

FINAL REPORT
"FAMILY" and "HOUSEHOLD"
USE SURVEY

Prepared for:
Institute for Local Self Government
--and--
California State Personnel Board

By;
Menkin-Lucero & Associates
Oakland, California
April 23, 1982

I. INTRODUCTION

PURPOSE

This report describes the purpose, methodology, and results of a study commissioned by the California State Personnel Board. Through this study, the Personnel Board sought to define ways in which Federal and State agencies, and local governments used the terms "family" or "household" to describe their programs or to establish client eligibility for their services. The Personnel Board wished to determine the extent to which these terms were presently being utilized because of recent variations in the makeup of family and household arrangements over the past decade. Implementation of the Federal Block Grants will vest the State government with new and broader authority for establishing eligibility standards for various services. At the same time, declining resources may necessitate a narrowing of some eligibility criteria. Potential decisions--in either direction--will require a broad factual view of the present program status of these terms, as provided through the survey sample results in this report.

CONTENTS

The report is organized into six sections:

- I. This Introduction
- II. An Executive Summary highlighting the principal findings of the study.
- III. A section describing the methods and sequential activities performed by Menkin-Lucero & Associates in conducting this study.
- IV. A detailed presentation of responses to the key survey questions, including a table displaying the responses from 96 programs and a list of 30 typical definitions of "household" or "family" which differ from the U.S. Census Department definitions of these two items.
- V. An analysis and a list of findings, developed by ML&a, as the result of the survey data presented in Section IV.
- VI. A group of Appendices, referenced in the five preceding sections.

II. EXECUTIVE SUMMARY

This report contains the results of a study commissioned by the California State Personnel Board, intended to determine the ways in which the terms "family" and/or "household" were used to describe publicly-provided programming, or to set eligibility for those programs in California. The study was conducted in the form of a mailed questionnaire, sent to 38 pre-selected Federal and State agencies, counties, and cities. A final total of 128 different programs administered by these 38 organizations responded to the mailing. Of this group, 32 reported that their program did not utilize either term. This report primarily focuses on the responses of those remaining 96 programs which do utilize the terms.

Respondents were asked to indicate whether they used standard Census definitions of the terms, or whether they used definitions derived from some other source. If so, they were requested to supply the origin of their non-Census definition. Program managers were also asked whether their program definition and eligibility criteria included or excluded members of what was depicted as a "variable family" (e.g., "two or more persons domiciled in the same household and operating as a single housekeeping unit, who are not related by blood, marriage, or adoption").

Based on 96 responses to these questions, the following general findings and conclusions emerged from this study.

- Seventy percent of those responding use definitions other than those developed by the U.S. Census Bureau.

- Seventy-five percent of the 96 respondents are not bound by a definition limiting family membership to a relationship based solely on blood, marriage, or adoption. Of these programs, economic relationships and the relationship of children to adults in the social unit are most often employed as definitional criteria.

- The greatest autonomy to adopt non-Census definitions of "household" and "family" appears to exist among counties. Since the county is the level of government where services are most often actually provided, it is not surprising that county departments frequently broaden Federal or State definitions (often with explicit State authorization) to encompass special populations or locally recognized needs.

•According to the respondents to this survey, the principal sources of non-Census definitions are Federal administrative regulations, Federal laws, and State administrative regulations. The predominant role of the Federal government in these programs stems from the original categorical basis under which most of the social programs included in this survey were initiated.

•The definitions used by 85% of the 96 respondents to this survey do not exclude members of "variable families" (as previously described in this section) from participation in their services. Additionally, 63.5% of these respondents actually served persons who could be described as members of such families during 1981.

III. METHODOLOGY

This study was initiated by a letter of request from Duane D. Morford, Chief of the Policy and Standards Division, California State Personnel Board, to Arthur Will, Director of the Institute for Local Self Government, dated December 9, 1981. The letter was accompanied by a concept paper, outlining definitions and general topical areas to be addressed in the study. Subsequently, the Institute subcontracted with Menkin-Lucero & Associates to perform the study.

During January, 1981, negotiations on the number of survey contacts and the degree of survey detail occurred between the Institute and ML&a. As the result of these negotiations, the number of survey contacts was adjusted from 5 Federal agencies, all State departments, 4 county governments and 13 cities, to the 38 organizations and governments actually mailed questionnaires (see Appendix B). Further, questionnaire items regarding program budget, number of staff, and submission of applicable regulations were eliminated by mutual agreement.

Phase One

The study was conducted in three phases. The first phase, involving design of the survey questionnaire and development of a contact list, commenced on February 1, 1982 and included the following activities:

- 1) Development by ML&a of 1st draft of questionnaire instrument
- 2) Pretest of the 1st draft. Written comments and suggestions were received from the following pre-selected individuals:

•Beau Carter
Calif. State Liaison Officer
Office of the Principal Regional
Official
Dept. of Health & Human Services
Region IX
San Francisco, Calif.
(Federal)

•Collin Alscher
Employment Counselor
Employment Development Dept.
Hayward, Calif.
(State)

•Ms. Donna Fabella
Child Protective Services Worker
Alameda Co. Social Services Dept.
Oakland, Calif.
(county)

•Ms. Katherine Cavanaugh
Asst. to the City Manager
Walnut Creek, Calif.
(city)

- 3) Revision of the questionnaire based upon the pretest comments, and development of 2nd draft.

- 4) Review of 2nd draft. Comments were received from the following individuals:
 - Edward Schoenberger, Institute for Local Self Government
 - Duane Morford, California State Personnel Board
 - Thomas Colman and Martha Acevedo, California Commission on Personal Privacy
- 5) Revision of the questionnaire based on comments from the above.
- 6) Development of the 3rd and final draft.
- 7) Development by ML&a of a preliminary contact list of Federal and State agencies, cities, and counties based upon the previously referenced negotiated agreement.
- 8) Review of contact list with comments from:
 - Edward Schoenberger (ILSG) - suggested addition and deletion of certain cities and counties; and
 - Martha Acevedo (CCPP) - provided list of suggested Federal and State contacts based on review of program description materials.
- 9) Revision of the contacts list and development of the finalized list. In development of the final contact list, attention was paid to achieving a representative sample of cities and counties stratified by size (small, medium, and large population and budget), and by geographic distribution throughout California.

Phase Two

Phase two of the study began on March 5 and involved the actual administration of the survey. In the interest of time and money, it was decided that a mail survey would be conducted with those units of government on the contact list. Provision was made in the work plan and budget for both telephone and limited in-person followup to non-respondents.

The questionnaire was accompanied by a cover letter explaining the purpose of the survey and signed by Arthur Will, ILSG Director (see Appendix A). The letter, and 3 copies of the questionnaire were sent to the program directors of 28 Federal and State agencies, to 7 counties, and to the city managers of 10 cities. However, eight of the small-to-medium sized cities were provided with 2 questionnaires rather than 3 (see Appendix B for complete mailing list). Typically, questionnaires were sent to the Social Services, Probation, CETA, Health, and Mental Health/Drug/Alcohol departments in each county.

A 2½-week deadline from the date of mailing was established for responses. At the end of that time, about 50% of the 103 program managers had not responded, and were contacted by telephone. Because of these calls, an additional 40 questionnaires were sent to departments who had either lost or never received the initial mailing, and 26 in-person interviews were scheduled with program managers in Orange, San Diego, and Los Angeles counties, and with the City of Los Angeles. All twenty-six interviews were subsequently conducted in Southern California by ML&a staff.

By April 9, a little over one month after the beginning of the 2nd phase of the project, survey responses were received from 128 different programs, or 124% of the originally-selected sample. A detailed statistical description of the responses is presented in Table 1, and a complete listing of all survey respondents is displayed in Appendix C.

Phase Three

On April 12, ML&a began the process of analyzing the questionnaire responses and preparing the final report. This activity was completed on April 23 with the submission of this report to the Institute for Local Self Government.

