefore, be it resolved that the American Psychiatric Association deplores all public and private discrimination against homosexuals in such areas as employment, housing, public accommodation, and licensing and declares that no burden of proof of such judgment, capacity or reliability should be placed upon homosexuals greater than that imposed on any other persons. Further, the American Psychiatric Association supports and urges the enactment of civil rights legislation at the local, State and Federal level that would offer homosexual citizens the same protections now guaranteed to others on the basis of race, creed, color, etc.

Discrimination against homosexuals derives mainly from fear of them. It is a condition that we have come to call homophobia and even though the reason for discrimination is sometimes cloaked in religion. The reason is widespread ignorance which exists about homosexuality. People still think of homosexuality as something that can be caught from others either as a result of seduction or by modeling oneself after the homosexuals. There is not an iota of scientific evidence for such assumption. People do not "choose" to be homosexual any more than they "choose" to be heterosexual. In almost all instances the basic factors that lead to a homosexual propensity are established either prenatally or in early childhood prior to the school years within the parental home. That modeling is not a relevant factor is indicated by the fact that practically all homosexuals come from heterosexual families and that the overwhelming majority of the "models" to whom they are exposed in our culture are heterosexual.

In particular, the model of a popular homosexual teacher, about which some parents are concerned, can never cause homosexuality to develop in any child of either sex whose programming, both biologically and developmentally, is proceeding along heterosexual lines. The only effect the exposure to known homosexual teachers can have on heterosexual children is to create more tolerance and understanding toward homosexuals as people, and to dispel the widespread prejudicial myths about them. As for the small percentage of children who for prior developmental reasons are already struggling with homosexual feelings, with all the guilt attendant upon such feelings in our society, a role model with whom they can identify in a positive way can only help them to feel better about themselves and thus contribute to their mental health. In both instances, the basic effect is a positive one rather than a negative one.

The other major fallacy in the reaction to homosexuals is to stereotype them, as if all homosexuals are alike. The absurdity of this becomes obvious if the analogous assumption were made that all heterosexuals are alike. There is as wide a personality variation among homosexuals as among heterosexuals and the vast majority of them are responsible, law-abiding citizens. They can be found in all walks of life, among all racial, religious and ethnic groups, and in rural as well as urban areas. Among their ranks are lawyers, doctors, policemen, firemen, judges, teachers and officials at almost every level of government. A very conservative estimate of their numbers is that largely or predominantly homosexual men and women make up no less than 10 percent of our national population.

The assumption that homosexuals are somehow less in control of their impulses than are heterosexuals is the same kind of misconception that underlies white prejudice against black or native-born prejudice against foreigners. In all of these instances the bias is a reflection of fear based on a lack of intimate knowledge of the people involved. Prejudice is being down on people you are not up on. A homosexual person is neither more nor less trustworthy than a heterosexual person. The assumption that male homosexuals constitute a significant threat to young children is totally unfounded. In actuality the seeking out of children as sexual objects is much less common among homosexuals than among heterosexuals. Moral

character is not determined by sexual preference, and individual homosexuals should be evaluated on their own merits and not on the basis of stereotyped preconceptions. To discriminate against homosexuals as a class, therefore, is a manifest injustice and no different than it would be to discriminate against blacks, Hispanics, Orientals, Jews or Catholics, simply on the basis of their group identity. An enlightened and civilized society must ultimately rid itself of its prejudice against homosexuals. The vast majority of homosexual men and women ask only to be accepted as human beings and allowed to live their own lives free of persecution or discrimination.

The popular rationale for discriminatory legislation against homosexuals is that presumably such punitive regulations will discourage its prevalence. Yet it has been demonstrated time and again that sanctions against homosexuals have no effect on the incidence of homosexuality. There is no evidence, for example, that its frequency is any higher in countries like France, Sweden, and the Netherlands where there is no discrimination against it, than in the United States where there is.

Recognizing this fact, there has been an increasing trend in the Western world, despite an occasional backlash, to legalize homosexual behavior between consenting adults in private and to outlaw discrimination against them in employment, housing, public accommodations, and licensing. It should be emphasized that contrary to the propaganda of its opponents such legislation neither leads to nor condones the seduction of minors or the violation of reasonable standards of public decency. Such behavior whether by homosexuals or heterosexuals, remains illegal. But the outlawing of discriminatory practices against homosexuals is a first and necessary step in making it possible for the millions of men and women whose early life experiences, through no fault of their own, have rendered them erotically responsive to their own sex, to live lives of dignity and self-respect. H.R. 2074 is an important and necessary step in this direction.

So, without the objection of my colleagues we thank you.
[The prepared statement of Judd Marmor follows:]

PREPARED STATEMENT OF JUDD MARMOR, M.D., PAST PRESIDENT, AMERICAN
PSYCHIATRIC ASSOCIATION

Gentlemen, I am honored by your invitation to address you on the subject of H.R. 2074. I am an Emeritus Professor of Psychiatry at the University of Southern California School of Medicine and Adjunct Professor of Psychiatry at the University of California at Los Angeles. I am also a past president of the American Psychiatric Association. I have written extensively on the subject of homosexuality and have edited two major books on the subject, the most recent of which, "Homosexual Behavior: A Modern Reappraisal," was published by Basic Books this year.

The key issue in H.R. 2074 is that of equal protection under the law for male and female homosexuals and bisexuals. As you may know, the American Psychiatric Association, in December 1973, passed a resolution to the effect that—

"Whereas homosexuality per se implies no impairment in judgment, stability, reliability, or general social or vocational capabilities: Therefore, be it resolved that the American Psychiatric Association deplors all public and private discrimination against homosexuals in such areas as employment, housing, public accommodation, and licensing and declares that no burden of proof of such judgment, capacity or reliability should be placed upon homosexuals greater than that imposed on any other persons. Further, the American Psychiatric Association supports and urges the enactment of civil rights legislation at the local, state and federal level that would offer homosexual citizens the same protections now guaranteed to others on the basis of race, creed, color, etc."

It is clear from this statement that the American Psychiatric Association position strongly supports the objectives of H.R. 2074. In the few remaining minutes at my disposal I would like to present some additional comments to support this point of view.

Discrimination against homosexuals derives primarily from fear of them, even though the basis for the discrimination is sometimes cloaked in religious rationalizations. The most important reason for public fears about homosexuality is the widespread ignorance that exists in the general public about it—about what makes persons become homosexual and about the personalities and moral character of homosexual individuals. Many people still think of homosexuality either as something that is chosen by a conscious act of will, or as something that can be “caught” from others, either as the result of seduction or by “modeling” of oneself after homosexuals to whom one has been exposed. Hence such people are apprehensive about associating with homosexuals and particularly fearful of having their children come into contact with them.

Yet there is not an iota of scientific evidence for such assumptions. People do not “choose” to be homosexual any more than they “choose” to be heterosexual. In almost all instances the basic factors that lead to a homosexual propensity are established either prenatally or in early childhood prior to the school years within the parental home. That modeling is not a relevant factor is indicated by the fact that practically all homosexuals come from heterosexual families and that the overwhelming majority of the “models” to whom they are exposed in our culture are heterosexual.

In particular, the model of a popular homosexual teacher, about which some parents are concerned, can never “cause” homosexuality to develop in any child of either sex whose programming, both biologically and developmentally, is proceeding along heterosexual lines. The only effect the exposure to known homosexual teachers can have on heterosexual children is to create more tolerance and understanding toward homosexuals as people, and to dispel the widespread prejudicial myths about them. As for the small percentage of children who for prior developmental reasons are already struggling with homosexual feelings, with all the guilt attendant upon such feelings in our society, a role-model with whom they can identify in a positive way can only help them to feel better about themselves and thus contribute to their mental health. In both instances, the basic effect is a positive one rather than a negative one.

The other major fallacy in the reaction to homosexuals is to stereotype them, as if all homosexuals are alike. The absurdity of this becomes obvious if the analogous assumption were made that all heterosexuals are alike. There is as wide a personality variation among homosexuals as among heterosexuals and the vast majority of them are responsible, law-abiding citizens. They can be found in all walks of life, among all racial, religious and ethnic groups, and in rural as well as urban areas. Among their ranks are lawyers, doctors, policemen, firemen, judges, teachers and officials at almost every level of government. A very conservative estimate of their numbers is that largely or predominantly homosexual men and women make up no less than ten percent of our national population.

The assumption that homosexuals are somehow less in control of their impulses than are heterosexuals is the same kind of misconception that underlies white prejudice against blacks or native-born prejudice against foreigners. In all of these instances the bias is a reflection of fear based on a lack of intimate knowledge of the people involved. Prejudice is being down on people you are not up on. A homosexual person is neither more nor less trustworthy than a heterosexual person. The assumption that males homosexuals constitute a significant threat to young children is totally unfounded. In actuality the seeking out of children as sexual objects is much less common among homosexuals than among heterosexuals. Moral character is not determined by sexual preference, and individual homosexuals should be evaluated on their own merits and not on the basis of stereotyped preconceptions. To discriminate against homosexuals as a class, therefore, is a manifest injustice and no different than it would be to discriminate against blacks, Hispanics, Orientals, Jews or Catholics, simply on the basis of their group identity. An enlightened and civilized society must ultimately rid itself of its prejudice against homosexuals. The vast majority of homosexual men and women ask only to be accepted as human beings and allowed to live their own lives free of persecution or discrimination.

The popular rationale for discriminatory legislation against homosexuals is that presumably such punitive regulations will discourage its prevalence. Yet it has been demonstrated time and again that sanctions against homosexuals have no effect on the incidence of homosexuality. There is no evidence, for example, that its frequen-

cy is any higher in countries like France, Sweden, and the Netherlands where there is no discrimination against it, than in the United States where there is.

Recognizing this fact, there has been an increasing trend in the Western world, despite an occasional backlash, to legalize homosexual behavior between consenting adults in private and to outlaw discrimination against them in employment, housing, public accommodations, and licensing. It should be emphasized that contrary to the propaganda of its opponents such legislation neither leads to nor condones the seduction of minors or the violation of reasonable standards of public decency. Such behavior whether by homosexuals or heterosexuals, remains illegal. But the outlawing of discriminatory practices against homosexuals is a first and necessary step in making it possible for the millions of men and women whose early life experiences, through no fault of their own, have rendered them erotically responsive to their own sex, to live lives of dignity and self-respect. H.R. 2074 is an important and necessary step in this direction.

Mr. JOHN BURTON. May I walk out the door and ask you a couple? One of the problems is, that people associate homosexuality with child molestation. So that is totally unrealistic. On public accommodations, I can remember I worked at the cable car village at 1390 California. Down the street was a place that only sold beer, the Handlebar, and it had a big sign: if you are queer, stay out of here. In 6 months the gentleman who owned the place not only was selling more beer than anybody else in town, but ended up being gay which I do not know what that proves but it was a great source of delight to the people living around Polk at the time.

Do you see any relationship between an individual who may experimentally become bisexual when there is a transition to homosexuality?

Dr. MARMOR. Not necessarily. Individuals who are bisexual have occasional homosexual and heterosexual experiences. There is a spectrum.

Mr. JOHN BURTON. You said it would be unreasonable, in other words, if somewhere prenatally there was nothing in an individual which could lead him to be homosexual. I do not know if it is unreasonable to think that an individual under what you might say were the best of circumstances, whatever that was, could end up being seduced, could end up enjoying the experience and feeling guiltless but nonetheless end up being gay—are you saying it is there in the person?

Dr. MARMOR. No. The human mammal, like other higher mammals, is capable of going both ways. Human beings are the only mammal programmed by society to be exclusively heterosexual and to have a built in horror of homosexuality. In all higher mammals there is ambisexual behavior. The capacity to be homosexual exists in all human beings.

We have some experiments of life to answer your question, though, Congressman Burton. Sailors or prisoners who have been isolated from heterosexual opportunities will indulge in homosexual activities but when reexposed to heterosexual contact return to their heterosexual ways.

Mr. JOHN BURTON. You said something where it was preestablished.

Dr. MARMOR. There is increasing evidence that a certain proportion and it is probably a minority of effeminates, who may have prenatal circumstances where there may not be as much sensitization of male hormones. That would still only apply to a small section of homosexuals.

The larger number probably become predisposed toward homosexual behavior by experiences in the family early in life. They do not choose it.

Mr. JOHN BURTON. Because of the heterosexual relationships that they have had, not speaking sexually but personal relationship. It turned out to be such bummers. I know a woman who became gay just because she just gave up on men, said they were a pain in the neck. She started just having all women friends. As far as her sexual preference goes it is still women but she still goes out to a show, or dinner with men, but she no longer enjoyed men's company.

Dr. MARMOR. It is a little harder for a man to switch preferences if he does not have.

Mr. WEISS. Mr. Stephens.

Mr. STEPHENS. Let me make an observation and ask you to comment on it. It seems we are dealing with a piece of legislation here which involves, and it is reflected in the dialog this morning, moral issues. I suspect it would come to the surface most clearly in the employment context with regard to teachers who might espouse homosexual lifestyles and have some influence on shaping the moral character of a child.

In connection with that, my reaction to your testimony is that your expertise is in human behavior and your scientific principles. But I question whether they can really resolve this issue. I refer to two statements, first, the statement that you made in 1973, at a symposium, "Should Homosexuals Be in The APA Nomenclature," held by the American Psychiatric Association prior to its striking "homosexual" from the manual of mental diseases.

You made reference to Dr. Frank Beach's study, from which you concluded that "from a biological viewpoint, there is nothing 'unnatural' about homosexual object choice." I am troubled by engrafting this principle onto our laws. I can remember in elementary school—and I don't mean to be facetious about this—how youngsters got excited about guppies in a classroom aquarium eating their young and then you have farmers warning that you have to watch piglets when they are young or they will be eaten by adult pigs. So by saying somebody is bisexual because of their mammalian inheritance does it follow that we should condone such behavior?

Mr. WEISS. Because of time restraints, we would like to give you the opportunity of submitting questions, but we will get response to this one question.

Dr. MARMOR. I never said human beings are homosexual. I said a tendency by predisposition, genetic predisposition as mammals, not as guppies.

The issue of legislating morals is difficult. The late Dr. Kinsey pointed out, if we continued the standards of our Judeo-Christian ethics, most of us would be in jail—oral sexuality, anal sexuality, anything other than the missionary position was considered an illegal kind of thing to do.

Well, there are very few healthy heterosexuals who do not flaunt those customs in one way or another. The real issue is whether or not sexual preference really hurts anybody. I do not think there is any scientific evidence that preference of homosexuals for their

own sex hurts anybody. I think if we recognize that and recognize that our attitudes as to this issue are strongly steeped in prejudice, it then allows us to treat the homosexual as a human being.

Mr. WEISS. Thank you, Dr. Marmor.

Miss Huerta.

**STATEMENT OF DELORES HUERTA, FIRST VICE PRESIDENT,
UNITED FARM WORKERS OF AMERICA**

Ms. HUERTA. Thank you for giving us this opportunity to testify. I am the first vice president and cofounder of the United Farm Workers, AFL-CIO. At this point, we have about 50,000 labor farm agreements and another 50,000 waiting for contracts to be signed. I also want to represent myself as a Hispanic mother with 11 children, with 10 years of community organizing. It is like turning the clock back 20 years to be here today because I have not had a chance to testify before Congressman Burton and Congressman Hawkins for many, many years. I am glad to see they are pioneers in trying to bring equal rights to the gays. Congressman Hawkins was the author of a bill to give farmworkers disability insurance in 1961. The big point of controversy then was, should farm workers have bargaining rights? With the help of Congressman John Burton and Congressman Phillip Burton, we finally got the bill to give farm workers equal rights.

Mr. WEISS. Those of us from other States have a difficult time keeping up with other outstanding Members from California that you have mentioned.

Ms. HUERTA. Those who opposed would say, "These are derelicts, winos. We are doing them a favor by giving them a job. They should not have equal rights." And so what has happened now is that through legislation that was passed to give farmworkers the same rights other workers have, farm workers are no longer subhuman, and it is unfortunate that we have to turn to legislation to get equal rights to people.

The racism still exists in our society and emotionalism exists, ignorance exists, and it is hard to do a mass education program in our society so people will understand that there are those different in color, culture, and in this case, sexual preference. So legislation is the only way we can make sure our citizens get equal treatment under the law. As farmworkers became organized, we were able to get collective agreements with all the benefits other workers have.

One of the things that is going by the wayside is the labor camps. In California, the labor camps are being done away with. As farm workers get their own income, they no longer exist in barracks.

Mr. JOHN BURTON. The one at Lionel no longer exists?

Ms. HUERTA. No. This means an employer does not have to have control over a worker's life 24 hours a day. How a worker lives is his private life. Again, that is what this bill speaks to—to people's private lives. It has nothing to do with their production. The fact a man or woman can work has nothing to do with their private lives or sexual preference.

I just want to sidetrack on the food handling. It was very interesting because as we testified before many congressional committees, we testified in the fields of California where there are no labor agreements, there are no toilets and hand-washing facilities.

That never helped us in getting legislation. However, in food handling facilities, it would be nice to have a strong budget for OSHA so the laws could be enforced and you could have the facilities you need.

What I am trying to say is, we support this because we have suffered injustice, we have suffered discrimination. We do not like to see other groups suffer that same type discrimination, and we as an organization with large numbers of Hispanics advocate equal rights for gays and lesbians.

Mr. JOHN BURTON. First of all, it was not the labor laws that brought our farmworkers out of peonage but you, Cesar, and Larry were working before there was a bill. I can remember being on the assembly agriculture committee when they came up and talked about putting outhouses in the fields, and I remember a very good friend of mine from Imperial Valley laughing about it like it was a joke; they could just go behind a tree anyway. I can remember the agriculture committee thinking it was the dumbest thing they ever heard of, that farmworkers should have toilet facilities and places to wash their hands because they were inferring you probably would not know how to use one anyway. It was not the Government which did that for the farm workers, it was you, Cesar, and people like you.

Ms. HUERTA. Thank you for recognizing our effort. At the same time we have to recognize that it was the law that was passed making our union legal. I think in this case we have a similar situation. We do have the gay rights organizations that are organized and doing a tremendous job all over the country to bring equal rights to gays and lesbians, but again, I want to point out an organizational effort when you have that much discrimination can never be safe unless you have a law to guarantee those rights.

I do want to commend the committee, and hope you pass this bill.

Mr. WEISS. Thank you very, very much and I appreciate your contribution to providing greater justice in our society.

Mr. STEPHENS.

You made comment that it would be nice if OSHA had the budget. I think that is something people tend to overlook, the budget impact. It is a fact the EEOC has a finite budget, and it is expected to accomplish a great deal. Their resources are being spread more thinly as time goes on.

One of the things which has struck me about this proposal is the fact that, and correct me if my impression is wrong, it seems as though the Hispanic community is suffering more economic hardship than the gay community. I cited earlier the survey done by the gay community suggesting they control a substantial amount of spendable income in this country. They are 97 percent employed. Then I look over at the Hispanic situation and I look at the Department of Labor statistics in 1978, and I find in the United States, the unemployment rate was 6.8 percent; for women 9 percent. In the San Francisco-Oakland SMSA area, Hispanic men, 8.4 percent; women, 18 percent. If you read our hearing records on EEO matters, you will find a number of civil rights groups will attribute this high unemployment rate to unlawful discrimination

against a class of people because of their race, class, or national origin.

It seems to me Congress is faced here with a question of establishing priorities. If this legislation passes, the EEOC will have to divert resources away from benefiting the Hispanic community and divert them over to helping the gay community, which seems to be far better off economically. Can you comment on that?

Ms. HUERTA. Your statement that the gay community is affluent is not true. It is a reflection of the total society. You are not talking about diverting funds from one community to another, because the gay community is a reflection of the total community.

Mr. WEISS. With that question and answer, again, our appreciation to you. If there are further questions, will you respond if they are submitted in writing?

Ms. HUERTA. Yes.

Mr. WEISS. Our next witness is Miss Gwenn Craig.

STATEMENT OF GWENN CRAIG, VICE PRESIDENT, HARVEY MILK GAY DEMOCRATIC CLUB

Ms. CRAIG. Congress Members and counsel, I come to you today as others have come and will come, to testify to the need of the remedies that our Government can provide against the great injuries caused by ignorance and bigotry.

Mr. WEISS. I want you to know your full statement will be entered in full without objection. If you would like to summarize it, feel free to do so.

Ms. CRAIG. Thank you.

I come to you as one who has experienced bigotry in varied forms, and I come with many other experiences to relate gleaned from the case files of lawyers, social researchers, and political activists, and I come with all their hopes that we will result in beginning to eradicate the last accepted prejudice in our country: prejudice against lesbian and gay Americans.

By all indications, lesbians and gay men represent one of the most hated and despised minority groups in America today, resulting from the similar stereotypes, misunderstandings, and ignorance that other kinds of people also suffer. The unrestricted hatred that gay people face is evidenced in big cities throughout the United States where gangs of toughs roam our neighborhoods to harass and beat identifiable gays, while police protection is often nonexistent.

Lesbians and gay men face indignities and harassment on many levels and in many forms, but there are indications that the one area in which they figure most significantly is in the area of employment. In an ongoing study by the Center for Homosexual Education, Evaluation and Research on the instances and effects of antigay discrimination, 60 percent of the respondents identified "employment" as the area in which they felt they had been discriminated against. Still, what is most frightening is that we have little or no recourse if we are arbitrarily forced from our jobs, our livelihoods, not because of our merit as workers, but because of the relationships we form and the lifestyles we create.

Still, whenever we push for some kind of basic civil rights protection—and I want to stress that we seek only protection, not privi-

leges—our opponents respond in disbelief, as we have heard today, insisting no problem exists to warrant protection—as if it is mere coincidence that no person known to be gay has ever been permitted to be, say, a bank president, a television newscaster, an airline pilot, or any of hundreds of jobs where gays just mysteriously do not exist.

The opponents of this law may say discrimination does not exist. The American people know better. As long ago as 1977, a nationwide Lou Harris poll found that 55 percent of the American people think homosexuals suffer from more discrimination than any other group in the country. Another study from the Gay Rights National Lobby indicates that 1 in 6 lesbians and gay men have had employment difficulties simply because they happen to be gay, while 1 in 11 gay people have lost their jobs, their ability to make it in this society, only because they do not sleep with the variety of people that their boss would like them to sleep with. These statistics translate to a level of human suffering that should not be permitted to exist in a society which prides itself on freedom.

Does discrimination exist? Ask Rob Balfe, an insurance claims adjuster from Minneapolis, Minn., who came to work one day and was told by his supervisor, "I don't want any homosexuals working here. You're fired."

With many years of experience in the insurance business and a solid record of high job performance, Rob thought he wouldn't have any trouble getting another job. Indeed, prospective employers seemed eager to hire him, until they checked with his former boss and the interest vanished. Rob Balfe was literally drummed out of his profession, not for anything he did wrong, but for what he was.

Does discrimination against gays exist? Ask Robert Murdoch, a corporate lawyer for 7 years with the Atlantic Richfield Oil Co.'s corporate headquarters in Los Angeles—employed until ARCO found he was gay and then he was simply fired. Ask James Estes about discrimination and he can tell you how he was fired from his job on the Princess Cruises Lines not because of anything he did wrong, but because his boss found out that Estes had what he termed a "questionable sexual preference."

Ask Barbara Love of New York City about discrimination and she can tell you about being evicted from her apartment in the dead of winter because the landlord did not want "her kind."

Ask Michael Raines from right here in San Francisco about discrimination. Just about anyone involved in the arts can tell you that he was widely praised for his work as managing director of the San Francisco War Memorial Opera House, an ideal executive. But Michael lost his job because, as one trustee said, the Opera House needed a "real man, a family man" in charge.

Another person who could tell you about discrimination but cannot be here is the heterosexual paraplegic from Long Island who was evicted from his home because his live-in nurse was a lesbian.

Maybe losing an apartment or losing a job on a cruise line does not sound like a big deal to you, but to gay people, this harassment represents an unrelenting daily pressure which flails away at our attempts to lead normal, productive lives. Add this to the pressures that many gays already feel from being also members of other

groups, and thus discriminated against for other reasons, at other times. And realize, as we have, that protections provided on account of race or gender can be circumvented when homosexuality is the charge, the weapon that can be used without impunity.

We know at times that behind the protestations of disbelief that come from those who oppose gay rights is sincere confusion, confusion that results from the issue of the closet. The closet is a hiding place, the place where things are not seen. After all, you can't see a person's sexual orientation the way you can see the color of their skin. Yes, the closet allows you to hide. But hiding isn't nondiscrimination, it is merely a more invidious form of discrimination. Other minorities suffer from more obvious forms of discrimination but that is because those minorities are more readily identifiable.

Can gay people hide from discrimination? Must gay people hide from discrimination? Must we treat our personal lives as if they were dirty little secrets to be cloistered in secrecy, as if our greatest prizes, our personal relationships, were our greatest vices?

Imagine, if you can, what it's like. Those of you who are heterosexuals, hide your wedding rings so no one will know you are heterosexual. Make sure to never whisper a single word, like a pronoun, indicating that you might have a relationship or even a date with a member of the opposite sex. Remember that one wrong slip, one simple admission, could bring your career, your livelihood to a screeching halt.

Imagine what it is like to spend a day keeping the secret, then imagine the months, the years of pressure, the daily terrifying fear that on this day you will be found out and you will lose all.

Imagine all this and you might be able to have a glimmer of what life is like for millions of lesbians and gay men in this country right now. And you might be able to understand why it is that almost every gay person in this room has lost a friend or loved one to suicide and other self-destruction while waiting for this Government to uphold the opinion that we are human beings worthy of protection.

The cases I have been able to describe to you come only because more and more courageous individuals are fighting discrimination in the courts. Some of us are lucky enough to live in cities that have enacted local gay rights ordinances, or maybe to live in a State like California where our courts have uniquely held that all discrimination violates State constitutional guarantees of equal protection.

In the few instances of existing local ordinances, we have remedies for private discrimination, and where we have liberal State courts we can go to court on matters of discrimination within the public sector. But it is the Federal courts that have traditionally been the haven for minority people under threat of locally-accepted attitudes of bigotry, and it is that entry into the Federal courts that we are denied.

Attorney Donna Hitchens of the Lesbian Rights Project in San Francisco represented Ann Clark, a pseudonym in this instance, when Ann was fired after 20 years in a well-paid, professional job when her boss decided that Ann was having a lesbian affair. Ann lost her pension, medical and other benefits, but she lived in San

Francisco and was able to use the court to gain some financial restitution.

Hitchens also represented Denise Kreps, her real name, a dispatcher in the Contra Costa County Sheriff's Department, who decided to move up into a deputy position. She passed the civil service test, placing 16 out of the 131 even considered, and when she came in line for the deputy position she submitted to the lie detector test given to all applicants.

One of the questions was, "Have you had a relationship with a person of the same sex since you were fourteen?" And Denise answered, yes. She was fired the next day. The firing was protested before the county's civil service commission and she was ordered reinstated. The sheriff refused. The case was taken to the Superior Court and won there, but Denise is still without her job and the sheriff has intentions to appeal the case.

Attorney Hitchens has had to turn down cases of clear discrimination on the basis of sexual orientation by private employers where the injured parties lived in other unprotected locales, and she says, "We desperately need the Federal courts so that we can have a real chance for financial remedies for the damages to human lives."

Most gay people, like most heterosexuals, don't want their sex lives dragged across the front pages of newspapers throughout the country. That is why, for all the cases I am able to cite today, there are many, many others never told. And that is why Michal Shively, after examining the responses of 598 lesbians and gay men across the United States for a study on "Civil Liberties and Sexual Orientation," has concluded: "The whole idea of affirmative action for homosexuals is a real infringement on privacy. It would necessitate disclosure to fulfill. Most would not welcome it."

Because lesbians and gay men can and often do hide their sexual orientation, employment discrimination usually occurs once the person is employed rather than at the point of hiring. There is an incredible waste in all this—not only in human terms but in dollars and cents.

A 6-year federally-funded study being conducted now at San Francisco State University is finding that discrimination against gays is extremely costly since an immense amount of time in screening, recruiting, and training employees goes down the drain when the worker is summarily dropped. So besides the destructive effects on people's lives, perhaps we are also denying this country the productivity of fine workers.

I think one final point needs to be made about H.R. 2074. The question before us is really not if a law prohibiting discrimination on the basis of affectional preference or sexual orientation will pass Congress, but when. One day gay rights will be the law. The suffering has been too great to permit it to continue. The question is how much longer that is going to take.

The question is how many people will needlessly suffer before the law passes. How many lives and careers gone before Congress takes the step that it will inevitably take toward fulfilling that American dream of equality?

Yes, this is a moral issue. Discrimination, bigotry, and the suffering they cause are extremely moral issues, and I ask this subcom-

mittee and Congress of these United States to take the moral stand against hatred by enacting H.R. 2074 sooner, not later.

Mr. WEISS. Thank you very much, Ms. Craig.

Mr. PHILLIP BURTON. I would like to compliment you on your testimony.

I don't want to take up too much of your time because I know there are a lot of important things to be done.

Ms. CRAIG. Yes, I am sure you do.

Mr. WEISS. Mr. Stephens.

Mr. STEPHENS. I would like to talk to those individuals you identified in your statement, but do you think it is fair that the Orthodox Presbyterian Church had to incur \$76,000 by pursuing their rights in discharging an organist whose views were not the same as theirs?

Ms. CRAIG. I am discouraged that the costs of courts are high and I am concerned because the gay rights persons are being asked to pay a lot of bills that were incurred such as for witnesses and air fares. So I think the greatest loss may come to the attorneys who lost the case.

What happens when we go to court unfortunately, there are costs that have to be incurred.

Mr. STEPHENS. I make that point because when legislation is proposed the horror stories come out, but I think we often lose sight of the impact of the legislation if it is enacted, because that too can cause hardships even in cases where I have two reasonable people who sit down and discuss it.

I would just raise the point we have to have a balance here.

Ms. CRAIG. My sympathies would probably lie with the organist who lost his job and had to come under public scrutiny and perhaps I am a little more affected by the loss to the person rather than the cost to the church.

I don't feel they should have acted as they did in this case.

Mr. STEPHENS. In a way you are saying you don't have much sympathy for their personal religious views. The church is made up of individuals. They like to be respected too as you ask them to respect you. I don't mean to be critical, but it seems when they hear an answer like that, they wonder how much mutual respect is involved here.

Mr. WEISS. There have been times in the history of this country where the claims of religious freedom—back to the Church of the Latter Day Saints for example, was ruled as not being subject to the religious constitution regardless of—

Mr. JOHN BURTON. That was as a condition to making a state; polygamy.

Mr. WEISS. Regardless, their religious principles were told they would have to take second place.

The Supreme Court held a few weeks ago that a group in Florida won't be able to protect its use of marijuana on its claim of religious freedom.

We have had groups that have claimed freedom of religion in the use of poisonous snakes in their proceedings.

The courts have said, "It ain't so."

You can't draw a general principle whenever a church says it is religious freedom. It is no more than when a university says in

defense of what it is doing, it is academic freedom. It may be and it may not be.

Mr. JOHN BURTON. I want to compliment you on your testimony. It was good.

Continue doing the good work in behalf of the goodness of the Nation.

Mr. WEISS. Mr. Hartman, we appreciate your stepping aside. Your testimony was very complete and very essential in the context of what we were discussing.

I only have one question. That is, you are aware of the fact that even though it cuts across, as the polls indicate, all the political lines, the fact is that Congress seems to have more of those who are unsympathetic to the prohibition against discrimination to gays and lesbians than those who are sympathetic.

I think there is an imbalance in the Congress on the face of it.

Mr. HARTMAN. I think that is most recognizable.

Mr. WEISS. What are your thoughts on that?

Mr. HARTMAN. I think it really goes back to a tremendous number of myths that still persist in the Nation. I think education on this issue is extremely important, especially education from the standpoint of a politician's view of what are and what are not issues.

In my own personal experience, I have spoken with many elected officials who choose not to even raise the issue in their own minds because they have a personal fear that their own views, which may be nonsupportive, may not be shared by their constituents.

I think there are individual Members of Congress who perhaps educate themselves and subject themselves to outside education a little more, that I might find this issue is not so dangerous as they might believe today.

Mr. WEISS. Thank you.

Mr. Stephens.

Mr. STEPHENS. I am not in a position to talk about the politics of the city issue, but I am concerned about the legal implications.

You, being a lawyer, perhaps can shed some light on this.

In this bill the term of art which is used is "affectional or sexual orientation." In the bill it means "male or female sexuality, heterosexuality, or bisexuality by orientation or practice."

In 1975, when legislation of a similar nature was introduced by Congresswoman Abzug, it was defined as "having or manifesting an emotional or physical attachment to another consenting person or persons of either gender or having or manifesting a preference for such attachment." The significance is the current legislation takes out the word "consenting."

Second, we talk in terms of orientation, not simply preference, the latter of which to me connotes a matter of choice while the former does not.

Then I have done some research on the term "homosexual" as interpreted by the courts. The only definition I found was in a Washington State court case which defined it as "one whose sexual inclination is toward those of an individual's own sex."

The thing that strikes me is that the term is not limited in terms of age or relationship. So, as I construe this bill in view of the body of law which exists and which would be drawn upon to interpret it,

someone could have a sexual preference for a 3-year-old neighbor girl or 3-year-old neighbor boy, or 3-year-old son or 3-year-old daughter.

Indeed, there are criminal cases involving such situations and the descriptive term "homosexual" is used to describe the defendant. I have four cases right here I can provide for the record.

My question is, is there a limit that should be included in the legislation to protect or to allow an employer to discriminate against someone who has a preference for children or for people within the family?

Mr. HARTMAN. I have been following the question, but I am not sure I understand.

Mr. WEISS. Mr. Stephens, before you do that, I understand we have to be out of this room at 2 o'clock. We will have the response to that and then for further questions Mr. Stephens and other members of the committee will submit questions to you in writing.

Mr. STEPHENS. In 1977 the Congress and our committee had hearings on the whole subject of sexual exploitation of children, in pornographic movies. During the testimony we heard people testify about the whole problem and what sort of conduct was going on in the community today.

There was a newspaper that was brought in and had this ad, let me quote you the ad here: "Gay, white male, 39, sincere bachelor; wants person 6 to 13 who needs a home and someone to care and love him as a father and friend."

A second ad stated: "Gay, white male, 29, bronze and brown, 140, 6'1", looking for a gay white man, 9 to 14 for possible friend and companion."

Suppose a person who puts this ad in the paper comes in to an employer and wants to be hired and somehow the employer knows he can match up this ad with that applicant.

Under this legislation as I interpret it, that sexual preference is protected—

Mr. JOHN BURTON. Could I respond to that?

Mr. WEISS. Why don't you let him respond then maybe you can get—

Mr. JOHN BURTON. That has nothing to do with the bill. It is child molestation and it is a crime.

Mr. HARTMAN. The definition provided in this bill makes no reference to child molestation. It doesn't make reference to the commission of crime. It doesn't condone the commission or what is otherwise a crime for any person who has a particular sexual purpose.

The legislative intent of this bill is to prohibit discrimination in employment and public housing on the strict, simple basis of one's sexual preference, whether they are straight, gay, or like to go both ways.

Mr. STEPHENS. Or like to do it with children.

Mr. HARTMAN. It has nothing to do with children.

Mr. WEISS. I am the prime sponsor of the legislation and I assure you it has nothing to do with children.

Mr. JOHN BURTON. You can say murderers can't be rented homes.

If the case is one where he was seeking a gay man of 9, it shows the guy doesn't know when manhood begins. That could be an

assumption there would be sexual activity. The other could be an assumption that a gay individual wanted to have a friendly situation.

Mr. HARTMAN. If I may make one final comment—

Mr. WEISS. Ten seconds.

Mr. HARTMAN. If you look at the statistics, 90 percent of all child molestation is between heterosexuals and little children. It is against the law.

Mr. WEISS. Thank you, Mr. Hartman, for your patience and all the members of the audience for your cooperation during this morning's hearing.

This is the first full-scale hearing that this legislation has had. The bill will be reintroduced in the next Congress and we extend our appreciation to the people of San Francisco and their government for making this all available to us.

Thank you very much.

Before the committee adjourns, without objection, the prepared statements of Mr. Jeff Brown and Rev. Bernard D. Mayes will be included in the record at this point.

Mr. WEISS. The committee stands adjourned.

[Whereupon, at 2 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

PREPARED STATEMENT OF JEFF BROWN, PUBLIC DEFENDER, CITY AND COUNTY OF
SAN FRANCISCO

Dear Mr. Chairman and Members, I appreciate the opportunity to address this committee. I am happy that the Congress is considering the extension of the 1964 Civil Rights Act to lesbians and gay men. This general subject is probably one of the most critical issues of our decade. What Congress does may well effect the quality of human rights in our society.

Action by Congress is critical because the States and local communities have failed to enact legislation to protect gay people in the areas of housing, employment, and the expression of political rights. Even where communities have enacted such legislation, initiatives have often resulted in their repeal. Recently in San Jose, an ordinance prohibiting discrimination on the basis of sexual preference was repealed. In a few communities, such as San Francisco, gay rights ordinances have survived—and quite successfully. But is it fair that gay men and lesbians must travel to this island of human rights to enjoy fundamental rights? This disparity can only be remedied by Congress.