TABLE 1:
STATISTICAL SUMMARY OF CONTACTS, RESPONSES &
TYPES OF RESPONSES TO SPB/ML&a FAMILY & HOUSEHOLD SURVEY

	QUESTION-NAIRES MAILED		QUESTIONNAIRES RETURNED				TYPE OF RESPONSES			
	# of units	# of programs within units	# of units	% units responding of units mailed	# of programs within units	% units responding of units mailed	# reporting programs using terms	% programs responding* which used terms	# reporting programs not using terms	% programs responding* not using terms
Federal	6	15	5	83.3%	22	146.6%	19	86.3%	3	13.6%
State	15	42	12	80%	35	83.3%	19	54%	16	46%
County	7	26	7	100%	58	223%	49	84.4%	9	15.5%
City	10	20	7	70%	13	65%	9	69.2%	4	30.7%
Overall	38	103	31	81.5%	128	146%	96	75%	32	25%

Source: ML&a Survey, 1982

*Note: These percentages are based on a comparison of this type of response to the total responses from this governmental level.

IV. PRESENTATION OF RESPONSES TO SURVEY

In all, 128 different programs responded to ML&a's survey. Of this group, 32 programs indicated in their response that they did not use the terms "family" or "household" in either describing their program or in establishing eligibility for their services. A list of these programs is contained in Appendix C, Part I. Part II of the same Appendix lists the remaining 96 programs which responded to the questionnaire and which do use one or both of the terms in their operations.

Two of seven cities which responded reported no programs utilizing these terms, and only 9 programs used the terms in the remaining five cities--results which reinforced the comment of one city manager that this type of survey was probably more appropriate for counties and for the largest cities which administer social programs, but less applicable to small and mid-size cities. However, responses to the survey and identification of programs using the study terms were numerous throughout the other 3 levels of government, yielding a sound and representative sampling of programs from a Federal, State and county perspective.

Table 2, appearing at the end of this section of the report, provides a detailed overview of responses from those 96 programs utilizing the two terms. Some of the principal social programs, such as Food Stamps and AFDC, are traceable through each of the Federal, State, and county levels displayed on this table. It is interesting to note that some disparity exists between each governmental level, in their comprehension of whether their means of defining "household" or "family" emanated from the U.S. Census definition or from some other source. Further, when a source other than the Census is indicated for defining one of these two terms, there also seems to be some disagreement as to what the underlying basis of that definition is. For example, the source of the "family" definition used with the AFDC program is variously reported by Federal respondents to be a Federal statute; by State respondents to be a Federal law and State administrative regulation; and by county respondents to be a Federal statute, Federal administrative regulation, State administrative regulation, and a State statute. However, all three levels consistently agree that AFDC regulations prohibit the provision of services to members of "variable families" as defined in Item #3 of the questionnaire. 55 98 .1

Also included in this section is a compendium of 30 definitions of "household" or "family" which were different than the Census definitions. In

instances where similar non-Census definitions were reported by more than one program, the definition was included in the list only once. In a few cases long, highly detailed descriptions of program eligibility criteria were reduced to those aspects of the criteria which were most pertinent to the interests of this study.

Findings based on the analysis of the data presented below are contained in the next section of this report.

TABLE 2: RESPONSES TO KEY QUESTIONS IN ML&a's FAMILY & HOUSEHOLD SURVEY

RESPONDENT	USE CENS. DEF. "FAM."	USE CENS. DEF. "HH"	USE OWN DEF. "FAM."	USE OWN DEF. "HH"	SOURCE OF DEF. (RE: KEY BELOW)	INCL. VAR. FAM.		EXCL. VAR. FAM.		SERVED VAR. FAM. PAST YR.		% VAR. FAM. SERVED	LEGAL RESTR. ON INCL. VAR. FAM.		SOURCE OF LEGAL RESTRICTION
						Yes	No	Yes	No	Yes	No		Yes	No	
(FEDERAL)															
1) US DEPT. OF AGRICULT.:															
- Child Care Food Prog.			X		FAR	X			X	N/A ¹	N/A	N/A	N/A	N/A	N/A
- Child Nutrition Programs				X	FS/FAR/FL/SAR	X			X	X		20%+		X	
- Commodity Supplemental Food Program				X	FS/FAR/FL/SC/SAR		X ²		X	X		20%+		X	
- Family Nutrition Program				X	FS/FAR/FC/SC/SAR		X ²		X	X		20%+		X	
- Food Stamp Program				X	FS/FAR/FL	X			X	X		N/A	N/A	N/A	N/A
- School Breakf. Prog.				X	FAR	X			X	N/A	N/A	N/A	N/A	N/A	N/A
- School Lunch Program				X	FAR	X			X	N/A	N/A	N/A	N/A	N/A	N/A
- Special Milk Program				X	FAR	X			X	N/A	N/A	N/A	N/A	N/A	N/A
2) US DEPT. OF HEALTH & HUMAN SERVICES:															
- Aid to Families with Dependent Children			X		FS		X	X		X		-0-	X		Soc. Sec. Act Title IV-A
- Head Start	X				N/A		X		X	X		-0-	X		45 CFR; Part 1305
- Low Income Energy Assistance Program		X			FS	X			X	X		N/A		X	

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						Yes	No	Yes	No	Yes	No		Yes	No	
- Suppl. Secur. Income	X	X		X	FS/FAR	X			X	X		N/A		X	
- Suppl. Secur. Program	X	X			FS/FAR	X			X	X		N/A		X	
3) US DEPT. OF HOUSING & URBAN DEVELOPMENT:															
- Com. Dev. Block Grnt.				X	FAR	X			X	N/A	N/A	N/A	N/A	N/A	N/A
- Sec. 8 - Subsid. Rent			X		FAR	X			X	X		N/A		X	
- Sec. 221 - Down Payment Assistance			X		FS		X		X				X		Federal Statute
- Sec. 235 - Interest Subsidy				X	FS/FAR		X	X			X		X		Fed. Statute
4) US DEPT. OF LABOR:															
- CETA			X		FAR/FS	X			X	X		N/A		X	
- Work Incentive Prog.			X		FS/FAR	X			X	X		N/A		X	
(STATE)															
1) STATE DEPT. CORRECTIONS:															
- Family Visiting	X				SCD/SAR		X	X			X		X		Cal. Supr. Ct. Decision re: Cummings Up-holding Exclusive Definition
2) STATE DEPT. OF ED.:															
- School Health Progr.		X	X		FS	X			X	X		20%+		X	

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						Yes	No	Yes	No	Yes	No		Yes	No	
						3) ST. EMPL. DEV. DEPT.:									
- Expand. Serv. through Exper. Elderly Manpr.			X		FAR		X ³	X	X			3-5%		X	
- Cal. Job Agent Progr.				X	Prg. Mnl.		X		X	N/A	N/A	N/A		X	
- Job Corps Program			X		FAR	N/A	N/A	N/A	N/A	X		0-3%		X	
- Fed. Targeted Job Tax Credit Program			X		FAR		X		X		X		X		CFR; Part IX (Empl. & Train. Admin.) CETA Regs. Subpart D, Sect. 675.4
- Migrant & Seasonal Farmworker Program			X		FAR		X		X	X		0-3%		X	
4) STATE DEPT. OF HEALTH:															
- Family Planning			X		FS/SC	X			X	X		N/A		X	
- Medi-Cal			X		FAR/SAR		X		X	N/A	N/A	N/A	N/A	N/A	N/A
5) ST. DEPT. MENTAL HEALTH:															
- Short-Doyle MH Serv.	X				SAR		X		X	X		N/A		X	
6) ST. DEPT. SOC. SERV.:															
- Adoptions Services			X		SAR/LAR	X			X	X		N/A		X	
- AFCD			X		FL/SAR		X	X ⁴			X		X		St. & Fed. Law
- Adult Services			X		FAR		X	X		X				X	

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						Yes	No	Yes	No	Yes	No		Yes	No	
- Child Support Enforc.	X				FAR/SAR		X	X			X		X		State Law
- Family Day Care			X		SAR	X			X	X		0-3%		X	
- Food Stamp Program				X	FS/FAR/SAR	X		X	X			10-20%		X	
- Foster Family-Children			X		SAR	X			X	X		0-3%		X	
- Foster Family-Adults			X		SAR	X			X	X		0-3%		X	
- Refugee Services			X		SAR	X			X		X			X	
(COUNTY)															
1) LOS ANGELES:															
- Health - Ability to Pay Program				X	SAR/LO/LAR	X			X	X		N/A		X	
- Health - Hill-Burton Program				X	FS/FAR	X			X	X		N/A		X	
- Soc. Serv. - AFDC			X		FS/FAR/SAR/STATE STATUTE		X	X			X		X		Fed. & State Law
- Soc. Serv.-Food Stps.				X	FAR	X			X	X		N/A		X	
- Soc. Serv.-Foster Care			X		FS/STATE STATUTE		X	X			X		X		Sec. 408, Soc. Sec. Act; Sec. 11405, Cal. Welf. & Inst. Code

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						Yes	No	Yes	No	Yes	No		Yes	No	
- Soc. Serv. - General Relief				X	LAR		X		X		X				Welfare & Inst. Code 17000 Et. Seq.
- Soc. Serv. - AFDC-Linked Medi-Cal	X				FS/FAR/FL/SAR		X		X	X		N/A		X	
2) MONTERREY CO.:															
- CETA, various titles			X		FAR		X		X	N/A	N/A		X		Fed. Regs.
- Soc. Serv.-AFDC Family Group			X		FS/SAR		X	X			X		X		Fed. & State Statutes
- Soc. Serv.-AFDC - Unemployed Parents			X		FS/SAR		X	X			X		X		Fed. & State Statutes
- Soc. Serv.-Child Protective Services	X				FS/SAR	X			X	X		10-20%		X	
- Soc. Serv.-Fd. Stamps				X	FS	X			X	X		20%+		X	
- Soc. Serv.-Genetic Handic. Persons Prog.			X		(Pending) SAR	X			X	X		N/A		X	
- Soc. Serv.-Medi-Cal	X				FS/SAR		X	X			X		X		Fed. Statute
3) ORANGE CO.:															
- Soc. Serv.-Child Day Care Services			X		FAR/SAR		X		X		X		X		State Soc. Serv. Regulations
- Soc. Serv.-Employment Related Services			X		FAR/SAR		X		X		X		X		Fed. & State Regs.
- Soc. Serv. - Medi-Cal			X		SAR	X			X	X		N/A		X	

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						Yes	No	Yes	No	Yes	No		Yes	No	
- Soc. Serv.-Refugee Resettlement			X		FS/FAR/FL/SAR		X		X		X		X		Fed. & State Regs.
4) PLACER CO.:															
- CETA	X				FS/FAR/FC		X		X	X		3-5%		X	
- Mental Health			X		SAR		X		X		X	N/A		X	
- Probation-Juvenile Center	X				LAR/LOCAL CRT. ORD.		X		X		X			X	
- Probation-Juvenile Diversion	X	X			FS		X		X	X		10-20%		X	
5) SAN DIEGO COUNTY:															
- Health-Calif. Children's Services			X		SAR		X		X	X		N/A		X	
- Health-Cervical Dysplasia Clinic			X		LAR		X		X		X			X	
- Health-Child Health & Disability Prevention			X		SAR/LAR	X			X	X		3-5%		X	
- Health-Community Disease Control Program			X		NONE	X			X	X		N/A		X	
- Health-Co. Pnt. Serv.			X		N/A		X		X	X		10-20%		X	
- Health-Early & Period. Screen. Diagn. & Treatment Program			*X		FAR/SAR/LAR	X			X	X		N/A		X	

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						Yes	No	Yes	No	Yes	No		Yes	No	
- Health-Edgemoor Geriatric Hospital	X				FS/SAR		X		X		X		X		Fed. & State Regs.
- Health-Fam. Planning			X		FAR/SAR		X ⁵		X		X			X	
- Health-Pub. Health Nursing			X		N/A	X			X	X		N/A		X	
- Health-Women, Infants & Children			X		FAR	X			X	X		N/A		X	
- Health-Uniform Housing Code Enforcement			X		SAR/LO	X			X	N/A	N/A	N/A		X	
- Mental Health - In-& Out-Patient	X				SC/W&I Code 5717 & 5718		X		X	X		20%+		X	
- Soc. Serv.-Child Protective Services			X		FS/STATE STATUTE	X			X	Y		20%+		X	
- Soc. Serv. - WIN Prog.	X				FAR		X		X		X			X	
- Soc. Serv.-General Relief			X	X	SAR/LO/LAR/LOCAL CRT. ORDR.	X			X	X		20%+		X	(for families) - Yes-State Regs., Local Ordnce. & Court Orders
- Soc. Serv. - In-Home Support Services				X	SAR	X			X	X		20%+		X	
6) SAN FRANCISCO CO.:															
- CETA, all titles			X	X	FS/FAR/FC FL/LAR	X			X	X		20%+		X	

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						Yes	No	Yes	No	Yes	No		Yes	No	
- Health - Calif. Children's Services	X				SAR		X		X	X		0-3%		X	
- Health - Family Planning	X				FAR/SC/SAR	X			X	X		N/A		X	
- Health - Community Mental Health			X		SAR		X		X	X		10-20%	X		State Dept. of Ment. Hlth. - Uniform Method of Determining Eligibility
7) TULARE COUNTY:															
- Probation - Family Court Services			X		ST. CIVIL CD. 1740 ET. SEQ.	X			X	X		10-20%		X	
- Probation - Juvenile Court	X		X		JUV. CRT. LAW 202 ET. SEQ.	X			X	X		N/A		X	
- Prob.-Victim/Witness Program			N/A	N/A	N/A	X			X	X		5-10%		X	
- Soc. Serv. - AFDC	X				FS/SAR		X	X		X			X		Fed. & State Law & Reg.
- Soc. Serv. - Child Protective Services	X	X			FAR		X		X	X		3-5%		X	
- Soc. Serv.-Fd. Stamps				X	FS/FAR/SAR	X			X	X		N/A	X		Fd. Stamp Regs. 63-402.1
- Soc. Serv.-Medi-Cal			X		SAR		X		X	X		N/A		X	

TABLE 2: RESPONSES TO KEY QUESTIONS IN ML&a's FAMILY & HOUSEHOLD SURVEY

RESPONDENT	USE CENS. DEF. "FAM."	USE CENS. DEF. "HH"	USE OWN DEF. "FAM."	USE OWN DEF. "HH"	SOURCE OF DEF. (RE: KEY BELOW)	INCL. VAR. FAM.		EXCL. VAR. FAM.		SERVED VAR. FAM. PAST YR.		% VAR. FAM. SERVED	LEGAL RESTR. ON INCL. VAR. FAM.		SOURCE OF LEGAL RESTRICTION
						Yes	No	Yes	No	Yes	No		Yes	No	
(CITIES)															
1) ARCATA:															
- Community Develop. Rehab. Program		X			FAR	X		X	X			3-5%	N/A	N/A	N/A
2) LOS ANGELES:															
- Handyworker Program				X	FAR	X		X	N/A	N/A	N/A	N/A	N/A	N/A	N/A
- Hous. Rehab. Program				X	FAR	X		X	X			3-5%		X	
- Sr. Citizen/Disabled Lifeline		X			LO	X		X	X			0-3%		X	
- Utility Users' Tax Exemption			N/A	N/A	LO/CALIF. PERSONAL INC. TAX LAW		X	N/A	N/A	N/A	N/A	N/A	X		Calif. Personal Income Tax Law
3) SACRAMENTO:															
- Housing Rehab. Progr.			X		FAR	X		X	X			0-3%	N/A	N/A	N/A
- Pub. Hous. & Sec. 8		X ⁶			FS/FAR	X		X	X			0-3%	N/A	N/A	N/A
4) SAN JOSE:															
- Com. Dev. Block Grant		X			LO	X		X	X			N/A		X	
5) VENTURA:															
- Housing Preservation		X			N/A	X		X		X				X	

TABLE 2: RESPONSES TO KEY QUESTIONS IN ML&a's FAMILY & HOUSEHOLD SURVEY

	USE CENS. DEF. "FAM."	USE CENS. DEF. "HH"	USE OWN DEF. "FAM."	USE OWN DEF. "HH"	SOURCE OF DEF. (RE: KEY BELOW)	INCL. VAR. FAM.		EXCL. VAR. FAM.		SERVED VAR. FAM. PAST YR.		% VAR. FAM. SERVED		LEGAL RESTR. ON INCL. VAR. FAM.	
						Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
						TOTALS:	20	11	49	23	FAR - 44	51	45	13	82
					FS - 37	53%	46.8%	13.5%	85%	63.5%	23.9%	3-5%	- 6	23.9%	64.5%
					FL - 7							5-10%	- 1		
					FC - 3							10-20%	- 6		
					SAR - 37							+20%	-10.		
					SC - 7										
					SCD - 1										
					State										
					Stat.- 4										
					LAR - 9										
					LO - 6										
					Local										
					Court										
					Order -2										

FOOTNOTES:

- ¹"N/A means not available to survey team.
- ²These programs indicate they consider one person a household.
- ³Stepchildren only - others considered family of one.
- ⁴Except in foster care (5% of AFDC cases).
- ⁵When nonmarried adults reside together, each is considered a separate family.
- ⁶Also: 24 CFR; Part 812.