There is another reason why Congress should act—the repression of gay men and women has an effect on interstate commerce and the total national economy. Gay men and lesbians in repressed communities are denied employment commensurate with their abilities. They are confronted with unacceptable choices:

1. Stay in the closet;
2. Seek less suitable employment;
3. Move to a community where they will be hired in spite of their sexual preferences.

Without question many of hundreds of thousands of men and women do not seek creative and productive employment simply because their sexual preferences do not make practical that they do so. The American economy, as well as the individual, is the loser. We lose the benefit of a huge reservoir of talent.

Finally, Congress must act because the United States if committed to human rights. Contemporary standards of human rights do not permit discrimination based on sexual preference. Discrimination that frustrates creative talents of people, that prevents them from housing, and from the expression of beliefs is intolerable in an enlightened world. A society that allows such practices does disservice to humanity. At a time that other countries are placing men and women in jail or setting them to sea because they are homosexuals, America has a chance to shine by its moral example. This is why Congress must extend the 1964 Civil Rights to lesbians and gay men.

DEPOSITION BY REV. BERNARD D. MAYES, EPISCOPAL DIOCESE OF CALIFORNIA

My name is Bernard Mayes. I am an Episcopal Priest canonically resident in the Episcopal Diocese of California where I have lived and worked since 1960. I am the Founder of San Francisco's Suicide and Crisis Intervention Center, and was formerly the President of the Bay Area Association of Suicide and Crisis Intervention Centers. I have therefore had ample opportunity through my counselling experience of learning the hidden fears of both homosexual employees and heterosexual employers. I am 51.

I also work as a professional communications consultant and in my time I have worked with and negotiated with unions and business firms at both management and shop-floor levels, and have had many opportunities to observe the effects of prejudice and fear upon employment opportunities. Since I am homosexual myself—a fact which until recently I was fearful of revealing lest I lose my job and my clients—I have personally experienced these effects and can speak from first-hand knowledge.

First let me briefly indicate the extent of the prejudice against homosexuality in the workforce—a prejudice which, as I shall suggest later, seems chiefly to be born from ignorance of sexuality in general, heterosexual as well as homosexual, reinforced by an obstinate and superstitious adherence to ancient tribal and religious taboos.

The Center for Homosexual Education, Evaluation and Research at San Francisco State University is currently compiling a list of cases in which discrimination on grounds of known or suspected homosexuality can be documented. Such discrimination is still officially the policy of the U.S. armed forces and of certain churches, and, at a conference organized by the Center in 1976 it was suspected, I remember, by sociologists who were conversant with national employment practices that large numbers of heterosexual employers would be likely to fire employees whom they discovered to be homosexual. The National Gay Task Force, New York, N.Y., is also compiling a list of Fortune 500 companies which have not extended non-discriminatory policies to protect homosexual employees.

I do not find this surprising. I have spent most of my life and homosexual friends my age (51) have spent most of theirs, living and working in constant and terrible fear of exposure and ostracism from the working community. There are very many men and women in high places, legislators among them, who even today have similar fears always with them. And I could relate a hundred heart-breaking stories of malevolent and unrelenting cruelty on the part of even educated and otherwise enlightened employers, of the blackmail of valuable, hardworking and creative women and men, and of nightmares of despair resulting too often in suicide. The number of such cases we see in the press may be small, and then only of those who failed to keep up their guard or who were betrayed by a word, a gesture, a careless love-letter. The well-hidden tragedies are more numerous. Multiply them by the towns and cities across the country and you have tens of thousands of citizens forced to live double lives, fearful of "coming out," being themselves and sharing for once in the open honest light of day those whom they love and care for. But what kind of life is it, I ask you, when you must always deny those you love, and watch your eyes and your tongue lest they betray you, even while heterosexuals at business meetings and parties are permitted—nay, openly encouraged—to display their husbands, their wives and their children like so much "proof" of their fertility? It has been said that homosexuality is merely a "life-style" which one may freely choose to adopt. I suspect most heterosexuals would not agree. And for good reason. Homosexuality is a fact of life, not an option. All the more reason to ensure equality before the law, and to end the perpetuation of fear and prejudice by the foolish insistence by Corporations and private business people that their employees be "safely married". Such safety is a sham, as many a gay man or woman who has married and even had children for such self-destructive reasons can vouch.

But, sadly, the reasons why employers are so often loath to hire known homosexuals seem to be rooted not in any rational response to the facts of life, but for fear of losing business. I suspect even the most prejudiced businessperson would hire gay people by the score were they able to guarantee an increase in his profits. It was once, and in some parts still is, the same for other minorities. For racial minorities the situation is slowly but surely improving due to the passage of laws such as your Committee is now considering. For gay women and men it is still generally the same as it always was.

The fear of losing business as a result of a homosexual workforce is in part justified. The heterosexual public cannot yet accept and rarely seem to understand their own sexuality, let alone that of the homosexual minority. And the reason for this is all too often the superstitious adherence to ancient religious taboos upheld and prescribed by certain religious organizations in the name of Christianity. The

enthusiasm with which these, often fundamentalist, churches seek to threaten homosexuals is notorious. But your Committee must know that such churches and their clergy far from represent either Christianity in general or the major U.S. religious denominations which almost unanimously have openly called for an ending of discrimination against homosexuals in secular and, increasingly, in religious employment. Even the question of whether a homosexual is, as they say, "practicing" or not is rapidly being recognized for the red herring that it is. What, for example, is a "practicing heterosexual"? "Celibacy" would seem to be the only alternative and that is a technical term referring to certain religious vows, and is therefore in most cases irrelevant.

The American Society of Friends was among the first of the major denominations to end discrimination against homosexuals in 1972. But so have the National Federation of Catholic Priests, the Central Conference of American Rabbis, the Union of American Hebrew Congregations, the National Council of Churches of Christ, the United Church of Christ, the Unitarian Universalist Association, the Lutheran Church of America, the Methodist Church and the Episcopal Church. Many other national organizations of professional and lay people, doctors, attorneys, psychologists, have joined these religious bodies. Some have gone even further and called for improved education about sexuality in general as the most productive way to break the now ridiculous taboo against informing our electorate of sexual matters. My own Diocese of California has studied the matter in detail, utilizing input from a variety of expert professional sources and have even suggested that it is not unlikely that humans may be more, or less, bi-sexual.

Certainly there is much to learn about human sexuality, but if by fair and enlightened laws we can help free so many millions of our citizens from the exhausting need to hide their lives, we should enact them without delay. Advance in civil rights is not easy, and for precisely the same reasons which hamper this advance, millions of homosexual women and men risk their jobs to come out of hiding. And make no mistake: it is the fear not only of rejection by family and friends but also of unemployment which makes "coming out" such a dangerous, traumatic, and comparatively rare step. Nevertheless, despite strident cries to the contrary, your Committee may rest assured that civil rights for homosexuals has the virtually unanimous backing of responsible religious bodies of our nation.

Thank you, Mr. Chairman, for your time.

PREPARED TESTIMONY OF HON. S. WILLIAM GREEN, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, I would like to begin by complimenting you and the other Members of your Committee for calling this hearing today. As a cosponsor and strong supporter of H.R. 2074, I know the importance of the issue you are examining. Bringing this sort of attention to the problem of discrimination against lesbians and gay men is not always an easy task or a politically popular one for Members of Congress, and I commend you for your effort.

Experts estimate that up to 10 percent of our population is homosexual and there is no question that discrimination in employment, housing and other areas is real. The legislation before this Committee today would amend the Civil Right Act of 1964 to prohibit that discrimination, and I would add that this legislation is long over-due.

My concern for this issue goes back to 1965 when, as a state legislator, I was one of only 19 Assemblymen to vote to remove homosexual conduct between consenting adults as a crime in New York State. I have been encouraged that the movement to secure the rights of gays has grown dramatically since that time.

I would also like to emphasize that this is not a partisan issue. Within the Congress, H.R. 2074 has bi-partisan support, and, among our constituents, that support is without regard to party. Gays are Republicans, Democrats and independents; they are conservative and liberal; they are men and women; they are urban and they are rural. As one of the current gay rights themes accurately indicates, gays "are everywhere." Significantly, lesbians and gay men are also increasingly political, and this is healthy.

I support the notion that our law should state and enforce our opposition to discrimination on the basis of "affectional or sexual orientation." In closing, Mr. Chairman, I would observe that this issue is one which is easily given to distortion. As legislators, we are not concerned about people's private sexual activities. We are concerned about human rights and dignity, and I am hopeful that today's hearing will mark another step toward enactment of national gay rights legislation.

PREPARED TESTIMONY OF KENNETH LISENBEE

There is no right in the Constitution which says moral values cannot be reflected in our laws. Undoubtedly there are some who would say that because the Bible speaks against sexual sins including homosexuality and adultery, it is discriminatory. If one considers the rights of the practicing homosexual relating to discrimination in employment opportunities, he is in danger of imposing a moral viewpoint about homosexuality which is contrary to what the majority of Americans believe. To say that practicing homosexuals are a discriminated minority is equivalent to saying that because people wish to practice sexual vice, the old-fashioned moral values are not applicable in today's free society, where "anything goes."

If our laws reflected a belief that marriage and family life is the best course for any society, it would not pass laws which make divorce easier, try to legalize homosexuality, fornication, bi-sexuality, adultery, transexuality, transvestism or bestiality. For if homosexuals do suffer discrimination, it is for lack of tolerance for this lifestyle which has always been contrary to traditional religious beliefs. Some today, even clergy, would say that homosexuals need to be "understood" by encouraging the acceptance of them in society. No one seems ready to admit, however, that homosexuals will ever be granted full equality in America because of restrictions against such behavior by the moral laws handed down throughout history and biblical statements against all immorality which is contrary to God's will for mankind. The society which condones homosexuality is a weak society which has already fallen prey to sexual promiscuity and declining national moral values, where the "rights" of a minority are in danger or usurping the "rights" of the majority—heterosexuals. In order to be just and equitable, we must compromise the moral values and strong family life to pacify a minority who wishes to be accepted as normal. We are all human beings with sexual urges, but there is no way to say that homosexuals are born that way. Biologically, it is unnatural.

American society appears to be condoning all forms of promiscuity at an alarming rate. The trend has been obvious over the last 20 years. Public schools teach sex education, but fail to make plain the moral implications of promiscuity. While television programs and films praise adultery, fornication, sexual perversions such as homosexuality and violence, little respect is held for marriage, traditional family life and sexual fidelity among married partners or abstinence before marriage. Millions of Americans are now experiencing sex outside of marriage as a valid alternative. Is it any wonder that divorce, illegitimate births, rapes and violence, abortions and homosexuality are on the upswing? Yet no one should presume that because such problems exist, they are beneficial to our society. To many liberal sociologists, doctors, lawyers, clergy and judges, the only solution to homosexual behavior is to approve and praise such behavior.

Without a doubt, the homosexual lifestyle is one of the most deceptive and promiscuous patterns of behavior in America. Hepatitis B and venereal diseases play a major part in the potential health threats posed by promiscuous homosexuals, as well as heterosexuals who are promiscuous. The modern philosophy seems to be "anything goes" or "do it if it feels good." No self control is necessary, and no moral discipline should restrict any form of sexual experimentation under the guise of "freedom of choice." Those who would wish to have "freedom of choice" would like to preclude any personal responsibility for illegitimate births, abortions (killing of the unborn child), venereal disease or mental turmoil of fathers who wish the child to be born but the courts rule that it is a decision of the mother only.

Some homosexual groups are attempting to whitewash their lifestyles by pointing out that some gay couples have had successful relationships for 15, 25, 50 or more years—often a better rate than marriages. Regardless of this information, the vast majority of homosexuals are not tied down to any one partner and often have dozens, even hundreds of partners in a lifetime—and this is not unusual. As long as there is "love"—(actually lust)—it seems justifiable.

Critics of organizations which are often falsely termed "anti-homosexual" are quick to say that they would seek to impose an outmoded, unauthoritative biblical morality on the majority of Americans. This concept is dangerous. What gay activists/militants really want (according to their leaders) is the abolition of all laws against sodomy, end discrimination in lesbian mother and gay father custody cases, and Federal funding of gay-sponsored businesses, housing projects, health clinics, tax benefits to gay foundations, and eventually the right to "marry" and adopt children. Many homosexuals who teach in public school would like to have homosexual activity granted "equal time" in sex education courses. No moral guidelines need apply here either. Children will simply be instructed in the clinical aspects of homosexual techniques, as well as masturbation—both of which are "normal" according to these teachers. Marriage and fidelity are dirty words. You will find no happier group of people than many homosexuals proud of contributing to the

divorce of Anita Bryant who had the courage to speak out against the sin of homosexuality. Contrary to popular "gay opinion" it was not a hate campaign, but merely a warning to homosexuals not to demand equality with heterosexuals because it goes contrary to the laws of God and is harmful to society and families. Many homosexuals were glad to see a "backlash" against the demands of the militant and activist homosexual movement. Many gays disavow any notions of discrimination whatsoever. Those who often seek to end discrimination are part of the highly vocal and visible gay activist/militant minority of homosexuals who are attempting to speak for *all* homosexuals and lesbians. They cannot.

If H.R. 2074 is passed, the United States will be forced to accept those who practice homosexuality into the churches, schools, and businesses whose majority have always been taught that homosexuality is a sexual dysfunction and vice which throughout human history has never been fully acceptable, and which is biologically unnatural. Some may counter this that because mankind is a highly evolved animal, and a God cannot therefore exist, i.e., one who created the universe and life itself, no moral grounds can forbid anything on the basis of our Judeo-Christian tradition. But evolution has apparently become the basis of our educational system, not a God.

Our country has already denied the basic human right of children to be born by presuming the so-called right of women to have an abortion ("freedom of choice") even though the tiniest percentage of abortions are due to rape or incest. Will we also condone homosexuality, bi-sexuality and other forms of sexual licentiousness because a minority has the false notion that they are normal? Do you think our next generation will survive this moral crisis? You will be guilty of aiding the further erosion of moral values in this country should H.R. 2074 pass due to demands of gays.

I would strongly urge each and every member of the Congress to pray for the will of God to be accomplished in this matter. In the past such men as George Washington and Abraham Lincoln have requested the Nation to fast and pray for guidance and intervention in times of national crisis. Are we doubtful that God's guidance and intervention is not needed in 1980-81 as well? There are some who view private sexual behavior as totally unrelated to public morality. I do not.

I am both a recovered alcoholic (two years) and an ex-homosexual (there are over 1,175,000 ex-homosexuals in the United States, according to reliable data available)—having completely stopped living a life based on promiscuity, false values, temporary pleasures, and lustful desires. I also had a gay "lover" for eight years. It is hoped that all members of Congress will read my story with an unbiased mind—for I do not hate people who suffer from the disillusionment of homosexuality. I have been there myself, and have changed because of the unhappiness and despair such a lifestyle inflicted on my character and personality. [It was once regarded important for an individual to profess belief in a living God, i.e., the Creator—yet today it is scoffed at and ridiculed. Evolution is taught as fact; it is not, despite the claims of some, including the narrator of "Cosmos" on national television. I offer no apology for my belief in God, also based on facts.]

At age six my identical twin brother and I were forced to learn homosexual practices by a "friend" of the family, however, I was too frightened to tell anyone. At age 14 I was solicited by a man who asked me to perform a homosexual act for \$2.00. I declined, and ran away terribly frightened, telling no one. Because my parents were divorced at age 11, and because I missed my father's companionship which I should have had in the family, and lacking strong moral guidelines from family, I was eventually to become involved in the "gay" life for 12 years. I had no idea how unhappy such casual sexual affairs would make my life—and how lonely I was for 12 years, despite it all. But I am firmly convinced that my homosexual behavior contributed to my alcoholism. It is easy for one to become involved in homosexual promiscuity at a crucial age of one's emotional and psycho-sexual development. In 1980-81 with the deluge of homosexual pornography on the market, it is openly encouraged, even considered "chic" to be homosexual or "bi-sexual". Nothing could be further from the truth. But I never considered myself particularly promiscuous. However, between the ages of 17 and 28, I had sex with more than 100 different men, mostly older. Some were married men with children, but most were as promiscuous as me. We usually met in gay bars or gay baths (although most baths patrons seem only interested in quick sex or at best "one night stands")—sometimes on the streets of Washington, D.C. or New York City where I spent my life during those 12 years. What a wasted period of my life. I have contracted various venereal diseases from homosexuals also, and during two or three of those 100+ instances I was forced against my will to have sex.

My first sexual encounter with a man occurred in a Y.M.C.A. near the White House in 1969. My brother and I were living in an apartment across from it, and we

used to use the athletic facilities and piano there on occasion. And there, at age 17, a swarthy looking older man asked me if I would "go to his room". I did not want to, fearing the outcome, but because he was extremely persistent, I did go with him. He later told me he was a Roman Catholic priest from Spain who worked at the White House. A fact I clearly remember to this very day. I knew that some men paid undue attention to me by their peristent stares and smiles, sometimes sending me drinks in bars for no apparent reason. But this first incident led to countless others and became habitual.

It was not long before I began to frequent homosexual bars—which I spent thousands of hours in, drinking beer at first and then vodka, brandy and wine. I had my first cigarette in a gay bar too—it was in Georgetown and no longer exists.

At age 17 I also discovered homosexual pornography. Although expensive in 1969, I purchased the porn primarily for masturbatory purposes. It too became habitual and I now realize how much harm pornography does. It corrupts and warps the mind of its users. Nowadays, pornography is available in countless thousands of stores, newsstands, back-room bars, and X-rated theatres all across America. No one seems interested in keeping pornography out of the view of children. Many have the false notion that it is a "victimless crime" and is "guaranteed" by the Constitution.

Most male homosexuals masturbate frequently—either alone or mutually—in addition to oral and anal sex. What I was looking for—a father figure and masculine role model—now was compulsively sought out through casual gay sex or affection and by purchasing homosexual pornography. Over a 12-year period I purchased at least \$10,000 of pornography and a similar amount of alcohol in gay bars. Hundreds of dollars were also spent on admission to gay baths and X-rated homosexual films. [Now you can purchase X-rated video cassettes for your home viewing pleasure.] In my estimation, gay baths are merely quasi-legal homosexual houses of prostitution.

Male hustlers or prostitution is a growing problem in cities all across America. Whole blocks of major cities are active cruising areas for men seeking sexual favors from young juveniles who can make large amounts of money in a very short period, while evading income taxes. Some male prostitutes are bi-sexual or married, and many are runaways from home—attracted to such activity by the lure of sexual pleasure and high monetary rewards.

Homosexual prostitution is a multi-million dollar a year business and thousands of youth are involved. So is organized crime. Numerous dial-a-date or dial-a-model businesses exist where you can even charge the cost to your Master Charge or Visa. [Some bath-houses accept credit cards as do many pornographers.] F.B.I. and police investigations know that such activities are controlled by organized crime. Some male prostitutes are willing to travel across the country for their customers, if the price is right. Numerous "personal want ads" exist in both homosexual and heterosexual porn publications offering any kind of sex imaginable.

The best defense in favor of legalized homosexual behavior comes from the gays themselves as well as those professional doctors, psychiatrists, publishers, lawyers, civil-rights advocates, and gay business owners or pornographers [who can afford to pay the highest fees for legal defense.]

The agnostic and atheistic concepts imposed on our educational system do not allow moral judgments to be placed on human conditions such as homosexuality. God has been taken out of the classrooms of elementary school, high school and colleges and replaced with a liberal philosophy of humanism and secularism. The idea of separation of church and State has been interpreted to mean freedom from religion. It allows atheism to become acceptable but not religion. Our forefathers would shudder in utter disbelief to witness the corruption of present American society.

When you look at the overall picture of modern society, you cannot fail to see the \$4+ billion a year pornographic racket, controlled by organized crime, and state that it is not a problem. And it is only getting worse. The relationship between sex and violence is now documented by studies and contradicts the report issued over 10 years ago of the Commission on Obscenity and Pornography. Since then, the problem has mushroomed and pornography has been protected by liberal interpretation of First Amendment freedoms. That pornography is big business controlled by organized crime apparently does not concern the Congress enough to pass stronger laws against this heinous crime.

Pornography only encourages illicit sex—it does not serve to educate the public on how to have a faithful, better marriage. The trend of pornographic and homosexual and heterosexual permissiveness, if allowed to continue at its alarming present rate, will eventually undermine all moral values relating to normal sexuality, marriage and family life—and from my own experience, I can objectively state that homosexual pornography which I purchased only reinforced my gay identity con-

flict. To me, porn is as addictive as alcohol is to an alcoholic, and as promiscuous sex is to a compulsive cruising homosexual or the heterosexual "singles bar" syndrome. I was looking for love in all the wrong places, and I never found it.

During the time I lived with a "lover" in New York City I was ignoring my problem and taking the easy way out—by giving in. I was very confused, went to a dozen or so psychiatrists and my problem with alcohol got only worse. I used to pass out instead of "fall asleep" and had innumerable "blackouts" when I would not remember anything about where I had been or what I did. But I must state that despite all of this gay lifestyle, I was anything but gay, in the traditional meaning of that word.

Never did I suffer from any employer discrimination—homosexuality was never discussed, never made a qualification for employment or used as a threat against me. What I did outside my jobs in private never interfered with my work, except my alcoholism which developed over 10+ years of drinking in gay bars later led to my being fired for repeated absences and sicknesses and being late too often. My working hours had to be adjusted to 10 to 6 because I could not show up at 9 a.m. On several instances I stayed out all night in homosexual bars and went directly to work from them without going home to change clothes. In New York, there are places where you can stay out all night, drink, watch porn films, have sex as often as you want, and dance or use drugs—all under one roof, for one easy admission fee. Who runs these places where in some instances live sexual performances are commonplace, and where patrons are encouraged to remove all clothes upon entering?

Additionally, my gay "lover" often reacted violently to my alcoholism and I was beaten up repeatedly over a 5-year period—with bruises, black eyes and a cracked rib. And I was afraid to report it to the police—but I was afraid of being murdered. Somehow, insanelly, I allowed myself the sadistic masochistic pleasure of continuing the relationship. I thought I was "in love." One time while working for a large New York bank, my employer suggested that I take a month's leave of absence because it was obvious I was an emotional and nervous wreck—this was a direct result of my gay lifestyle. [I have also had three suicide attempts—all related to homosexuality and alcoholism and drug addiction.] This information is documented by my psychiatrists and doctors.

Had a compassionate Government program been available to help people like myself change, I would have been the first one to avail myself of it. But today you only hear of psychiatrists and politicians interested in either the money or the gay vote. It is a sad fact.

Rather than legalizing this sexual aberration by promoting and encouraging laws to be enacted and enforced which allow the sickness of homosexuality and other forms of sexual immorality to proliferate, the government should provide money to develop programs which will help unhappy gays change—as hundreds of thousands have on their own—instead of encouraging promiscuity. In addition, government grants should be made available to law enforcement agencies which will enable them to crack down on organized crime's pornographic industry, prostitution and child porn—a national disgrace. The "man-boy love movement" should be investigated, and studies should be conducted which prove that homosexuality, prostitution and pornography, as well as the trend towards abortion and divorces can be reversed, as well as rape and violent crime reduced. The families of the United States of America must be protected *now* from all forms of immorality—masquerading as equal rights—which are undermining the moral fiber of this nation.

Our divorce statistics alone show how families are endangered. The trend toward single parent homes, lesbian and male homosexual couples wanting to adopt children (which absolutely influence impressionable young children and prejudice them towards gay lifestyles) and live sexual adult entertainment must be reversed.

Legislation of morality is not the issue. Discrimination in employment of homosexuals is not the real issue. The issue which is first and foremost: should the future of the United States and its family life be endangered by the unlawful sexual practices of a minority? Should the Federal government have the right to condone activities which are wrong?

It is a sad fact that some loud, prominent, powerful and influential groups of male homosexuals and lesbians (including some feminist groups and "civil rights"—"equal rights" advocates) are bent on destroying the basis of our society—the family. They want equal time, so to speak, to promote homosexuality in education and even some religious groups now clearly feel that God does not condemn such sexual activity. One would wonder when they last read their Bible!

I call upon the Government of the United States to seriously consider the ultimate consequences of a totally permissive society where homosexuality, fornication, adultery, rapes and child porn are allowed to proliferate. Some people have even

become adept at selling children for up to \$10,000 each! Black market babies. The 1980 White House Conference on Families was a political farce which could not even define what a family is, but was perfectly willing to include homosexual couples as equal with married couples. A minority of advocates was allowed to control the agenda—costing \$3 million dollars of taxpayers money.

We cannot afford to ignore the history of past civilizations which had become permissive in the sexual area. I am living proof that homosexuals can and do change—with the help of the living God. Over 1,175,000 ex-homosexuals live in the United States, and some are married with children, others celibate. That's to be praised!

Homosexuality is a family problem, similar to divorce and alcoholism. The factors which contribute to these problems have their root cause in the home. Any right education in schools would not fail to ignore the facts about the unhappiness which such sexual and social problems as adultery, fornication, abortions and homosexuality and pornography cause in any society. Let us all work together to solve these problems by not condoning them. God help you all, and thank you for allowing me the opportunity to speak out. It was my public duty as a citizen of this great nation in this time of trouble.

STATEMENT OF THE U.S. COMMISSION ON CIVIL RIGHTS, CIVIL RIGHTS AND THE
96TH CONGRESS

The U.S. Commission on Civil Rights has viewed with increasing concern the attachment of anti-civil rights amendments to appropriations bills and also the failure by the Congress to act on significant civil rights bills.

In recent years, Congress has permitted amendments designed to weaken civil rights laws to be added to appropriations bills usually without Committee hearings and with only minimal floor debate. We deplore the erosion of the civil rights of all Americans by this "back door" method.

When Congress returns from its election campaign recess, the Senate will act on appropriations measures for the Departments of Labor, Health and Human Services, Education, Justice and the Treasury, among others. The House of Representatives has already included in this legislation amendments which, if enacted, would prohibit civil rights enforcement measures that have helped to make the concept of equal opportunity more of a reality for millions of Americans. It is this group of amendments which we urge the Senate to reject.

AMENDMENTS TO THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND
EDUCATION, AND RELATED AGENCIES APPROPRIATIONS BILL (H.R. 7998)

An amendment sponsored by Rep. Robert S. Walker (R-Pa.), passed in the House by voice vote, would prohibit the expenditure of funds by the Department of Labor, Health and Human Services, and Education to issue, implement or enforce any program which includes ratios, quotas, or other numerical requirements in employment or admissions policies or practices.

By prohibiting the use of numerical standards to remedy, and possibly even to identify, race, national origin, religious and sex discrimination, the Walker amendment would jeopardize the government's ability to enforce Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972. Moreover, the amendment would seriously undermine the Department of Labor's implementation of Executive Order 11246, as amended, which is designed to assure minorities and women equal employment opportunities.

To prohibit categorically Federal agencies from using numerically-based formulas to end discrimination and to mitigate its effects, the Congress would be in direct conflict with the recognition on the part of the executive and judicial branches of the need for such remedies to end racial, ethnic, religious, and sex discrimination.

An amendment sponsored by Rep. John M. Ashbrook (R-Ohio), approved by a 213-194 House vote, would prohibit the Department of Education from spending funds, other than those specifically appropriated for bilingual education programs, to enforce regulations requiring a State or local education agency to meet the needs of limited-English speaking students, through programs other than intensive English instruction.

We are encouraged that both the House and the Senate excluded this Ashbrook amendment from the continuing resolution which funds most Federal agencies through December 15, 1980. The resolution does contain a milder amendment by Senator Lawton Chiles (D-Fla.), however, which precludes issuance of regulations until June 1, 1981. Nonetheless, it should be noted that the Department of Education, as is the practice with most Federal agencies, has encouraged and will consider

extensive public comment before final regulations are issued. Therefore, we see no advantage in requiring such a long delay before issuance of these regulations. We urge the Senate to delete the language of the Ashbrook and Chiles amendments from the fiscal year 1981 appropriations bill for the Department of Education.

Another amendment sponsored by Rep. Ashbrook, passed in the House by voice vote, would prohibit any expenditures under court order or in junction for any purposes specifically prohibited by this appropriations bill.

This amendment would erect an obstacle to the Federal Judiciary's fundamental and historic authority to interpret and to assure compliance with Federal law, including civil rights law, in accordance with the Constitution.

Another amendment sponsored by Rep. Ashbrook, passed in the House by voice vote, would prohibit the expenditure of funds to enforce any portion of the regulations under Title IX of the Education Amendments of 1972 which have been found by three U.S. circuit courts of appeals to exceed the scope of the statute and by one circuit court not to exceed the scope of the statute. This prohibition would be in effect until the conflict between the decisions has been resolved in favor of the challenged portion of the regulations. This amendment would have the effect of preventing in eight judicial circuits in the nation enforcement of Title IX regulations prohibiting recipient educational institutions from discriminating against their female employees, including teaching, coaching and administrative staff.

It must be recognized that discrimination against educational employees and discrimination against students are frequently so related that neither can be eliminated unless both are addressed together. If this amendment is enacted, discrimination in employment at higher educational institutions can be remedied only by the Equal Employment Opportunity Commission under Title VII of the Civil Rights Act of 1964, and this crucial relationship between employment and program discrimination will be ignored. Without the enforcement of nondiscrimination in employment under Title IX by the Department of Education's Office for Civil Rights, the Federal government's responsiveness to the discriminatory effects of employment practices in education will be diminished.

For all of these reasons, this Commission strongly opposes this amendment.

In addition, we wish to express once again our opposition to the inclusion of language similar to the Eagleton-Briden amendment in the House-passed appropriations measure for the Department of Education. The Eagleton-Biden amendment (Section 306) states in part: "None of the funds contained in this Act shall be used to require, directly or indirectly, the transportation of any student to a school other than the school which is nearest the student's home, except for a student requiring special education, to the school offering such special education, in order to comply with title VI of the Civil Rights Act of 1964. . . ."

The Commission on Civil Rights has consistently opposed the Eagleton-Biden amendment from the time it was first proposed in 1977 and has repeatedly urged its repeal. From the evidence available to us, we believe that this amendment has had a very adverse effect on Federal enforcement in this area and has given encouragement to local districts wishing unlawfully to resist and delay the constitutionally mandated desegregation of their schools.

AMENDMENT TO THE DEPARTMENTS OF STATE, JUSTICE, AND COMMERCE, THE
JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS BILL (H.R. 7584)

An amendment sponsored by Rep. James M. Collins (R-Texas), passed in the House by voice vote, would prohibit the Department of Justice from bringing action "to require directly or indirectly the transportation of any student to a school other than the school which is nearest the student's home."

If this amendment became law, its effect, together with the restrictions placed on the Department of Education by the Eagleton-Biden amendment, would be to require the Federal government to continue funding unconstitutionally segregated school systems where student transportation is the last available desegregation remedy. It would thus prevent the executive branch from fulfilling its Constitutional obligation to ensure equal protection of the laws and desegregation of public education in those school districts most resistant to desegregation.

Although the Senate also approved this amendment by a vote of 49-42, a perfecting amendment has been proposed by Sen. Lowell Weicker (R-Conn.) that would allow the Department of Justice to initiate or participate "in litigation to secure remedies for violations of the fifth or fourteenth amendments to the Constitution of the United States." This Commission strongly supports Congressional recognition, as embodied in the Weicker amendment, of the responsibility of the Department of Justice to uphold the Constitution. Nevertheless, we are strongly opposed to any version of the Collins amendment because it could leave the Federal government without enforcement ability to some Title VI school desegregation cases.

AMENDMENTS TO THE TREASURY DEPARTMENT, THE U.S. POSTAL SERVICE, THE EXECUTIVE OFFICE OF THE PRESIDENT AND CERTAIN INDEPENDENT AGENCIES APPROPRIATIONS BILL (H.R. 7583)

There are two amendments attached to this appropriations bill that restrict the Internal Revenue Service's ability to set standards by which private schools obtain tax-exempt status. An amendment sponsored by Rep. Robert K. Dornan (R-Calif.), approved by 208-85 House vote, would prohibit the expenditure of funds by IRS to implement proposed revenue procedures pertaining to the tax-exempt status of private schools. Another amendment sponsored by Rep. Ashbrook, approved by a 300-107 House vote, would prohibit the expenditure of funds to formulate or carry out any program that would cause the loss of tax-exempt status of any private, religious, or church-operated school unless such program was in effect prior to the enactment of this appropriations bill.

These amendments, both included in last year's Treasury Department appropriations bill, spring from the effort by the Internal Revenue Service to implement revenue procedures regarding tax-exemption for private schools that are adjudicated to be or are found, in fact, to be racially discriminatory. IRS published proposed revenue procedures on August 22, 1978 (revised on February 9, 1979) that would be consistent with the decision in *Green v. Connally* 330 F. Supp. 1150 (D.D.C.), aff'd sub nom., *Coit v. Green*, 404 U.S. 997 (1971) which set out guidelines to determine whether private schools, with few or no minority students, are eligible for tax-exempt status.

On May 5, 1980, the United States District Court for the District of Columbia entered an order and modified permanent injunction in the *Green* case, applicable to Mississippi only, that provided that schools that were adjudicated to be discrimination or that were created or substantially expanded at the time of local school desegregation and were operated on a segregated basis should not receive governmental encouragement and support in the form of a tax exemption. The order provided the Internal Revenue Service with clear guidance on how such schools must be evaluated in order to determine whether they deserve tax exempt status. The proposed revenue procedures are consistent with this order.

With this latest *Green* decision, and with the Ashbrook and Dornan amendments still in place, the nation essentially has two standards by which to determine eligibility for tax exemption of private schools that may be racially discriminatory—one for Mississippi and one for the remaining 49 states. Not only do the Ashbrook and Dornan amendments prohibit IRS from developing revenue procedures that will allow it to function nationwide in a manner consistent with the *Green* decision, but they encourage segregated private schools. Without such revenue procedures, the existing criteria of IRS are insufficient to assure that discriminatory schools, even those adjudicated to be discriminatory, will lose their tax-exempt status. There are no statutory means for IRS to seek a court order concerning the alleged discriminatory nature of a school's policies or practices.

For these reasons, the Commission on Civil Rights strenuously opposes the Ashbrook and Dornan amendments to this appropriations bill.

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This Commission strongly opposes the anti-civil rights amendments discussed in this statement. We urge their defeat when Congress returns in November.

But there are other issues on which the 96th Congress can improve its civil rights record if it will but act. Several significant measures pending in Congress would be positive contributions to the nation if enacted into law.

First, and probably the most important civil rights legislation the 96th Congress will consider, is the Fair Housing Amendments of 1980. This legislation will establish a strong administrative enforcement mechanism which the Department of Housing and Urban Development can utilize to effectively combat discrimination in the sale and rental of housing in this country. This bill, which amends Title VIII of the Civil Rights Act of 1968, passed the House of Representatives by the substantial margin of 310-95, but has stalled in the Senate and is awaiting floor action after the election recess.

The Youth Act of 1980, considered one of the administration's major domestic initiatives, seeks to alleviate the unemployment crisis among minority and disadvantaged youth through a two-pronged approach that improves employment skills training and basic education programs for young persons, many of whom have been victims of discrimination. This bill also has been approved by the House but did not reach the Senate floor for a vote.

The Domestic Violence Act provides for Federal support and stimulation of state and local programs to curb domestic violence and assist its victims. This bill has

been considered by both chambers of Congress and the House has approved a conference report on the bill while the Senate is yet to act.

The Congress has passed the Housing and Community Development Act of 1980, which amended and extended Federal laws related to housing and community development and preservation programs. Included in this comprehensive measure was an amendment to renew for five years the Home Mortgage Disclosure Act of 1975. This Act required lending institutions in metropolitan areas to provide investment and reinvestment data which have been effectively used by government and community groups to break "red-lining" practices by lending institutions.

In concluding this assessment of the civil rights accomplishments of the 96th Congress, this Commission reiterates its strong opposition to the series of anti civil rights measures adopted by the House. We urge the Senate to defeat these measures which represent a serious retreat from this nation's commitment to the achievement of equal opportunity for all Americans.

PREPARED STATEMENT BY WILLIAM P. THOMPSON, STATED CLERK OF THE GENERAL ASSEMBLY, UNITED PRESBYTERIAN CHURCH IN THE U.S.A.

My name is William P. Thompson, and I am Stated Clerk of the United Presbyterian Church in the United States of America. This Protestant denomination includes more than 2.6 million persons in all 50 states, with some 8,500 congregations. The church's national headquarters are in New York City, at 475 Riverside Drive, Manhattan. This statement is to present the United Presbyterian Church's carefully considered policy on the subject of the civil rights of homosexual persons.