KEY FOR COLUMN, "SOURCE OF DEFINITION":

- FS - Federal Statute
- FAR - Federal Administrative Regulation
- FC - Federal Contract
- FCD - Federal Court Decision
- FL - Federal Legislation
- SC - State Contract
- SCD - State Court Decision
- SAR - State Administrative Regulation
- LO - Local Ordinance
- LAR - Local Administrative Regulation

TABLE 3

LIST OF "HOUSEHOLD" OR "FAMILY" DEFINITIONS
PROVIDED BY PROGRAMS WHICH DO NOT USE U.S. CENSUS
DEFINITIONS OF THESE TERMS

- 1) USDA/Child Care Program:
Family - "group of related or non-related individuals who are not residents of an institution or boarding house, but who are living as one economic unit."
- 2) USDA/Child Nutrition Program:
Household - "group of related or non-related individuals living together and sharing common cooking facilities."
- 3) USDA/Family Nutrition Program:
Household - "group of related or unrelated individuals living together under one roof, sharing common cooking facilities, with all income considered for eligibility purposes."
- 4) USDA/Food Stamp Program:
Household - "an individual who lives alone or who, while living with others, customarily purchases food and prepares meals for home consumption separate and apart from the others; or a group of individuals living together and customarily purchasing food and preparing meals together for consumption..."
- 5) USDA/School Breakfast, School Lunch and Special Milk Programs:
Household - "group of related or non-related individuals who are not residents of an institution or boarding house, but who are living as one economic unit."
- 6) HHS/AFDC:
Family - The child or children (and caretaker relatives) are determined to be eligible for AFDC by income verification.
- 7) HHS/SSI:
Household - "public assistance household is one in which each member receives one or more public income maintenance payments (AFDC, etc.)."
- 8) HUD/Section 8:
Family - "an elderly family or single person, e.g., a family whose head is at least 62 years of age, or a person living alone."
- 9) HUD/Section 235:
Family - "two or more persons related by blood, marriage, or operation of law who occupy the same unit."
- 10) DOL/CETA:
Family - "one or more persons living in a single residence, related to each other by blood, marriage, or adoption. A stepchild or stepparent shall be considered as related by marriage."

- 11) DOL/Work Incentive:
Family - "a child living with a specified relative in a place of residence maintained as his/her home. A child may be considered to meet this definition if living with a person in one of the following groups: blood relatives, including those of half blood, first cousins, nephews, nieces and persons of preceding generations denoted by the prefixes grand, great, or great-great..."
- 12) State Dept. of Ed/School Health:
Family - "a unit of intimate transacting and interdependent persons who share the same values and goals, responsibility for decisions and resources, and a commitment to one another over time."
- 13) State Dept. of Health/Family Planning:
Family - "one or more adults and children, if any, related by blood, marriage (including commonlaw), or adoption and residing in the same household. When adults, other than spouses, reside together, each person shall be considered a separate family. Children (17 or younger) living with relatives who are not legally responsible for their care, children who are emancipated minors, and children living under the care of unrelated persons shall also be considered as one-person families."
- 14) State DOH/Medi-Cal:
Family - "the following persons living in the home: a child or sibling children; parents, married or unmarried of sibling children; stepparents of sibling children; and, the separate children of either married or unmarried parent or stepparent."
- 15) State Social Services/Adoptions:
Family - "a single person, whether unmarried, widowed, or divorced may be accepted when a two-parent family cannot be found to meet the needs of the child."
- 16) State Social Services/Food Stamps:
Household - "an individual who lives alone or who, while living with others customarily purchases and prepares food to consume separate from others; or, a group of individuals living together and customarily purchasing, preparing and consuming food at home."
- 17) Los Angeles Co. Health Dept./Ability-to-Pay:
Household - "one individual living alone or with persons not related by blood, marriage or adoption, or an individual living with persons who are related in one of these ways."
- 18) LA County Social Services/AFDC:
Family - "children who are eligible for AFDC and live with a caretaker(s) related to the child by blood or adoption. A stepparent or woman whose pregnancy has been verified may be considered appropriate."
- 19) LA County Social Services/General Relief:
Household - "persons who share the same dwelling are aided as separate cases unless they are adult children or spouses, including common law relationships."

- 20) Monterrey Co. Social Services/AFDC:
Family - "at least one eligible child and the following persons living in the home: natural or adoptive parents; other related, eligible children; caretaker relative not a parent; stepparent who is unemployed; or spouse of eligible child's natural or adoptive parent."
- 21) Monterrey Co. Social Services/Genetically Handicapped Program:
Family - "group of individuals who live together on a continuing basis and share their income and expenses and are dependent upon the group's resources."
- 22) San Diego Co. Health/Calif. Children's Services:
Family - "group of individuals who live together on a continuing basis, share their income and expenses, and are each dependent on the group's resources."
- 23) San Diego Co. Health/Community Disease Control:
Family - "persons residing in a contiguous group of residential rooms used on a continuous basis by one or more interacting individuals."
- 24) San Diego Co. Health/County Patient Services:
Family - "spouses, minor children, and adopted minor children residing together as a unit."
- 25) San Diego Co. Health/WIC Program:
Family - "group of related or non-related individuals who are not residents of an institution but who are living together as one economic unit."
- 26) San Diego Co. Social Services/Child Protective Services:
Family - "primary caretaker(s), siblings, or significant others living together."
- 27) San Francisco Co. Health/Community Mental Health:
Family - "husband and/or wife and minor dependent children."
- 28) Tulare Co. Probation/Family Court:
Family - "includes cohabitating individuals and natural parents (married or unmarried), their offspring, and other significant individuals concerned about children (e.g., grandparents)."
- 29) City of LA/Handyworker:
Household - "single family dwelling with the number of residents not limited."
- 30) City of LA/Housing Rehab:
Household - "persons legally occupying the structure being considered for rehab."

SOURCE: ML&a survey, 1982.

V. ANALYSIS & FINDINGS

The responses to ML&a's survey, as displayed in the previous section, suggest seven conclusions or findings.

- 1) Based on the responses to this survey, three out of every ten programs reporting use the Federal Census definition of either "household" or "family" for their program. Approximately seventy percent, therefore, use a definition derived from some source other than the Census to describe their program or to establish service eligibility.
- 2) As illustrated by the representative definitions contained in Table 3, many of the non-Census definitions used for "household" and "family" are custom-tailored to the particular needs and requirements of the various programs. For example, the definition of "family" used by the San Diego County Health Department's Community Disease Control Program is specifically designed to identify the characteristics most relevant to infectious disease containment (e.g., physical proximity and degree of interaction). Similarly, the definitions of "household" (numbers 29 and 30) used by these two programs of the City of Los Angeles are particularly structured to relate to the family as occupants of a dwelling.
- 3) An analysis of the 30 non-Census definitions indicates that these definitions are most commonly based upon two primary criteria -- economic status of the individuals being considered as a household or family, and the relationship of children to the adults in the social unit. Beyond these two overriding criteria, five general factors appear to frequently surface in many of these definitions. These include:
 - a) Persons living under one roof in a joint occupancy arrangement
 - b) Persons sharing cooking functions and/or cooking facilities
 - c) Persons purchasing food as a group
 - d) Persons sharing income and expenses and functioning as a single economic unit
 - e) Persons sharing a set of common values and interests

In examining these 30 definitions, it appears that stepparents and stepchildren are often considered as part of an acceptable family or household unit, and that commonlaw marriage is sometimes a sufficient basis for inclusion in the family unit, with cohabitation used less frequently as a descriptive term. It is also apparent in reviewing these definitions

that more freedom exists at the county level to substitute for, or to expand upon, State and Federal definitions. In several cases, county Social Service and Health Departments broadened the standard Census definition by adding locally appropriate terminology to expand service eligibility.

- 4) Based on the responses to this survey, the three major sources of non-Federal definitions of "household" and "family" are: Federal Administrative Regulations, Federal Statute and State Administrative Regulations. If the judgment and perceptions of these 96 respondents are valid, eligibility for services, at least within these programs, is usually defined through the regulatory process.

- 5) In response to the survey, a nearly equal number of programs include the persons living in a "variable family" (as defined in questionnaire item #3) as part of their program description, compared to those whose program description does not include such a variable unit. That is, 53% of program definitions would allow variable families to be serviced while 46.8% contain no such explicit provisions in their program description. Several of the program directors responding No to the question, "Does your program description include persons living in this variable arrangement," did so because their descriptions also specifically include families of one person. However, responses to question 3b, which asks whether program descriptions specifically exclude the "variable family," demonstrate conclusively that these respondents do not exclude members of such a family from their programs. A total of 82 respondents (or 85% of those programs using "family" or "household"), would not exclude members of the "variable family" under the terms of their current program descriptions, while 13.5% of these program descriptions would exclude "variable family" members.

- 6) In keeping with the two sets of findings presented in #5 (above), it is not surprising that a significantly greater number of programs reported serving members of what we've defined as the "variable family" during 1981 than those which did not. Programs, by a margin of almost 3 to 1 (65.5% to 23.9%), served a broader category of persons during the past year than that defined simply by the general Census Department definition.

For the most part, respondents were reluctant or unable to identify an estimated percentage of their 1981 service population which corresponded

to the "variable family" definition. Of the 61 programs which reported serving members of the "variable family" last year, only 32 provided such an estimate. However, it is interesting to note that of those 32 programs willing to hazard such an estimate, 50% claimed that "variable family" members constituted at least 10% of their caseload (and 31.2% said that more than 1 in 5 of their clients lived in such a family).

- 7) A substantial majority of respondents stated that there currently exists no legal restrictions which prevent them from serving members of a "variable family." A total of 64.5% of the 96 respondents report that they are free of such restrictions, while 23.9% report that legal restrictions presently exist, which prohibit them from serving "variable family" members. Among respondents who are reportedly limited in this fashion, Federal or State administrative regulations or laws are most often cited as the cause of such constraints.

VI. APPENDICES

- A. Copy of Survey Questionnaire and Cover Letter used in this study.
- B. Contact (mailing) List for ML&a "Family" and "Household" Use Survey.
- C. Respondents to "Family"/"Household" Survey.

INSTITUTE FOR LOCAL SELF GOVERNMENT



Executive Director
ARTHUR G. WILL

CLAREMONT HOTEL BUILDING
BERKELEY, CALIFORNIA 94705
TELEPHONE: (415) 841-4044

March 5, 1982

The Institute for Local Self Government, under contract with the California State Personnel Board, is surveying local, state, and federal agencies in California to identify ways in which the terms "family" and "household" are used to describe programs, or to establish client eligibility for services.

This study has been commissioned in response to recent variations in the make-up of family and household arrangements over the past decade. The Personnel Board wishes to determine the extent to which public agencies in California include families and households as part of their program descriptions and eligibility requirements; and whether these variations are addressed.

Implementation of the Federal Block Grants will vest the state government with new and broader authority for establishing eligibility standards for various programs and services. At the same time, declining resources may necessitate a narrowing of some eligibility criteria. Your participation in this survey will assist in the possible redefinition of how future eligibility for programs is determined in California.

We greatly appreciate your attention to the brief questionnaire attached to this letter. Completion of a program page for each applicable program should take only a few minutes. If you have any questions, please contact Mr. Andrew Eber of MENKIN-LUCERO & Associates at (415)452-4696, our consultant for this survey.

Sincerely,

Arthur G. Will
Executive Director

STATE PERSONNEL BOARD
"FAMILY & HOUSEHOLD" USE SURVEY

Dear Program Administrator:

Your cooperation is requested in completing one copy of the attached program page for each program operated by your agency which:

- a. Provides services or benefits to the public and which uses the words FAMILY and/or HOUSEHOLD in the program description.
- b. Provides services or benefits to the public, and which uses the terms FAMILY and/or HOUSEHOLD as part of the program eligibility criteria.

If your agency DOES NOT operate programs which include "household" and/or "family" as part of the program description and eligibility criteria, simply complete the identification lines (below) and return this page to:

MENKIN-LUCERO & Associates
Attn.: Andrew Eber
1633 San Pablo Avenue
Oakland, CA 94612

Person Completing Questionnaire:

Name _____

Title _____

Signature _____

Address _____

Phone _____

Responding Agency: _____

STATE PERSONNEL BOARD
"FAMILY & HOUSEHOLD" USE SURVEY

NOTE: Please complete and submit a separate copy of this page (3 are supplied, feel free to duplicate others as needed) for EACH program within your agency which uses "family" and/or "household" as part of the program description or eligibility criteria.

1. (a) Please list the name of the program which utilizes "family" and/or "household".

(b) What is the principal service or benefit which clients receive from this program by virtue of their membership in a family or household?

(c) Please provide in the space below a brief description of this program, as it pertains to "family" and/or "household". You may also submit additional program literature on this subject.

(d) Commonly used definitions of "household" and "family" are those developed by the U.S. Census Bureau. Please place a check mark next to the Census definition listed below, if the same definition is used in this program. (CENSUS DEFINITION OF "FAMILY") "A household head and one or more persons in the same household and related to the head by blood, marriage, or adoption". Yes _____, we use this definition. No _____, we do not.

(CENSUS DEFINITION OF "HOUSEHOLD") "All persons occupying one or more rooms who live and eat together and who have their own separate outside entrance to the housing unit". Yes _____, we use this definition. No _____, we do not.

(b) Do your program eligibility requirements exclude persons living in this variable arrangement? Yes _____ / No _____

Within the past year, has your program provided services to any persons meeting this variable definition arrangement? Yes _____ / No _____

If yes, approximately what percent of the total number of families/households served by this program met the variable arrangement definition?

0-3% ___ / 3-5% ___ / 5-10% ___ / 10-20% ___ / 20%+ ___

5. If your program's definition of "family" does not now include such a variable arrangement definition, are there any legal restrictions which would stop your program from broadening its definition of "family" so as to include them? Yes _____ / No _____

If Yes, what are those restrictions? (Please explain below, or on a separate sheet of paper, if necessary).

Thank you very much for your time and cooperation in completing this questionnaire. The information will be very valuable to the State Personnel Board. Please complete the identification lines on the cover page and return this questionnaire and any enclosures to:

MENKIN-LUCERO & Associates
Attn.: Andrew Eber
1633 San Pablo Avenue
Oakland, CA 94612

APPENDIX B

CONTACT LIST FOR ML&a
"FAMILY" AND "HOUSEHOLD" USE SURVEY

FEDERAL

- 1) Dept. of Housing & Urban Development
 - a) Office of Multi-Family housing development
 - b) Single family mortgage insurance program
 - c) Community Planning & Development Program
 - d) Urban Homesteading Program
- 2) Dept. of Labor
 - a) CETA Services Program
- 3) Dept. of Health & Human Services
 - a) Administration for Children, Youth & Families
 - b) Bureau of Community Health Services
 - c) Social Security Administration (AFDC Program, SSI)
- 4) Veteran's Administration
 - a) Veteran's Benefits and Assistance
- 5) Dept. of Education
 - a) Vocational & Adult Education (Rural Family Education Program)
 - b) Migrant Education
- 6) Dept. of Agriculture
 - a) Food Stamp Program
 - b) Science & Education Administration (Family Life Improvement Program)
 - c) Special and Family Nutrition Education Programs
 - d) WIC Program