First, let me review for you the background of the United Presbyterian Church's involvement in this subject. For two years our denomination conducted a church-wide study of homosexuality, during which a task force of Presbyterians with various professional and personal credentials from throughout the church was convened. This task force included a medical doctor, a lawyer, a sex therapist and an ethicist as well as biblical scholars and theologians. They presented to the church a lengthy background paper and a proposed policy statement with which our General Assembly—our denomination's highest legislative and executive body—dealt in May, 1978, in San Diego. This intense attention to the subject of homosexuality culminated in the adoption of a policy statement and recommendations which guide the United Presbyterian Church, which are attached for your information. Included in that official action is this statement:

"The 190th General Assembly of the United Presbyterian Church (1978) . . . calls upon United Presbyterians to work for the passage of laws that prohibit discrimination in the areas of employment, housing, and public accommodations based on the sexual orientation of a person." (p. 62.)

I think it is important for you to take into account the setting in which the General Assembly's decision was reached. The basic question before the United Presbyterian Church was whether or not to ordain homosexual persons to ministry in the church. Strenuous debate on the subject went on throughout the church while the task force was doing its work. Commissioners to the General Assembly studied this subject more deeply, probably, than any other issue we have dealt with in recent years, and there were strong opinions on both sides of the question. The decision made in San Diego resulted in definitive guidance to presbyteries against such ordination. That, of course, is not an issue in civil rights legislation. My point in raising it is to note that, almost without exception, those favoring ordination and those opposed to it were united in opposing any form of civil discrimination based on sexual orientation. Thus, while our General Assembly opposed ordination by a margin of nearly 6 to 1, it nonetheless affirmed and supported the recommendation on civil rights that I have cited by an overwhelming margin.

The policy statement leading to this action says in part: "There is no legal, social, or moral justification for denying homosexual persons access to the basic requirements of human social existence." (p. 61.) Work, shelter, and acceptance in public places certainly are among those basic requirements.

The major arguments that brought this denomination to its affirmation of civil rights legislation protecting homosexual persons were spelled out in our background paper, from which I quote:

"Homosexuals are human beings, and it is not in keeping with Christian love to regard them as less than that. As human beings, they have needs for food, shelter, jobs and education, just as all other human beings do. Again, it is not in keeping with Christian love to prevent their meeting those needs. Viewed this way, the gay civil rights issue becomes not a matter of compromising with evil but rather a matter of showing Christ's love, compassion, and justice." (p. 44) ". . . where civil

rights legislation is proposed, Christians' greatest concern focuses on the issue of employment. Misunderstandings of various provisions of such legislation need to be allayed with facts. Under civil rights laws, . . . no employer need hire any heterosexual or homosexual person who is unqualified or incompetent; no firm or establishment need employ a heterosexual or homosexual person whose behavior on the job offends customers and calls into question the company's reputation." (p. 44)

The background paper written by the task force then confronted the most sensitive aspect of the employment issue, that of homosexual persons being hired as teachers, and recognized the widely held "fears that homosexual teachers are somehow less competent and reliable than heterosexual teachers, that homosexual teachers will somehow influence children and young people to develop homosexual orientations, and that homosexual teachers are somehow more likely than heterosexual teachers to seduce or molest their students. Fears based on misunderstanding need to be allayed with facts." The task force itself rejected those fears and called for others to also reject them. It cited professional opinions refuting those myths, including the resolution of the Board of Trustees of the American Psychiatric Association of Dec. 15, 1973, endorsing civil rights legislation for homosexual persons, such as you are now considering, and the opinion of Dr. John P. Spiegel, President of the American Psychiatric Association, in March 1975, stating that "there is no evidence to support" the thesis that "homosexual teachers might affect the sexual orientation of their students, nor is there evidence to believe that seduction of a student by a homosexual teacher is any more likely to occur than heterosexual seduction." Dr. Spiegel further wrote, "I hope very much that legislation will be enacted to end a cruel and wasteful form of discrimination that is based on prejudices rather than on scientific knowledge." (p. 45).

The United Presbyterian Church has accepted these and other arguments from appropriate professional sources, and adds to them our belief that the insidious discrimination that takes place in the absence of civil rights protection is morally wrong and contrary to our belief in the worth and dignity of each person as a child of God. We accept biblical commandments to show love, compassion, and justice toward our neighbors, including those we may not like or of whom we may not approve. That includes guaranteeing the rights of all persons—regardless of sexual orientation—to employment, housing, and public accommodations.

PREPARED STATEMENT BY WILHEL W. G. REITZER, WASHINGTON, D.C.

This statement sets forth a number of reasons why the proposed legislation is not in the best interests of individuals and society at large.

With a background in law and theology, I am writing a book on the Ten Commandments. One of these commandments makes sexual integrity a major human right/duty. Adultery is the worst form of violation, but the commandment also embraces prohibition against other forms of unwholesome sex activity. One such form is homosexuality, which this bill would not only legalize but also grant civil rights to so that people who discriminate against it will be brought to bar and punished.

I have done extensive research on this subject resulting in five separate essays covering various aspects. For the benefit of the subcommittee I submit a short summary of each for the record:

I. THE AUTHORITIES CONDEMNING HOMOSEXUALITY

(i) *The Law of Nature*. This law prescribes what is natural in the use of all bodily organs; homosexuality makes unnatural use of bodily organs.

(ii) *Intuition*. Natural law is integral to humanity, i.e., it is "written in the heart" (Romans 2:15). It is recognized intuitively: without the use of reason. Intuition regards homosexuality unnatural.

(iii) *Divine Manifestation*. God impresses on every individual's mind that certain information is true (Rom. 1:19,20,32). By this instruction, homosexuality is known to be wrong and culpable.

(iv) *Conscience*. This is an inner alarm that goes off whenever one strays from God's standards. Its dictates God gives such weight everyone will be accountable for them on Judgment Day. It holds homosexuality unlawful.

(v) *A Sense of Shame*. This is another built-in indicator; it corroborates conscience, being a valid reflector of basic values. Homosexuality is shameful.

(vi) *Holy Scripture*. Romans 1:21-27 presents the Biblical rationale of homosexuality as basically a form of divine punishment: those who persist in perverting truth and dishonoring God, God gives over to the perversion of an integral part of their being (their sexuality) and to dishonoring of themselves.

(vii) *Jesus Christ*. Jesus did not speak out on the subject because homosexuality was not a problem in Israel at the time. But He clearly ruled the only sexual choices are monogamous male-female marriage or celibacy (Mt. 19:3-13). He condemned all sexual outlet outside marriage as intrinsically self-gratifying because not based on a lifelong commitment. Therefore all such sex violates the integrity of human personhood and weighs against the marriage institution, which is the foundation-rock of a well-ordered society.

(viii) *Human reason*. When operating aright (cf. 1 Cor. 2:14), reason affirms the Biblical rationale's reasonableness—and greatly admires it as well.

(ix) *Internal consequences*. Those practicing homosexuality develop physical and psychological aberrations: unnatural walk, talk, mannerisms, fixations, which Apostle Paul calls "the recompense that was befitting their error" (Rom. 1:27). They are visible proof of God's condemnations and punishment (cf. Isa. 3:9).

(x) *The Church*. Until recently the Church uniformly condemned homosexuality. The current erosion is consistent with the prophesied iniquity of "the Last Days."

(xi) *Legislative History*. Until recently homosexual acts were unlawful in every State as a threat to public, safety, welfare, morals.

(xii) *External Judgments of God*. The classical example is the fire rained on Sodom—for the sins with which the name Sodom is still associated today (Jude 7). Specifically sexual sins defile the land, bringing upon it judgments (Lev. 18:22-30): storms, droughts, epidemics, unrest, apathy, economic woes, war. Homosexuality in particular afflicts society with specific consequences (see hereafter).

II. THE ADVERSE ASPECTS OF HOMOSEXUALITY

(a) *Psychological*. Homosexuality has all the psychological characteristics of a vice. It is addictive: the longer practiced, the more compulsive it becomes, and the more bizarre and despicable forms it takes. Ongoing practice produces anxiety, guilt, fears, nervousness, remorse, instability—despite an outward air of a gay, carefree, glamorous life. Also widespread: insecurity, depression, dissatisfaction, superciliousness, loneliness, malevolence, jealousy. Also, they manifest a high rate of mental disorder marked by irrationality, unreliability, impulsiveness, suicidal tendencies, spendthrift, transiency, deception, crime.

(b) *Social*. Homosexuals form a distinct subculture with their own vernacular, dress, etc. which reflects an underlying antagonism to heterosexuality that deliberately separates itself out of a sense of distinctiveness. They seek nondiscrimination and nonharassment, but they themselves discriminate, harass, disrupt, boycott. Without disclosure and for the sake of appearances, they marry and have offspring; but if the pretense becomes too burdensome, they will divorce. Their false views are a particular menace to the uneducated, the inexperienced, the weak-willed, the gullible, the young.

(c) *Economical*. The business world regards homosexuals as more accident prone, a greater financial and security risk, of higher job instability.

(d) *Medical*. Being unusually sexually active and promiscuous, venereal disease is high among them. Their sexual aberrations regularly cause psycho-neurotic symptoms—compulsions, fetishes, involuntary fixations—difficult to dislodge.

(e) *Moral*. As a major vice, homosexuality causes major decline in moral fiber: in the resolve, the initiative, the energy to do the right and necessary things to solve problems, to ward off dangers, to fully enjoy life.

(f) *Religious*. Homosexuals manifest a superficial religiosity because of a desire to sanctify their sexual activity and to obtain social approval. They keep finding neither church membership, nor church office, nor sacraments, nor "marriage" removes the underlying unsettledness they all suffer.

III. AVOIDING THE ERRORS OF THE HOMOSEXUAL ISSUE

In this essay I give examples of 28 different gimmicks, devices, and fallacies employed to advance the homosexual cause and to cast opprobrium on the opposition (e.g. Name-calling: opponents are homophobes, bigots, etc.). I also refute their leading arguments (e.g. that homosexuality is a natural innate condition; the answer is that there is no valid rationale for innate homosexuality as there is for heterosexual marriage). The essay gives evidence of the growing problem of homosexual recruitment of and demand for minors.

IV. HOMOSEXUALITY AND THE LAW

This essay sketches arguments for officially outlawing homosexuality:

At one time all states outlawed homosexual acts as within the police power of the state to safeguard public health, safety, and welfare.

Because marriage is regarded as the solid foundation of an enduring, prosperous society, courts also speak of the state having a compelling interest in safeguarding the marriage institution and marital stability: from the threat of i) extramarital sex, and ii) a decline in eligible bachelors.

There is also the problem of containing the spread of disease, of protecting minors, of making public places safe from solicitation and offensive conduct.

Outlawing is necessary also for the educative and deterrent impact a law has.

Consent should make no difference because in certain crimes (as euthanasia, incest, bigamy, dueling, homicide) basic human values are involved that must be protected against any encroachment.

All the arguments for legalization miss the main point, which is that homosexual acts are intrinsically evil. It is specifically listed in the Bible as a crime to be outlawed (1 Tim. 1:10). If evil is legalized, it is still evil, and society suffers all the more.

V. HOMOSEXUALS AND CIVIL RIGHTS

The various civil rights claims made on behalf of homosexuals are all unfounded:

Government Employment—the citizenry deserves public servants of good moral character to insure a good public image and high public confidence. Further, a homosexual undermines agency efficiency. A 1950 Senate committee report stated they have "a corrosive influence upon fellow employees" and concluded "one homosexual can pollute a Government office" (81st Cong. Doc. 241, p. 4). They also are a higher security risk.

Teaching—also teachers should have exemplary moral character because they stand *in loco parentis* to pupils (in place of parents); part of their duty is to impress on students principles of good moral character.

Student Activity On Campuses—because most students are still wrestling with various sexual temptations, giving homosexuals official university recognition to operate gay student organizations merely extends an aura of approval to homosexuality that will i) reinforce homosexuality of the membership, ii) bring those on the borderline into homosexuality, iii) increase homosexual activity.

Anti-discrimination Laws—open employment means homosexuals in sensitive close-contact positions: hospitals, recreation, police, prisons, youth activities. Open housing subjects tenants to nuisances, aggravations, suspicions.

CONCLUSION

Sexual integrity has been a bulwark of western civilization since the introduction of Biblical Scripture, and a principal reason for its successes and prosperity. To the extent that sexual deviation is allowed, to that extent society brings divine retribution upon itself—the law-abiding suffering along with the violators.

PREPARED STATEMENT OF REV. G. WILLIAM SHEEK, DIRECTOR, OFFICE OF FAMILY MINISTRIES AND HUMAN SEXUALITY, NATIONAL COUNCIL OF CHURCHES

My name is William Sheek. I am Director of the Office of Family Ministries and Human Sexuality of the National Council of Churches of Christ in the USA. The National Council of Churches of Christ in the USA is a cooperative agency of thirty-two Protestant and Orthodox bodies in this country whose combined membership is over forty million. I do not purport to speak for all members of the communions which are constituent to the National Council of Churches, but this testimony is delivered from a policy resolution of March 6, 1975, entitled "A Resolution on Civil Rights Without Discrimination as to Affectional and Sexual Preference" issued by the Governing Board, the policy-making body composed of persons selected by member denominations in proportion to their size.

"The National Council of the Churches of Christ has always held that, as a child of God, every person is endowed with worth and dignity that human judgment cannot set aside. Therefore every person is entitled to equal treatment under the law.

For this reason the National Council of the Churches of Christ has endeavored to insure for all persons regardless of race, class, sex, creed, or place of national origin their full civil rights. To this list the Governing Board now adds affectional or sexual preference. Discrimination based on any of those criteria is morally wrong.

Many persons, including some of the members and pastors of some of our churches, have been and are being deprived of their civil rights and full and equal protection of the law because of their affectional or sexual preference.

Therefore, the Governing Board of the National Council of the Churches of Christ:

(1) Reiterates the Christian conviction that all persons are entitled to full civil rights and equal protection and to the pastoral concern of the church;

(2) Urges its member churches and their constituencies to work to ensure the enactment of legislation at the national, state and local levels that would guarantee the civil rights of all persons without regard to their affectional or sexual preferences; and

(3) Asks the General Secretary to request the appropriate units of the Council to gather for the Board's information work already done or in process in the communications on this subject and to explore the most effective ways of relating the theological insights of the churches on the effects of discrimination and prejudice on the lives of homosexual persons in the community and the churches."

Therefore, in keeping with the high value placed on human rights and irrespective of any moral judgment on sexual orientation or practice the National Council of Churches strongly urges the enactment of and/or amendment to present legislation to assure every person his/her full civil rights in all societal areas including employment, housing, public service and federally assisted opportunities.

[From Time, Apr. 23, 1979]

HOW GAY IS GAY?—HOMOSEXUAL MEN AND WOMEN ARE MAKING PROGRESS TOWARD EQUALITY

Wandering into the New Town section of Chicago's North Side, a visitor quickly notices that changed city scene: male couples in tight jeans and with close-cropped hair walk together; the crowd watching a volleyball game in Lincoln Park is all male, so are most of the people taking the spring air on a strip of beach along Lake Michigan. In the past few years New Town has become Chicago's first center of open homosexual activity, with an initial result that could have been predicted a decade ago: last summer roving gangs of young toughs shouting anti-homosexual epithets beat up a number of men strolling the streets of the area late at night.

What followed, however, would have been remarkable if not unthinkable in Chicago or in many other major American cities just a few years ago. Gay Life, a local homosexual weekly, organized street patrols to stop the assaults. They were also aided by "straight" volunteers from neighborhood community associations. Moreover, they were helped by the Chicago police. Says a rather astonished Grant Ford, publisher of Gay Life: "The community groups came to our help right away. They saw us as neighbors rather than gays. The police were even more amazing. They were totally cooperative."

In its way, what happened in New Town symbolizes a national trend that is changing the lives of the American minority that forms the gay society. Homosexual men and women are coming out of the closet as never before to live openly. They are colonizing areas of big cities as their own turf, operating bars and even founding churches in conservative small towns, and setting up a nationwide network of organizations to offer counseling and companionship to those gays—still the vast majority—who continue to conceal their sexual orientation. As in New Town, gay people still encounter suspicion and hostility, and occasionally violence, and their campaign to live openly and freely is still far from won. But they are gaining a degree of acceptance and even sympathy from heterosexuals, many of whom are still unsure how to deal with them, that neither straights nor gays would have thought possible just the day before yesterday.

The evolving status of gays, and the way they are perceived by heterosexuals, is all the more surprising because of the nature of the gay society. Homosexuals form the most amorphous and isolated—though also the most pervasive—of all American minorities. Blacks and Hispanics, for example, are unified to a large degree by physical characteristics, history, customs and often socioeconomic position. "We cut across every socioeconomic line, every racial line," says Jean O'Leary, co-leader of the National Gay Task Force. "We're in every profession you can imagine." Says Robert L. Livingston, a gay member of the New York City commission on human rights: "Homosexuals are disco babies and Goldwater Republicans." He is not exaggerating: Donald Embinder, 44, gay publisher of Blueboy, something like a homosexual Playboy (circ. 135,000), once campaigned for Arizona's senior Senator.

Today the gays lack a recognized leadership: the heads of their organizations speak for only a tiny minority of a minority, and alone among American leaders have no census of their constituency. The Institute of Sex Research, founded by Alfred C. Kinsey, defines a homosexual as anyone who has had more than six sexual experiences with a member of the same gender. On that basis, the institute estimates that homosexuals constitute 10 percent of the U.S. population (13 percent of the males, 5 percent of the females). Of these, according to gay leaders, perhaps

only 1 percent or so are out of the closet. The rest are still known as homosexuals only to themselves and perhaps a few trusted friends. Until a decade ago, they had nothing in common but their sexual orientation and fear of society's contempt.

The turning point came in the summer of 1969 in Manhattan's Greenwich Village, when 400 gays flooded the streets for several nights to protest police raids on the Stonewall Inn, a homosexual bar on Christopher Street. The Anti-Viet Nam, civil rights and women's rights movements all helped galvanize gays into thinking that they, too, could make a claim on society for recognition of their basic rights and point of view. Since then, the gay rights movement has impressed the nation's consciousness strongly enough to gain an ironic tribute: the rise of an alarmed, organized and vehement opposition that includes fundamentalist churches.

The struggle is being fought on many levels. Politically, the movement's victories are now barely balancing its defeats. Thirty-nine cities, towns and counties, including Detroit, Washington, D.C., and Minneapolis, have enacted ordinances forbidding discrimination against homosexuals in jobs and housing, but only five of those communities have been added to the list in the past two years. The city council in supposedly blasé and sophisticated New York City defeated such an ordinance in 1978. Last week the Connecticut house of representatives voted down a gay rights bill.

Singer Anita Bryant's well-publicized anti-homosexual crusade in 1977 led to the repeal of gay rights ordinances in Dade County, Fla., Wichita, Kans., St. Paul and Eugene, Ore. But Bryant's efforts also prodded gays by the tens of thousands to join homosexual rights organizations. In Washington, D.C., last fall, the gays organized to help elect Marion Barry as mayor. A staunch gay rights advocate, Barry has expressed gratitude for their support. Says Tom Bostow, president of Washington's Gertrude Stein Democratic Club: "The single person who elected Barry was Anita Bryant." The gays also mobilized enough strength at the polls in California last November to turn down, 3 to 2, a proposition that would have permitted schools boards to fire any openly homosexual teachers.

In 1975 the Civil Service Commission, responding to a Federal court decision, issued guidelines stating that people could not be denied federal employment solely because of homosexuality. The guidelines do not govern some "excepted" departments. Among these, the Foreign Service and the Agency for International Development of the State Department officially ended discrimination against homosexuals two years ago, but the FBI and CIA are still holding out. The Defense Department clings to a hard-line policy: "Known homosexuals are separated from the military service."

Some 40 Congressmen are not sponsoring an amendment to the Civil Rights Act of 1964 that would forbid discrimination in jobs, housing, public facilities or federally aided programs on the basis of "affectional or sexual orientation," as well as race or religion. It has little chance of passage this year. In the future, each side will probably win a vote here and there, but in the nation as a whole the gays and the anti-gays seem to have fought each other to a political standstill.

That is not the case on the social and psychological fronts, where the increasing openness and the acceptance of gays is startling. Significantly, some 120 national corporations, including such major companies as A.T. & T. and IBM, have announced that they do not discriminate in hiring or promoting people because they are homosexual. Television and movies are treating gay themes more openly and sympathetically. ABC's hit series *Soap*, for example, has two homosexual characters, one a macho football player. Another sign of the times: Advice Columnist Ann Landers, a stalwart champion of traditional morality, now counsels parents not to be ashamed of their homosexual children.

In several big cities—New York, Boston, Chicago—gays have moved into rundown neighborhoods, renovated buildings and set up their own bustling communities. One of the best-established gay neighborhoods is in San Francisco, where homosexuals are flocking by the thousands from all over the country to Castro Street and the Haight-Ashbury section, once the capital of hippiedom. They are even being recruited for the police department.

The district was once represented on the city board of supervisors by Harvey Milk, a gay leader who was killed in November by Daniel James White, a former member of the board and a political opponent. Now running for the seat is Leonard Matlovich, who was discharged from the Air Force four years ago in a test case on homosexual rights.

Even outside such "gay ghettos" as San Francisco's, the most striking evidence of the movement is the astonishing proliferation of organizations dedicated publicly to serving homosexuals, whether out of or still in the closet. They are designed to help gays in what is still in the overwhelming majority of cases a lonely struggle: first the battle within themselves to face the truth about their sexual orientation, then

the excruciatingly difficult decision whether or not to "come out"—and if so, when and to whom.

A few younger gays, especially in big cities, have never hidden their identities. Benefiting from the progress of the movement, they have lived openly as homosexuals since they first realized that they were gay. But they are in a tiny minority of a minority. Says Robin MacCormack, a gay assistant to Boston Mayor Kevin White: "I am just one very fortunate person. In those buildings in the financial district and all around the city, there are people who go to work every day wondering: 'Is this the day I'm going to let something slip? Is this the day I'm going to lose career chances or even my job?' It's a costume party, for gays and straights alike. Sometimes it's come as you are, but most often it's come as you aren't."

Even among those gays who have decided to reveal their sexuality, very few are all the way out of the closet. Some reveal their homosexuality to a few trusted friends but not to parents; some to parents but not to grandparents; some to families and friends but not to employers. They are never sure of the reaction they will get. A young San Francisco attorney who handles the account of a major oil company for one of the city's most prestigious law firms finally steeled himself to reveal his homosexuality to one of his senior partners at dinner. The boss said he did not care, but cautioned the lawyer not to tell the other senior partners just yet. Elaine Noble, another assistant to Boston Mayor White, belongs to a 200-member organization of Boston-area lesbian professionals—bankers, lawyers stockbrokers, ad people. She is one of merely a handful of members who have openly proclaimed their sexual orientation.

About the only way that homosexuals could find companionship until a few years ago was in gay bars or cruising certain streets. (One result: the rate of alcoholism among homosexuals is estimated at 20 percent to 30 percent, three to four times the rate among all adult Americans.) Today Washington, D.C., has more than 80 homosexual organizations, and Boston, with 70, even has one for overweight lesbians.

These organizations generally divide into two types. Many are primarily meeting, counseling and support groups for homosexual lawyers, doctors, businessmen, teachers, whatever. A person calling such a group will be put in touch with other gay males or lesbians with whom he or she can arrange quiet dinners and talks about professional or social problems. The organizations are particularly helpful for older gays who have no desire to patronize bars or discos catering to homosexuals, and whose life-style is far removed from the tight-jeans set.

The other type of homosexual organization is the community service group. For the religiously inclined, there is a national gay church: the Metropolitan Community Church, headquartered in Los Angeles and including 80 congregations throughout the U.S. In Boston, the Homophile Community Health Service provides psychological counseling for gays who fear that straight doctors will tell them that the source of all gays' problems is their homosexuality.

Despite these new forms of support, gays still often feel isolated and persecuted. There are now three homosexual bathhouses in Milwaukee, a sign in a way of how far the movement has come. But there has been a price to pay: since last year, police have arrested 36 men on charges of disorderly conduct, though the police found enough evidence to arraign only four. Says Milwaukee District Attorney E. Michael McCann: "I view the homosexual community as a quiet but suppurating sore on the body politic."

Even in cities or states that have freedom-of-sex laws, the gays are often in danger of losing jobs, or their apartments, if they come out. Says Gay Boston Attorney John P. Ward, speaking of Massachusetts, whose highest court has handed down two notably liberal decisions: "What the law really is; is what happens in the little district courts, and between you and the police officer—and the law has to change considerably before the message goes out to places like Fitchburg and Leominster that it is not open season on homosexuals."

As a result, while the gay rights movement is definitely moving ahead, the life-styles of homosexuals vary widely throughout the nation. Some examples:

In Mankato, Minn. (pop. 32,000), Jim Chalgren, 27, and five other men were thrown out of the Trader and Trapper Discothèque in 1976 for dancing together. Now Chalgren occasionally dances with other men in bars and encounters nothing worse than name-calling. In fact, he has organized gay dances that are held every three or four months in hotel ballrooms, drawing crowds of as many as 130. But, he says, "there are people who meet at our dances who will avoid each other if they cross paths in a hardware store. It can still be a disaster to be identified as gay in Mankato."

In Macon, Ga. (pop. 150,000), two gay bars compete for customers with no police harassment. But the only proclaimed homosexual in town is Disc Jockey Johnny Fambro, who came out last fall to help organize opposition to an Anita Bryant rally.

"Susan," a lesbian who works at nearby Robins Air Force Base, attended the anti-Bryant demonstration but would not carry a picket sign because she feared she would not get a security clearance; nor will she take her roommate "Doris" to parties.

In Cambridge, Mass., the Harvard-Radcliffe Gay Student Association meets openly every Wednesday night to hear speeches and play readings, and has thrown parties that attracted as many as 300 students from the area. At Harvard Law School, gays have acquired considerable clout; the school now will not allow any law firms that discriminate against homosexuals to use its placement service for employment interviews. But gay students at Harvard Business School still keep their homosexuality a deep secret for fear that it will hurt their employment prospects with major corporations when they graduate. The chairwoman of the Radcliffe Lesbians Association asks that her name not be printed in *TIME* because "I would just as soon my relations in California did not know."

Among the gays, there is a basic split between those who flaunt a defiant life-style and the closeted, who grant that "drag queens" and "flaming fags" have called attention to the gays' plight by marching in the streets, yet would never dream of emulating them. There are other divisions. Black homosexuals charge, with some justice, that the gay rights movement is dominated by whites who are often no less racist than straight society. At the same time they are rejected, and vehemently, by heterosexual blacks. Says Terri Clark, a Washington lesbian activist: "The black community is extremely homophobic, because it feels that the [homosexual] person has been corrupted by the white man's perversions."

Lesbians often feel themselves to be the most persecuted minority of all. One reason is economic: working at low-paying jobs, they usually do not have as much money as gay males, who are often successful in the straight world. Nor do homosexual men usually have children to support, as do a fair number of lesbians who have finally admitted their sexual orientation. Many female homosexuals think they have less in common with gay men than with heterosexual feminists, who have now largely accepted them after some early misgivings.

The males are also far more visible than the females in performing one of the most fascinating roles of the gay rights movement: influencing straight culture. Male homosexuals have long been particularly active in the world of the arts, where they often can work openly with no fear of losing their livelihood if they have the talent; Novelist Truman Capote and Playwright Tennessee Williams are two notable examples. But the new influence of homosexuals is something quite different: their dress, tastes and speech are being adopted by many straights who would be stunned if they knew the origins of the latest fashions or fads.

The extent of this influence is difficult to pin down since there is no readily identifiable "gay aesthetic." For every flamboyant gay male who parades about in tight-fitting Levi's and bomber jacket (one current uniform), there are others who wear three-piece pinstripe suits, and even the strollers in New Town Castro Street will affect one look today and another tomorrow. What does seem to be true, however, is that some open gays, feeling themselves to be rebels against conventional society, search restlessly for new fashions that run counter to the straight taste of the moment. Then fashion designers and music executives, some of whom are themselves gay, introduce to straight audiences whatever new look or sound catches on at Fire Island or other gathering places for gays. Says David Rothenberg, a gay who used to be a publicist on Broadway: "If I were a businessman, I'd walk Christopher Street [a gay parade ground in Manhattan's Greenwich Village] because that's what they'll be selling at Lamston's next year."

The outstanding example of gay taste going straight is the popularity of disco lights, dancing and music, which swept the homosexual clubs of Fire Island and Manhattan long before they caught on among straights. Some gays feel that homosexuals especially long to lose themselves in the kind of glittery, dream-fantasy world created by discos. Says one gay editor: "To me, Studio 54 is the epitome of the gay aesthetic"—a sentiment that might startle many of that watering hole's patrons.

Music executives know that the songs and performers that most excite gay audiences have the best chance of selling nationally. Music indeed is one field in which being gay can be a benefit. Marc Paul Simon, vice president of Casablanca Record and Filmworks in Los Angeles, told a boss about his homosexuality his second day on an earlier job at Twentieth Century Fox Records. Says Simon: "I made it a selling point. I told him that I would be an advantage, since the best clubs are gay."

A male homosexual model, acclaimed as one of the world's best-dressed men, cites examples of fashion takeovers. "The first time I saw men wearing Adidas running shoes as part of casual wear was in the homosexual community on Fire Island several years ago. Now it has become a fashion staple in the straight world." Gays

were among the first to wear baggy white painters' pants, though such garments are now being bought by heterosexual men and women. In more elegant ensembles, the wearing of silk scarves with sport coats or suits began among gays and is now catching on with dressy straights.

More generally, homosexuals adopted long hair before it became *de rigueur* for young males of all persuasions; once long hair was in, the gays led the swing to short back and sides. There is, in fact, a saying among homosexuals that straights will adopt a fashion just as *avante-garde* gays are turning to something new.

If the gays are split over fashions and life-styles, they are splintered in matters of politics and strategy. Last February delegates to a national conference sponsored by a coalition of gay male and lesbian organizations in Philadelphia voted to stage a march on Washington on Oct. 14 to urge passage of gay-rights legislation across the country. But many gays shudder at the prospect of more militant and flamboyant homosexuals besieging Capitol Hill in full view of the TV cameras. The opponents of the march fear it will cause a damaging backlash. Says Doug Wright, a Washington, D.C., editor: "That's like handing Anita Bryant a victory she can't get anywhere else."

The movement is also split on ultimate goals. Most gays want only to be allowed to live openly and freely without suffering any penalty from society. But the radical fringe in agitating for the repeal of laws making sexual contact between adult gays and young boys crime. The idea horrifies many homosexuals, who are well aware of the deep-seated fear among many parents that gays are out to seduce or enthrall straight children, a view homosexual leaders hotly deny.

Whatever course the organized gay movement may take, and whatever its victories or defeats, the outlook is for more and more homosexuals to come at least partly out of the closet. Says Chicago Psychologist Jon Jost: "Ten or 15 years ago, homosexuality was just not discussed, and many people suffered because they simply did not know that there have always been people like themselves. Everything that has happened in the past few years has reduced the potential for that isolation. Just hearing the word gay, reading it in a newspaper, seeing a gay person, real or fictional, on television—any of those things make it easier for a person to come out."

Nor can heterosexual society again ignore the subject of homosexuality, as many straights devoutly wish it could. Says Eric Rofes, a gay teacher in a Cambridge, Mass., private school: "Ten years ago, few people knew that they knew a gay person. Today, most kids grow up knowing that they know someone who is gay." Knowledge, however, does not necessarily mean acceptance.

[From Time, Apr. 23, 1979]

MASTERS AND JOHNSON ON HOMOSEXUALITY—AN EXCLUSIVE PREVIEW OF THE FAMED SEX RESEARCHERS' NEWEST STUDY

No doubt about it, Gynecologist William Howell Masters, 63, and Psychologist Virginia Johnson, 54, are a contemporary phenomenon. Since 1954 the famous sex-research duo have sold nearly 750,000 hard-cover copies of their five books, trained 7,000 sex therapists, observed more than 10,000 orgasms in their St. Louis lab, and treated 2,500 "sexually dysfunctional" couples, achieving a remarkable success rate of 80%. Along the way, they have become undisputed stars of a burgeoning sexual research industry, a fact acknowledged last year when the board of their Reproductive Biology Research Foundation finally persuaded them to change its name to the Masters and Johnson Institute.

Like their predecessor Alfred Kinsey, they have found that poking into the sex lives of Americans can be unsettling. Their first and most impressive book, "Human Sexual Response," published in 1966, was a meticulous, pioneering inquiry into the physiology of sex; it dispelled myths about this taboo subject that even doctors believed in—for example, that sexual activity stops with age. But their work, especially such controversial aspects of it as their use of sexual surrogates as partners assisting in the treatment of impotent men, brought upon them the wrath of the pious.

Now M&J apparently feel that the public is ready for their clinical findings on a more controversial form of sex: homosexuality. They can hardly be accused of rushing into print—the homosexual research project began in 1964 and the laboratory work was finished in 1968. The book reports on the sexual performance of 176 homosexuals—94 men, 82 women—ranging in age from 21 to 54. The homosexuals were compared with two groups of heterosexuals: 567 men and women culled from the original participants in the "Human Sexual Response" study and 114 new volunteers. As before, these human guinea pigs went through their sexual paces in

the M&J laboratory, with the ever vigilant scientists standing by, notebooks in hand.

Masters and Johnson are at last letting the public in on what they found. In Boston next week Little, Brown and Co. is publishing their widely awaited "Homosexuality in Perspective" (\$17.50), a densely documented 450-page tome that has already prompted gossipy guesses about what it does and does not reveal.

Voyeurs will have to search hard for easy delights. The study concentrates on the bodily processes of sex, in highly technical language, and has almost nothing to say about the psychology, ethics or origins of homosexuality, nor does it address the question of whether the lack of any procreative aspect to sex affects homosexuality. The conclusions are stated with caution and caveats—the sample is small and may not be representative of the general homosexual population. There is also a warning that sex in the lab may differ from sex at home. As Masters told Time Correspondent Ruth Galvin: "We can't say what happens beneath the sheets when the lights are out." The prose is opaque, studded with such assaults on English as "stimulative approach opportunity" (foreplay) and "vocalized performance concerns" (talking about sex). Still, Masters and Johnson have produced a thought-provoking inquiry into the sexual life of homosexuals. Some highlights:

Committed homosexuals (those who have lived together at least one year) have a more relaxed understanding of their partners' sexual needs than most heterosexuals, married and unmarried, presumably because it is easier to understand one's own sex than the opposite sex.

Homosexuals and heterosexuals they studied—all of them preselected for "sexual efficiency"—have about the same low rate of failure to reach orgasm: 3%.

"Ambisexuals," M&J's term for their admittedly small sampling of twelve bisexuals who are equally attracted to both sexes, have few sex fantasies and rarely fantasize about real people.

In lesbian lovemaking, which many sex researchers believe can teach heterosexual males a thing or two about how to approach women, committed couples devote an "extraordinary" amount of time to sexual play. For example, stimulation of the breasts, usually begun by heterosexual men within 30 seconds of sexual activity, begins much later among lesbians.

Prolonged lovemaking without orgasm can cause lower abdominal pain in women, comparable to the familiar testicular pain in men.

Heterosexual sex fantasies are common among homosexuals, mirroring the homosexual fantasies occasionally indulged in many heterosexuals.

Perhaps the most intriguing finding is not about homosexuals, but about heterosexuals. As Masters and Johnson tell it, heterosexuals are generally bumbling in their lovemaking: they hurry sex, misread signals, and communicate poorly. Men usually assume, wrongly, that lubrication of the vagina means that the woman is ready for intercourse. Many women have no idea how men like to be touched sexually, and most men massage the female genitals in a straightforward gung-ho style that women find harsh. And enjoyment of sex is clouded by the fear of not reaching orgasm. Say Masters and Johnson: "Preoccupation with orgasmic attainment was expressed time and again by heterosexual men and women during interrogation after each testing session.

A third of all heterosexual women said that their breasts are not a particularly important erogenous zone, yet many considered breast play exciting because men seemed to enjoy it. Unlike lesbians, who knew that touching the breasts can be painful during certain times of the menstrual cycle, heterosexual men almost always touched the breasts in the same way. Even when breast play caused pain, the wives reported the fact to the researchers, but not to their husbands. Say Masters and Johnson: "When the husbands were queried separately, they expressed surprise at their wives' cyclic distress, and the unanimous reaction was 'Why didn't she tell me?'"

The sex researchers suggest an obvious answer: poor sexual communication between men and women rests on the assumption, shared by both sexes, that men are natural leaders and experts in sex and therefore must be doing the right thing. "The burden of sexual performance is on the man," says Johnson, "the burden of trying to guess when she's interested, what she wants, how she wants it, and so on." Adds Masters: "What we have established in this book is that the male will have to give up his position as sex expert and the one with the greater sexual facility—which he doesn't have."

Homosexuals, who do not have the burden of deciphering the opposite sex, generally communicate better. Committed, attached homosexuals are less preoccupied with orgasm than married heterosexuals, and more aware of the exact level of their partners' sexual excitement. And single gays did better than single straights. Masters and Johnson found the same patterns among the ambisexuals: they acted like

homosexuals when they were with homosexuals (*e.g.*, more communication) and like heterosexuals while making heterosexual love (*e.g.*, an assumption that the male should take the lead). To Masters and Johnson, this is clearly a result of "cultural influence"—ambisexuals pick up different cues on how heterosexuals and homosexuals make love.

The ambisexuals seemed well adjusted. They had no psychiatric or work problems, but were detached and lonely, and fantasized very little, a fact that the researchers cannot explain. The chapter on sex fantasies comes with a deflating warning: don't make too much of the findings because they came from only 132 people, were gathered a decade or more ago, and will not be reported in full until the next Masters and Johnson book, "Human Sexual Inadequacy II," due in 1981. Still, the preliminary findings show that fantasies of forced sex were the most popular fantasies among lesbians and the second most popular among homosexual men, heterosexual men and heterosexual women.

The primary fantasy found in the two heterosexual groups were a recurring daydream of sex with a different partner. On the other hand, the leading fantasies of gay men involved body parts—usually the genitals and buttocks. Homosexual fantasies about forced sex were more violent and sadistic than those among heterosexuals. Straight women repeatedly conjured up images of gang rape but the assaults were relatively tame: although the woman is given no choice in the matter, she is treated lovingly by a circle of panting admirers. In most cases the lesbian version of these fantasies showed a theme of revenge against another woman. The daydreamer engineers the humiliation of the woman and then stands by enjoying it. Straight men had less violent fantasies about forced sex than gay men, and in fact played the part of rapist slightly less often than they did that of the rapee—a helpless male ravished against his will by a group of lusty women.

The finding that homosexuals often fantasize about having heterosexual sex confirms reports from some psychologists and counselors. For instance, in the recent book on female homosexuality "Our Right to Love: A Lesbian Resource Book," Los Angeles Clinical Psychologist Nancy Toder reports that many of her lesbian patients talk of sexual feelings or dreams about men. Toder thinks that these musings are partly out of curiosity, partly reminiscences of sleeping with men. There is no evidence, however, that homosexuals dream of straight sex any more than heterosexuals dream of gay sex.

One of the book's most unexpected findings did not come out of the homosexual research project, but from sex therapy provided for gays—itsself something of a pioneering venture. Between 1968 and 1977 the researchers treated, for various sexual problems, 151 homosexuals, including 54 men and 13 women who wanted to convert or revert to heterosexuality. M & J do not list a success rate for such conversions, only a known failure rate. That failure rate is now at 35 percent, and is not expected to exceed 45 percent when all the five-year follow-ups are completed. For professional therapists, many of whom believe that such conversions are rare or impossible, this is likely to be the book's most surprising statistic. It would mean that a permanent, or at least long-term, switch to heterosexuality is possible more than half the time among gays who are highly motivated to change.

Masters and Johnson consider these findings subsidiary to the main, and really not very surprising, point of the book: there are no differences between heterosexuals and homosexuals in the physical processes of lubrication, erection, ejaculation and orgasm. Says Masters: "The entire orgasmic experience is indistinguishable." Indeed, the researchers believe that their demonstration of "nearly identical response vectors" will gradually lead to more public acceptance of homosexuality.

That judgment is questionable, for public opposition to homosexuality hardly depends on the notion that gays have different kinds of orgasms. M & J are probably right, however, to suggest that one significant byproduct of their book will be better medical care for homosexuals, who have been badly treated by doctors. In the past, for instance, some doctors refused to give them rectal examinations for fear of causing arousal, a concern that has never been shown by gynecologists conducting vaginal examinations. Says Dr. Robert Kolodny, M & J's heir apparent at the research institute: "Documenting the similarity of physiological process gives less excuse for the health-care professional to shrink from treatment of the homosexual patient, under the pretext that his health problems may be in some way different."

Through Masters and Johnson are scrupulously neutral in their attitudes toward homosexuality, their latest study is sure to have a social impact simply because it devotes so much attention to the gay life. As Johnson says: "People who stop and think will say, hey, these are somebody's brothers and sisters, wives and husbands, sons and daughters, friends and neighbors, and they are loved and loving human beings." The book has another implicit message for heterosexuals: it is that homo-

sexuality is not going to go away, whether society ignores it, accepts it or rejects it. In fact, by looking honestly, if critically, at the gay life, straight men and women may learn important lessons in lovemaking. Among them: that nothing succeeds so much as treating sexual partners with consideration, understanding and unhurried gentleness. Says Masters, "These are the big things to come out of this book at long range, I have a hunch."

And perhaps something more general and therapeutic as well. Masters and Johnson's physiological approach in all their work has drawn much fire from those who rightly point out that there is more to human affection than rates of orgasm. But that same narrow focus on biology has given to many readers both knowledge and a sense of legitimacy about sex that they never had, and that can be a liberation for men and women of any persuasion.

NATIONAL ORGANIZATION FOR WOMEN, INC.,
Washington, D.C., June 2, 1980.

DEAR REPRESENTATIVE: I am writing on behalf of more than 125,000 members of the National Organization for Women to urge your support of legislation protecting the rights of lesbians and gay men.

H.R. 2074, introduced by Representatives Ted Weiss (D-NY) and Henry Waxman (D-CA) and co-sponsored by 53 Members, would prohibit discrimination on the basis of "affectional or sexual orientation" in employment, housing, public facilities and federally assisted opportunities. The Civil Rights Act of 1964 recognized that each person has a right to be judged on individual ability rather than to be denied opportunities because of non-relevant factors such as race, religion and sex. Sexual orientation is likewise a non-relevant criteria and should be barred as the basis for restricting rights. When the rights of any American citizen are denied or violated we all suffer a curtailment of our freedom.

H.R. 6303, introduced by Representatives Anthony Beilenson (D-CA), Julian Dixon (D-CA) and Henry Waxman (D-CA) would delete the phrase "sexual deviation" as a reason for excluding persons from entry. Current Immigration and Naturalization law, based on antiquated concepts encourages dishonesty, requires allocation of enforcement resources that are needed elsewhere, and causes unnecessary friction in the international community.

Anti-gay amendments to other bills that would limit funding for or services to homosexuals are likely to appear on the floor of the House. Your active opposition to such amendments will help end the attempts to create second-class citizens for some Americans through exploitation of emotional issues. Once we begin making lists of groups not "deserving" of governmental services, protection or funding, we will no longer be living in a democracy where individual worth is the keystone.

Thank you for your attention to this issue. If you have not already done so, I hope you will consider co-sponsoring H.R. 2074 and H.R. 6303. Your support in ensuring basic civil rights and justice for all Americans will be greatly appreciated.

Respectfully yours,

JANE WELLS-SCHOOLEY,
Vice President—Action.

AMERICAN PSYCHOLOGICAL ASSOCIATION,
Washington, D.C., June 9, 1980.

HON. THEODORE S. WEISS,
Cannon Office Building,
U.S. House of Representatives,

WASHINGTON, D.C.

DEAR CONGRESSMAN WEISS: I am writing on behalf of the 50,000 members of the American Psychological Association in support of H.R. 2074, to prohibit discrimination on the basis of affectional or sexual orientation. APA's commitment to insuring the civil rights of lesbians and gay men is clearly reflected in the following policy statement adopted by our Council of Representatives in January 1975:

"The American Psychological Association deplors all public and private discrimination in such areas as employment, housing, public accommodation, and licensing against those who engage in or have engaged in homosexual activities and declares that no burden of proof of such judgment, capacity, or reliability shall be placed upon these individuals greater than that imposed on any other persons;

"Further, the American Psychological Association supports and urges the enactment of civil rights legislation at the local, state and federal level that would offer

citizens who engage in acts of homosexuality the same protections now guaranteed to others on the basis of race, creed, color, etc.;

"Further, the American Psychological Association supports and urges the repeal of all discriminatory legislation singling out homosexual acts by consenting adults in private."

The strength of APA's support for the civil and legal rights of gays is further evidenced by the Council's amendment of the Association's "Statement of Policy Regarding Equal Employment Opportunity" to include sexual orientation among the prohibited discriminations listed. APA's employment practices in its various professional programs and advertisements in all Association publications comply with this policy.

If there is any way in which we may facilitate efforts to ensure passage of H.R. 2074 please do not hesitate to call in APA. The Staff Liaison to the newly established Committee on Gay Concerns, Dr. Virginia O'Leary will be pleased to respond to the requests of your and your staff.

Cordially,

FLORENCE L. DENMARK, *President.*

[From National Review, Mar. 17, 1978]

GAY RIGHTS AND CONSERVATIVE POLITICS

I. MINORITY REPORT: MAD ABOUT THE BOYS

(By Jere Real)

George A. Young is troubled. Like many other Americans of middle-income status, he's bothered by recent events. He's one of that category of citizens so conveniently—and so cavalierly—described by pollsters as the "small" businessman. He is, in actuality, the steady working professional, who, as they say, helps form the fabric of our society.

George knows about inflation, knows what it is costing him and his business. Daily he lives with government over-regulation. Middle-aged and middle-class, he constantly fights two battles, one with the profit margin and the other with the waistline. He seems to be losing both. And with such routine problems facing him, he occasionally thinks, too, about bigger problems—things like the energy crisis, even foreign affairs. He isn't quite happy about the Panama Canal treaty, but he's not sure. He'd like to see, just for once, some kind of stability in the Middle East. He also has a sense that maybe, just maybe, the Carter Administration really doesn't have a sense of direction, that it's just drifting with the public apathy.

George has been a Republican—a conservative—voter ever since he first voted for Ike back in 1952. Now, he's not a Republican, mind you, at least not one of those 17 per cent who still claim it these days. George is what might be called a gut conservative, more reaction than action. But he did vote for Ike again in 1956 and for Nixon the first time in 1960. Then for Goldwater and for Nixon the second time. (In 1972, he stayed home.)

Lately, other things have been bothering George, and, come 1980, he's going to go out and vote democratic even though it's not his traditional, more conservative political home. The reason? Well, George A. Young is G-A-Y—that's right, he's homosexual, and quite frankly, he's not too happy with what he's been hearing recently from the people who speak for his kind of politics.

George belongs to one of America's invisible and, until recently, silent minorities. It is not a small minority; it cuts across the entire political spectrum, black and white, young and old, married and single, poor, middle-class, and wealthy. George is a florist, a druggist, a hardware-store owner, a theater manager, a restaurateur, a mechanic. He's that "nice young doctor who's so good with his patients" or that bachelor lawyer ("Wonder why he never got married . . ."). He's your daughter's riding instructor or the guy that sold you your last car—or, yes, he may even be that interior decorator you use because he "really is so good at his job." There are, according to recent responsible estimates, about 15 to 20 million George A. Youngs scattered about the country.

Of these, maybe a hundred thousand live in San Francisco, and two hundred thousand in New York City; most of the remainder live just about any place. The reason most Americans don't know they're there is that, quite simply, their private lives have not yet been revealed, either by themselves (the "coming out" of currently fashionable jargon) or by one of those occasional unfortunate "discoveries" which can, for any homosexual, still mean the loss of a job, disbarment, or some other such catastrophe. Most of these George A. Youngs have never marched in a "gay rights"

parade. Until recently, most had never signed a petition about their sexuality. For many homosexuals living in small towns, only their hairdresser did know.

But George is getting uneasy; in spite of his inherent conservatism, in economics, business, politics, and lifestyle, he's begun to feel a bit threatened. One of the reasons is that he's been reading his favorite editors and columnists, and he doesn't like what they've been saying about him and all the other George A. Youngs.

For example, he recently read: "In a healthy society, it [homosexuality] will be contained, segregated, controlled, and stigmatized, carrying both a legal and a social sanction."

That came from neither "Mein Kampf," Pravda, nor one of George Wallace's more erratic press conferences; it came from an article by former Nixon speechwriter Patrick Buchanan, now a syndicated conservative columnist. In subsequent articles, Buchanan cited homosexuality as the major cause of the disintegration of the American family (omitting, strangely, divorce from his consideration) and the fall of the Weimar Republic (overlooking rampant inflation and an unstable political situation). Still more recently, supporting a U.S. Supreme Court decision about homosexual teachers, Buchanan wrote: ". . . to disqualify a teacher on the grounds of professed homosexuality seems neither mean-spirited nor irrational." I venture to suggest that to a rational conservative it might very well seem both.

The casual reader who disagreed with Buchanan's views might be inclined to write off these opinions as perhaps the overwrought outrage of a writer whose anger had, on this one issue at least, outrun his good sense. After all, there has always existed among the fantasy Right—the world, of, say, the John Birchers and the Minuteman—a strong anti-homosexual theme: it has been played loudly in the pages of American Opinion magazine. Medford Evans' American Opinion article, "There's No Such Thing as a Good Fairy" (April 1977) was typical; Evans began by equating homosexuality with death and extended his metaphor to include cannibalism and Murder, Inc.

But from the "responsible Right"—conservatives of such varying hues as George Will, James J. Kilpatrick, Jeffrey Hart, National Review, and Max Rafferty; or, on the local level, in the editorial columns of the Richmond News-Leader—there has echoed a similar chorus. While lacking the thundering Weltschmerz, the Wagnerian abandon, of the Birchers, these more respectable conservatives have played variations on a similar melodic line. With ironic counterpoint, those who have argued so effectively against government intrusion into the lives of citizens were quite willing to let the government legislate the lives of some citizens, the country's homosexuals.

Sexual preference—who sleeps with whom in private—has rarely been, except in the case of a few political scandals, a major issue in American national political debate. It has, wisely, been regarded an issue best left to individuals and their bedrooms.

But suddenly, last summer, the situation changed markedly in the furor that erupted in Miami over the passage of a Dade County ordinance prohibiting discrimination against homosexuals in jobs and housing. Indeed, thoughtful conservatives might have noted at that time that had there been no law intruding upon the private sexual lives of the citizens in that state, there would have been no point in passing such an ordinance in the first place. That view, needless to say, was not in evidence. The situation worsened as citrus industry spokeswoman Anita Bryant mounted an emotional campaign to revoke the new ordinance in a specially called election. Her campaign attracted many conservatives, particularly those with strong religious convictions. Her group's subsequent victory in the balloting contained only one surprise for any conservative political observer—and that was that the homosexual cause received as much of the vote as it did, about one-third. Florida, after all, had regularly voted for the fiery populist-segregationist George Wallace in his various presidential forays. And in his last campaign, in 1976, they had turned to the smoother, more tranquilizing, but no less evangelical, savior from Plains.

Nearly all the nation's prominent conservative political pundits backed Anita Bryant's campaign to one degree or another. Even James J. Kilpatrick, who in 1965 in his syndicated column had urged repeal of state laws against homosexuality, fudged noticeably in this "60 Minutes" "counterpoint," saying "this group has no special rights under the Constitution." He neglected to specify whether he thought they had any rights under it. In the weeks following the vote, only Ralph de Toledano again urged that state legislatures reconsider outmoded laws that make sexual behavior a criminal offense. For the most part, conservatives skirted (no pun intended) the larger question of citizen privacy raised by the homosexual issue.

Homosexuality isn't a question of choice, despite what Viguerie, Bryant, and Schlafly may believe

What I suggest is that, generally speaking, the conservative commentary about homosexuality was characterized not by rationality (perhaps difficult for a hetero-

sexual to achieve on this issue) but more often by emotional response. The formerly thoughtful pages of the Richmond News-Leader are a case in point. Its editorial page now regularly fulminates about homosexuality, even lapsing at times into such journalistic vulgarities as the editorial lisp, as it did when writing of Chip Carter's appearance at a gay-sponsored tricycle race in San Francisco during the last presidential campaign. "Thwell!" was the News-Leader's thoughtfully considered response. Its editorial pages also regularly invoke the epithet "queer" when discussing homosexual issues. The paper's commentary on the case of Sergeant Leonard Matlovich, the Air Force man discharged for his homosexuality, clearly was an instance of an editorialist seizing the small issue and failing to perceive larger ironies. The paper complimented the Air Force for discharging Matlovich (at that time, dishonorably) even though he was a decorated veteran of the Vietnam War. Yet at the same time, the Federal Government was indulging itself in various programs of repatriation for draft dodgers and deserters of that same conflict. In the rush to condemn the sergeant whose fatal flaw had been to tell the truth about himself, the Virginia paper remained blind to far more significant truths—the discrepancies in federal policy.

I mention this instance simply because I think it illustrates that there are often far more complex ways of looking at these sexual issues than are being perceived—or employed, whichever may be the case—by most conservative commentators. In the Matlovich case, there was another issue about which I have seen no comment at all by conservatives. We might well ask ourselves: Should a citizen, a homosexual citizen, be deprived of the privilege (and most conservatives still believe it is a privilege, I think) of serving his country in the armed forces? At issue here, of course, is a basic ideal of many conservatives, that of patriotism. Ultimately, too, conservatives must face up to the question of how far religion as practiced by a few can be allowed to intrude upon the legislative process before that intrusion infringes on everyone else's lives.

Too often conservatives have accepted (and repeated) the views of religious fundamentals about homosexuality. Even National Review (with its recent items about some obscure British paedophile league) conjures up erroneously created fears about child molestation, when data show that most child molestation is by heterosexuals and virtually all child abuse is at the hand of angry parents. As for the "sin" argument, it is perhaps historically interesting, but many churches are beginning to reconsider their views about homosexuality, and, anyway, it should have little political consequence. In this country one man's sin has always been the next man's freedom. Those who suggest homosexuality will destroy the family overlook the obvious: inflation, which has sent ever-increasing numbers of wives into employment, has far more to do with changing the structure of family life than does homosexuality. It is, I suggest, nor more necessary for conservatives to be anti-homosexual than it is for them to be pro-homosexual. There still exists a need, however, for a more thoughtful and less emotional evaluation of this issue by the Right.

There are also pragmatic political questions involved in this touchy issue. Many members of the conservative movement today would use homosexuality as an emotional rallying point for various candidates and causes. Governor Meldrim Thomson of New Hampshire attempted to do this during the 1976 presidential primaries with pamphlets he sent out in behalf of Governor Reagan's candidacy. The brochures carried his own anti-homosexual views, which had not, incidentally, been developed or utilized by Reagan's own campaign staff.

The Richard Viguerie organization, big in conservative fund-raising operations, has recently brought up the same issue. The August 1977 issue of its Conservative Digest carried an interview with Mike Thompson, chairman of the Florida Conservative Union, entitled "Anita Bryant's Crusade: Where Next?" Thompson, who had served as "communications director" for Miss Bryant's "Save Our Children" anti-homosexual crusade, urges the Republican Party to take up an anti-gay policy nationally and "position itself as the party of the family." He argues that "You're either going to encourage a homosexual lifestyle or you're going to discourage it." Here Thompson has the disadvantage to most heterosexuals writing about homosexuality: he simply doesn't know how it works. Homosexuality isn't a question of choice, despite what he, Bryant, and Phyllis Schlafly may believe. One can no more "encourage" sexual preference than "discourage" it. Most reliable social-scientific evidence today seems to indicate that the homosexual percentage of a given population is fairly constant, generally about 10 per cent.

But Thompson is also raising that frequently invoked question of "legitimacy" for homosexuals. Most homosexuals want no more than what other citizens want; to argue that granting this group basic constitutional protections will somehow "legitimize" their lifestyle, is absurd. When 15 to 20 million persons are living a particular

lifestyle, that group already has the "legitimacy" of its own existence. No amount of morally inspired wishful thinking or legislation will change that fact any more than Prohibition produced a nation of teetotalers. All the "gay" teachers in the world proclaiming their sexuality to their classes daily would not serve to "recruit" a single heterosexual youth to their ranks. But Thompson, like many who use these arguments, sees this issue as a means to a political end: "This is a chance for the Republican party to take leadership in a popular issue," he writes. It is to be hoped that intelligent conservatives can resist such "leadership."

All of which brings us back to George A. Young—all of them. Conservatives must recognize, as many of the more simplistic among us, like Mr. Thompson, fail to do, that some issues are letter left alone. Most heterosexuals, and nearly all conservatives I know, fail to recognize the dimensions of this issue. For the conservative movement to seize upon an emotional anti-gay response in either local or national political campaigns is to take an action that easily could cut two ways. It could antagonize as many as it would attract. Out there among the 15 to 20 million are a lot of George A. Youngs who are, by inclination, status, even political conviction, basically conservative. Their sex life—so far, at any rate—really has very little to do with the way they vote. It probably won't unless someone makes it a crucial political issue for them.

Abuse of a minority, no matter how unpopular, is no service to the conservative cause

A number of years ago, when I was an editorial-page writer for the Richmond News-Leader, I covered some civil rights demonstrations in various remote areas of Alabama. On one such trip, after a long day driving on dusty back roads and walking across cotton fields talking with blacks, local sheriffs, and civil rights activists, I returned to a small community with an acquaintance who had been serving as that essential aid for every journalist on the road, his local contact. He was, it turned out, a John Bircher. Late that afternoon he took me to the home of two elderly gentlemen for a much-needed restorative drink. They were retired antique dealers, and, just before we went into their superbly furnished home, he told me that they too were members of the John Birch Society. But he added, sotto voce, "I think that they're . . . well, you know, a bit on the gay side." I have recalled that event many times in recent months. I keep wondering how those two gracious hosts must have reacted to the American Opinion article "There's No Such Thing as a Good Fairy," if they were still alive to read it last spring. And when Pat Buchanan speaks of stigmatizing, controlling, and segregating, I wonder if he has in mind all those members of YAF whose letters turn up in the columns of the West Coast homosexual newspaper, The Advocate. To put it bluntly, for conservatives to make an anti-gay stand part of their national program is to risk causing all homosexual voters to become—out of necessity—one-issue voters. There is no political pundit around who can say for certain what that means.

I recall once, when I was working for James J. Kilpatrick, he took me to task for a rather scathing editorial I had written about the civil rights movement in Virginia. It was, he told me, a hard-hitting piece, but it lacked compassion." It was a bit of advice from a writer I respect, and I never forgot it. That compassion is what is missing from many conservatives' approach to the homosexual issue. Abuse of a minority, no matter how unpopular that group may be with the majority, is no service to the conservative cause, because politics—regardless of some people's wishful thinking—is not an either-or, pro-con situation.

There's a scene in Mart Crowley's 1968 play about homosexuals, "The Boys in the Band," from which conservatives might learn. Near the final curtain, the main character, a Mississippian named Michael who now lives in New York, states the problem many homosexuals felt in 1968: "If we could just learn," he says, "not to hate ourselves quite so very much." It is something most homosexuals have learned in the years since that play was first produced. And it is a thought that conservatives, viewing homosexuals in the nation and, indeed, in their own movement, well might ponder.

II. CAPITAL M

(By M. J. Sobran, Jr.)

No doubt about it, conservatives have been somewhat overwrought on this issue, and less articulate than they might be. If the question before us were as simple as whether homosexuality ought to be a crime, I think the confusion might be dispelled quickly. For my part, I agree with Mr. Real—and with Mr. Kilpatrick, who presumably hasn't changed his mind since 1965—that it should not be punished with criminal sanctions. Abstractly speaking, and waiving considerations of liberty and prudence, it probably makes more sense to outlaw fornication and adultery

(which after all lead to bastardy and abortion) than sodomy. But we aren't here to discuss that. For better or worse, the government has now left the bedroom, if only to meddle in the kitchen. Its working philosophy seems to be, "Sodomy, sí—saccharin, no."

I take my own bearings in this matter from personal experience. I remember, for instance, an English instructor, now dead, whom I knew in college. I have no warrant to drag his remains out of the closet, but it was widely understood that Harry (not his real name) was a homosexual. He was a good-natured, witty, effeminate man, a bit vain perhaps, loquacious, a histrionic mimic, who affected a lisp; I think everyone who knew him liked him well enough. A close friend of mine shared an office with him and was very fond of him; and now and again Bob (his real name) would make some light allusion to Harry's peculiar taste. No malice in it; he wouldn't have let Harry hear it, though, for the world. The kind of little joke you make about a friend's foibles: affectionate, but realistic: as you might smile about his drinking or his improvidence. Bob's way of regarding Harry always struck me as the very model of a sane and civilized attitude. He had his own standards, but no censorious eagerness to assert them unnecessarily at the expense of others' feelings.

Yes. Charity by all means. But may I say that those of us who have opposed the "gay rights" movement—which arose after many of us had already piped up for decriminalization—have suffered insults too? that we have been accused of wholesale bigotry? that we are often lumped together not only with Anita Bryant and the John Birch Society, but even with Nazis and Communists? This is what might be called guilt by free association. But tempers are high, and there is no law against vituperation, so abuse there will be. Nobody can stop it all, and nobody on either side should be made to answer for more than his share of it. Mr. Real himself quotes Mr. Kilpatrick as saying that homosexuals have, under the Constitution, "no special rights," which leads him to ask whether Kilpatrick thinks they have any rights. Why should that be in question? Has Kilpatrick said that homosexuals should be arrested without warrant, or imprisoned without trial? Given his 1965 statement, it seems low and facile to read "no special rights" as a virtual denial of all rights we commonly enjoy.

As for jokes about homosexuality, I can't see that they are any more reprehensible than jokes about drunkards or misers. People make fun of our vices; they make fun even of what we like to think of as our virtues. It is hardly reasonable to ask others to accept our own self-evaluations as authoritative. And if I choose to stake my dignity on an aspect of myself I know they disapprove of, I can hardly complain of their contempt. The goals of most of the militant capital-M Minorities might be best secured by a general prohibition against humor; sometimes I think they have nearly succeeded already.

Meanwhile, there is a good deal of semantic legerdemain going on. The majority is constantly being put on the defensive with grandiose accusations of racism, sexism, bigotry, and the like; and those who go much further in this than Mr. Real would dream of going typically charge us with genocidal hostility toward them (the Dade County homosexuals compared themselves to Jews in Hitler's Germany) even as they demanded that we watch our nuances. Of course we should watch our jokes and our nuances for our own reasons, which should include consideration for people of homosexual inclination. As Mr. Real suggests, it would be cheap and bullying for conservatives to seek political capital on the basis of mere righteous membership in the sexual majority. Homosexuals have no special rights, but they have rights. That they themselves define those rights badly does not excuse us from defining them exactly.

Everyone senses that "civil rights" has become a code-word for government favoritism

The bad semantics, unfortunately, aren't confined to the gay rights movement. It was the prototype of that movement, the Negro civil rights movement, that introduced a serious verbal corruption into our public discourse. The phrase "civil rights" used to mean legal protections of the citizen against the state. The Bill of Rights, for instance, enumerates limitations on the (Federal) Government's power over the citizen. But more recently the term has been used to mean protection of citizen against citizen; guarantees not against oppressive political action, but against free social action; guarantees secured—above all—by an actual increase in state jurisdiction. In what sense can we be said to have more "civil" rights than before, when the government in fact has more authority over us than ever?

If we really think justice requires that our civil rights and social freedoms be abridged, we shouldn't shrink from saying so. It may be wrong for us to be legally free to discriminate against blacks (as it is wrong for us to be legally free to murder them). But in that case we should forthrightly diminish or abolish the freedom without talking as if the sum total of our freedom has somehow been thereby enlarged. Justice, freedom, civil rights, and the interests of Negroes are all good

things. But they are not all the same thing. And we should avoid using these distinct—and sometimes incompatible—terms as if they were interchangeable.

I think that as a matter of simple fact everyone senses that “civil rights,” ostensibly a neutral term, has become a tendentious code-word for government favoritism. Far from signifying a general increase in American freedom, it now refers to a set of limitations placed by the government on the private (non-governmental) actions of the white majority for the sake of blacks. The average white American doesn’t feel that “civil rights” means him. The rise of affirmative action has exposed the specious universalism of “civil rights.” Recently I ran across an article in *Time* that brushed off objections to affirmative action programs by impatiently pointing out that the whole purpose of the 1964 Civil Rights Act was, after all, to “protect blacks.” At one level, of course, it has protected them, by giving them the same kind of recourse against private discrimination that they have against private assault. Whether this is proper or not, it has not increased even the Negro’s civil rights, since he has no more freedom vis-à-vis the state than the white; at this level, he too has lost, at least in principle, through he may feel it less in comparison with his particular benefits.

The black rights movement began as a struggle against state discrimination; at that time it became known, rationally enough, as the civil rights movement. Unfortunately for terminological clarity, the name stuck even when the quest for racial justice became an attack on private targets; and today the demands of organized Negro groups for state interference in hitherto undisturbed areas (like private clubs) are routinely referred to as “civil rights” causes even by reporters conscientiously straining to be objective.

Given the lopsided history of that term, it is no wonder people are now wary of “gay rights.” Most Americans take a live-and-let-live view of things they disapprove of. The harassment of homosexuals has surely decreased in the last few years. But what can “gay rights” mean, unless special rights for homosexuals? Even assuming that it is right for the state not only to tolerate homosexuality but also to forbid anti-homosexual discrimination, can Mr. Real reasonably expect us to assume that this movement will, unlike its civil rights model, evanesce when its first demands are conceded? Isn’t it more prudent to fear that this is just the beginning of yet another bottomless commitment to a pressure group full of the sense of its own victimization? A commitment leading to more privileges for the few and regulations on the many, all in the name of affirmative action and righting historical wrongs and consciousness raising and dispelling stereotypes? San Francisco’s schools are already adopting textbooks giving quasi-official sanction to homosexuality as an alternative lifestyle.

Of course (as we are always reminded) none of this necessarily follows. It doesn’t follow—not in abstract logic. But it seems to follow in fact. The 1964 Civil Rights Act was supposed to outlaw racial criteria, but it has been used instead to federalize them. Hopes and intentions are one thing, probable results another. (I think of the way Anthony Lewis told us that Cambodian Communism might be different—we should wait and see. Same with Eurocommunism.) I know Mr. Real doesn’t intend the abuses I contemplate. But the fact is that the gay rights movement isn’t led or dominated by his quiet conservative homosexuals who run small businesses; and even if it were, they wouldn’t be the ones to administer its “reforms.”

The pretense that all we are establishing is an official “neutrality” is always the first step in the establishment of secularist orthodoxies. The editor of this journal years ago analyzed the real tendency of “academic freedom.” I have mentioned “civil rights.” To take only one more example, consider abortion. Just as we would be free to disapprove of homosexuality “personally,” so we are still free to disapprove of abortion—while our government not only tolerates it but subsidizes it. We are free to think as we will on all sorts of things; we may think, if we like, that our dogs are animated by the transmigrated souls of our ancestors. But such beliefs haven’t the slightest influence on those who govern us and collect and redistribute a sizable share of our wealth.

The puritan heresy is that whatever is immoral should be illegal. Our secularism is a kind of reverse puritanism that holds that whatever should be legal must also be moral. Hester Prynne nowadays sews on her own A and announces that it stands for Alternative (as in Lifestyle). And because we believe in separating church and state, we are supposed to regard as discredited any morality that can be shown to have a religious provenance. Mr. Real gently derides the idea that homosexuality is a quote-sin-unquote, and says we must “face up to the question of how far religion as practiced by a few can be allowed to intrude upon the legislative process before that intrusion infringes upon everyone else’s lives.”

He has a point. Surely it is true that few if any children will be made homosexual by the opinions of their teachers. If a child turns out homosexual, it is much more

likely his parents' fault than his teachers'. All the same, do we want our children taught in school that homosexuality is merely an "alternative lifestyle," or any such cant? I don't know that marijuana is medically deleterious, but I don't want its consumption advocated in school. It violates my sense of the fitness of things, and its pedagogical advocacy violates my understanding of what a school is for. As long as education is public, I will care what it promotes at my expense. That a child can survive the teaching of moral and intellectual nonsense is no reason to tolerate nonsense in such an institution.

Yes, I too worry about the imposition of a narrow religion. But I worry equally—no, under the circumstances, I worry much more—about the imposition of a narrow irreligion. Why should we always turn to the doctrinaire atheist as the final arbiter of our public morals? He may have his own peculiar metaphysic. As a matter of fact, the prevailing secularism probably traces to religion of some kind—it strikes me as the offspring of Unitarian Universalism. But I am less concerned with its origins than with its nature. I prefer old-fashioned Catholics, Jews, Moslems, and, yes, Anita Bryant as moral preceptors, if the alternative is a class of people who hold that sexual morality reduces to mere immediate preference, and that whether one chooses a male or female, a permanent or transitory partner is a matter of indifference. I prefer an English teacher who exalts Shakespeare over one who exalts Edgar Guest, if I have the choice. But I would a thousand times prefer a teacher who thought Edgar Guest the greatest poet who ever lived, over one who taught that poetry was "subjective," and that there are no distinctions of poetic value.

The gay rights movement hasn't refined our moral sense. On the contrary, it seems to be, more than it knows, "against discrimination." It offers no models of sexual conduct. It comes with a flood of pornography and promiscuity, against which it offers not the least audible protest. It seems part of the whole phenomenon of rejecting all standards as silly superstition like quote-sin-unquote. That is why, by the way, it is important to distinguish between the movement and the discreet individual homosexual, whose privacy we should respect without condoning his behavior. If any homosexual resents that attitude, I am afraid he is making greater demands on me than I would make on him.

The First Amendment hardly forbids people to hold and act on their creeds, even when they vote and discuss public questions. It merely forbids them to impose their creeds formally on others. If I am a Catholic, am I to suspend my conviction that abortion is something that is wrong and ought to be forbidden? More to the point, if I am an atheist, am I to suspend the same conviction merely because many who share it get it from the Pope? Many people oppose murder and theft because the law of Moses proscribed them; but that is no argument for legalizing murder and theft. A similar point might be made about slavery. And so on.

The purpose of the First Amendment was to guarantee freedom of religion. If it includes freedom from religion, it also includes freedom for it. Yet many people talk, in the name of that Amendment, as if it had somehow made religion a bit disreputable; as if it meant especially the freedom of unbelievers, in the full sense of freedom to establish unbelief—to exclude religion from public places, while leaving us free to propagate any beliefs, values, and morals, provided they don't refer explicitly to the supernatural. If one teacher preached the Baptist faith in a public school, and another preached atheism, is there any doubt which of the two our civil libertarians would rally behind, which they would litigate against?

If I read Mr. Real correctly, he shares the widespread belief that sexual morality is entirely "private"—i.e., that there is no impersonal standard by which different kinds of sexual behavior can be "graded." He seems able to conceive such a standard only as an arbitrary divine mandate. Like the fundamentalist, he thinks that Revelation alone can give us a sexual code; except that he, unlike the fundamentalist, doubts that there has been any Revelation, and holds that even if there has, we qua citizens are debarred from consulting it. Here is an odd twist to the principle *sola scriptura!*

Milliners have rights, don't they? Of course. Shall we have a law, then, against anti-millinerism?

Liberty means private discretion. Private discretion implies the possibility of irrationality and unfairness. If I have free speech, I am equally free to utter wisdom or folly. If I have economic freedom, I can choose to have commercial transactions with anyone I like, according to such criteria, wise or foolish, as seem appropriate to me. That many criteria seem foolish and unfair on the face of them does not mean the state should forbid anyone to use them. For one thing, they may under peculiar conditions be rational. For another, there are too many irrational criteria for the state to prohibit them all, even assuming that it is the state's business and competence to judge. I might, for wholly idiosyncratic reasons, decide not to rent a room to

a milliner. And don't milliners have rights? Of course they do. Shall we have a law, then, against anti-millinerism? Preposterous. But why protect homosexuals and not milliners—or students, or left-handed people, or midgets?

Far from being singled out by the population at large, homosexuals are being singled out by the movement that claims to speak for them and demands that they be favored with a protection accorded to few other categories of people. Their putative spokesmen are demanding official Minority status. It is not a demand for freedom or even for equal treatment, but for privilege at the expense of everyone else's freedom. Only deceitful (and self-deceiving) rhetoric has obscured this, but conservatives, including homosexual conservatives, should understand it. When I was a student I was often exasperated by the way college administrators, media pundits, and others always accepted the vocal left-wing activists as representative of my generation, and indulged their demands accordingly. It is usually the ideological predators who create and exploit simplified images of their own groups (they begin, of course, by denouncing "stereotypes") so that they can reap the benefits of official acceptance as spokesmen. Vernon Jordan is the official Black. Bella Abzug is the official Woman. Ralph Nader is the official Consumer. They actually speak for relatively few, but politicians and the press continue to regard them as Plato regarded the Forms: they are the pure essences, and no accumulation of mere facts can gainsay them.

Now the nation has already, in the matter of race, made one great exception to the principle of private discretion. In the light of our tragic history, this was understandable; if due attention had been paid to the proper distinctions, it would have been justified, and in any case the benefits have been so tremendous as to give us some consolation. But it has already seriously confused our political discourse and set a very bad precedent. Moreover it has been perverted in affirmative action programs, especially those imposed by public officials who have no responsibility to the people they command. The exception is fast becoming the rule.

If that happens, farewell to freedom. Or if that doesn't grab you, farewell to nuance. And in fact there is already a kind of quiet textbook purge under way, led by the kind of people who are forever deploring Joe McCarthy's assaults on the life of the mind: the new Bowdlerism is clearing the shelves of "racist and sexist stereotypes," supplanting them with "positive images" of the official Minorities.