STATE

- 1) Dept. of Alcohol & Drug Programs
 - a) Alcohol Treatment & Rehabilitation Services
 - b) Drug Treatment & Rehabilitation Services
- 2) Dept. of Health Services
 - a) Office of Family Planning
 - b) Medi-Cal Assistance Program
 - c) Rural Health Division
 - d) Indian Health Division
 - e) California Children's Services Branch

- 3) Office of Statewide Health Planning & Development
 - a) Health Profession Development Program
 - b) Uncompensated Care Program
- 4) Dept. of Corrections
 - a) Family Visiting Program
 - b) Treatment Program
 - c) Psychiatric Counseling Programs
- 5) Dept. of the Youth Authority
 - a) Division of Rehabilitation Services - Family Life Education Program
- 6) Dept. of Developmental Services
 - a) Hospital Services Program
- 7) Dept. of Mental Health
 - a) Community Support Program
 - b) Conservatorship Program
 - c) Training and Professional Development Program
- 8) Employment Development Dept.
 - a) CWETA Program
 - b) Displaced Homemakers Program
 - c) Unemployment Insurance Program
 - d) Disability Insurance Program
 - e) Former Inmates Program
 - f) WIN Program
- 9) Dept. of Social Services
 - a) AFDC Program
 - b) Foster Care Program
 - c) Aid for Adoption of Children Program
 - d) Adult Services
 - e) Food Stamp Program
 - f) Refugee Program
 - g) Specialized Family and Children's Service Program
 - h) In-home Support Services Program
 - i) Community Care Licensing Program
 - j) Disability Evaluation Program
- 10) Dept. of Education
 - a) Institutional Program
 - b) Migrant Education Program
 - c) Health Education Unit

- 11) California State Council on Developmental Disabilities
- 12) Dept. of Consumer Affairs
- 13) Office of Criminal Justice Planning
- 14) Office of Emergency Services
- 15) Dept. of Fair Employment and Housing
- 16) Dept. of Veteran's Affairs

COUNTIES

(For each County: Dept. of Social Services; Probation; Mental Health/Alcohol/Drug; Health; and CETA)

- 1) Placer
- 2) Los Angeles
- 3) Tulare
- 4) Orange
- 5) San Diego
- 6) San Francisco (City and County)
- 7) Monterrey

CITIES

- 1) Arcata
- 2) Merced
- 3) Claremont
- 4) Daly City
- 5) Los Angeles
- 6) San Diego
- 7) San Jose
- 8) Sacramento
- 9) Stockton
- 10) Ventura

APPENDIX C

RESPONDENTS TO "FAMILY"/"HOUSEHOLD" SURVEY

- I. The following organizations returned the survey form indicating that the words "family" and/or "household" were used neither to describe their program nor as an eligibility criteria.

FEDERAL (3)

- 1) Agriculture
 - Science & Education Administration
- 2) Education
 - Vocational Education
 - Adult Education

STATE (16)

- 1) Office of Criminal Justice Planning
- 2) Dept. of Corrections
 - Psychiatric Counseling
 - Treatment Program
- 3) Developmental Services
- 4) Council on Developmental Disabilities
- 5) Dept. of Drug & Alcohol Programs
 - Drug Treatment & Rehabilitation
 - Alcohol Treatment & Rehabilitation
- 6) Education
 - Migrant Education
- 7) Emergency Services
- 8) Employment Development Dept.
 - WIN Program
- 9) Fair Employment and Housing
- 10) Health
 - Indian Health Branch
 - Rural Health Division
- 11) Office of Statewide Health Planning and Development
 - Division of Health Professions Development
- 12) Mental Health
 - Training and Professional Development
- 13) Social Services
 - Disability Evaluation Division

COUNTIES (9)

- 1) Los Angeles
 - Mental Health
 - Probation
- 2) Monterrey
 - Probation
- 3) San Diego
 - Community Action
 - Emergency Medical Services
 - Drug Programs
 - Alcohol Programs
 - Vital Statistics
- 4) San Francisco
 - Probation

CITIES (4)

- 1) Daly City
- 2) Los Angeles
 - Planning Dept.
- 3) San Diego
- 4) Stockton

II. The following organizations returned the survey form indicating how the words "family" and/or "household" were used to either describe their program or as an eligibility criteria.

FEDERAL

- 1) Agriculture
 - Child Care Food Program
 - Child Nutrition Program
 - Community Supplemental Food Program
 - Family Nutrition Program
 - Food Stamp Program
 - School Breakfast Program
 - School Lunch Program
 - Special Milk Program
- 2) Health & Human Services
 - Aid to Families with Dependent Children
- 3) U.S. Dept. of Housing & Urban Development
 - Community Development Block Grant
 - Section 8 - Subsidized Rent
 - Section 221 - Down Payment Assistance
 - Section 235 - Interest Subsidy

- 4) U.S. Dept. of Labor
 - Comprehensive Employment & Training Act
 - Work Incentive Program

STATE

- 1) Dept. of Corrections
 - Family Visiting
- 2) Dept. of Education
 - School Health Program
- 3) Employment Development Dept.
 - Expanded Service through Experienced Elderly Manpower
 - California Job Agent Program
 - Job Corps Program
 - Federal Targeted Jobs Tax Credit Program
 - Migrant & Seasonal Farmworker Program
- 4) Dept. of Health
 - Family Planning
 - Medi-Cal
- 5) Dept. of Mental Health
 - Short-Doyle Mental Health Services
- 6) State Dept. of Social Services
 - Adoptions Services
 - Aid to Families with Dependent Children
 - Adult Services
 - Child Support Enforcement
 - Family Day Care
 - Food Stamp Program
 - Foster Family-Children
 - Foster Family-Adults
 - Refugee Services

COUNTY

- 1) Los Angeles
 - Health - Ability-to-Pay Program
 - Health-Hill-Burton Program
 - Social Services - Aid to Families with Dependent Children
 - Social Services - Food Stamps
 - Social Services - Foster Care
 - Social Services - General Relief
 - Social Services - AFDC-Linked Medi-Cal
- 2) Monterrey County
 - CETA - various titles
 - Social Services - AFDC-Family Group
 - Social Services - AFDC-Unemployed Parents
 - Social Services - Child Protective Services
 - Social Services - Genetically Handicapped Persons Program
 - Social Services - Medi-Cal

- 3) Orange County
 - Social Services - Child Day Care Services
 - Social Services - Employment Related Services
 - Social Services - Medi-Cal
 - Social Services - Refugee Resettlement
- 4) Placer County
 - CETA
 - Mental Health
 - Probation - Juvenile Center
 - Probation - Juvenile Diversion
- 5) San Diego County
 - Health - California Children's Services
 - Health - Cervical Dysplasia Clinic
 - Health - Child Health & Disability Prevention
 - Health - Community Disease Control Program
 - Health - County Patient Services
 - Health - Early & Periodic Screening Diagnosis & Treatment Program
 - Health - Edgemoor Geriatric Hospital
 - Health - Family Planning
 - Health - Public Health Nursing
 - Health - Women, Infants & Children
 - Health - Uniform Housing Code Enforcement
 - Mental Health - In-& Out-Patient
 - Social Services - Child Protective Services
 - Social Services - WIN Program
 - Social Services - General Relief
 - Social Services - In-Home Support Services
- 6) San Francisco County
 - CETA - all titles
 - Health - California Children's Services
 - Health - Family Planning
 - Health - Community Mental Health
- 7) Tulare County
 - Probation - Family Court Services
 - Probation - Juvenile Court
 - Probation - Victim/Witness Program
 - Social Services - Aid to Families with Dependent Children
 - Social Services - Child Protective Services
 - Social Services - Food Stamps
 - Social Services - Medi-Cal

CITIES

- 1) Arcata
 - Community Development Rehabilitation Program
- 2) Los Angeles
 - Handyworker Program
 - Housing Rehabilitation Program
 - Senior Citizen/Disabled Lifeline
 - Utility User's Tax Exemption

- 3) Sacramento
 - Housing Rehabilitation Program
 - Public Housing & Section 8
- 4) San Jose
 - Community Development Block Grant
- 5) Ventura
 - Housing Preservation

TO: Commission on Personal Privacy

FROM: Donna J. Hitchens and Linda Barr
Lesbian Rights Project

RE: Discrimination Against Lesbians and Gay Men in Private
Employment

INTRODUCTION

Discrimination against lesbians and gay men by private employers has received minimal attention and limited regulation, if any, by federal and state law. There are no federal or California statutes expressly prohibiting discrimination against lesbians and gay men in private employment. Repeated attempts at the federal and state level to enact protective legislation have not been successful. This memo provides a brief summary of the state of law with regard to the ability of private employers to discriminate against lesbian and gay employees on the basis of their sexual orientation.