Old Harry would have deplored all this. Or rather—since he taught Swift—he'd have laughed at it. As he knew well enough, there is no law that says a homosexual has to be a solemn prig. At least I don't think there is such a law; though by now there may be an HEW directive somewhere.

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CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C.

FEDERAL GOVERNMENT POLICY TOWARD EMPLOYMENT OF HOMOSEXUALS

There are no federal laws specifically protecting the right of persons to engage in homosexual conduct or expressly requiring federal agencies to hire persons with such sexual preferences. Until recently, discharges of government employees who were found to have engaged in homosexual conduct had been routinely upheld even in cases in which the employee's conduct was found not to interfere with performance of his official duties on the ground that such conduct created a national security risk, or could threaten the morals of other employees or could interfere with the "efficiency of the service." Until *Norton v. Macy*, 417 F. 2d 1161 (D.C. Cir. 1969), no court required an agency to prove that an employee's sexual preferences actually interfered with the performance of his governmental responsibilities. The *Norton* case put the burden on the government to show that there was actually a "rational nexus" between the conduct of the offending employee and the statutory standard by which a person can be removed from government service, i.e., "for such cause as will, promote the efficiency of the service." 5 U.S.C. sec. 7501.

The *Norton* case, decided by a 2-1 margin, involved the dismissal of a budget analyst in the National Aeronautics and Space Administration (NASA) who had been questioned by the D.C. Morals Squad on suspicion of attempting to solicit another man away from the office and after office hours. The employee denied that he had made an improper advance or was a homosexual though he admitted that during high school and college he might have engaged in homosexual activity. The Court of Appeals concluded that there was no rational basis for NASA's conclusion that the discharge would promote the efficiency of the agency, that the Civil Service had "neither the expertise nor the requisite anointment to make or enforce absolute moral judgments" and that it was not "an appropriate function of the federal

bureaucracy to enforce the majority's codes of conduct in the private lives of its employees . . . [which would] be at war with elementary concepts of liberty, privacy and diversity." 417 F.2d at 1165.

Norton was found to have been judged by his supervisory to be a "competent employee" doing "very good work," had duties which did not bring him into contact with the public, and worked with others unaware of his "immorality." Upon a finding that he was "an extremely infrequent offender, who neither openly flaunts nor carelessly displays his unorthodox sexual conduct in public" and thus minimized the potential for embarrassment of his agency, the Court held that his dismissal was arbitrary and ordered the appellant to be reinstated. The Court stressed that sexual conduct could be a ground for dismissal and that potential embarrassment from an employee's conduct could affect the efficiency of an agency but that the appellant's dismissal here had not been adequately supported by the record in this case.

Cases decided after *Norton*, such as *Adams v. Laird*, 420 F.2d 230 (D.C. Cir. 1969); cert. den. 397 U.S. 1039 (1970), were primarily concerned with attempts by persons charged with homosexual conduct to obtain or retain security clearance. Such cases have usually ignored or applied the "rational nexus" test with results adverse to the appellants. Even though the *Norton* case appears to be the minority view and the Supreme Court has never decided this issue, the Civil Service Commission revised the regulations governing grounds for suitability disqualification from the federal civil service on July 3, 1975 in a manner that appears to reflect the view that the "rational nexus" test may soon, if it has not already, be supported by the majority of courts.

While no federal law either requires or prohibits the federal government from employing persons known to have homosexual preferences, the President is granted initial authority to issue regulations pertaining to the admission of individuals into the Executive Branch, ascertain the "fitness" and "character" of applicants and to permit investigations to determine suitability of applicants in a manner that "will best promote the efficiency of that service." 5 U.S.C. § 3301. The President's authority to issue such regulations has been delegated to the Civil Service Commission. Ex.Ord. No. 11222, § 601, May 8, 1965, 30 Fed. Reg. 6469; Ex.Ord. No. 11228, June 14, 1965, 30 Fed. Reg. 7739. The Civil Service Commission is given the authority to remove or suspend persons in the competitive service "for such cause as will promote the efficiency of the service." 5 U.S.C. § 7501. Prior to revision of the "suitability" regulation, the Civil Service Commission was authorized, among other grounds, to dismiss employees found to exhibit "criminal, infamous, dishonest, immoral or notoriously disgraceful conduct," the usual ground for dismissing persons found to have engaged in homosexual conduct. 5 C.F.R. § 731.201 (1974).

The revised regulation, 5 C.F.R. § 731.202 (1976), would permit federal agencies to hire and retain persons with homosexual preference so long as they did not engage in "Criminal, dishonest, infamous or notoriously disgraceful conduct." had not made fraudulent or intentionally false statements in connection with their employment, had not engaged in misconduct in previous employment, were not disloyal to the United States Government, refused to furnish testimony required by law, were not drug abusers or alcoholics and were not otherwise statutorily unfit to hold federal employment. In determining suitability, the Civil Service Commission is for the first time required to determine the extent to which "disgraceful conduct" or other factors that could be cause for dismissal or denial of employment are actually "pertinent" to the position including the "sensitivity" of the position which the person holds or for which he is applying. Such other factor include:

- (2) The nature and seriousness of the conduct;
- (3) The circumstances surrounding the conduct;
- (4) The recency of the conduct;
- (5) The age of the applicant or appointee at the time of the conduct;
- (6) Contributing social or environmental conditions;
- (7) The presence or absence of rehabilitation or efforts toward rehabilitation. (5 C.F.R. 731.202(c).)

The basic law, which gives the Civil Service Commission the authority to take such actions regarding personnel as will "promote the efficiency of the service", remains unchanged, 5 U.S.C. § 7501. While the new regulations would not require the Federal Government to hire homosexuals, it would prohibit their employment only after careful consideration of the circumstances in which they engaged in "criminal, dishonest, infamous or notoriously disgraceful conduct" or were otherwise disqualified and such other factors such as the sensitivity of the job and the recency of the action. The phrase "immoral conduct" was removed as one of the factors for which employment could be denied. The language of the new regulations does not appear to go as far as some newspaper accounts indicated since sexual

performance is not even mentioned in the regulations. The Agency apparently intends, however, to interpret them as barring refusal to hire or basing dismissal solely on homosexuality. The "rational nexus" test may have received the support of the Civil Service Commission.

E. JEREMY HUTTON,
Legislative Attorney.

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., October 22, 1979.

To: The Honorable Theodore Weiss; Attention: Bruce Kriegman.
From: Sarah P. Collins, Analyst in American National Government, Government Division.

Subject: Legislation pertaining to homosexual rights.

In response to your request, I have prepared a list of legislation introduced in the 94th through 96th Congresses pertaining to homosexual rights. This listing includes all version of legislation designed to protect homosexual rights, as well as legislation which would deny homosexuals any protections or benefits.

I trust this list will be of assistance to you. Please do not hesitate to call me at 287-5821 if you have any further questions on this issue.

STATEMENT OF SARAH P. COLLINS, ANALYST IN AMERICAN NATIONAL
GOVERNMENT, GOVERNMENT DIVISION, CONGRESSIONAL RESEARCH SERVICE

LEGISLATION PERTAINING TO HOMOSEXUAL RIGHTS, 94TH THROUGH 96TH CONGRESSES

Only during the past decade have homosexuals begun to organize publicly to improve their status in American society. Some homosexual rights activists and civil libertarians maintain that homosexuals have suffered discrimination not unlike that suffered by other minority groups and women.

The first legislation to extend the protection of existing civil rights laws to homosexuals was introduced in 1975 by Congresswoman Bella Abzug. She noted in remarks accompanying the bill that several States and private groups had already called for an end to perceived discrimination against homosexuals. Although the 94th Congress took no action on the bill, similar legislation has been introduced in each subsequent Congress, and each time has attracted more cosponsors.

This report lists legislation which, if enacted, would have an impact only on homosexuals, as distinct from broader kinds of social legislation which could affect homosexuals as part of a general population. Some of the legislation cited is intended to extend civil rights protections to homosexuals, while other proposals would specifically deny to homosexuals any special consideration or protection under law.

94TH CONGRESS

H.R. 166 Civil Rights Amendments.—For purposes of the Civil Rights Act, defines the term "affectional or sexual preference" to mean having or manifesting an emotional or physical attachment to another consenting person or persons of either sex, or manifesting a preference for such attachment. The bill would prohibit discrimination based on such affectional or sexual preference in the following areas: (1) public accommodations; (2) public education; (3) equal employment opportunities; (4) the sale, rental and financing of housing; and (5) education programs which receive Federal financial assistance.

H.R. 166 was introduced on January 14, 1975, by Rep. Abzug, and co-sponsored by Reps. Koch, Nix, McCloskey and John L. Burton. It was referred to the Committee on the Judiciary.

H.R. 5452 Civil Rights Amendments.—Bill was identical to H.R. 166. It was introduced on March 25, 1975, and was co-sponsored by the following Representatives:

Koch	Richmond	Badillo
Nix	Bingham	Rangel
Dellums	Rosenthal	Chisholm
Fauntroy	Mitchell (Md.)	Holtzman
Harrington	Fraser	Schroeder
McCloskey	Brown (Calif.)	Studds
Stark	Mineta	Burton, John L.
Solarz	Waxman	

H.R. 10389 Civil Rights Amendment.—Bill was identical to H.R. 166. It was introduced on October 28, 1975, by Rep. Ottinger.

H.R. 13019 Civil Rights Amendments.—Amends the Civil Rights Act of 1964 to prohibit discrimination based on affectional or sexual preference in (1) public accommodations; (2) public facilities; (3) public education; (4) federally assisted opportunities; (5) equal employment opportunities; (6) housing; and (7) educational programs receiving Federal assistance.

H.R. 13019 was introduced on April 5, 1976, by Rep. Phillip Burton, and was referred to the Committee on the Judiciary.

H.R. 13928 Civil Rights Amendments.—Bill was identical to H.R. 13019. It was introduced on May 20, 1976, by Rep. Abzug, and co-sponsored by Reps. AuCoin, Burke (Calif.), Hawkins, and Miller (Calif.)

95TH CONGRESS

H.R. 451 Civil Rights Amendments.—Amends the Civil Rights Act of 1964 to prohibit discrimination based on affectional or sexual preference in: (1) public accommodations; (2) public facilities; (3) public education; (4) federally assisted opportunities; (5) equal employment opportunities; (6) housing; and (7) educational programs receiving Federal assistance.

H.R. 451 was introduced on January 1, 1977, by Rep. Koch, and co-sponsored by the following Reps.:

Bingham	Harrington	Studds
Burton, John L.	Holtzman	Weiss
Dellums	McCloskey	
Fraser	Miller (Calif.)	

H.R. 2998 Civil Rights Amendments.—Bill was identical to H.R. 451. It was introduced on February 2, 1977, by Rep. Koch, and referred to several committees. It was co-sponsored by the following Reps.:

Bingham	Harrington	Richmond
Burke (Calif.)	Hawkins	Rosenthal
Burton, John L.	Holtzman	Solarz
Chisholm	McCloskey	Stark
Clay	McKinney	Stokes
Conyers	Miller (Calif.)	Studds
Dellums	Mitchell (Md.)	Waxman
Fraser	Rangel	Weiss

H.R. 4794 Civil Rights Amendments.—Bill was identical to H.R. 451. It was introduced by Rep. Koch on March 9, 1977, and referred to several committees. It was co-sponsored by the following Reps.:

AuCoin	Fauntroy	Nix
Badillo	Markey	Ottinger
Brown (Calif.)	Mikva	Scheuer
Collins (Ill.)	Mineta	Schroeder
Diggs	Moffett	

H.R. 5239 Civil Rights Amendments.—Bill was identical to H.R. 451. It was introduced on March 21, 1977, by Rep. Phillip Burton and was referred to several committees.

H.R. 7775 Civil Rights Amendments.—Bill was identical to H.R. 451, with an additional section which would prohibit quotas or determinations of discrimination based upon statistics. It was introduced by Mr. Koch on June 14, 1977, and referred to several committees.

H.R. 10575 Civil Rights Amendments.—Bill was identical to H.R. 451. It was introduced by Rep. Edwards on January 26, 1978, and was referred to several committees.

H.R. 12149 Civil Rights Amendments.—Bill was identical to H.R. 451. It was introduced by Rep. Green on April 17, 1978, and was referred to several committees.

H. Amdt. No. 368.—Amendment to H.R. 7554, HUD Appropriations Act, 1978. Amendment prohibited the appropriation of any money subject to the Federal regulation defining the conditions under which two or more persons shall be eligible for admission to public housing as a family. Supporters of the Amendment noted that a recently promulgated HUD regulation would open public housing to unmarried heterosexual couples and to homosexual couples. The amendment was introduced by Rep. Boland, debated and passed by voice vote on June 15, 1977. The

amendment became section 408 of the bill as enacted (Public Law 95-119, Oct. 4, 1977).

H. Amdt. No. 423.—Amendment to H.R. 6666, the Legal Services Corporation Act. Amendment would prohibit legal assistance in cases arising out of disputes or controversies on the issue of homosexuality or gay rights. The amendment was introduced by Rep. McDonald on June 27, 1977. It was first rejected by voice vote, but then was adopted by recorded vote (roll #384: 230-133). The Amendment was eliminated from the bill in conference.

96TH CONGRESS

H.R. 2074 Civil Rights Amendments of 1979.—Authorizes the Attorney General to institute a civil action when an individual is denied use of a public facility because of the individual's affectional or sexual orientation. Prohibits discrimination on the basis of affectional or sexual orientation in (1) Federally assisted programs; (2) employment; or (3) housing. Prohibits the use of statistical differences in determining whether such discrimination exists, and prohibits the use of quotas as a remedy for any such discrimination.

H.R. 2074 was introduced on February 8, 1979, by Rep. Weiss and was referred to several committees. It was co-sponsored by the following Reps.:

Waxman	Burton, Phillip	Lowry
Mitchell, P.	Chisholm	Markey
Clay	Conyers	Mineta
McCloskey	Dellums	Moffett
Rosenthal	Diggs	Ottinger
Rangel	Dixon	Schroeder
Miller, G.	Edgar	Shannon
Stark	Edwards, D.	Studds
Sabo	Fauntroy	Weaver
AuCoin	Gray	Yates
Barnes	Green	Scheuer
Bingham	Hawkins	Stokes
Beilenson	Holtzman	Richmond
Brodhead	Lehman	Mikva
Burton, J.	Leland	McKinney

H. Con. Res. 166.—Expresses the sense of the Congress that homosexual acts shall never receive special consideration under law. The resolution was introduced by Rep. McDonald on July 24, 1979, and was referred to the Committee on the Judiciary.

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, D.C., April 18, 1980.

GAY RIGHTS IN PERSPECTIVE: RELIGIOUS ASPECTS, PAST AND PRESENT

Although homosexuality appears in most cultures and at all times throughout history, attitudes toward it—societal, cultural, and religious—have varied widely from toleration or permissiveness to total condemnation. Few areas of human life have been as little understood or as subject to popular, deeply rooted disapproval, misconception and speculation.

Within the Judeaean-Christian and Islamic traditions, homosexual activity, while it has always been present, has always been regarded as sinful, constituting an offense against the moral law. The origins of this condemnation are to be found in the Bible and in the traditional theological treatment of natural law and sexuality. Leviticus 18:22 specifically condemns male homosexuality and (20:13) provides for the death penalty. Although this prescription is omitted from the "Curses" in Deuteronomy 27, it appears in Deuteronomy 23:17 and 18 (in the context of male cultic prostitution, associated with Canaanitic fertility rites), and is reiterated in the 613 Precepts or Commandments (Mitzvot) of the Law, according to Rabbinic tradition.

These and other Old Testament passages (Genesis 38:15, I King, 14:24, Ezekiel 16:49, etc.) reflect, in part, the ancient Israelitic attitude toward sacred female and male prostitution, denounced as the abomination, *to 'ebah*, or pagan idolatry. The story of the destruction of Sodom (Genesis 19:1-11), whose inhabitants were punished by God for their sins, gave its name to homosexual acts (sodomy in later ages, although the narrative is concerned with intended homosexual rape in the context of violating the law of hospitality. Similarly, in Judges 20:22-30, the Benjaminsites of

Gibeah demand the male guest and instead are given a concubine to ravish (as Lot in Genesis offers his daughters to the Sodomites). Legend and tradition alike have associated Sodom with wickedness in general, especially illicit or inordinate lust. In the Middle Ages, "sodomy," classed with homicide in gravity, often referred to heresy, treason, sorcery, sacrilege, and bestiality. It was believed to be against the divinely-willed order of nature. Thus, Alan of Lille (d. 1202) in his "Complaint of Nature" uses sodomy as a metaphor for all that is unnatural and sinful.

In the New Testament, though the Gospels are silent on this subject, St. Paul condemns both male and female homosexuality in Romans 1:18-28, where it is included among the dishonorable effects of idolatry among the Gentiles, men and women exchanging "natural relations for unnatural." In I Corinthians 6:9-10, he again denounces homosexual acts, using two Greek words, usually translated "homosexuals" but probably referring to "passive" and "active" sodomy respectively (between males). One of the terms is repeated in I Timothy 1:8-10. These condemnations appear in listings or catalogues of sins similar to the categories of vices in Jewish and Graeco-Roman literature of the time. It is known that prostitution, male and female alike, was widespread in the Mediterranean seaports of St. Paul's day, often associated with fertility cults such as those of the Great Mother.

The Fathers of the Church and later Christian thought condemned homosexual acts as against both Scripture and the theology of natural law by which all sexual acts were conceived to be moral to the extent that they were directed to the purpose of procreation, either explicitly or implicitly. Even in conjugal union, immoderate or inordinate sexual pleasure was condemned by both Christian (St. Thomas Aquinas) and Jewish (Maimonides) moral theologians: such *delectatio* or pleasure was especially reprehensible in homosexual acts, which could not (even in theory or by intent) result in generation. Marriage was the universal norm, with celibacy (pre-supposing chastity) the chosen vocation of the few (priests and religious) and the imposed obligation of all others who were unwed.

Historically, homosexual acts were treated by the church as sins to be repented of and by the State, under the impact of religious teaching, as crimes to be punished. Thus, the Codex Theodosius, promulgated in 438-439 by the Emperor Theodosius II, punished sodomy with death by burning. In 538 and 544 the Emperor Justinian issued statutes against sodomy, citing the Biblical story of Sodom, but providing penalties only for the impenitent. These and similar enactments throughout Europe continued in effect until the example of the Code Napoleon in the last century and the continuing movement to decriminalize private, adult, and consensual homosexual acts.

Prior to modern times, homosexual acts were thus regarded in the West as either sinful or as criminal or as both, given the pervasive influence of religious teaching in society. Hence, the term sodomy, centering in an act, a violation of natural, ecclesiastical, or civil law, rather than in the perception of an underlying condition or affective disposition. The possible exception of ancient Athens, where homoerotic relations were accepted and even idealized, had little relevance for Christian society inasmuch as the homosexuality approved among the Greeks was chiefly pederastic (i.e., involved older men with young men in a mentor-like relationship that could, and, apparently, frequently did include sexual relations); marriage and procreation were assumed to be the eventual norm for every citizen. Hence, no self-conscious subculture could develop a unique sense of sexual identity.

The advent of modern psychology in the 18th and 19th centuries, in the wake of the political, cultural, and social changes associated with the era of the Enlightenment, led to the quest for "scientific" understanding of human life and the emergence of sexology as a branch of systematic knowledge. The first use of the word "homosexual" (to describe a sexual condition or orientation), invented by a Hungarian advocate of homosexual rights, occurred in the same year (1869) as the first "clinical" description of homosexual behavior as a diagnostic category by an eminent German physician.

In that year, Karl-Friedrich-Otto Westphal (1833-1890), a pioneering figure in modern psychiatry, wrote his famous essay on "Die konträre Sexualempfindung" (contrary sexual sensations), in the Archives for Psychiatry and Nervous Diseases. "The psychological, psychiatric, medical category of homosexuality was constituted", writes Michael Foucault in his "History of Sexuality," from the moment it was characterized." For Westphal, a pathologist of the nervous system, homosexuality was essentially a congenital "inversion", not a vice, and was to be treated as a medical problem. At the same time, the writer Karoly Maria Benkert (1824-1882), writing under the pseudonym of "Kertbeny", coined the word "homosexuality" in a pamphlet which argued for the human and civil rights of "homosexuals" and against the punitive Prussian legal code. The term passed into general use, replacing sodomy (except in law), inversion, and "urning", a word coined by another early

advocate of homosexual rights, Karl Heinrich Ulrichs (1825–1895), who wrote under the pseudonym "Numa Numantius". "Homosexuals" seems to have been first used in England by the writer Havelock Ellis (1859–1939), who in 1897, (speaking of Sir Richard Burton's "climatic" theory of sodomy,) described it as "a barbarously hybrid word." Nevertheless, it has established itself in popular and scholarly use alike.

The homosexual-rights movement reflected the appearance of a distinctive consciousness and identity, emerging in such urban centers as London, Paris, and Berlin. The existence of this sub-culture and its mores were first documented by Carlier, the head of the Paris police, whose investigation of "pederasts" throughout the city was published in 1887. This distinctive identity was thus treated by society as either a matter for police surveillance or as a problem for medical pathology.

The publication of Heinrich Kaan's "Psychopathia Sexualis" in 1844 gave "scientific" legitimation to the psychologism of the age, which sought to determine the etiology and character of sexuality in all its manifestations, specifically with "nervous disorders" and mental disease. This emphasis culminated in the studies of sexual behavior by Richard Krafft-Ebing (1840–1902), Paul Moreau (1844–1908), Benjamin Tarnowski (1839–1906), and others, who argued for theories of psychosexual "degeneration", congenital or somehow acquired, as the basis for sexual pathology, including homosexuality. Usually these theories were associated with belief in the destructive effects of excessive sexual activity, especially masturbation. Krafft-Ebing's "Psychopathia Sexualis," published in 1866, was also influenced by the studies of such men as Wilhelm Waldeyer (1836–1921) in embryology, which advanced theories of primordial bisexuality. The bisexual concept was utilized by many writers such as Magnus Hirschfeld (1868–1935), an advocate of homosexual rights, and the philosopher Otto Weininger (1880–1903) to argue for genetic basis to homosexual behavior. These views had some influence on Sigmund Freud (1856–1939) in his "Three Essays on Sexuality" (1905). Generally, however, Freud is associated with environmental theories to explain homosexuality, associated with the anxieties consequent upon the Oedipal conflict in the socio-dynamics of the family.

Although the nature and genesis of homosexuality has remained obscure, despite over a century of medical and psychological investigation, the effect of that research upon religious thinking was significant. There has been a perceptible, if uneven, movement away from condemnation and toward the conviction that grace and psychotherapy would be able to heal what was increasingly regarded as an illness or emotional disorder rather than as a sin. The distinction between objective or material sin and subjective culpability is generally accepted today in moral theology. Homosexuality as a condition is not regarded as blameworthy in itself; even overt homosexual acts, though formally sinful, may not be culpable if they are due to some compulsion. Certain eminent theologians (e.g., Helmut Thielicke) have argued that homosexuality may constitute a "burden of predisposition" (beyond any conscious choice) that the individual must accept and live with, preferably by sublimation. Thielicke acknowledges the possibility of an ethically responsible homosexual relationship, a position shared by relatively few theologians, most of whom have held that homosexuals should abstain from all overt sexual activity. A dissenting view, increasingly articulated, affirms the possibility of homosexual relationships within a Christian moral context.

The decision of the American Psychiatric Association in 1974 that homosexuality is not a pathological illness reflects changing opinion, brought about by the inconclusive nature of medical research into the causes of homosexual behavior and encouraged by the rising activism of homosexual rights advocates. There appears to be wide disagreement on the definitional boundaries of homosexuality. There seem now to be diverse patterns of homosexual behavior, constituting a continuum of variables. No uni-casual explanation for homosexual behavior has gained general acceptance as adequate to deal with the complexities of the phenomenon. Rather, there appear to be a multiplicity of generally predisposing factors—e.t., familial, socio-cultural, psychosexual, genetic—whose relationships are inadequately understood.

Against this background, modern religious thinking has taken divergent paths. Considerable support has gathered within many churches for decriminalization of homosexual acts involving consenting adults and for the right of homosexuals to be free from discrimination in their daily lives. Significant elements within some churches are questioning the present validity of traditional teaching on homosexuality, arguing that the quality and integrity of a relationship, rather than its sexual or genital character, should determine its moral status. In some contemporary theology the concept of what is natural is often defined in personalist and contextual terms rather than in terms of imperative biological norms. The greater freedom afforded to women in recent decades, particularly with respect to the procreative

function of sexual intercourse, has also affected societal attitudes toward homosexuals. At the same time, many religious people and leaders have reaffirmed traditional sanctions against homosexual behavior. Conservative Christian and Jewish opinion continues generally to commend the ideal of abstinence for homosexuals.

Some holding divergent opinions on homosexuality have been able to agree on the issue of civil rights for homosexuals. In some cases they have urged an end to all forms of discrimination based on sexual or affectional preference. Support for equal rights and protection for homosexuals has come from churches representing a broad spectrum of denominational traditions in American religious life, conservative and liberal alike. Such support from major denominational bodies is based upon concern for the common good and does not depend upon agreement as to the nature of homosexuality or the character of homosexual acts. This position is represented by the study guide on "The Church and Homosexuality" prepared for the Presbyterian Church in the United States in 1977, which reflects the changing understanding of homosexual behavior:

"If we are to think responsibly about homosexuality today, we must learn what the science of human behavior can teach us about its causes and character. We must engage in careful biblical and theological reflection. In our time, when many homosexual persons, some of them committed Christians, are speaking out for themselves, we must listen with compassion and openness to what they have to tell us. The task is not easy. The scientific data are incomplete and inconclusive; psychiatrists, psychologists and sociologists interpret them in different ways. Biblical scholars and theologians committed to the authority of Scripture disagree in their interpretations of Scripture. Homosexual persons themselves do not speak with one voice. There is great variety in their experience, and they are as subject as anyone else to error in the interpretation of their experiences and in their understanding of themselves. Moreover, all of us have trouble thinking clearly about homosexuality because we approach it with various degrees of fear, anxiety, guilt and prejudice based on culturally stereotyped views of masculinity and femininity and sexuality in general. All these complications and difficulties mean that even when we have done the best we can to achieve a faithful and intelligent Christian understanding of homosexuality and homosexual persons, we must be modest about our conclusions and open to let ourselves be corrected as we are led to deeper understanding in the future."

While not all citizens are able to accept the theological orientation in the Presbyterian statement, many would agree to extending equal protection under the law to homosexuals. Among those who regard homosexuality as either sin or psychological disorder, some are also opposed to such rights being extended to homosexuals, arguing that the good of society would be thereby impaired. Others are concerned that, in the words of the New Catholic Encyclopedia, "In the exercise of civil rights . . . the homosexual should realize that they are limited by the rights of others, particularly in the sensitive area of teaching on the elementary and secondary levels." The 1976 pastoral letter of the National Conference of Catholic Bishops restated the traditional Judaeo-Christian stand against homosexual acts:

"Homosexual activity . . . as distinguished from homosexual orientation, is morally wrong. Like heterosexual persons, homosexuals are called to give witness to chastity, avoiding, with God's grace, behavior which is wrong for them just as nonmarital relations are for heterosexuals."

Some who share these or similar views are also concerned for the possible impact of the homosexual rights movement on the family and society.

Nevertheless, of the many Christians and Jews who continue either to regard homosexual acts as sinful (following the historic Judaeo-Christian tradition) or to regard homosexuality as an illness (in accord with various scientific theories of the past century), a considerable element, speaking from within the Judaeo-Christian community, has come to support the demand by the homosexual community for equal rights under the law. In the words of the Presbyterian study:

"The Church is called to bear witness to the justice of the Kingdom of God by standing for justice in human society. Whether or not Christians accept or approve of homosexuality itself, they should stand for just treatment of homosexual persons as well as all other persons in our society. They should advocate and defend for homosexual persons also the civil liberties, equal rights and protection under the law from social and economic discrimination which are due all other citizens."

CHARLES H. WHITTIER,
Analyst in American National Government
(Humanities and Religion), Government Division.

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., October 19, 1979.

To: Honorable Theodore Weiss; Attention: Bruce Kriegman.
From: Charles H. Whittier, Analyst in American National Government (Humanities and Religion), Government Division.
Subject: Edmund Burke's attitude toward homosexual law reform and his influence in American thinking.

The attached report is provided in response to your inquiry regarding Edmund Burke's defense of humane treatment for persons convicted of homosexual acts in 18th century Britain. While equal rights for homosexuals as such was not perceived as an appropriate concern in that era, much less a matter of public policy, Burke's stand attracted widespread attention. His "attitude toward homosexuality was," writes Alice P. Miller in "Edmund Burke and His World,"¹ "rather liberal for a man of his generation. To suppose that he would have favored 'gay rights' would be going too far. But he was horrified at the punishment . . .", an unusual attitude in an age accustomed to much casual brutality and mob violence. Sir Philip Magnus, in his "Edmund Burke," notes what he calls Burke's "imprudent zeal in taking up the cases of homosexual offenders" during the national crisis of 1780 and "inflicting an impassioned harangue" on the sodomy laws before the House of Commons.²

Burke's sympathies in the matter reflected his general concern with humanitarian reform. "He contended that the pillory was not . . . an appropriate part of the punishment which the law reserved for homosexuals, and with characteristic earnestness he endeavored to see that the law, so long as it existed, was not enforced in that particular."³ His speech and subsequent involvement in this issue brought him much criticism and slanderous distortion of his motives, provoking him to legal action (see the enclosed account).

Burke's influence in America was considerable, and he was widely read. We know that his "Essay on the Sublime and the Beautiful," published in 1757, was owned and read by Thomas Jefferson and by him recommended in 1771.⁴ His strong sympathy with the American colonists in their conflict with the Crown had found expression in numerous speeches after his entry into Parliament in 1766, notably that of 1774, "On American Taxation," and that of 1775, "On Conciliation." The greatest disciple of Montesquieu, whose theories of civil government he adapted to the pragmatic climate of British politics, he was deeply influenced by the 17th century philosophy of custom and its "ancient constitution" of immemorial usage;⁵ he popularized the Whig tradition association with Locke. His reputation among many Americans was shaken by his denunciation of the French Revolution, Jefferson even alluding to the "rotteness of mind" of his "Reflections on the Revolution in France" in 1790.

In view of Burke's influence in America, it seems reasonable to suppose that his protest against the use of the pillory would not have been ignored, especially among those who, in the words of the Eighth Amendment to the Federal Constitution, opposed "cruel and unusual punishment." Without asserting his direct influence, Burke's position may be seen as a significant element in shaping a more humane climate in law and in society at large.

If we may be of further assistance to you in this matter, please call 287-5821.

[Congressional Research Service, The Library of Congress, Washington, D.C., April 18, 1980]

PRESIDENTIAL CANDIDATES SPEAK TO THE ISSUE OF HOMOSEXUAL RIGHTS

I. INTRODUCTION

The 1979-80 Presidential primaries have marked the full emergence of "gay rights" as a national political issue. Nearly every candidate, Republican and Demo-

¹ Miller, Alice P. *Edmund Burke and His World*. Old Greenwich, Connecticut, Devin-Adair, 1979, p. 150. (This is an expanded version of an earlier study, published in 1976.)

² Magnus, Sir Philip. *Edmund Burke*. New York, Russell and Russell, 1973, p. 55. (This is a reprint of the original work, published in Britain in 1939.)

³ Magnus, Sir Philip. *Edmund Burke*, p. 150.

⁴ See Wills, Garry. *Inventing America*. New York, Doubleday & Co., 1978, p. 270.

⁵ That is, he saw political rights as deriving, like the Common Law, from historical precedent and tradition rather than from any theory of rights in the abstract. See Courtney, C.P. *Burke and Montesquieu*. Oxford, Basil Blackwell, 1963; and Pocock, J.G.A. *The Ancient Constitution and the Federal Law: English Historical Thought in the 17th Century*. Cambridge, Cambridge University Press, 1957.

cratic, has had occasion to address the question of discrimination against homosexuals. Most of the leading candidates have opposed such discrimination in law. Some have favored specific "gay rights" proposals that would expand or extend existing civil rights laws to include homosexuals. In part, these developments appear to be in response to a widely-perceived "gay vote" associated with the movement for homosexual rights across the country.¹

A principal goal of the "gay rights" movement, the adoption of civil rights planks for homosexuals by both National parties, is being furthered by the Gay Rights National Lobby through the National Convention Project,² focusing on participation at all levels of the political process in behalf of "gay rights" concerns. Homosexual activist organizations and other groups who share their concerns are supporting two congressional "gay rights" bills that deal with nongovernmental discrimination against homosexuals in such areas as employment, housing, and public facilities," The National Gay Rights Bill" (Weiss-Waxman, H.R. 2074), and the "Tsongas Bill" (S. 2081), Opposition to the "gay rights" movement is reflected in two other congressional proposals: the Family Protection Act of 1979 (S. 1808) and House Concurrent Resolution 166, both of which would provide legal sanction for discrimination against homosexuals. Support for these proposals has been particularly strong on the part of such religious groups as Moral Majority, PTL, and Christian Voice.

II. ACTIVE CANDIDATES' VIEWS

The leading Democratic candidates—President Carter and Senator Kennedy—hold views on the "social issues" (including homosexuals' rights), which have been described as "much alike in substance."³ At a "Gay Vote USA Gala" fund-raising gathering sponsored by the National Convention Project in Washington on November 27, 1980, three candidates, were represented—the President, by a representative, who spoke to the group; the Senator, by a letter, read by a member of his campaign staff; and Governor Brown of California—then still a candidate—attending in person and delivering a statement. All three, in varying degree, expressed support for homosexual rights.

President Carter, who is reported to be giving "serious consideration" to an executive order forbidding discrimination against homosexuals in the Government, has stated that his Administration "has taken no action designed to discriminate against homosexuals in their lifestyle or in their actions."⁴ In a subsequent interview with John Chancellor of NBC on January 7, 1980, the President observed that "the Federal Government recognizes, and so do I, that States have the right to administer laws concerning homosexuals in schools and particularly sensitive areas. But as far as the Federal Government is concerned, I do not believe that we should have any discrimination against homosexuals because of their beliefs."

The President's position was amplified in this response to a questionnaire sent to all presidential candidates in November of 1979 by the National Gay Task Force. The response, in the form of a letter by Robert Strauss, Chairman of the Carter/Mondale Presidential Committee, cites meetings between White House aides and leaders of the Gay community as illustrative of the President's policy in opening the Administration to discussion of gay concerns. The letter further emphasizes the President's commitment to appoint officials to positions in the Federal Government without discrimination based on sexual preference: ". . . The President is committed to continuing his policy of appointing qualified individuals without discrimination based on race, color, sex, religion, national origin, or sexual orientation."⁵ Member of the National Gay Task Force expressed some disappointment at the absence of support for the "National Gay Rights Bill", a proposed gay rights plank in the Democratic Party platform, and an executive order banning all Federal job discrimination.⁶ The Strauss letter states that the Civil Service Reform Act of 1978 "prohibits discrimination because of sexual orientation in approximately 95 percent of all Federal jobs covered by the civil service system."

¹ Lerer, Ken. "Gays—a new key voter group," *New York Magazine*, May 30, 1977, p. 8-9. See also: "Gay movement continues to develop national, local political clout," *Campaigning Reports*, Dec. 13, 1979, p. 5.

² "Convention Project seeks party platform planks." *Capitol Hill* (Newsletter of Gay Rights National Lobby), Vol. 2, No. 1, p. 1.

³ Denniston, Lyle, "Democrats stand alike—but sound different." *Washington Star*, Jan. 10, 1980, p. A. 3-4.

⁴ "The Record of President Jimmy Carter." White House release, October 1979 (cited in Sidey, Hugh. *Political Profiles: Jimmy Carter*. Washington, D.C. Political Profiles, Inc. 1979, p. 26.)

⁵ Letter to National Gay Task Force from Robert Strauss, Mar. 3, 1980.

⁶ Chibbaro, Jr., Lou. "Carter Statement Viewed as Retreat." *The Blade*, Vol. II, No. 6, Mar. 20, 1980, p. 1, 4.