TITLE VII

Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et. seq. (1976), provides protection against discrimination on the basis of sex by both private employers and public employers. However, "discrimination on the basis of sex" has not been interpreted to include discrimination on the basis of sexual orientation. See, DeSantis v. Pacific Telephone and Telegraph, Inc., (9th Cir. 1979) 608 F.2d 327; Smith v. Liberty Mutual Insurance Co., (N.D. Ga. 1975) 395 F. Supp. 1098, aff'd, (5th Cir. 1978) 569 F.2d 325; Voyles v. Davies Medical Center,

(N.D. Cal. 1975) 403 F. Supp. 456, aff'd mem., (9th Cir. 1978) 570 F. 2d 354; Holloway v. Arthur Anderson & Co., (9th Cir. 1977) 566 F.2d 659; Sommers v. Budget Marketing, Inc., (8th Cir. 1982) 27 EPD 32,317.

Title VII's legislative history provides no indication that Congress intended the use of the word "sex" within the statute to include sexual orientation.¹ Legislation has been introduced in Congress almost every year to amend Title VII to include sexual orientation as a category of prohibited discrimination. Partly because of this proposed legislation, the Federal courts have determined that Congress never meant to include it in the statute as it presently exists. See, e.g., Smith, supra, at 1101; Holloway, supra, at 662-663.

In addition, the Equal Employment Opportunity Commission has consistently ruled that it has no jurisdiction over a charge of unlawful employment discrimination based on a person's homosexuality, since Congressional intent indicates that "sex" means "gender", not "sexual practices." See, EEOC Dec. No. 76-67, 2 Empl. Prac. Guide (CCH) 6493 (3/2/76); EEOC Dec. No. 76-75, 2 Empl. Prac. Guide (CCH) 6495 (3/2/76); EEOC Dec. No. 76-100, 2 Empl. Prac. Guide (CCH) 6675 (3/9/76); EEOC Dec. No. 76-115, 2 Empl. Prac. Guide (CCH) 6680 (7/7/76).

To summarize, unless Title VII is amended to include

¹ See generally, Rieke, B., "Title VII and Private Sector Employment Discrimination Against Homosexuals," 22 Ariz. L. Rev. 94, 97 (1980); Friedman, J., "Constitutional and Statutory Challenges to Discrimination in Employment Based on Sexual Orientation," 64 Iowa L. Rev. 527, 563 (1979).

sexual orientation, federal law will not provide any protection for lesbians and gay men who work for non-governmental employers and are discriminated against on the basis of their sexual orientation.

CALIFORNIA

California provides a few alternative measures of protection for lesbians and gay men in private employment, but there is a decided lack of uniformity to these measures. For example, there is no explicit, statewide statutory protection against discrimination on the basis of sexual orientation. Similar to the Congressional situation, bills are introduced almost yearly in the state legislature which would provide protection for lesbians and gay men in employment; however, they have failed to achieve passage.

In 1979, Governor Brown signed Executive Order B-54-79, which prohibits discrimination in state employment (agencies, departments, boards and commissions) on the basis of sexual orientation. In Gay Law Students v. Pacific Telephone and Telegraph, (1979) 24 Cal. 3d 458, 156 Cal. Rptr. 14, 595 F.2d 592, the California Supreme Court held that the Fair Employment and Housing Act, Cal. Govt. Code §129000 et seq. (West 1982) [formerly, the Fair Employment Practices Act, Cal. Labor Code §1410 et seq.] does not provide protection for lesbians and gay men in employment. Id.

Another closed statutory avenue is the Unruh Civil Rights Act, Cal. Civil Code §50 et seq. (West 1982), which has been held to exclude employment discrimination from its coverage.

See, Gay Law Students v. Pacific Telephone and Telegraph, (1979) 24 Cal. 3d 458, 156 Cal. Rptr. 14, 595 P.2d 592; Van Hoomissen v. Xerox Corp., (D.C. Cal. 1973) 368 F. Supp. 829; Alcorn v. Anbro Engineering, Inc., (1970) 2 Cal. 3d 493, 86 Cal. Rptr. 88, 468 P. 2d 216.

The California Supreme Court took an affirmative step forward in Gay Law Students, supra, by creating a new cause of action for "manifest"² lesbians and gay men through Cal. Labor Code §1101 and §1102 (West 1971).

Section 1101 provides: "No employer shall make, adopt, or enforce any rule, regulation, or policy: a) forbidding or preventing employees from engaging or participating in politics... b) controlling or directing, or tending to control or direct the political activities or affiliations of employees."

Section 1102 provides: "No employer shall coerce or influence or attempt to coerce or influence his employees through or by means of threat of discharge or loss of employment to adopt or follow or refrain from adopting or following any particular course or line of political action or political activity."

The Court, in Gay Law Students, supra, stated that: "...the struggle of the homosexual community for equal rights, particularly in the field of employment, must be recognized as a political activity." Id. at 488. This cause of action will probably

² For a thorough discussion of the term "manifest" homosexuality, see Warner, D., "Homophobia, 'Manifest Homosexuals' and Political Activity: A New Approach to Gay Rights and the 'Issue' of Homosexuality," 11 Golden Gate L. Rev. 635 (1981).

best work where an employee's acts can be considered "manifest" acts of homosexuality, i.e., coming out at work as a political activity. However, whether or not this particular cause of action will be a useful one remains to be seen. There is no published case law available since Gay Law Students that provides an interpretation of the application of the Labor Code.

LOCAL ORDINANCES

Some California communities have enacted local ordinances to protect lesbians and gay men in private employment. For example, San Francisco Ordinance #178-78 (San Francisco Police Code, Article 3301 et seq.) provides broad protection for lesbians and gay men in employment, housing and public accommodations. It covers employers with more than five (5) employees and it covers discrimination which is wholly or partially based on sexual orientation, in application for employment, as well as current employment. Its strength lies in its alternative methods of enforcement: 1) complaints may be filed with the Human Rights Commission; 2) injunctive relief is available; and most importantly 3) a private right of action against the employer may be pursued. Even though these ordinances exist, there is almost no reported case law to test their effectiveness. In the only reported case brought specifically under the San Francisco ordinance, the court held against the plaintiff strictly because the ordinance conflicted with the Free Exercise Clause of the First Amendment. The defendant was a religious organization. Walker v. First Orthodox Presbyterian Church of San Francisco, (Cal. Super. Ct. 1980) 22 FEP 762.

CONCLUSION

With the exception of the protections available through a local ordinance or Labor Code §§1101 and 1102, lesbians and gay men who work for private employers in California can be legally subjected to employment discrimination on the basis of their sexual orientation. They can be:

1. rejected for employment;
2. terminated from employment;
3. subjected to working conditions different than those of their heterosexual colleagues; and
4. refused promotions.

None of these actions must be based on the individual's skills, ability, merit or job performance. The lesbian or gay employee can be subjected to these discriminatory practices solely because of her/his sexual orientation.

RECOMMENDATIONS

See attached page.

TO: Commission on Personal Privacy
FROM: Donna J. Hitchens and Linda Barr
RE: Recommendations

1. Amend the California Fair Employment and Housing Act so that it explicitly prohibits employers from discriminating on the basis of sexual orientation.

2. Add a chapter to the California Labor Code that would prohibit any employer from:
 - a. soliciting or requiring the divulgence of any information about an employee's (or prospective employee's) private life that has not been demonstrated by the employer to be necessary to the performance of the job;

 - b. using any information acquired about an employee's (or prospective employee's) private life, which has not been demonstrated by the employer to be necessary to the performance of the job, to influence any decision regarding the hiring, placement, promotion, assignment, or termination of the employee;

 - c. subjecting an employee to harassment or interrogation on the basis of information acquired about their private lives that has not been demonstrated to be necessary to the performance of the job.