Senator Robert Kennedy, in January of this year, responded to the Gay Task Force inquiry by pledging to support as President legislation to prohibit discrimination in employment on the basis of sexual preference as well as a Democratic Party platform plank endorsing gay rights legislation and an executive order banning discrimination against homosexuals in Federal employment.⁷ He did not indicate support for the "gay rights" bill presently before the Senate. Earlier, in his statement read to a Washington gathering for "gay rights," the Senator had presently endorsed both a "gay rights" plank in the Democratic platform and an executive order banning sexual discrimination in Federal programs and hiring.⁸ In campaigning the Senator has spoken of "gay rights" as "a new civil right," adding, "I think . . . that there has to be elimination of all discrimination against gay rights in our society."⁹

Among leading Republican candidates, Governor Ronald Reagan has taken no stand on National Gay Rights proposals, though he has stated, in an interview with NBC's John Chancellor in December of 1979: "I'm opposed to discrimination against anyone. I have to say that some of what we're seeing to day is not a campaign against discrimination. It is a demand for recognition and acceptance of a certain way of life." In a statement released by the Governor earlier this month, he reiterated that "all citizens have equal rights before the law." However, he expressed his opposition to "gay ordinances," which, he holds, "in effect, would compel [an employer] to hire a person because of that person's sexual preference."¹⁰ The Governor has been reported to include "gays among all persons he says should be free from discrimination. [He] expressly notes that he does not advocate or support 'gay lifestyles' and adds that he does not think any unique lifestyle should be given favored attention."¹¹

Representative Anderson has supported codification of laws to prohibit discrimination on the basis of sexual preference. Writing in response to the National Gay Task Force inquiry, Representative Anderson stated that in both appointments and policies, he would, if elected President, be "sensitive to" the needs of all Americans, "irrespective of race, creed, affectional preference, or any other arbitrary distinction."¹² In April of 1980, he moved to co-sponsor H.R. 2074, the proposed "National Gay Rights" bill. At the same time he joined in sponsoring H.R. 6303, which would permit the entry of foreign homosexuals into the United States.

George Bush has stated that he is "opposed to any discrimination or harassment against gays," but "does not support specific civil rights legislation" or "codifying" what is properly a "matter between the individuals involved," which "should not be elevated to great public attention."¹³

III. CANDIDATES NOW WITHDRAWN

Among candidates who have withdrawn from the race, Governor Edmund Brown announced that, if he were President, he would "issue an executive order banning discrimination against homosexuals in Federal employment, and that he would work for passage of gay rights legislation and appoint qualified gays to Federal jobs."¹⁴ In an address before a fund-raising group, the Governor stated: "I make the forthright statement that human rights, begins at home, and that every citizen, whatever their age, whatever their color, whatever their sexual orientation, is entitled to the full rights of American citizenship, in public, in government, in private enterprise."¹⁵

Senator Howard Baker, describing the homosexual rights issue as having "a high quotient of emotionalism" but not deeply divisive, has stated that "there is a fundamental tenet that says every American should have equal protection under the law and honest opportunity to prosper and live in peace in our society. I believe that for every segment of society and (its) subdivisions, including homosexuals."¹⁶

⁷ Chibbaro, Jr., Lou. "Kennedy Expressed Support." *The Blade*, Vol. II, No. 1, Jan. 10, 1980, p. 1, 5.

⁸ Peterson, Bill. "Brown's Support for Gays Brings Cheer," *Washington Post*, Nov. 28, 1979, p. 3.

⁹ Michaels, Don. "Sign of Kennedy Support Surfaces in Post." *The Blade*, Vol. II, No. 2, Jan. 24, 1980, p. 3.

¹⁰ Statement authorized by Governor Reagan Campaign, Apr. 1, 1980.

¹¹ Denniston, Star, Jan. 9, 1980, p. A4.

¹² Letter of Representative John Anderson to National Gay Task Force, undated.

¹³ Wiese, Arthur. "Political Profiles: George Bush." *Political Profiles, Inc.* Washington, D.C., 1979, p. 26.

¹⁴ Peterson, Bill. "Brown Backs Gas Rationing by Coupons," *Washington Post*, Nov. 1979, p. 6.

¹⁵ King, Wayne. "Governor Brown in Oregon, Confers With Homosexual Rights Group." *New York Times*, Dec. 16, 1980, p. 28.

¹⁶ Interview cited in *Washington Star*, p. A4.

The Senator has taken no stand on legal codification to prohibit discrimination against homosexuals. He is reported to have said that he feels "no sense of emotional outrage" at the prospect of "a homosexual in the Defense Department. . . ." ¹⁷

Governor John Connally has been reported as "not comfortable with the idea that things such as homosexuality should be treated permissively. It's not normal, natural human behavior." However, he added that homosexuals ought not to be denied "the right to make a living" even in Federal jobs, except "where their homosexuality could be used against them, such as sensitive national security posts. . . ." ¹⁸

PREPARED STATEMENT OF SARAH P. COLLINS, ANALYST IN AMERICAN NATIONAL GOVERNMENT, GOVERNMENT DIVISION, CONGRESSIONAL RESEARCH SERVICE

LEGISLATION PERTAINING TO HOMOSEXUAL RIGHTS, 94TH THROUGH 96TH CONGRESSES

Some homosexual rights activists and civil libertarians maintain that homosexuals have suffered discrimination not unlike that suffered by other minority groups and women. Thus, during the past decade homosexuals have begun to organize publicly to improve their status in American society.

The first Federal legislation to extend the protection of existing civil rights laws to homosexuals was introduced in 1975 in the 94th Congress by Representative Bella Abzug. In remarks accompanying the bill she noted that several States and private groups had already called for an end to perceived discrimination against homosexuals. Although the 94th Congress took no action on the bill, similar legislation has been introduced and co-sponsored in each subsequent Congress.

This report lists legislation which, if enacted, would have an impact only on homosexuals, as distinct from broader kinds of social legislation which could affect homosexuals as part of a general population. Some of the legislation cited is intended to extend civil rights protections to homosexuals while other proposals would specifically deny to homosexuals any special consideration or protection under law.

94TH CONGRESS

H.R. 166 Civil Rights Amendments.—For purposes of the Civil Rights Act, defines the term "affectional or sexual preference" to mean having or manifesting an emotional or physical attachment to another consenting person or persons of either sex, or manifesting a preference for such attachment. The bill would prohibit discrimination based on such affectional or sexual preference in the following areas: (1) public accommodations; (2) public education; (3) equal employment opportunities; (4) the sale, rental and financing of housing; and (5) education programs which receive Federal financial assistance.

H.R. 166 was introduced on January 14, 1975 by Representative Abzug, and co-sponsored by Representatives Koch, Nix, McCloskey and John L. Burton. It was referred to the Committee on the Judiciary.

H.R. 5452 Civil Rights Amendments.—Identical to H.R. 166, the bill was introduced on March 25, 1975, by Representative Abzug, and was co-sponsored by the following Representatives:

Koch	Richmond	Badillo
Nix	Bingham	Rangel
Dellums	Rosenthal	Chisholm
Fauntroy	Mitchell (Md.)	Holtzman
Harrington	Fraser	Schroeder
McCloskey	Brown (Calif.)	Studds
Stark	Mineta	Burton, John L.
Solarz	Waxman	

H.R. 10389 Civil Rights Amendments.—Identical to H.R. 166, it was introduced on October 28, 1975 by Representative Ottinger.

H.R. 13019 Civil Rights Amendments.—Identical to H.R. 166, it was introduced on April 5, 1976 by Representative Phillip Burton, and was referred to the Committee on the Judiciary.

H.R. 13928 Civil Rights Amendments.—Identical to H.R. 166, it was introduced on May 20, 1976 by Representative Abzug, and co-sponsored by Representatives AuCoin, Burke (Calif.), Hawkins, and Miller (Calif.).

¹⁷ "Political Profiles: Howard Baker," Political Profiles, Inc., Washington, D.C., 1979, p. 26.

¹⁸ Denniston, "Political Report," Star, Jan. 9, 1980, p. A4.

95TH CONGRESS

H.R. 451 Civil Rights Amendments.—Amends the Civil Rights Act of 1964 to prohibit discrimination based on affectional or sexual preference in: (1) public accommodations; (2) public facilities; (3) public education; (4) federally assisted opportunities; (5) equal employment opportunities; (6) housing; and (7) educational programs receiving Federal assistance.

H.R. 451 was introduced on January 1, 1977 by Representative Koch, and co-sponsored by the following Representatives:

Bingham	Harrington	Studds
Burton, John L.	Holtzman	Weiss
Dellums	McCloskey	
Fraser	Miller (Calif.)	

H.R. 2998 Civil Rights Amendments.—Identical to H.R. 451, it was introduced on February 2, 1977 by Representative Koch, and referred to several committees. It was co-sponsored by the following Representatives:

Bingham	Harrington	Richmond
Burke (Calif.)	Hawkins	Rosenthal
Burton, John L.	Holtzman	Solarz
Chisholm	McCloskey	Stark
Clay	McKinney	Stokes
Conyers	Miller (Calif.)	Studds
Dellums	Mitchell (Md.)	Waxman
Fraser	Rangel	Weiss

H.R. 4794 Civil Rights Amendments.—Identical to H.R. 451, it was introduced by Representative Koch on March 9, 1977 and referred to several committees. It was co-sponsored by the following Representatives:

AuCoin	Fauntroy	Nix
Badillo	Markey	Ottinger
Brown (Calif.)	Mikva	Scheuer
Collins (Ill.)	Mineta	Schroeder
Diggs	Moffett	

H.R. 5239 Civil Rights Amendments.—Identical to H.R. 451, it was introduced on March 21, 1977 by Representative Phillip Burton and was referred to several committees.

H.R. 7775 Civil Rights Amendments.—Identical to H.R. 451, except for an additional section that would prohibit quotas or determinations of discrimination based upon statistics, it was introduced by Mr. Koch on June 14, 1977 and referred to several committees.

H.R. 10575 Civil Rights Amendments.—Identical to H.R. 451, it was introduced by Representative Edwards on January 26, 1978 and was referred to several committees.

H.R. 12149 Civil Rights Amendments.—Identical to H.R. 451, it was introduced by Representative Green on April 17, 1978 and was referred to several committees.

H. Amdt. No. 368.—Amendment to H.R. 7554, HUD Appropriations Act, 1978. Amendment prohibited the use of appropriated funds under a new Federal regulation defining the conditions under which two or more persons shall be eligible for admission to public housing as a family. Supporters of the amendment noted that the HUD regulation would open public housing to unmarried heterosexual couples and to homosexual couples. The amendment was introduced by Representative Boland, debated and passed by voice vote on June 15, 1977. The amendment became section 408 of the bill as enacted (P.L. 95-119, October 4, 1977).

H. Amdt. No. 423.—Amendment to H.R. 6666, the Legal Services Corporation (LSC) Act. Amendment would prohibit the LSC from providing legal assistance in cases arising out of disputes or controversies on the issue of homosexuality or gay rights. The amendment was introduced by Representative McDonald on June 27, 1977. It was first rejected by voice vote, but then was adopted by recorded vote (roll #384: 230-133). The amendment was eliminated from the bill in conference.

96TH CONGRESS

H.R. 2074 Civil Rights Amendments of 1979.—Prohibits discrimination on the basis of affectional or sexual orientation in (1) federally assisted programs; (2) employment; or (3) housing. Prohibits the use of statistics in determining whether such discrimination exists, and prohibits the use of quotas as a remedy for any such

discrimination. Authorizes the Attorney General to institute a civil action when an individual is denied use of a public facility because of the individual's affectional or sexual orientation.

H.R. 2074 was introduced on February 8, 1979 by Representative Weiss and was referred to several committees. It was co-sponsored by the following Representatives:

Waxman	Burton, P.	Lowry
Mitchell, P.	Chisholm	Markey
Clay	Conyers	Mineta
McCloskey	Dellums	Moffett
Rosenthal	Diggs	Ottinger
Rangel	Dixon	Schroeder
Miller, G.	Edgar	Shannon
Stark	Edwards, D.	Studds
Sabo	Fauntroy	Weaver
AuCoin	Gray	Yates
Barnes	Green	Scheuer
Bingham	Hawkins	Stokes
Beilenson	Holtzman	Richmond
Broadhead	Lehman	Mikva
Burton, J.	Leland	McKinney
Carr	Corman	Nolan
Duncan, R.	Panetta	Roybal
Howard	Anderson, J.	

H. Con. Res. 166.—Expresses the sense of Congress that homosexual acts shall never receive special consideration under law. The resolution was introduced by Representative McDonald on July 24, 1979 and was referred to the Committee on the Judiciary. It was co-sponsored by Representatives Mottl and Symms.

H.R. 6028.—Family Protection Act. This bill is intended to protect the family unit in American society. It would deny Federal assistance to homosexuals and would declare discrimination against homosexuals not to be an unlawful employment practice.

H.R. 6028 was introduced on December 4, 1979 by Representative Symms and referred to several committees. It is co-sponsored by Representative James Collins and Representative Hansen.

H.R. 6303.—A bill to amend the Immigration and Naturalization Act. This bill would repeal Section 212(a)(4) of the Immigration Act which currently prohibits homosexuals from entering the country. The bill was introduced on January 28, 1980, by Representative Beilenson, and referred to the Committee on the Judiciary. It was co-sponsored by the following Representatives:

Dixon	Sabo	Weiss
Waxman	McCloskey	Diggs
Stark	Fazio	Mitchell, P.
Yates	Prichard	Stokes
Dellums	Mikulski	Green
Bingham	Rosenthal	Ottinger
Edwards, D.	Matsui	Anderson, J.
Burton, J.	Burton, P.	
Lowry	Miller, G.	

S. 1808.—Family Protection Act. This bill is identical with H.R. 6028 (above). It was introduced by Senator Laxalt on September 24, 1979 and referred to the Committee on Finance. It was co-sponsored by the following Senators:

Garn	Helms	Jepsen
Cochran	Hatch	

S. 2081.—A bill to prohibit employment discrimination on the basis of sexual orientation. This bill is similar to the employment sections of H.R. 2074 and would amend Title VII of the Civil Rights Act of 1964. The bill would prohibit the use of statistics in determining whether such discrimination exists, and would prohibit the use of quotas as a remedy for any such discrimination. The bill was introduced by Senator Tsongas on December 5, 1979 and referred to the Committee on Labor and Human Resources. It was co-sponsored by Senators Weicker and Moynihan.

S. 2210.—A bill to amend the Immigration and Naturalization Act. This bill is a companion bill to H.R. 6303 (above) and would eliminate "sexual deviation" as a basis for excluding an alien from admission into the United States. The bill was

introduced by Senator Cranston on January 23, 1980 and was referred to the Committee on the Judiciary.

PREPARED STATEMENT OF SARAH P. COLLINS, ANALYST IN AMERICAN NATIONAL GOVERNMENT, GOVERNMENT DIVISION, CONGRESSIONAL RESEARCH SERVICE

HOMOSEXUAL RIGHTS: AN ISSUES OVERVIEW

Especially during the past decade, homosexuals have begun to organize publicly to improve their status in American society. This has been in response to discrimination against homosexuals as perceived by them and by civil libertarians and likened by them to unmerited discrimination endured by other minority groups and by women.

Simultaneously the past decade has also seen some changes in the treatment of homosexuals at various levels and branches of the Federal and State governments. For example, some policies of the Federal Government have been modified that previously barred known homosexuals from civil service employment, the military service, and entry to the country. These changes either have been urged by homosexual-rights activists and civil libertarians or have been mandated by court decisions in cases won by homosexuals.

Still there are those within the homosexual and civil rights movements who have argued for a more systematic approach. In consort with supporters within and outside the Congress they have pushed for Federal legislation to secure and protect certain rights for homosexuals. As a result, homosexual-rights legislation has been introduced in the last three Congresses. In addition, more than fifty State and local governments have acted to modify existing laws directed at homosexual activity and to insure equal treatment of homosexuals in such fields as employment, housing and public accommodations.

FEDERAL POLICY

Federal Government policies may affect homosexuals' rights in a number of areas, including Government employment, military service, housing, public accommodations, education, entry into the country, and naturalization. As of yet there is no overall Federal policy regarding the rights of homosexuals. In some of these areas laws or regulations remain unchanged or silent, but in others there have been recent changes, or attempts at change, in Government policy.

For example, in 1975, suitability regulations for employment in the U.S. Civil Service were changed to prohibit disqualification solely on the grounds of sexual preference. Previously, known homosexuals were not hired, and homosexual employees could be fired on the grounds of "criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct." In 1975, however, the Civil Service Commission adopted a "rational nexus" test, which had been developed in the course of several employment rights court cases. This test requires an individual to be judged on whether his or her allegedly troublesome conduct interferes with or prevents effective performance on the job. Although, to our knowledge, no systematic study of the impact of this change has been made, it appears likely that it has abated the concerns of homosexual applicants and employees about rejection, discovery, or discharge. It needs to be noted, however, that security and intelligence agencies (CIA, FBI, NSA) continue to exercise the option of excluding or dismissing homosexuals because of their alleged susceptibility to blackmail.

Relatedly, in the past few years, the Defense Department and the Office of Personnel Management have begun to review their policies that deny security clearances to homosexual employees. Known homosexuals who are Federal employees, or employees of firms under contract to the Federal Government, have been long denied security clearances. Part of the rationale for this policy has been the Government's argument that because homosexuals are prime targets for blackmail they are per se greater security risks than heterosexuals. Contrarily, it has been argued that the recent trend by many homosexuals to live an openly homosexual lifestyle dispels the security-risk concern. Homosexual-rights activists also frequently argue that it is the Government's treatment of homosexuals and its classification of them as security risks, and not their homosexuality, that create the potential for blackmail. In some accord with this viewpoint have been U.S. Courts of Appeals decisions¹ that have required Federal agencies to relate a person's homosexuality to specific job or security risks before a clearance can be denied. In other words, Federal agencies must consider someone's homosexuality together with all of his or

¹ See, *Norton v. Macy*, 417 F. 2d 1161 (D.C. Cir., 1969) and *McKean v. Laird*, 490 F. 2d 1962 (D.C. Cir., 1973).

her other personal characteristics when determining whether the person poses a security risk sufficient to deny him or her a security clearance.

The armed services of the United States have also begun to review their policies regarding military personnel who are homosexuals. In the past, the Defense Department has automatically dishonorably discharged homosexuals and those with "homosexual tendencies" on the grounds that their homosexuality was inconsistent with military discipline and morale. In 1978, however, the U.S. Court of Appeals for the District of Columbia ruled that the Department could not automatically discharge military personnel for homosexuality alone.² Homosexuals can be discharged if "unusual circumstances" are also present and if a reasonable justification for the discharge is provided by the Department. In light of this ruling, the department is revising its discharge regulations and has allowed some already dishonorably discharged persons to apply for upgraded discharges.

The Immigration and Naturalization Service (INS) has also begun to change its policy against allowing homosexual foreigners into the United States. In the past, homosexuals have been denied visas and citizenship on the grounds that they were afflicted with "psychopathic personality," a condition which has been construed to include homosexuality. In the past year, such exclusion has been challenged on the ground that homosexuality is no longer considered by most psychiatrists to be a mental disorder. The Commissioner of the INS agreed with these arguments and ordered that homosexuals be allowed to enter the country on a "deferred" basis.³ However, the Department of Justice has tentatively ruled that the INS lacks the power to change the policy and must enforce the exclusion until or unless it is changed by statute. The issue remains under evaluation in the Justice Department and may be reviewed soon by the Congress when it works on an overall revision of immigration law.

To summarize, the Federal Government has no consistent policy regarding homosexuals, although many of its practices have recently changed or are now under revision. In the cases in which the Federal Government is an employer or contractor, policies that at one time denied homosexuals jobs for which they were otherwise qualified have been moderated, generally upon judicial mandate, and security clearance policies and regulations are under review. In the case of allowing homosexuals into the country, the Immigration and Naturalization Service is reviewing its policies to ensure fair treatment of all persons within the guidelines of its statutory mandate. Recently, the Federal Bureau of Prisons announced a change in a position long adhered to in agreeing to permit selected homosexual literature to be sent to prisoners who want to receive it.

FEDERAL LEGISLATION

The first Federal legislation intended to protect the rights of homosexuals was introduced in 1975 by Congresswoman Bella Abzug. Although the 94th Congress took no action on the bill, similar legislation has been introduced in each subsequent Congress, and each time has attracted more cosponsors. In the same period, there has been some legislation introduced that is intended specifically to deny homosexuals benefits or participation in Federal programs.

The Abzug bill would have amended the Civil Rights Act of 1964 and other laws to prohibit discrimination based on sexual or affectional preference in the following areas: (1) public accommodations; (2) public education; (3) equal employment opportunity; (4) the sale, rental, and financing of housing; and (5) education programs that receive Federal financial assistance. The bill defined affectional or sexual preference as "having or manifesting an emotional or physical attachment to another consenting person or persons of either gender, or having or manifesting a preference for such attachment."

Four Representatives initially cosponsored the bill and were joined by nineteen additional Representatives before the session ended. Similar bills were introduced by a total of six other Members of the House of Representatives in the 94th Congress. Most subsequent legislation intended to protect the civil rights of American homosexuals has been some variation of the original Abzug bill.

² *Matlovich v. Secretary of the Air Force*, 591 F. 2d 852 (D.C. Cir., 1978)

³ Attorneys for persons so detained have contested such actions claiming that the government not only unjustly defers entry but subjects persons to unnecessary, perhaps unwarranted, disclosure of sexual preferences and lifestyle, thus subjecting them to possible public ridicule, complications in their private lives (including family relationships), and employment jeopardy. One hundred thirty-three members of the Dutch parliament have recently protested the U.S. policy in a letter to the Speaker of the House of Representatives, Thomas P. O'Neill, Jr. See *infra* for additional analysis of this issue.

In the 95th Congress, Rep. Koch was the principal sponsor of the homosexual rights bill. The legislation attracted 38 cosponsors, and two other Representatives introduced similar legislation. Rep. Koch followed his initial introduction with a second version of the bill which included a specific prohibition on quotas and forbade any determination of discrimination based on statistics. The sponsor noted that this section was added "to prevent misinterpretation" because opponents of the bill had alleged that the legislation would require affirmative action in the hiring of homosexuals to make up for past discrimination. This provision has been included in later versions of the legislation.

In two instances in the 95th congress, the House of Representatives voted for legislation to preclude Federal aid for homosexuals. In June, 1977, the House voted to prohibit the use of a new definition of family prepared by the Department of Housing and Urban Development (HUD) that might have allowed unmarried family units, including homosexual and heterosexual couples, to apply for public housing. This amendment to the HUD appropriations, introduced by Representative Boland (D-Mass.), was adopted by voice vote, retained in House-Senate conference, and enacted into law. Also in 1977, the House voted to prohibit the use of any Legal Service Corporations funds "with respect to any proceeding or litigation arising out of disputes or controversies on the issue of homosexuality or so-called gay rights." The amendment, introduced by Representative McDonald (D-Ga.), was first rejected by voice vote but then passed on a recorded vote; however, it was eliminated from the bill in conference.

In the 96th Congress, Representative Weiss (D-N.Y.) led 53 cosponsors (as of April 17, 1980) in introducing a Civil Rights Amendments Act that is similar to the revised homosexual rights bills of earlier Congresses. The Attorney General would be authorized to institute a civil action if a person were denied use of a public facility because of his or her sexual or affectional orientation. Senator Tsongas (D-Mass.) and two cosponsors have introduced legislation to prohibit employment discrimination against homosexuals. This is the first Senate bill designed to protect the rights of homosexuals. Relatedly, legislation has been introduced by Representative Beilenson (D-Calif.) with 25 cosponsors (as of April 17, 1980) and Senator Cranston (D-Calif.) to eliminate the exclusion-of-homosexuals provision from U.S. immigration laws.

Contrarily, legislation has been introduced for the first time to bar homosexuals from receiving any consideration or benefits under Federal law. Representative McDonald has introduced a concurrent resolution expressing the sense of the Congress that homosexuals should never receive special consideration under law. Senator Laxalt (R-Nev.) has introduced a Family Protection Act, several sections of which would deny Federal assistance to homosexuals, and would declare discrimination against homosexuals not to be considered an unlawful employment practice. There has been no action as yet on any of the proposals.

Legislation intended to protect or deny homosexuals' rights or benefits has thus been pending in the last several Congresses. As yet, none of the proposals has received a hearing by any committee of either House.

LOCAL AND STATE ORDINANCES

During the past decade, more than forty municipalities in the United States took action to protect the rights of homosexuals. These actions have ranged from mayoral orders prohibiting discrimination in local government hiring, to broad human rights ordinances prohibiting discrimination in private sector housing and employment, as well as in excess to public accommodations. They have not always been received favorably; successful repeal attempts in such localities as Dade County, Florida and St. Paul, Minnesota caught national attention. In the same period of time most States have acted to repeal or modify statutes regulating sexual activities between consenting adults.

Many of the first homosexual rights actions were taken by local boards of education, city councils and executives who amended existing human rights statutes and ordinances to protect homosexuals. These actions were generally taken after public debate or hearings, and were implemented with little controversy. In June 1977, however, residents of Dade County, Florida, voted to repeal such an ordinance specifically because it protected the rights of homosexuals in housing, employment and public accommodations. The group opposing the ordinance was led by singer Anita Bryant, and her involvement attracted national attention to the repeal campaign and the issues. After the Florida vote, residents of several other municipalities held public referenda on local rights actions. In some of these cases, proposed adoption of homosexual rights ordinances has been rejected. In others, such as California's vote on the homosexual teacher initiatives in 1978, proposed anti-homosexual laws have been defeated.

More than twenty States⁴ have revised their laws to reduce or eliminate penalties for consenting adults who engage in certain previously prohibited sexual activities. Civil libertarians have joined homosexuals in lobbying for these changes on the ground that current laws regarding sexual activity are inappropriate, and on the ground that most laws restricting sexual conduct have been enforced almost exclusively against homosexuals, even though heterosexuals also have engaged in the same prohibited acts. Several other States have decriminalized sexual conduct only for consenting adults in a heterosexual relationship. In the same period, at least five States have acted to ban same-sex marriages.

In summary, the 1970's saw increasing interest in the issue of homosexual rights. Units of Federal, State and local governments have confronted the issue, and have generally, but not always, moved toward increasing tolerance and acceptance of homosexuals in employment, housing, and public accommodations. These policy changes have also evoked the opposition of some officials and individuals in American society. In light of the controversial nature of the issues, and the increased interest in some of the proposals, it seems likely that the 1980's may see further change in the area of homosexual rights.

IMMIGRATION AND NATURALIZATION SERVICE POLICY

In the past year there has been controversy over the Immigration and Naturalization Service (INS) policy of refusing entry to the country to persons known to be or suspected of being homosexual. The INS policy is founded in immigration laws which require INS officials to deny visas to persons who fit within any of thirty-two classifications of individuals considered to be unworthy for entry. The controversy has focused on whether or not the INS could change policy in the absence of congressional approval. If any such change requires congressional action, it is a matter of whether Congress should eliminate the statutory exclusion of homosexuals from the country.

In July 1979, two homosexuals were denied entry to the U.S. by INS inspectors in San Francisco. The denial was based on INS policy that homosexuals were included in the excludable category of persons "afflicted with psychopathic personality or sexual deviation or a mental defect." Under the policy, persons suspected of fitting the category were to be examined by officials of the Public Health Service (PHS). If those officials determined that the person fitted the excludable category, they issued a certificate which then forbade the INS from issuing the required visa. Gay rights activists initiated a lawsuit against the INS and Public Health Service on behalf of the two men who were denied entry based on the exclusion policy.

In August 1979, Surgeon General Julius Richmond revised the policy of the Public Health Service, and ordered PHS officials not to issue the certificates based solely on homosexuality. His decision was based on two reasons. First, current psychiatric authorities, such as the American Psychiatric Association, characterize homosexuality as one form of sexual behavior, rather than as a mental defect or disorder. Secondly, Dr. Richmond noted that homosexuality is not determinable through medical diagnosis. His decision and order meant that the INS had no basis on which to determine who should be excluded from entry to the country on the basis of homosexuality.

Stripped of its traditional method of identifying and excluding homosexuals, the INS ruled that homosexuals would be admitted to the country on a deferred basis. Visitors admitted on that basis could be called for a hearing to determine their final entry status if the policy were later changed. The ruling came amidst increasing public interest in the issue, as well as pressure from homosexual and libertarian groups and eighteen Members of Congress who urged modification or repeal of the exclusion. During this period, border agents displayed confusion about the validity of the statute and of the Commissioner's ruling. In the late summer and fall 1979, agents detained or denied entry to at least three groups of men and women suspected of being homosexuals.

At the request of the INS, the Department of Justice studied the issue, and issued a memorandum ruling that the INS did not have the administrative power to change a policy mandated by statute. This ruling held that, despite recent change in the status of homosexuals, the Congress must make any change in the immigration laws since legislative history demonstrated that Congress had specifically reaffirmed its intent to exclude homosexuals as recently as 1965.

⁴ States that have revised laws relating to sexual activity between consenting adults include: Alaska, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Indiana, Iowa, Maine, Massachusetts, Nebraska, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Oregon, South Dakota, Vermont, Washington, West Virginia, and Wyoming.

As a result of the Justice Department ruling, the INS is required to enforce the homosexual exclusion as always, but cannot rely on the Public Health Service to determine unworthiness based on homosexuality. Officials of the INS immediately began to formulate guidelines that would assist border guards to identify and exclude homosexuals without unduly delaying all persons crossing U.S. borders.

Many groups and interested individuals have turned to Congress to resolve the continuing problem. Homosexual groups are urging Congress to repeal the exclusion outright. These groups and civil libertarians note that current application of the policy works to exclude those homosexuals who answer customs agents' questions honestly but to allow entry to persons who are not forthright about their homosexuality. Advocates of the repeal also note that while the homosexual exclusions is to be enforced, drunkards, gamblers and adulterers, to whom the law also applies, are rarely excluded.

Legislation to repeal the exclusion has been introduced in both Houses of the Congress (H.R. 6303, Rep. Anthony Beilenson (D., Calif.) *et al.*; 2210, Sen. Alan Cranston (D., Calif.)). In the past, Congress has shown little interest in any issue relating to homosexuality. Congress may begin work on a major revision of the immigration law in 1980, and it is conceivably that the homosexual exclusion may be included in that legislation. It is expected that any action on such proposals might meet substantial opposition from three groups: persons who oppose homosexual rights generally; persons who oppose more liberal immigration laws; and persons who would not support such a controversial proposal in an election year.

EMPLOYMENT

One of the major objectives of the homosexual-rights movement has been for governments at the Federal, State and local levels to prohibit employment discrimination based on homosexuality. Homosexual-rights activists and civil libertarians maintain that there exists substantial employment discrimination against homosexuals not unlike that suffered by more visible minority groups and by women. They urge the adoption of laws to prohibit any standard of employment that fails to judge present or prospective employees on their individual merits. These demands raise the issues of the extent of such discrimination in the employment context and whether, if such discrimination is widespread, Congress should statutorily prohibit discrimination based on homosexuality.

It is frequently difficult to document the existence or scope of employment discrimination against homosexuals. Unlike most members of ethnic or racial minorities, homosexuality is not visible to the eye or readily apparent from a surname. Homosexual-rights organizations allege that many persons who have been denied employment or promotion on the basis of homosexuality are reluctant to challenge the action because of the resulting notoriety that can follow them from one job to another. Despite the protections offered in some fields of employment, homosexuals may face employers, employees, and a public that are reluctant to hire, work, or interact with them.

Public opinion on employment opportunity for homosexuals is generally favorable but appears less supportive for specific occupations. For example, a 1977 Gallup Poll found that 56% of those surveyed supported equal employment rights for homosexuals but this support weakened when participants were asked about hiring homosexuals for occupations such as elementary school teaching (27% support) and the clergy (36% support).

Homosexuals have gained a measure of employment protection in the Federal civil service and in some State and local employment. Suitability for Federal employment is now to be determined on the basis of whether the conduct of the individual may reasonably be expected to interfere with or prevent effective performance in the job. Human rights statutes and ordinances in more than forty municipalities provide for non-discrimination on the basis of homosexuality for municipal employment and private employment under contract to the municipality, and less often to private employment. Homosexual-rights activists note that most of these actions have been implemented successfully and have served to educate employers that hiring employees based on their ability and not their sexual orientation can be good business.

The vast majority of jobs in the private sector are not covered by any such protective measures. The National Gay Task Force reported in 1978 that apart from teachers' organizations, few unions have adopted statements supporting the homosexual-rights movement and few industry groups have offered legislative support. While increasing numbers of employers are adopting nondiscrimination policies, many others have no such policies. Without this protection, homosexual employees have few remedies if they are adversely affected because of their sexual orientation.

Special problems attach to homosexuals' attempts to gain or retain employment in fields often considered to be sensitive, especially teaching. Many parents and members of the clergy are concerned that children not be exposed to homosexuals on a daily basis in the classroom. Despite the lack of uncontrovertible evidence that homosexuals would seduce or molest children, the issue of homosexual teachers has been cited as an important factor in the successful campaign to repeal Dade County, Florida's human rights ordinance in 1977.

State and Federal courts, including the Supreme Court, have affirmed the right of school systems to discharge homosexual teachers. Such discharges are often based on the individual's alleged "immorality," which violates the good moral character requirement for almost all school teachers in the country. Homosexual-rights activists argue that the character requirement should be divorced from the person's sexual orientation. They endorse the position of the American Psychiatric Association that "teachers should be judged on the basis of professional competence, not on the basis of personal lifestyle or sexual preference."

Many leaders of the homosexual-rights movement maintain that full employment equality for homosexual persons is best accomplished by amending the Civil Rights Act of 1964 to include them as a protected class. In support of this, they cite the slow increase of the number of large companies willing to support non-discrimination policies, and cite the lack of judicial power to curb private discrimination. They also note that inclusion of homosexuals under protective employment laws would afford homosexuals an equal chance for jobs for which they are otherwise qualified but would not necessitate the abandonment of requirements such as good moral character.

HOUSING

Frequently, one of the goals of a group that believes it is discriminated against is to secure fair housing opportunities for members of the group. Homosexual-rights spokesmen charge that homosexuals have sometimes been denied equal opportunity in the sale and rental of housing and in the securing of credit to buy homes. They advocate the inclusion of homosexuals as a protected group in laws that currently prohibit housing discrimination on the basis of race, sex, and marital status.

Homosexual groups allege that discrimination is particularly directed at homosexuals who attempt to rent housing in areas that are considered to be family oriented. This charge can be difficult to prove because, in denying occupancy, landlords may not specify presumed or known homosexuality as the reason for denial. The Oregon State Task Force on Homosexuality found that such discrimination affected both men and women, and that it was usually based on the landlord's belief in certain stereotypical myths about homosexuals. The report cited beliefs such as that homosexuals were unusually interested in sex and parties; that homosexuals recruited heterosexuals; and that homosexuals molested children. Homosexual groups maintain that landlords holding such beliefs tend to treat all homosexuals alike. As a result, many good tenants hide their homosexuality for fear that exposure will cause the landlord to evict them.

Several laws have been enacted in the recent past that help homosexuals to obtain and retain housing. Ordinances prohibiting housing discrimination on the basis of sexual orientation have been enacted in at least fifteen municipalities. Homosexuals and single heterosexuals both benefit from the Equal Credit Opportunity Act, which bars credit discrimination on the basis of marital status. Homosexual groups note, however, that these laws do not protect all homosexuals, especially those who rent their homes. The groups also note that inclusion of homosexuals in protective housing laws would merely afford homosexuals an equal chance for housing and would not require landlords to seek out homosexual tenants or to rent to otherwise unqualified tenants.

QUOTAS

In the past decade, several minority groups, including homosexuals, have made substantial progress toward achieving their goals of equality in areas such as employment, housing, education and access to federally assisted opportunities. Along with this progress has come increasing concern over the possible imposition of quotas or affirmative action requirements to correct past discrimination.

Homosexual-rights leaders have generally disavowed any interest in having such quotas imposed. Leaders of the movement have stated that their aims are only to secure for homosexuals their constitutional rights and to free them from oppression and the fear of oppression. These leaders also note that imposition of quotas would require an accounting of all homosexuals in the country, a task that would be practically impossible to accomplish.

Individuals who oppose the homosexual-rights movement argue that imposition of affirmative action quotas has accompanied other civil rights laws. In addition, many

persons who oppose the goals of the homosexual-rights movement do so on moral or religious grounds and, accordingly, object strongly to the possibility of being required to hire, sell, or rent to homosexuals. In fact, arguments of this nature have been credited for the successful repeal of an all-inclusive homosexual-rights ordinance in Dade County, Florida.

Legislators who support homosexual-rights legislation have been careful to include provisions prohibiting the imposition of quotas or affirmative action. The prohibition would extend to the use of statistics to prove the existence of discrimination based on sexual orientation. Sponsors of the proposals have emphasized that the provisions were added only to prevent any misinterpretation of the intent of the legislation and, therefore, do not substantively alter the proposal.

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PREPARED STATEMENT OF DR. DAVID C. INNES, PASTOR, HAMILTON SQUARE
BAPTIST CHURCH

Honorable members of the Subcommittee on Employment Opportunities, we are saddened and outraged by what appears to be the basic assumption by this subcommittee that there is little or no substantive and legitimate opposition to the proposed legislation in this geographical area that is worthy or deserving of hearing by this committee. That only one speaker is allowed to voice reasons for opposition to the proposed legislation at what is billed as a "public hearing" is considered by us as a travesty and mockery of the democratic process. We beg you to further open the discussion to allow a fair presentation of our point of view.

HOMOSEXUALS ARE NOT A BONA FIDE MINORITY

Implicit in the House of Representatives bill, H.R. 2074, is the assumption that homosexuals are a bona fide minority. They are not. Blacks, browns, Asians, and other racial minorities cannot change the color of their skins. It is not practical nor wise to expect men or women to undergo a sex change in order to avoid job discrimination. On the other hand, homosexual behaviour can be changed if the individual really desires such change.¹

Contrary to what some homosexuals state, there is no proven, uncontested, scientific evidence to show that sexual preference is genetic. In the same way, there is no such evidence to support transvestitism, bestiality, or incest as genetically determined.² In fact, science still seems to indicate that the sex genes and nuclear or chromosomal sexing of body cells of male and female deviates, whether homosexual or otherwise, have normal patterns.³ In short, genetically speaking, there is no third sex.

If then homosexuality is not genetic, it must be adopted and learned behaviour. What is new and radical about H.R. 2074 is that it would make a form of behaviour into a civil right. In a recent election dealing with "homosexual rights" legislation in Davis, California,⁴ no support for the homosexual position was forthcoming from the racial minority groups.⁵ They seem to feel that calling homosexuals a minority takes away from many of their own legitimate causes, especially in the area of affirmative action programs. Granting special legislation to groups based on behaviour opens the floodgates wide to almost any group that wants minority status. They are as numerous as the mind is creative. For example, some men with beards still experience some discrimination. Why shouldn't they have a Civil Rights Act protecting them?

Merely because some people choose to be homosexuals is no reason for special rights legislation for them. Homosexuals in California generally enjoy the same protection of the law as any other resident of the State. There is almost nothing a California homosexual cannot do, or aspire to do under the law, that any straight can do, or aspire to do.⁶ Homosexual acts between consenting adults were decrimi-

¹ Dr. Daniel Cappon, "Toward An Understanding of Homosexuality," Prentice-Hall, 1965, p. 252; finding of Dr. William H. Masters and Virginia E. Johnson reported in the San Francisco Chronicle, Tuesday, Apr. 17, 1979, "Sex Experts' Study on Gays," page 1 (taken from the N.Y. Times).

² "20 Questions About Homosexuality: A Political Primer," Gay Activists Alliance, 1979, pp. 2, 3. Copy available at Gay Activists Alliance, Inc. P.O. Box 2, Village Station, New York, N.Y. 10014. See Exhibit .

³ Cappon, supra, p. vii.

⁴ The campaign dealt with a "homosexual rights" initiative. The election was held in June, 1980. The people of Davis voted the initiative down by a 2-1 margin.

⁵ "Ethnic' Gays Are the Cities Emerging Political Power" Los Angeles Times, Sunday, Sept. 7, 1980—Part V3 by William Schneider. See also Idaree Westbrook's statement at the Black Leadership Forum, "I maintain that gays are not a minority but a group of young men who can afford the luxury of buying up houses and displacing black people, and I resent it." Westbrook predicts that ten years from now, San Francisco will be "a city of nice professional males and no families or children." Found in "Gays: A Major Force in the Marketplace", Business Week, Sept. 3, 1980, at pp. 118, 120.

⁶ Charles McCabe, San Francisco Chronicle, Friday, Aug. 17, 1979, in his column "Himself" entitled "Sex in the Streets."

nalized in California in 1975. Since no showing of large-scale job and housing discrimination⁷ can be made by homosexuals, there is no compelling reason or need for Congress to try to guarantee public acceptance of homosexual behaviour.

THE ISSUE IS NOT THE RIGHT TO PRIVACY

We have already discussed the fact that California has decriminalized homosexual acts between consenting adults. The fact is that homosexual activists do not want privacy, but do almost anything for media exposure. They are the ones who have taken a private matter and made it into a public one in order to seek a governmental stamp of approval on their chosen lifestyle.⁸

We are often told, "We homosexuals do not look, act, dress, or talk any different in public than anyone else."⁹ If that is true, there would be no problem at all. No one denies that a homosexual can be a competent welder, baker, doctor, or lawyer. Many are and they all seem to filter into the job market. What we find objectionable is their attempt to use the Civil Rights laws to gain societal acceptance of their sexual lifestyle.

RIGHT TO TEACH YOUNG CHILDREN

There is at least one area in which our society may wish to legitimately exclude overtly public homosexuals from employment, namely teaching in grade schools. If homosexuality is a choice, either gradually or decisively made, followed by learned behaviour and if children do learn sexual preference at a young age, as some psychologists and homosexuals claim, then we as a nation have to wonder if exposing our children to the homosexual influence at an early age will "orient" them likewise. Homosexuals should first shoulder the burden of proof of proving conclusively that the overtly homosexual teacher will not influence children's sexual preferences. We are all aware that children are easily influenced and that unless children are taught correctly they are at high risk of assuming behaviour patterns and habits that are contrary to parental and societal norms.

As seen on the C.B.S. documentary, one of the goals of the homosexual community is the favorable teaching of homosexuality in the public schools. Jean O'Leary, co-executive director of the National Gay Task Force proposes for the public schools the following goals:

1. Homosexual guidance counselors;
2. Students will be "encouraged to explore alternative lifestyles," including homosexual behaviour;
3. Text books which do not mention homosexuality, or which refer to it as a disorder should not be used;
4. Books advocating homosexual behaviour in the school libraries; and
5. Clubs should be set up in the schools to foster pride among adolescents who have engaged in homosexual behaviour.¹⁰

Until recently, homosexuals publicly denied that they recruited people or that their educational forums were a form of recruiting. After they lost the election in Davis, California, one of the local lesbian leaders said, "We finally realize that recruitment is the only answer."¹¹ A pro-homosexual study done in Oregon recommends that in public schools where sex education is part of the standard curriculum

⁷ "The Report of Effectiveness" by the Human Rights Commission, 1095 Market Street, Suite 501, S.F., CA. 94103 prepared for the San Francisco Board of Supervisors, 1978, found only 5 instances of housing discrimination that were referred to the District Attorney. There are no known statistics compiled as to whether they were substantiated in court. This is a city of approximately 650,000 people with a homosexual community of approximately 150,000!

⁸ Document 6—"Survey of Psychological and Sociological Literature on Gay People, Social Stigmatization, and Civil Rights Laws" by Doug Wessel, March, 1978, 8 pages. See Sexual Orientation Ordinance: No. 178-78. File copy No. 119-78 with the Clerk of the Board of Supervisors, County and City of San Francisco.

In it, Doug Wessel states, the "aim of civil rights legislation has proven successful both in reducing discrimination and in changing the attitudes of discrimination and potential victims . . ." He further states that "civil rights legislation minimizes discrimination and serves to lessen the social stigma attached to being a member of a minority group." (Emphasis ours).

⁹ "Final Report of the Task Force on Sexual Preference", State of Oregon, Department of Human Resources, Dec. 1, 1978, pp. 11, 12, 19.

¹⁰ (From "Lesbians and the Schools" by Jean O'Leary and Ginny Vida. This article appeared in a publication by the National Organization of Women entitled "Struggle to End Sex Bias in Public Schools," third edition. The above information was taken from a pamphlet published in April 1978 by the Voice of the People, P.O. Box 5320, Eugene, OR 97405).

¹¹ "The Davis Enterprise," Thursday, Oct. 2, 1980, p. 1.

at the seventh grade level or above, that education should include the subject of homosexuality.¹²

THE ADDITION OF HOMOSEXUALITY TO THE CIVIL RIGHTS ACT OF 1964 WILL HAVE A CHILLING EFFECT ON OTHER CIVIL RIGHTS

Presently, in states such as California, the law is "neutral" regarding homosexuality. It does not impose "Christian" moral values regarding homosexuality on homosexuals nor does it impose homosexuality on the private citizens who find homosexual behaviour repugnant and/or deviant. This proposed legislation will adversely affect people's right to associate or not associate freely. The homosexual rights advocates are making statements that some people, notably employers of strong moral convictions, are not citizens entitled to the same rights as others. In other words, if you are an employer, you are forbidden to base your employment consideration of a person on moral guidelines. The government will dictate how you will guide the moral reputation of your employees and firm—all this without any showing that homosexuals are being systematically excluded from our nation's economy or are economically depressed on average.

Homosexuals want to chill people's freedom of speech. In the Santa Clara County Ordinance (a measure passed by the Board of Supervisors but repealed by a public vote, 3-1 against it, in June, 1980) and in the Matt Cole draft ordinance, a copy of which was presented to the Davis City Council, Davis, California in 1974 as a form of proposed ordinance which was rejected the following provision is stated, "It shall be unlawful for any person to make, print, publish or disseminate any notice or statement which indicates that such person engages in or will engage in any practice prohibited by this ordinance."

NEXT AFTER FREE SPEECH

While religious organizations are exempted from the scope of the proposed civil rights act, there still remains a strongly adverse effect on the free exercise of religion. Many "religious" organizations are not churches and may fall under the provisions of H.R. 2074; for example, Christian radio and television stations and networks, religious publishing houses and book stores, religious recording studios and companies, religious music groups, and so on. Many of these do practice discrimination in employment against unrepentant sinners such as practicing homosexuals. To force them to hire a practicing homosexual would be causing them to chose who is Lord: Jesus Christ or the United States Government. It should be noted that the United States Supreme Court has recognized that freedom of religion has a preferred position in the pantheon of Constitutional rights.¹³

¹² Final Report, supra at 9.

¹³ *Murdock v. Pennsylvania*, 319 U.S. 105, 115 (1943). See also pages 8, 9 and 10 of Judge John A. Ertola's Minute Order in *Walker v. First Orthodox Presbyterian Church of S.F.*, San Francisco Superior Court No. 760-028 (Apr. 3, 1980).



California Correctional Officers Association

"Ethical Procedure is the First Step Toward Progress"

510 BERGUT DRIVE, SUITE U / SACRAMENTO, CALIFORNIA 95814 / (916) 447-8565

DECLARATION

I, William Welch, M.D., hereby declare that:

1. I am a member of the California Correctional Officers Association.
2. I am the Chief of medical emergency service at the California Medical Facility, California Department of Corrections.
3. I have served on the staff at CMF for six years.
4. In my position as physician/surgeon, a doctor and an employee at a prison facility, I am directly involved with the health and safety of both inmates and staff.
5. It is my firm opinion that the suitability of hiring overt homosexuals as staff is inappropriate. The reasons for this opinion are as follows:

The California Medical Facility treats sex offenders and among these are overt homosexuals. In my experience, I have observed that overt homosexuals have few inhibitions and little reservation about securing homosexual activities for themselves. Please bear in mind that I am referring to individuals who have been incarcerated due to criminal sexual perversions. I believe the hiring of what amounts to be overt homosexual staff (as persons who are discreet about the matter could not be detected) would be a serious mistake by the appointing power. I would speculate that overt homosexual staff would be more susceptible to inmate solicitations in return for favors than heterosexual (normal) staff. As such, the hiring of overt homosexual staff would constitute an unnecessary security risk. My concern then is that a breach of security would constitute an unnecessary safety risk.

I hereby declare that the foregoing is true and correct to the best of my knowledge.

NAME: William Welch

DATE: 9 October 1980

PETTIT & MA' IN

THE MUNICIPAL COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

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4	KEVIN WALKER,)	
5)	
	Plaintiff,)	
6	vs.)	No. 778930
7	FIRST ORTHODOX PRESBYTERIAN)	
8	CHURCH OF SAN FRANCISCO, a)	
	religious corporation;)	
9	CHARLES A. McILHENNY, Pastor,)	
	First Orthodox Presbyterian)	
10	Church of San Francisco; THE)	
	PRESBYTERY OF THE FIRST)	
11	ORTHODOX PRESBYTERIAN CHURCH,)	
	Northern California region; and)	
12	DOES i-V,)	
)	
13	Defendants.)	

DEPOSITION OF:

KEVIN WALKER

September 12, 1979

Reported by:
LOWELL E. TORNO, CSR

- 1 A. Excuse me?
- 2 Q. You had no involvement in drafting the statute?
- 3 A. No, sir.
- 4 Q. You had no input whatsoever in drafting it?
- 5 A. No, sir.
- 6 Q. What does the phrase "sexual orientation" mean?
- 7 MR. McCRARY: Are you asking for his conclusions about
- 8 that or asking about it in terms of the statute?
- 9 MR. WHITEHEAD: I am asking him to give me the facts
- 10 surrounding that.
- 11 MR. McCRARY: So what it means to him?
- 12 MR. WHITEHEAD: To him, right.
- 13 THE WITNESS: Sexual orientation is simply one's-- Well,
- 14 to be objective, it's just one's object of sexual attractive--
- 15 in other words, what one is attracted to, sexually. That's
- 16 what I would take to mean sexual orientation.
- 17 MR. WHITEHEAD: Q. Does it apply with sex of minors?
- 18 A. Excuse me?
- 19 Q. Does that apply to sex with minors?
- 20 A. If one is attracted to a minor I suppose it could be,
- 21 yes, applied to a minor.
- 22 Q. Could it mean sex with animals?
- 23 A. Excuse me?
- 24 Q. Could it apply to sex with animals?
- 25 A. Sexual orientation could, yes, sir.
- 26 Q. What in that statute, as you read the complaint or
- 27 involved in going through this with your attorneys, what in that
- 28 statute made you think that that statute applied to churches?

1 at all. I believe that. I have sinned just as much as anyone
2 else in this room. And I'm not trying to get out of that.

3 Q. You repented of that sin?

4 A. I would repent of any sins that I have committed. However,
5 I don't believe my feelings and affection towards another man
6 are sinful in nature.

7 Q. That is not what I asked.

8 A. Excuse me.

9 Q. Excuse me. If this ordinance applies to the church would
10 it force the church to end up hiring someone it considers a
11 sinner?

12 Let me make it very clear-- Go ahead.

13 A. I can answer. Yes, if the church holds that to be--
14 homosexuality to be sinful in nature and the law requires that
15 a person applying for such a job be granted that job, provided
16 they are qualified, then I suppose they would be forced to hire
17 someone that they consider to be a sinner. Although, legally--

18 Q. I am just asking you what the church believes.

19 A. The church believes? I'm sorry. I have confused the
20 question you asked.

21 Q. I think you have answered it.

22 The ordinance applies to the employment practices of the
23 church. This ordinance will make the church employ somebody
24 it considers to be a sinner to play the organ.

25 A. It doesn't require them to hire somebody who is a sinner.

26 Q. Again the ordinance we are talking about is talking about
27 sexual orientation, which includes homosexuals.

28 A. I feel they are tying it to be a sinner.

1 Q. Excuse me. I'm not saying that personally. The church,
2 the First Orthodox Presbyterian Church, we have established they
3 consider it a sin? A. Yes.

4 Q. The question: Would that force them if a fellow comes up
5 and said, "I am a practicing homosexual and I want the job
6 here," the statute standing behind him, is that going to make
7 them hire for an organist someone they consider to be a sinner?

8 A. I would gather-- I would gather so, yes. That's the
9 ordinance.

10 Q. Again if this ordinance applies to this particular church
11 we are talking about, that will force them to allow someone to
12 participate in the worship service that they consider to be a
13 sinner?

14 A. There are no people that are without sin and there are
15 many people that are now employed by the church who are sinners.

16 Q. That is not the question. The question is: If this
17 ordinance is standing behind the person applying, he said,
18 "Hey, I'm a homosexual, and I want to be the organist and part
19 of the worship team, worship service," will it not force them
20 to hire this person they consider to be a sinner?

21 A. I would think so.

22 Q. Such a person ends up being in front of the congregation,
23 for anyone who enters the church to see.

24 A. I was. So I would assume.

25 Q. Isn't this publicly displaying what the church considers
26 sin?

27 A. I was not displaying myself when I was an organist. I
28 was serving a job. I had personally little to do except to

1 supply a certain atmosphere during the service for the church.
2 My homosexuality was never an issue until certain people became
3 aware of it. It had no effect whatever on the way I did my job.

4 And actually I suppose not many people knew about it
5 because not many people think about it that much. So, no, the
6 answer to that question, no, I was not displaying myself. And
7 I don't think people that would be hired would be displaying
8 their homosexuality. I believe that sincerely, anybody that
9 takes a job like that would be interested in their job and not
10 furthering their status as a homosexual.

11 Q. This ordinance we are talking about, the sexual orienta-
12 tion ordinance, presents the church here in question and any
13 church with a choice of either disobeying or obeying the
14 ordinance; isn't that true?

15 A. I'm sorry, could you ask that again, please?

16 Q. Does the ordinance in question, basically, present the
17 church with either having to obey the ordinance or not obeying
18 the ordinance as far as employment practices concerning sexual
19 orientation?

20 A. Yes, if it comes to a question.

21 Q. And we have gotten into the area where we have come to a
22 firm conclusion, I believe, that the church in question believes
23 homosexuality to be a sin, and to obey the ordinance, this
24 means the church must condone something they do believe to be
25 a sin; isn't that true?

26 A. That would be true.

27 Q. The fact in this case to obey the ordinance means that
28 the church must violate a fundamental tenet of their religious

1 beliefs; isn't that true?

2 A. I would-- Yes, it's true.

3 Q. Now, the statute sets forth certain liability or penalties
4 if the ordinance is disobeyed; isn't that correct?

5 A. I'm not-- Yes. That is correct. I don't know
6 specifically what those are.

7 Q. Let me read them to you right here.

8 A. That's fine.

9 MR. McCARY: Why don't you put the ordinance in front of
10 you.

11 THE WITNESS: You are beginning at the beginning of the
12 ordinance?

13 MR. WHITEHEAD: Q. Section 3306 which is back a little
14 farther. Section 3306, if you have it in front of you, I will
15 read it to you. A. Yes.

16 Q. "Any person who violates any of the provisions of this
17 article or aids in the violation of any provision of this
18 article shall be liable for and the court must award to the
19 individual whose rights are violated special and general
20 damages and may pay in addition thereto not less than \$200 but
21 not more than \$400 together with attorneys' fees and costs of
22 the action."

23 Now, in your complaint you have asked for the statutory
24 penalty of \$400 for general, special damages, and for punitive
25 damages and attorney fees and costs; is that not true?

26 A. Yes.

27 Q. So that if the church in question or any other defendants
28 have violated the statute they could be liable for these

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

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ENDORSED
FILED
San Francisco County Superior Court
APR - 3 1980

KEVIN WALKER,
Plaintiff,

vs.

FIRST ORTHODOX PRESBYTERIAN
CHURCH OF SAN FRANCISCO, a
religious corporation, et al.,

Defendants.

CARL M. OLSEN, Clerk
BY MARTIN P. ANTONI
DEPUTY CLERK

No. 760-028

MINUTE ORDER

AND CROSS-ACTION.

I.

The issue presented by this motion is whether the defendants' have raised an affirmative defense which is a complete bar to plaintiff's suit, and thus, whether defendants are entitled to summary judgment in their favor. (Frazier, Dame, Doherty, Parrish & Hanawalt v. Boccardo, Blum, Lull, Niland, Teerlink & Bell (1977) 70 Cal.App.3d 331.) Defendants claim by way of an affirmative defense that this suit is barred by the Free Exercise Clause of the First Amendment of the United States Constitution, made applicable to the states by the Fourteenth Amendment, and similar provisions of the California Constitution. The court grants defendants' motion for summary judgment solely on this

1 Thus, the City and County's interest in protecting gays
2 against discrimination and providing remedy for it is to
3 prevent "strife and unrest" and to fully utilize the City
4 and County's "capacities for development and advancement."
5 This must be balanced against defendants' free exercise
6 of religion rights.

7 This balancing process is extremely difficult for
8 a court to do without seeming to place the judge's personal
9 value judgments on the scale. However, the United States
10 Supreme Court has recognized that freedom of religion has
11 a preferred position in the pantheon of constitutional
12 rights. Murdock v. Pennsylvania 319 U.S. 105, 115 (1943).
13 The United States Supreme Court has made it clear that the
14 state's burden of proof is onerous. "It is basic that
15 no showing merely of a relationship to some colorable
16 state interest would suffice; in this highly sensitive
17 constitutional area, only the gravest abuses [of religious
18 freedom], endangering paramount interests, give occasion
19 for permissible limitation" of religious freedom. Sherbert v.
20 Verner 374 U.S. 398, 406 (1963) (Emphasis added.) Cases
21 where the Supreme Court has allowed governmental interference
22 with religious beliefs are those involving life and death
23 decisions. See, e.g., Jacobson v. Massachusetts 197 U.S. 11
24 (1905) (compulsory vaccination upheld); Jehovah's Witnesses
25 v. King County Hospital 390 U.S. 598 (1968) (per curiam),
26 affirming 278 F. Supp. 488 (W. D. Wash. 1967) (three-judge
27 court) (blood transfusion to save child's life against parents'
28 protest upheld).

1 The court's balancing process in Wisconsin v. Yoder
2 406 U.S. 205 (1972) offers guidance to this court in the
3 present case. In Yoder, the Supreme Court recognized that
4 the parents' interest in assuring their children were raised
5 and educated according to the tenets of their faith out-
6 weighed the "strong" state interest in compulsory education.
7 Similarly, although the objective of the City and County of
8 San Francisco in enacting an anti-discrimination ordinance
9 is salutary, applying the ordinance to these defendants
10 infringes too greatly on their First Amendment rights.
11 These defendants are, therefore, exempt from any liability
12 imposed by Section 3303 and 3306 of the San Francisco Police
13 Code.⁴

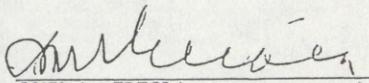
14 The framers of the United States Constitution and the
15 Bill of Rights wrote the Free Exercise Clause to protect
16 religious beliefs that may not be followed by the majority,
17 to allow every person to obey his own conscience without
18 interference from the government. Freedom of religion is so
19 fundamental to American history that it must be preserved
20 even at the expense of other rights which have become
21 institutionalized by the democratic process. Whenever a
22 court is asked to balance the right of one individual
23 against a conflicting right of another, it is a serious and
24

25 The parties have not addressed another possible
26 exemption. Section 3303(c)(2) states, "Nothing in this
27 section shall be construed to apply to employment by any
28 business which employs five or fewer employees including
the owner and any management and supervisory employees."

1 difficult task. The United States Constitution and the
2 cases interpreting it make that less difficult in this
3 case.

4 Defendants' motion for summary judgment is granted.
5 Defendant shall prepare a form of judgment.

6 DATED: April 3, 1980.

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10 _____
11 JOHN A. ERTOLA
12 Judge of the Superior Court
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A New Big Push for Homosexuals' Rights

No longer content to be a silent minority, America's homosexuals want equality—and are bringing many changes across the U.S.

When citizens in San Jose, Calif., organized to repeal a law that banned discrimination based on sexual orientation, homosexual groups quickly raised \$250,000 to fight the June vote.

In the wake of protests by homosexuals against the movie "Cruising"—which depicts a sordid and violent homosexual world—a number of theaters turned the film down.

In Key West, Boulder and Minneapolis-St. Paul, gay vigilante groups patrol streets and parks to curb antigay violence in homosexual trysting areas.

Such actions and others in recent weeks show convincingly that America's homosexual minority is in an all-out drive for full and open equality.

Behind the headlines, gay individuals are making quiet gains in key areas of national life.

Surprising inroads. Although homosexuals are regarded with suspicion, if not outright hostility, in many areas, the homosexual-rights movement has sparked subtle changes in the nation's social makeup—from politics to the marketplace—that few would have thought possible a decade ago.

"The battle isn't won yet, but we have demonstrated that we are a major constituency with legitimate demands," says Charles Brydon, co-director of the National Gay Task Force, a homosexual-rights group. "The straight world simply can't ignore us now."

In seeking parity, however, homosexuals must overcome prejudice against sexual practices that most Americans still consider biologically or psychologically abnormal or immoral. Most sensitive is the issue of whether homosexuals are a threat to children—a charge that gay leaders firmly deny.

Although open advocacy of homosexual interests is carried out by only a small number of the nation's estimated 20 million lesbians and gay men, evidence of rising public tolerance of homosexuality is growing.

A young female bank executive in Los Angeles notes that people are considered "square" today if they're not tolerant of unorthodox sexual prefer-

ences. She asserts: "Homosexuality is so widespread that if you go to a party of 50 people, you would suspect that at least 10 are bisexual or gay. An attorney may look straight and you have a date with him. Then you find out that he swings on the side—that he's a 'bi.'"

The most clear-cut advances have come in big-city politics, where office seekers court homosexual support and elections have been decided by blocs of gay voters. Moreover, gay activists make no secret of their aim to influence this year's presidential campaigns.

Homosexuals have begun to show an economic power that may even be greater than that of either the black or Hispanic communities. Gay-oriented periodicals, churches, businesses and professional services have proliferated in dozens of communities, and gay organizations are cropping up on many college campuses.

Urban gains. Onetime slum neighborhoods in Boston, Philadelphia, Baltimore, Chicago, St. Louis, Houston and Los Angeles have been colonized and restored by homosexual investors.

Entertainment featuring homosexual characters has moved from small clubs to Broadway plays and movies. Homosexual roles are now commonplace on prime-time television, and an all-gay situation comedy is being prepared for the fall TV season.

The increased visibility of homosexual men and women has largely occurred since the "gay power" movement began in 1969, when New York City police raided a bar on Christopher Street, a gay area in Manhattan's Greenwich Village. Since then, both peaceful and militant demonstrations have been held in cities from Washington to San Francisco. The rallying cry "We are everywhere!" has signaled to the heterosexual world that gay individuals cut



Vigilantes of San Francisco's Community United Against Violence patrol streets to stop assaults on homosexuals.

across every socioeconomic, racial and occupational line.

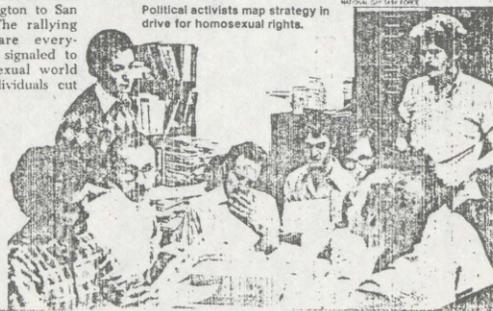
"Gay people themselves are responsible for the way in which society regards homosexuals," says Peter C. Frisch, publisher of the *Advocate*, a bi-monthly gay newsmagazine in San Mateo, Calif. "We have allowed the myths and stereotypes to go unchallenged for centuries. Now we are using our economic and political power to play the establishment games, to show that in most ways we are no different than anyone else."

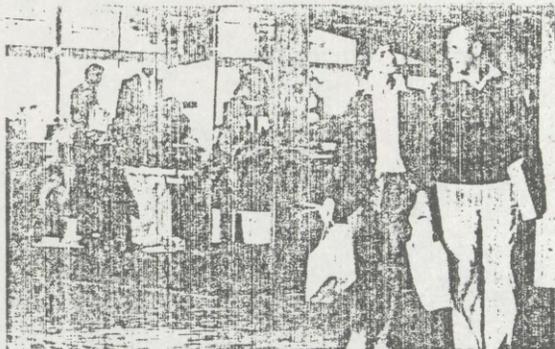
Such intentions arouse vehement opposition, especially from religious and conservative political groups.

"Nothing gets our members more riled up than gay-rights issues," says Gary Jarmin, a leader of Christian Voice, a coalition of 40 denominations with a membership of 180,000. "We consider homosexuality a threat to the nation's moral environment."

Jarmin believes that increased mili-

Political activists map strategy in drive for homosexual rights.





High income of gay households—roughly 50 percent above national average—has resulted in increased marketing and advertising directed at homosexual consumers.

tancy among gay-rights advocates has alarmed citizens to the "dangers of letting avowed homosexuals into schools, churches and policymaking roles." He claims that gay-rights initiatives have been slowed considerably since singer Anita Bryant's nationwide anti-homosexual campaign in 1977.

Behind the antagonism is confusion about the medical and psychological aspects of homosexuality. Alfred C. Kinsey, founder of the Institute of Sex

Research, defined a homosexual as anyone who, as an adult, has had more than six sexual experiences with a member of the same sex. That definition, says Dr. John Money, a professor at the Johns Hopkins Medical School and chief of the school's gender-identity clinic, means homosexuals are far more numerous than the public may realize—encompassing 13 percent of males and 7 percent of females.

"Only a tiny fraction of gays have ac-

tually come out of the closet," Dr. Money asserts. "The rest are known only to a few trusted friends or are living bisexual lives, with all the trappings of heterosexuality."

In 1974, the American Psychiatric Association removed homosexuality from its list of mental illnesses, specifying instead a "sexual-orientation disorder" that referred only to those who were unhappy with their same-sex orientation. Last year, the U.S. surgeon general declared that homosexuality by itself would no longer be considered a "mental disease or defect."

Such evolving medical views—though not yet shared by most physicians—have removed some of the stigma that mainstream America attaches to being "queer" or "perverted."

One result of that trend is a wave of legal protections that forbid discrimination against homosexuals in employment and housing. Thirty-six municipalities and seven counties, as well as California and Pennsylvania, have implemented such measures. Moreover, 36 states have repealed sodomy statutes that police traditionally have enforced only against homosexuals.

Now, the gay community is mobiliz-

ing to have specific civil-rights laws enacted. Among top priorities:

- A presidential order prohibiting discrimination on the basis of sexual preference in federal jobs and contracts. Current rules forbid such practices but exempt the Federal Bureau of Investigation, the Central Intelligence Agency and the State Department.

- Congressional passage of the lesbian-gay civil-rights bill that would amend the 1964 Civil Rights Act to include homosexuals.

- Removal of the restriction that keeps declared homosexuals from entering the U.S. from foreign countries.

Political power. A major effort is being made to get gay-rights planks adopted in the Republican and Democratic platforms this year. Mary Spottswood Poon, a co-director of the National Convention Project, says \$100,000 is being raised to help elect gay delegates to the conventions.

The rise of gay political coalitions in several major cities is forcing this year's presidential candidates to heed their message, says David Mixner, a gay political adviser and fund-raiser for California Governor Jerry Brown.

"Gays have become one of the most

powerful political groups in the Los Angeles and San Francisco areas," says Mixner. "The big reason is money. Gay political groups have amassed huge election funds, and they target their contributions very effectively."

In California, the results have been impressive. The gay-oriented Municipal Election Committee in Los Angeles raised \$200,000 for local candidates in the last three years, and a recent \$150-a-plate dinner attended by dozens of key politicians brought in \$120,000 for a new gay community center.

Gays on force. San Francisco has elected openly gay persons to the city commission, and the city police force is the nation's first to train gay recruits.

Also significant is the degree to which the gay subculture has made inroads into the nation's economy. Example: A marketing survey taken in 1977 found that the income of the average gay household of 1.4 persons was \$23,600, about 50 percent above the national average. Seventy percent are college graduates, 97 percent are employed, and 84 percent are regular voters. Another study concluded that gays may control as much as 19 percent of the spendable income in America.

"Gay men have more discretionary income because they seldom have family obligations," says Donald N. Embinder, chairman of Blueboy, Inc., a major gay publishing company in Florida. "They tend to be entrepreneurs, they devote more time to their work, and they skew purchases toward personal luxury items."

Embinder notes that several major corporations, including Adolph Coors Company, Budget Rent A Car and Casablanca Records, have begun advertising in gay periodicals. He expects more ads in the near future from financial institutions, tobacco companies, travel agencies, the liquor industry, home-electronics firms and fashion houses.

Although gay leaders are encouraged by recent advances, few expect total public acceptance soon.

Concludes Raymond W. Hartman, head of the American Bar Association's Committee on Rights of Gay People:

"We just want the same opportunities that heterosexuals have to pursue careers and lifestyles openly and without prejudice. Nobody expects that to be an easy process, but the advances so far have been greater than anyone thought possible 10 years ago." □

Gays: A major force in the marketplace

From Castro Street in San Francisco to Christopher Street in New York City, hundreds of thousands of homosexuals held Gay Freedom Day marches in June to mark the 10th anniversary of a police raid on a gay bar in New York, an event generally regarded as having sparked gay activism in the U. S. In that decade, gays have won impressive social and political victories: Forty cities have passed ordinances banning job discrimination against homosexuals, professed gays have been elected city supervisors and state legislators, and gays have been appointed to high government positions.

With less fanfare, gays have also begun an equally important demonstration of economic power. Gay enterprise is no longer associated only with boutiques in gay communities. Homosexuals have established dozens of chambers of commerce and other business and professional organizations to further one another's economic interests, which run the gamut from auto repair shops to tax consultancies. In the process, gays have gained the attention of marketers in such mainstream corporations as Adolph Coors Co., Chartered Bank of London, and Hertz Corp.

"Ten years ago we were willing to be invisible," says David B. Goodstein, president of Liberation Publications Inc., of San Mateo, Calif., which produces a bimonthly gay newsmagazine, *The Advocate*. According to sex researcher Alfred Kinsey, homosexuals are more numerous than the public may realize. Defining a homosexual as a person who has had more than six adult homosexual experiences, Kinsey estimated that 10% of the population, or more than 20 million Americans, are gay. "We're everywhere, and we're the most affluent of any minority," says Peter G. Frisch, publisher of *The Advocate*.

Survey figures. Demographic studies appear to support him. Commissioned by *The Advocate* to survey 73,000 readers in 1977, a straight Los Angeles market-research company, Walker & Struman Research Inc., found that income for the average gay household of 1.4 persons is \$23,600, about 50% above the national average; that 79% of the readers use commercial airlines an average of nearly four trips a year; that more than 80% own at least one car; and that 80% order drinks by brand names. Seventy percent are college graduates, 97% are employed, and 84% are regular voters—about double the national average.

Kenneth D. Struman, an owner of the



Tour agent Ebensten: His first travel ads were rejected, and "people were appalled."

research company, acknowledges that "minorities have a vested interest in boosting their status," but insists that the data were carefully checked to make sure they were representative. "Gay discretionary spending power is incredible," he says. Projections from another Los Angeles-based study suggest that gays control 19% of spendable income in the U. S. "It is becoming more apparent to the straight community that there is a lot of buying power among gays," says George Terzian, a lawyer who heads the gay Greater Gotham Business Council in New York City.

Operating on this assumption, an increasing number of name-brand companies have begun to promote their goods and services in *The Advocate* and other gay journals. A vice-president of Transamerica Corp.'s Budget Rent a Car subsidiary notes that his company had some reservations about advertising in *The Advocate* because of the personal ads in the magazine's midsection. The company decided to take the plunge, he says, because "for very little money we reach a potentially large audience that travels a lot, has high disposable income, and likely feels more loyalty to the advertiser." Fidelity Savings & Loan Assn. in San Francisco, whose \$1.9 billion in assets places it among the top

15 S&Ls in California, funded the printing this spring of the gay Golden Gate Business Assn. (GGBA) buyers' guide and has placed ads in *The Advocate*. So have State S&L Hibernia Bank, and several other financial institutions.

'Business sense.' Few executives want to be quoted by name about such ads for fear of alienating straight customers. But one S&L branch manager in San Francisco remarks that, with 100,000 or more gays in the city, "it would be foolish not to go after the market. We had to advertise—it's just good business sense."

While many advertisers are enthusiastic about the demographics of the gay community, they are also apprehensive. That would certainly describe Coors, which ran informational ads in *The Advocate* and five other gay publications to combat rumors that the Golden (Colo.)-based beer company had given \$1 million to singer Anita Bryant's campaign against gays in Florida. The ads were "an attempt to set the record straight," says Senior Vice President Peter H. Coors, who says he is unaware that Coors has also placed a full-page ad for Coors Light Beer in *The Advocate*. The Bryant ads, Coors says, caused some straight backlash. "It's a no-win issue," he says. "We were labeled incorrectly as anti-gay, then we were labeled incorrectly as pro-gay. We would prefer it if the whole issue would go away."

Other companies, such as Levi Strauss & Co., of San Francisco, say they have not advertised to gays because they do not target ads to any specific minority. But Levi's corporate marketing services director, John P. Wyek, contends that the gay market is almost as large as the black community and larger than the Hispanic. He says that his company monitors the gay community for clues to fashion trends the way it monitors young urban blacks—to spot fashion trends that may move into the majority community.

Clothes market. "It has long been recognized in our industry that the gay community is a substantial market for fashion-oriented clothes," says Wyek. Gays reportedly spend an average of \$500 each per year on clothes, and Wyek points out that Levi's original shrink-to-fit, button-fly denim jeans are "a staple product with the gay community." Other marketers note the pacesetter role

gays have played in popularizing running shoes and painters' trousers as casual attire, and in sparking disco mania.

Indeed, record companies have welcomed gay executives in part because of their familiarity with music trends. Marc Paul Simon, a homosexual who is soon to become president of a new subsidiary, EarMarc Records, is vice-president of special projects for Casablanca Records & Film Works in Los Angeles, a company with more than \$100 million in annual revenues. Raymond F. Caviano, executive director of the Disco Dept. of Warner Bros. Records & Tapes Inc. and president of its subsidiary, RFC Records, recently discussed being gay and its relation to the disco industry in *The Advocate*.

Other companies say that the affinity of homosexuals for artistic pursuits gives them special value in certain jobs.

other gays eager to become senior managers not to volunteer the information. "In business, it is not advisable to come out for controversial causes, whether they be atheism, the Ku Klux Klan, or homosexuality," he says.

Gay images. Most professed homosexuals do not try to establish a gay image in business because, in the words of San Francisco stockbroker Thomas F. White, "I felt it was not relevant." Says Martin M. Topliff, a homosexual who runs a data processing service bureau in San Francisco: "The larger your company gets, the more difficult it is to retain a gay profile. You have to hire the best people and can't afford to discriminate. It's not good economics."

But substantial numbers of gay entrepreneurs who perceive that their main market lies among fellow homosexuals do not agree. The directories of gay business associations in cities such as New York and San Francisco list hundreds of members and services ranging from chiropractors and contractors to typewriters and travel agencies.

Although many of these businesses may not be new, their openly gay orientation is. The new availability of advertising media, both gay and straight, has aided many such transitions. Eight years ago, when Hanns Ebensten, a former vice-president of New York-based Lindblad Travel Inc., started his travel business offering tours for men, he recalls that "people were appalled," and straight publications rejected his ads. Since then gay publications have proliferated, and straight publications, like straight society, have changed their attitudes. Now gay ads run in both straight publications and gay media, and Ebensten counts 20,000 names of gays in his card file. He figures that gay tours to everywhere from the Grand Canyon to Machu Picchu, Peru, provide

25% of his \$1.5 million annual gross. Ebensten is one of many gay entrepreneurs. "Gays are the epitome of capitalism," says Steven H. Shiffett, president of Houston's Gay Political Caucus and a member of Houston's gay executive and professional association. As evidence, Shiffett cites gays' representation across the spectrum of business, with special emphasis on real estate. "We're usually

been in the vanguard of turning around rundown neighborhoods," agrees San Francisco Realtor Robert T. Tackes whose gay-oriented company has 6 agents and three offices.

Neighborhoods. As gays have displaced other groups in various neighborhoods they have caused friction. San Francisco's Western Addition area, a target for urban renewal, is a prime example according to Wilbur W. Hamilton, executive director of the city's redevelopment agency. In the Western Addition, gay have been identified with "gentrification," the return of the white middle class to the inner city, Hamilton says. This has provoked a black backlash.

"I maintain that gays are not a minority but a group of young men who can afford the luxury of buying up houses and displacing black people, and I resent it," says Idaree Westbrook, a board member of the city's Black Leadership Forum. "The system belongs to them. They do fix up homes beautifully, and that's all the lending institutions care about." Westbrook predicts that, 1 year from now, San Francisco will be

Gays often take a hand in turning around rundown neighborhoods

city of nice professional males and a families or children."

Westbrook rejects gays' claims that they are an oppressed minority, but that courts have delivered several legal victories that support that status. In May the California Supreme Court ruled that privately owned utilities cannot arbitrarily discriminate against homosexuals. And last month a federal court judge ruled in Washington, D.C., that the Gay Activists Alliance has as much right to advertise on Washington-area buses as religious groups, opponents of abortion, and Communist Party candidates.

Gays were less successful with boycotts against Coors beer and Florida orange juice (attacked because Bryant's its advertising symbol). But Charles F. Brydon, an executive director of the National Gay Task Force in New York attributes these results to false information and a lack of unanimity on the issues in the gay community rather than to weakness. Here, he says, is a more meaningful fact: In a recent poll of major corporations, 120 of them state that they do not discriminate on the basis of sexual preference. The number five years ago was eight, he notes.

And Kim R. Cortright, executive secretary of San Francisco's goal reports a symbol of what may be the most important economic development of all for the gay community. Increasingly, he says, companies are requesting the group's mailing list.



On San Francisco's Castro Street: Gay business directories list hundreds of entrepreneurs.

The gay executive vice-president of one of the top 200 U.S. companies believes that his "subjective, sensitive side and interest in art, color, and consumers" were important factors in persuading his corporation, a New York-based consumer-products company, to promote him to its third-ranking executive position.

Although this executive does not deny his homosexuality if asked, he advises

Lesbians invite city to celebrate

Davis City Council members — well, most Davis City Council members — were invited Wednesday to celebrate National Lesbian Day in Davis next week.

A group representing the Women's Alliance for Change and "various and sundry lesbians" appeared in City Hall during Wednesday's council meeting to invite the council to festivities and distribute "Aunt Eleanor Wants You" buttons.

Councilman Jim Stevens, an outspoken foe of gay rights in the recent city June initiative vote, did not get a button.

He charged "discrimination."

Kathy McDevitt said that the group would celebrate Eleanor Roosevelt's birthday Oct. 11.

She told the council, as a group of about 10 women and a few men stood with her, that it is fortunate that National Lesbian Day coincides with

National Sex Education Week.

"We finally realize that recruitment is the only answer," said McDevitt, who said numbers of lesbians had waned since the city 2-to-1 vote against the gay rights initiative.

She said lesbians' goals "must be to recruit more lesbians."

The group distributed fliers that read "Aunt Eleanor Wants You! to celebrate National Lesbian Day in Davis."

It was billed as "two rollicking days for her birthday." Friday, Oct. 10, "look for recruiting tables on the quad, 11 a.m. to 1 p.m."

On Saturday there will be a picnic with "Amazon games" at Putah Creek Lodge from noon to 3 p.m., including softball and waterballoon fights.

There will be a dance at Putah Creek Lodge later that night.

U.S. to Reconsider Gay Visitors Issue

Washington

Top Justice Department officials met with representatives of gay organizations yesterday and agreed to reconsider whether the Immigration and Naturalization Service has authority to stop suspected homosexuals from entering the country.

Associate Attorney General John Shenfield ordered department legal counsel John M. Harmon to review a law banning homosexuals from the U.S. after meeting with members of Gay Rights Advocates of San Francisco and the National Gay Rights Task Force.

Donald Knutson of Gay Rights Advocates and Charles Brydon, co-director of the task force, said later that they were "optimistic" the department would reverse itself a second time and conclude that the controversial law is, after all, unenforceable.

The 27-year-old law requires the INS to bar anyone that Public Health Service physicians determine to be homosexual.

But last August, the department said it would no longer use homosexuality as a reason for denying entry into the United States. The policy was dropped after U.S. Surgeon General Julius B. Richmond said the Public Health Service no longer considered homosexuality a "mental disease or defect."

However, last month Harmon told INS officials that they must enforce the ban on homosexuals entering the country until Congress changes the law.

Chronicle Washington Bureau

Gay Ousted By Army Faces Murder Trial

Seattle

A 21-year-old man discharged by the Army for being a homosexual was charged with first-degree murder yesterday in the shooting death of the man he lived with, officials said.

Diane Rabin of the King County prosecutors office said Roger Cutsinger was charged in the December 14 shooting of Larry D. Duerksen, 29, an employee of the University of Washington library.

Cutsinger is in custody and will be arraigned tomorrow. Bail was set at \$250,000.

Seattle police said Cutsinger and Duerksen shared an apartment near the university. Cutsinger was arrested Friday.

His battle with the Army drew national attention when he tried to remain in the service after acknowledging his homosexuality. Many of his superiors and fellow officers testified that he was a competent soldier.

The Army contends homosexuality is "incompatible" with military service. Cutsinger received an honorable discharge in early No-

★ ★ Times, Jan. 1, 1980



UP Telephoto

ROGER CUTSINGER
Former Army private

ember, 10 months before his three-year enlistment would have ended.

At the time of his discharge, he was a clerk in the Ninth Adjutant General Company at Fort Lewis, Wash.

After the discharge, Cutsinger said he would sue the Army for \$3 million to \$5 million for alleged discrimination.

Associated Press

Page 14—S.F. EXAMINER ★ Tues., Jan. 15, 1980

Many 'new' venereal diseases

WASHINGTON (UPI) — A venereal disease specialist reports researchers have identified at least 20 different disease agents that can be transmitted by sexual contact, posing a major public health problem for the 1980s.

Dr. King Holmes said the "new generation" of diseases probably has existed since antiquity but is being recognized now because of improved laboratory and investigation techniques and, apparently, because of recent changes in sexual behavior.

Holmes also said there is a growing awareness of the consequences of some of these sexually-transmitted infections to the health of pregnant women and to their offspring.

He said the disease-carrying agents now known to be transmitted by sexual contact include nine bacteria,

five viruses, three protozoa, one fungus and two parasites. They can cause a variety of diseases.

Holmes, of the University of Washington and head of infectious diseases section of the Public Health Service Hospital in Seattle, told a meeting yesterday sponsored by the National Institute of Allergy and Infectious Diseases that some of these newly recognized diseases are increasing faster than such classic venereal diseases as gonorrhea and syphilis.

And he said that because of a growing number of young adults, declining marriage rates and earlier and increasing sexual activity, the United States can expect a continued epidemic of sexually-transmitted diseases in the 1980s.

He said the rate of sexually-trans-

mitted diseases in the United States increased dramatically during the last two decades. There were 10 million such cases in 1975, it was reported in government figures.

Holmes said diseases spread by sexual activity are most common in the 19- to 24-year-old age group. He said peak fertility rates occurred in the late 1950s and early 1960s, which means, according to the Bureau of Census, that the number of young adults will peak at 29.5 million in the United States in 1981.

Research has shown that married people have fewer sexually transmitted infections, and Holmes said the proportion of young adults who are married is expected to continue to decline through the 1980s.

In addition, Holmes said, young Americans are engaging in premarital sex at earlier ages.

"Not only has the percentage of teenagers who have had intercourse increased, but the proportion who have had more than one premarital partner has also increased," he said.

Gay Marriages Ruled Invalid

Los Angeles
A federal judge, acting in a case in which two men claimed to be legally married, ruled yesterday same-sex marriages are invalid.

One of the men affected, Anthony Sullivan, said a ruling denies homosexuals due process and equal protection of the law, and that the ruling probably should be appealed.

"The word 'spouse' means a relationship between a man and a woman," said U.S. District Judge Irving

Sullivan, from Australia, and Richard Adams got a marriage license and were married in Boulder, Colo., in 1975 and later sought permanent immigrant status for Sullivan as the spouse of a citizen.

Meantime, the marriage was declared invalid by a Colorado attorney general's office, which said the county clerk had erred in issuing the license.

Sullivan and Adams had moved to Hollywood, and in late 1975 Sullivan received a letter from the Immigration and Naturalization Service denying him permanent immigrant status.

"You have failed to establish a bona fide marital relationship can exist between faggots," the letter said.

The INS later said it would withdraw the letter because of the offending language, but continued to hold the position that no marriage existed and that Sullivan had to leave the country.

After yesterday's ruling, Sullivan said homosexuals who wish to marry are not getting the benefit of the law.

Gay Will Fight to Gain Citizenship

By John Fogarty
Chronicle Washington Bureau

Washington

A federal judge in Virginia has ruled that homosexuality is sufficient grounds for denying U.S. citizenship, thereby setting the stage for an important legal test of gay rights. U.S. District Judge Oren R. Lewis handed down the decision Tuesday, denying the naturalization request of Horst Nemetz, 40, a hairdresser in Springfield, Va. Nemetz, a German, has been living in the United States as a resident alien since 1967.

In a three-page opinion, Lewis described homosexuality as "licentious living" that is "likely to lead to moral decay." He said Nemetz had "failed to establish that he has been for the past five years a person of good moral character" because he refused to answer questions about his sexual conduct.

Officials of the U.S. Immigration and Naturalization Service have used homosexuality as ground for denying aliens entry into the country, but it is not specifically listed in either INS regulations or federal law as a bar to citizenship.

Nemetz' lawyer, Richard Murray, said the case will be appealed.

He noted that federal courts in other states, including New York, Oregon and California, have granted citizenship to known homosexuals.

When applying for U.S. citi-

zenship, an individual must prove that he is of "good moral character."

Nemetz' problems started when, in a routine background check, federal investigators were informed that he is a homosexual.

Murray said his client acknowledged that and was not questioned further about the matter. But INS officials concluded that as a homosexual Nemetz had violated Virginia's stringent sodomy law, was not of good moral character and should not be granted citizenship.

Nemetz appealed to U.S. District Court, and Lewis, part of a three-judge panel that upheld Virginia's sodomy law in 1975, ruled in favor of the INS.

Although it is on the books, the controversial law is seldom enforced, and Murray stressed yesterday that Nemetz has not been charged with violating it.

"The issue is whether private sexual acts between consenting adults has anything to do with the laws governing citizenship."

Charles Brydon, co-chairman of the National Gay Rights Task Force, said in an interview from New York that he knows of only one other case when an individual has been denied citizenship because of homosexuality. That case, involving a Texas man, is also being appealed.

The diseases can be transmitted either from food infected by hands or by oral sexual contact with an infected person.

Although both sexes are equally susceptible, the health department reported the incidence of the diseases was eight to ten times greater in males between the ages of 20 to 40 than in the rest of the population. Dritz said there hasn't been a hepatitis outbreak from contaminated restaurant food here since last May.

Sharp Increase in Hepatitis And Dysentery in S.F.

Dr. Selma Dritz, assistant director of the Bureau of Disease Control, said the department had received reports of 744 cases of hepatitis up to mid-November, 1973. The average number of cases for the past three years was 400 to 500 a year.

She said by mid-November of this year 220 cases of amebic dysentery were reported. The average case load the past three years was about 100 annually.

Dr. Selma Dritz, assistant director of the Bureau of Disease Control, said the department had received reports of 744 cases of hepatitis up to mid-November, 1973. The average number of cases for the past three years was 400 to 500 a year.

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Associated Press

Gay Migration Into Black Neighborhoods



gh rent and gays, Alice Ellison prepared to leave her flat near the Panhandle for a \$260 house in Oakland

on lower Haight Street, a housing conflict between gay and black tenants is being drawn. Gay real estate agents are purging blocks of resentful black tenants from the street.

It's happening all over the city. In addition, wherever there are gay tenants, the neighborhood blacks after they migrated there are in demand again, and they are sold out from under them.

As prices and suburban costs rise, whites are flocking to inner city neighborhoods. Very few more houses are being built, and many white homeowners are selling. Gay, which renovate, repair and sell. Prices have risen in ten years.

The Heights flows downhill. Whites start new paint on their old houses. Gay, however, stays in the old houses and in the Heights. They are in a constant state of flux. They are not moving out of the city.

Some planners and black leaders estimate that the black population of the two-mile-square Western Addition has already been cut from 64 percent of the total to 33 percent. They also estimate that 70 percent of the remaining blacks live in the housing projects in the flats of Hayes Valley, near City Hall. Soon, some predict, only this permanent underclass will be left.

In their place, white families will come, following on the heels of the gay pioneers, say the planners. Some day, speculators hope, lower Haight Street, the decayed commercial spine of what was once a black area, will be lined with espresso shops, bars, delis and bakeries, adding a flair to a bleached-out street.

Whites have always owned most of the Western Addition. But the new landlords are renovators, not slumlords, and improvements mean higher rents and evictions.

Although the streets are still black turf, the trump cards are building titles.

In one building at Haight and Fillmore, three-quarters of the elderly black tenants have been forced out by rising rents since

See page 9-1-79

1976. Their places have been taken by young gays, most of them white. On another corner, a black-owned liquor store, church, sandwich shop and heroin-dealing "social club" are gone. One gay business, a florist, has dared replace them.

Ten blocks away, on Broderick Street, a white, well-paid pharmacist specializing in nuclear medicine lives with his wife and daughter in a former rooming house, now restored as a six-room mansion. Bought, already restored, in 1977 for \$53,000, it is now worth more than \$120,000.

On Fell Street, a real estate partnership bought the \$70-a-month Casa Loma residential hotel last year. It is now a \$70-a-week hotel for gay tourists.

"I just can't afford it here," said Alice Ellison, 24, as she prepared to move, without regrets, from a \$425 flat near the Panhandle to a \$260 house in Oakland with a yard for her children. "And I want to get my son away from the gays."

On Fillmore Street, another woman, a young black telephone operator, is being pushed out by her building's new owners. She cannot afford to pay the price of this urban renaissance in a neighborhood she once thought of as hers.

She is searching for another place within walking distance of her job with an answering service. She supports three children on \$1000 a month and shares a one-bedroom apartment with them.

Six months ago, she was ousted from a larger apartment in the neighborhood when new gay landlords raised the rent from \$225 to \$360 and replaced the outgoing blacks with gay tenants.

"Where can we go?" she burst angrily. "We can't go to the Mission, it's happening there, too. Gays are pushing us out of the neighborhood and out of San Francisco. If this keeps up, I'm going to have to move to Oakland, and with commute costs that'll mean a definite cut in income — if BART'll get me to work at all."

Blacks once dreamed the American dream of a house in the suburbs in integrated communities. Now they are being pushed there.

"For a long time, blacks saw cities as a hole in the doughnut and the suburbs as the doughnut," said Will Ussery, a black Western Addition resident who is a BART director and a planner for HUD.

"But the suburbs aren't the same as they were 15 years ago. Suburbs are the next ring of decay. Those who originally fled to the suburbs thought they could take all the power, the jobs and the money from the cities with them. But it didn't work out that way, and now

ites want the cities back."

"The gay community has taken the houses of one black family after another," shouted Idaree Westbrook, 53, a black educational consultant, at a recent community meeting between blacks and gays.

"You've taken the Haight-Ashbury, don't deny it, and now you're moving in on the Western Addition," she said.

"I resent a pair of single white men who can earn more and spend \$400 a month each for rent, where a young black couple with a child — even a young white couple — can't afford that," she added later. Five black families now remain on her formerly mostly black stretch of Clayton in the Haight-Ashbury, and gays have taken their places.

Recently, her grandson was "horrified" by two gay men kissing on the street. "How will this permissiveness affect future generations of black kids?" she asked. "I don't think seeing a prostitute is nearly as bad as seeing two males kissing. There's a normality to (prostitution) in the black community that kids learn to understand."

The new gay tenants take the brunt of neighborhood anger, while gay and straight speculators make thousands of dollars.

Burglaries and street crime plague black families and gay tenants alike. Gays pay gay ghetto rents for black ghetto streets, and walk gingerly past the unemployed black men who stand all day on corners drinking wine.

"I was really happy to be around black people again," said Gwen Craig, the black lesbian vice president of the Harvey Milk Democratic Club, who moved to lower Haight Street two years ago.

"I didn't know the time would come when I'd feel threatened because of it."

Gay men have been assaulted in front of her building. Once, when she walked hand in hand with her white lover, a black man said, "I wish Dan White was here."

She rarely walks or shops on her stretch of Haight Street, where there's a gay flower shop, a gay restaurant, a handful of take-out joints and furniture stores, but no bank, pharmacy, hardware store or large supermarket.

She can buy an \$85 used refrigerator, an 85-cent bottle of Gallo white port, eggs benedict or a rose, but not a bottle of wine with a date on it, a nail, a greeting card or a chunk of camembert cheese.

Older blacks have been forced out of her building to cheaper housing in Oakland. She hopes the stringent rent control initiative she helped place on the ballot will slow the speculation.

Pat Califia, a 25-year-old psychology student, is leaving the \$375 flat she shared with three others in the Haight-Fillmore.

They were the first whites on a block that is now half-white and mostly gay. Assaults have declined since they moved in.

But Califia always felt like an outsider. Three months ago, three young blacks kicked her to the sidewalk and told her they hated queers. She is moving to the Mission District.

"Low-income gays like me are used as buffers for speculators who want to raise the value of their property," she said. "We're used to clean up the neighborhood. But when they raise the rents, the low-income gays go, too. We're the intermediate step. We have slightly more money, and we have middle-class values, or at least that's the stereotype."

Some of the district's tiny

proportion of black homeowners, who comprise between 3 and 7 percent of the population there, welcome the changes.

"The neighborhood never was that bad, but the gays have improved it a good deal," said Veolise Moss, 73, who co-owns a three-unit building on Fulton Street with her sister Sarah. "Anybody can live anywhere they want so long as they treat me right. We're not going to sell and we're not moving."

★ ★ ★

But some of the old people mourn the loss of black families, as they stay behind in the tatters of a black community ripped by redevelopment bulldozers, unemployment, heroin and rising rents.

Every day Malton Wilson, 67, walks ten blocks from his tiny Fillmore Street room near the gay fringe of Duboce Park in search of

a community that has almost disappeared.

He finds its remnants at the Frigidaire Quick Wash at Fillmore and McAllister, where he watches black women and their children from nearby subsidized housing fold their laundry. He stares out at the empty lots that the Redevelopment Agency has promised for years would house thriving shops like the ones it bulldozed, including Wilson's garage business.

His wife is dead and he survives on a small pension, ashamed to be such a "poor old man."

Wilson said he's not "bothered" by gays moving in, but he misses "seeing my friends and having kids and families all around.

"I've lived here for 25 years and I don't want to move," he said. "I don't pay much rent, but if things get worse, I don't know what I'll do."

GENTRIFICATION

All over the country, the white middle class is returning to neighborhoods its grandparents abandoned, trading the saran-wrapped life of the suburbs for the gritty challenges of urban pioneering.

Planners call this reversal of white flight "gentrification" — return of the gentry.

The rising price of gasoline and the creation of new urban office jobs is expected to accelerate the process. Many planners predict that within ten or 15 years many American cities will look like Paris, housing

the well-to-do in renovated inner cores and banishing the poor to decaying tract suburbs.

In San Francisco, gays are the cutting edge of gentrification. Elsewhere, young singles and professional couples lead the way.

According to the Urban League, gentrification is changing inner city neighborhoods in Chicago, Detroit, Boston, Philadelphia, Brooklyn, Washington, D.C., and 35 other major cities.

In Washington, middle-class renovators have burst beyond their beachhead in Georgetown, and a special city planning study on the problem has predicted that within four years 100,000 persons, or a seventh of the city's population, will be forced to move. Most of the displaced will be black.

As a result, urban planners and federal bureaucrats are considering trying to slow the return of (white) "families" to the inner city — something they spent the last five years boosting.

In San Francisco, federal and city low-cost renovation loans have been blamed for accelerating the displacement of Hispanics from Bernal Heights and Duboce Park, and blacks from the Haight-Ashbury and Alamo Square.

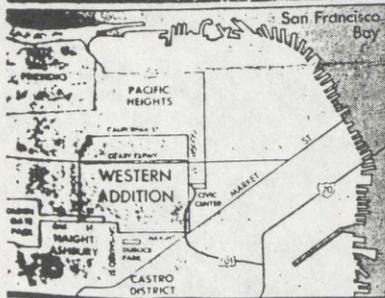
Elsewhere in the city, gentrification goes on without the help of federal programs. Middle-class families, gays and singles took over Noe Valley as working-class Irish left it. Renovation nibbles at the predominantly Latino Mission district, pushing waves of Hispanics south into Daly City.

"It's become the main issue in planning today," said Will Hardee, the San Francisco Planning Department's specialist on the Western Addition. Last year he recommended against a low-cost loan program there because it would have accelerated displacement.

"When you re-hab, it's very nice, but you also do things that result in displacement. But if you don't rehabilitate and everything deteriorates, you lead toward redevelopment and nobody wants that."

SPECIAL REPORT

Gay Migration Into Black Neighborhoods



restored Victorians overlook a 'redeveloped' lot in the Western Addition (shaded area on the map)

By Katy Butler and Gwendolyn Evans

ITS quarter to 9 in the morning on lower Haight Street, on the sullen border where the gay Castro rubs against the black Western Addition.

This is San Francisco's Gaza Strip, where gay renovators with money meet the blacks they are displacing, where the conflict between the haves and the have-nots is starkest.

From Duboce Park, a line of brightly painted Victorians marches uphill toward the burnt-out Sportsmen's Shoeshine Parlor and Ray's Little Harlem Club on Haight. Black families used to live where gays live now.

At the corner of Haight and Fillmore, white commuters wait for the bus downtown, while unemployed black men gather on the street for a day of wine drinking.

Down the block is the black-owned G&J luncheonette, one of a handful of black businesses remaining among empty, gay-owned storefronts. "Stormy Monday" plays on the jukebox as Leroy Howard, a black bartender, has a ritual morning cup of coffee with a longboned black woman so beautiful she makes her Muni driver's uniform stand out like something from Paris.

A block away, inside Daddy's restaurant, the gay beachhead on lower Haight Street, it could be Union Street. Waiters in high-camp khaki uniforms and military ties and ribbons bustle about dishing omelettes to gay and straight white couples dawdling over morning papers. Red carnations in steel army canteens grace classy zinc tables.

Chris Lundberg and Gary White, renovators who have forced

and paid blacks to leave their buildings, finish up their eggs benedict.

At 10 o'clock just as Howard leaves the G&J to open up Jimmie's West Point bar down the street, the renovators slide their silver 1978 Volvo out from between a battered Buick Caprice and an old Chevy, and head for a day's carpentry in their building at Laguna and Hayes Streets.

"Of course we feel bad about evicting people," says Lundberg, as he pulls away from the curb. One of their black tenants, yet to be evicted, has cancer. Another has lived in her apartment nine years.

But White adds he doesn't mind evicting some tenants — "unemployed, alcoholics, women who have babies every year — people who don't even try any more."

Just then, the khaki-curtained door of Daddy's opens. A slim black gay man, a waiter there, runs down the shabby street after a white customer who has forgotten his sunglasses.

Three black teenagers in sweat-shirts and jeans approach him on the sidewalk. "Hey, Blood," sneers one as the teenagers move toward the housing projects on Webster.

"Hey, Punk," says another, four feet away and coming closer, as the gay man darts back inside Daddy's as though he hears nothing. "Hey Nigger White Boy."

S.F. Chron 9-29-80

Vaccine Offers Hepatitis Immunity

New York

An experimental vaccine against hepatitis B has been shown to give virtually complete protection against the viral liver infection that is common throughout the world, according to results of a study by researchers at the New York Blood Center.

Wolf Szmunes, the epidemiologist who headed the vaccine trials for the blood center, said in an interview yesterday that the findings represent an important step toward the marketing of the vaccine, which must be approved by the Federal Food and Drug Administration.

The experimental vaccine, which is given in three shots over a six-month period, was prepared by Merck, Sharpe and Dohme of West Point, Pa.

About 15,000 cases of hepatitis B, which is one of at least three types of hepatitis, are reported to the national Center for Disease Control in Atlanta each year. But epidemiologists consider the disease to be considerably under-reported, and their most conservative estimate is that it affects at least 150,000 Americans each year.

Before the 1960s, hepatitis B was believed to be transmitted only through blood transfusions. But

studies conducted by Saul Krugman of New York University and others have shown that hepatitis B can be spread by intimate person-to-person contact.

Unlike hepatitis A, which is spread through fecal contamination of food and water, hepatitis B is not present in feces. Hepatitis B is found in highest concentration in blood. It also can be found in breast milk, saliva and semen. It can be transmitted, for example, by the sharing of a contaminated toothbrush or razor, Krugman said in an interview.

Of additional importance is the fact that epidemiological studies have linked hepatitis B with hepatoma, a cancer that develops in the liver. Hepatoma is rare in this country but common elsewhere, particularly in areas of Africa and Asia.

The blood center tests, which began in November of 1978, were conducted among 1083 male homosexuals. That group was selected because homosexuals have been found to have a risk of developing hepatitis B that is 10 times greater than other individuals. Other groups, such as American Indians and children living in institutions for the retarded, also have a higher than usual incidence of hepatitis B.

New York Times

rate vexes S.F. experts

SAN FRANCISCO (UPI) — Officials don't know for sure why the venereal disease rate is so high in San Francisco. They just know it is.

The rate for syphilis last year in the entire United States was 11 cases per 100,000 residents. For California, the rate was 18.6 and for Los Angeles it was 40.

For San Francisco, it was 240 — more than 20 times the national average.

Public health officials know the harrowing numbers where syphilis is concerned. And they know the number of cases of gonorrhea reported last year in the city was second only to Washington D.C. and was about five times the average for the rest of California.

But they continue to puzzle over why the rates are so high. They suspect the city's high proportion of homosexuals is a factor. They say more cases may get reported in San Francisco than elsewhere.

In any event, they can't escape the conclusion that a city where casual sex is a frequent occurrence is a city where the VD rate will rise correspondingly.

"The problem is due to generally active people having multiple sex partners" in succession, according to Dr. Irvin Bruff, director of the City Clinic. As expected, VD infects single people having sexual contact with a variety of partners more than one-partner individuals such as married persons, and the proportion of single people is high in San Francisco.

singles is the city's large homosexual population.

"We are a tolerant city, so there's a great many lifestyles," said Merv Silverman, director of public health for San Francisco. "We see a very large rate of venereal disease in the homosexual community."

Dr. Irena Heindl, a public health medical officer with the state Department of Health Venereal Disease Control Unit in Sacramento, agreed.

"When you get crowded into situations such as San Francisco, that creates problems," she said. "You have the gay communities. They tend to have more sexual partners, they're not as particular about their partners and they tend not to take precautions."

"It's definitely significant," she said, in accounting for the city's dubious achievement as a VD statistics leader.

She cited San Francisco's statistics for the first three months of this year to back up her contention that a growing number of homosexual males in San Francisco has contributed to the increasing rate.

*San Jose
Mercurian
April 24, 1980*

San Francisco Chronicle

The Largest Daily Circulation in Northern California

115th Year No. 78

TUESDAY, APRIL 17, 1979

777-1111

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Sex Experts' Study on Gays

New York

A decade-long study by Dr. William H. Masters and Virginia E. Johnson, the pioneering sex researchers, has found that the sexual problems of homosexuals, including the desire by some to function as heterosexuals, can in many cases be effectively treated in two weeks of intensive therapy.

The research also found that homosexuals are

no different from heterosexuals in the ways they respond to sexual stimuli.

Masters and Johnson said their study has convinced them that homosexuality for most persons is neither a physical nor an emotional illness nor a genetic disorder, but rather a form of "learned behavior," just like heterosexuality, or

Back Page Col. 5

PHOTO

in total cost

SEX EXPERTS

From Page 1
preference for the opposite sex.

The new findings challenge many longstanding beliefs about the sexual functioning of heterosexual and homosexual men and women. The findings are expected to stimulate the establishment of treatment programs for sexually distressed homosexuals, many of whom have been refused treatment by psychotherapists and other health-care practitioners in the past.

The new findings have not yet been shown to therapists outside the Masters and Johnson center in St. Louis, so there has been no professional reaction yet. But the research will undoubtedly generate considerable controversy.

Details of the latest work, which consumed the decade from 1968 through 1977, are contained in a new book by Masters and Johnson, "Homosexuality in Perspective," to be published next week by Little, Brown & Co.

In the Masters and Johnson study, 84 homosexual men and women were treated for problems they had in functioning effectively as homosexuals — impotence in the case of the men and inability to reach orgasm in the case of the women. Overall, the two-week

urged psychotherapists to help all patients in sexual distress find therapy, regardless of their sexual-orientation.

Masters, a gynecologist, and Johnson, a psychologist, attribute much of their own treatment success to an approach to therapy that includes the distressed person's sexual partner and a male-and-female treatment team.

The new report encompasses a research study of the sexual functioning of homosexual and heterosexual couples in the Masters and Johnson Institute, a laboratory in St. Louis that was formerly called the Reproductive Biology Research Foundation. Most persons participated with their spouses, in the case of heterosexuals, or with their committed partners, in the case of homosexuals. Some were assigned partners.

In this aspect of the study, Masters and Johnson found no significant differences in the ability of homosexuals and heterosexuals to respond to a wide variety of sexual stimuli. "From a functional point of view, homosexuality and heterosexuality have far more similarities than differences," the researchers concluded.

Dr. Robert Kolodny of the St. Louis institute said in an interview

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In the Masters and Johnson study, 84 homosexual men and women were treated for problems they had in functioning effectively as homosexuals — impotence in the case of the men and inability to reach orgasm in the case of the women. Overall, the two-week treatment, a combination of sex therapy and psychotherapy that in many cases included a five-year followup, failed in about 12 percent of cases.

Masters and Johnson also treated 67 homosexual men and women who wanted to function as heterosexuals. About 35 percent of those patients failed to achieve a long-standing reversal of their homosexuality. In an interview, Masters expressed dismay with the institute's high failure rate in reversing homosexual orientation, although the results are far better than any previously reported.

"I'd be very surprised if we didn't do much better in the next ten years," he said. "We were just learning, doing this for the first time, and we got less than full cooperation from the clients," many of whom, he said, were suspicious and anxious.

The St. Louis researchers said they chose to report their results in terms of failure rates because failure of therapy is more easily defined than success and because long-term results have not yet been determined in all cases. For practical purposes, however, the vast majority of the remaining clients could be considered clinical successes.

"The current concept that the sexually dysfunctional or dissatisfied homosexual male or female cannot be treated without an 80 or 90 percent overall failure rate is simply erroneous," Masters and Johnson declared.

Asserting that sexual dysfunctions like impotence and failure to achieve orgasm are just as devastating to the homosexual as to the heterosexual, the researchers

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Dr. Robert Kolodny of the St. Louis institute said in an interview that the findings fly in the face of the belief that homosexuals are "less than fully functional and less able to enjoy their sexuality."

However, in the Masters and Johnson study, committed homosexual couples tended to communicate their sexual likes and dislikes more readily than married heterosexual couples and the homosexual couples spent more time at sexual stimulation before reaching orgasm.

Masters and Johnson found that there was no difference in the ability of men and women — heterosexual or homosexual — to respond to comparable forms of stimulation. Failure to reach orgasm was slightly more common among the men than the women, although the difference was too small to be significant.

"The cultural concepts that men are the sex experts or that they function more effectively sexually than women may be seriously questioned on the basis of these data," the researchers concluded.

The report also included — for the first time — a scientific definition for a small group of people who are neither homosexual nor heterosexual but rather what the researchers call "ambisexual." These men and women are equally comfortable in and responsive to sexual interaction with partners of either sex.

Their main sexual concern is the interaction itself, rather than the gender of the partner, the St. Louis team reported. Ambisexuals were described as different from bisexuals, who the researchers said, usually show a homosexual or heterosexual preference.

The new work is an extension of the team's two previous pioneering projects, the first a laboratory study of sexual functioning in men and women, which culminated with the publication of "Human Sexual Response" in 1966, and the second the use of a dual-sex team in a two-week treatment program for couples with sexual problems, described in "Human Sexual Inadequacy," published in 1970. All three books are written as professional texts, although like the two previous works, the third is likely to have considerable popular appeal as well.

CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT OF PUBLIC HEALTH

CENTRAL OFFICE
101 GROVE STREET
SAN FRANCISCO, CALIFORNIA 94102

May 12, 1980

Mr. Charles McIlhenny
1350 Lawton Street
San Francisco, CA 94122

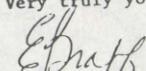
Dear Mr. McIlhenny:

In response to your brief query to Mr. Hawkins and myself, I'll offer a brief response which may be adequate for your purposes. If it is not, please telephone me at 558-4046.

The only example of VD statistics were those relating to syphilis, and frankly I do not know what they represent. In either case San Francisco is much higher than Los Angeles, CA and United States rates in any syphilis diagnostic category but not of the magnitude indicated.

The average number of contacts per case of infectious syphilis is 3.5 which we follow-up. The cost per case epidemiologically has not been computed.

Very truly yours,



Erwin H. Braff, M.D.
Director
Bureau of Disease Control
and Adult Health

EHB:hs

cc: Don Hawkins

DEPARTMENT OF HEALTH SERVICES

714/744 P STREET
SACRAMENTO, CA 95814

May 14, 1980

(3)

Charles McLhenny
1350 Lawton Street
San Francisco, CA 94122

Dear Mr. McLhenny:

In answer to your query regarding the validity of the figures regarding incidence of syphilis in San Francisco as compared to Los Angeles and California (as quoted in the San Jose Mercury, April 24, 1980), the San Francisco figures are essentially correct. The Los Angeles figures are understated and probably refer to early infectious syphilis rather than total cases. Total cases would bring its case rate figure up to around 95/100,000 population. The California case rate figure for total cases would be in the neighborhood of 55/100,000 population. San Francisco has ranked among the top ten U.S. cities for many years.

The second question regarding contact follow-up is more difficult to answer. An infectious case of syphilis may have only one contact, the original source for that case, and if interviewed and treated in time may not have passed the disease on to someone else. On the other hand, if this patient has had many partners prior to becoming aware of symptoms (or himself/herself being named as a possible source of someone else's infectious state) and has had many sexual contacts since then, the contact list becomes longer and more entangled. An "average number" is meaningless.

An attempt to determine cost for contact tracing would require a complex model with many variables. In California, each health department is required to report and investigate cases. Large counties have personnel with specialized training who coordinate with State and Federal investigators; rural areas obviously make do with multi-functioning staff but also coordinate with State and Federal investigators. It is an expensive program, but when one considers the dramatic fall in the number of long-term hopeless late cases of syphilis who used to populate the mental institutions at the cost of millions of dollars, not to mention the financial and psychological impact on their families, the effort is well worth the expense.

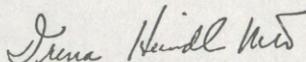
Charles McLhenny

-2-

May 13, 1980

If you have additional questions, do not hesitate to write or to contact your own San Francisco Health Department.

Yours truly,



Irena Heindl, M.D.
Public Health Medical Officer
VD Control Program
P. O. Box 2230
Sacramento, CA 95810

cc: Erwin Braff, M.D.
San Francisco Health Department
101 Grove Street
San Francisco, CA 94102