CHILD CUSTODY DISPUTES

AND THE

HOMOSEXUAL PARENT

ROBERTA BENNETT, Commissioner
COMMISSION ON PERSONAL PRIVACY

SUMMARY

Traditionally, homosexual parents involved in child custody disputes have received inconsistent and frequently inequitable treatment because of legal standards that did not protect them from judicial homophobia. Recent decisions in this area indicate a willingness by the Courts to consider a parent's homosexuality only to the extent that it actually affects the welfare of the children. Despite what could be perceived as a more liberal approach to these cases by the Courts, the homosexual parent's parenting capabilities and home environment must withstand a stricter and more in depth scrutiny by the Court than that of heterosexual parents. The myths and stereotypes about homosexuality which pervade our society, including the widely held belief that a homosexual parent cannot provide a healthy home environment, makes it difficult, if not impossible, for the Court to overcome its own homophobia and neutrally adjudicate a child custody case involving a homosexual parent.

There is no rational basis for treating homosexual parents differently from heterosexual parents in custody cases

and in doing so the Court victimizes both parent and child by allowing the concept of the best interests of the child to be permeated by unfounded preconceptions, irrational fears and prejudices.

The nexus requirement established in child custody cases with heterosexual parents must be applied without exception to all custody cases involving homosexual parents if we are to prevent judicial homophobia and/or a parent's sexual orientation from being the determinative factor in awarding child custody where one of the parents is a homosexual.

It is amazing that there is a state of the art in the area of gay and lesbian custody and visitation cases. Five years ago the terms homosexual and parent were considered to be mutually exclusive. In the last five years, however, the Courts have heard an increasing number of cases involving a homosexual parent. Further, for the first time, studies are being made to determine the relationship between a parent's sexual orientation and the development of that parent's children. These studies and the recent cases collectively form strong authority for the proposition that the terms homosexuality and parenthood are not mutually exclusive. Quite to the contrary, these terms are terrifically compatible, and the state of the art is such that educating a Judge to this compatibility is well within the grasp of today's attorneys.

There are virtually no statistics available on the incidence of homosexual parenting. One thing we can be sure of, however, is that being a homosexual has little, if anything, to do with one's desire or ability to be a parent. In a major study recently completed by the Kinsey Institute for Sex Research, approximately 1,000 homosexuals were interviewed. One-fifth of the men interviewed had been married, as had

one-third of the white lesbians and one-half of the black lesbians who were interviewed.¹ It is reasonable to conclude that some of those gays and lesbians became parents while they were married. Further, many men and women who are homosexuals decide that they want to have and raise children. Some choose to marry and live a double life, others deliberately have children, often times by way of artificial insemination.

The custody and visitation cases that are reported or published are only a small percentage of the actual custodial cases involving a homosexual parent. The majority of custody cases are settled out of Court through negotiation. Also, many custody cases that are won or lost at the trial level are never published because not appealed. This does not even speak to the hundreds of thousands of children being raised by gay parents who never come to the attention of our Court systems.

Most of the custody cases involve lesbian mothers. Gay fathers' rights are usually considered only in the area of visitation. The Courts are split in their resolution of

1. Maddox, Homosexual Parents, Psychology Today, February, 1982, at 62.

the lesbian mother custody issue. A minority of jurisdictions still find a lesbian mother unfit per se to be the custodial parent. However, the prevalent and current judicial trend gives no presumptive effect to the mother's lesbianism and considers the parent's homosexuality as only one factor amongst many in reaching a decision. It is important to note that there are no set guidelines for determining the issues of custody and visitation. The Court, rather, is given discretion to determine what order it deems to be in the best interests of the child.

The cases are difficult to analyze because homosexuality is usually not the only factor involved. Although California in the landmark decision of NADLER V. SUPERIOR COURT was the first to strike the presumption of per se unfitness, the Los Angeles Superior Court at the trial level held in LEEDS V. LEEDS, that if all other things are equal, then it is in the best interest of the

2. California Civil Code Section 4600

3. 255 Cal. App. 2d 523; 63 Cal. Rptr. 352 (1967). The Court ruled that "the trial Court failed in its duty to exercise the very discretion with which it is vested by holding as a matter of law that Petitioner was an unfit mother on the basis that she is a homosexual." Id. at ____, 63 Cal. Rptr. at 354.

children to be in the custody of the heterosexual parent. It appears that while Courts often say that a parent's homosexuality does not per se render a parent unfit, a parent's homosexuality is actually determinative of the custody issue. Of course, not every homosexual parent is the best parent or should win every custody suit. However, the sexual orientation of the parent should be irrelevant unless positive evidence exists which shows that the parent's sexual orientation is detrimental to the child's best interests.

It is an uphill battle for homosexual parents to win or retain custody of their children. Often times it is an expensive, time-consuming, traumatic experience just to obtain reasonable visitation with one's children if one is a homosexual parent. The homosexual parent must face many problems which are not encountered by his/her heterosexual counterpart. Perhaps the most difficult hurdle to overcome is the myriad of stereotypes and myths about homosexuals. Judges, like most people in our society, have grown up with these myths and stereotypes and are affected thereby. An attorney representing a homosexual parent cannot afford to allow those myths and stereotypes to go unchallenged in a custody proceeding and expect to win.

Despite the fact that the American Psychiatric Association removed homosexuality from its list of mental disorders in 1973, many people still regard homosexuality as a mental illness. In a report presented to the APA in 1976, it was stated, "not one objective study, by any researcher, in any country, that substantiates the theory of homosexual pathology", and concluded that the most recent data in the field "indicates that homosexuality falls within the normal range of psychological functioning."⁴ Unfortunately, the public at large and many professionals continue to view homosexuals as abnormal.

It would be absurd to believe that Judges are not biased by their own personal feelings. An experiment was performed in which a videotape of a mock counseling session was shown to an audience of students preparing for careers in the mental health areas. Half the students were told that the "patient" was lesbian, and the other half that she was heterosexual. The students concluded that "perceptions of persons are seriously skewed by the homosexual label."⁵

4. Silverstein, Even Psychiatry Can Profit From Its Past Mistakes, 2 Journal of Homosexuality, 1976-7, at 153.

5. Siegel, Homophobia: Types, Origins, Remedies, 39 CHRISTIANITY AND CRISIS, 1979, at 280.

"For those subjects of the experiment who understood the client in the film to be lesbian, she was seen as more defensive, less nurturant, less affiliative, less autonomous, and less self-confident than the same women appeared to subjects who saw her as heterosexual.

There are many persons who believe that homosexuals are a danger to their children. This fear adhered to by our predominantly heterosexual community has no basis in fact. To the contrary, Dr. Donna Martin, Chief Psychologist with the Permanente Medical Group, has declared:

In the course of my clinical work, I have had a fair amount of experience working with LM's (Lesbian Mothers). As I compare the LM group with heterosexual mothers (HM's), I have seen several differences emerge. My impression is that, as a group, the LM's tended to be more thoughtful about the implications of the personal relationships for their children and more concerned about providing a healthy developmental environment. The focus of the average HM who comes to a psych(sic) clinic about her child has to do with how the mother is being affected by the child's unsatisfactory or disturbing behavior. In the first group, the stress seems to be on the child's welfare, while in the second, the concern tends to be more self-related. From what I have seen clinically, my impression is that children of LM's have as good a chance for developmental success as children from intact heterosexual families. On the other hand, my observations lead me to believe that children of LM's have a higher probability of developmental

success than do children of single mothers involved in transient or sequential relationships.⁷

There is no substantive data to empirically support the theory that a child raised in a homosexual home will suffer serious maladjustments. To the contrary, the most recent data in this area is contained in a study carried out in 1976 at U.C.L.A. The results are based on interviews and tests conducted with 20 children aged 5 - 12, who had lesbian mothers ranging in age from early 20's to early 40's, most of whom were living with female lovers. The control group was composed of heterosexual women raising their children alone. The two groups of children could not be differentiated on the basis of their mothers' sexual orientation, nor were they distinguishable by disturbed gender development. The preliminary findings of this 3-year study conducted by Dr. Martha Kirkpatrick, Dr. Ron Roy, and Kathy Smith, stands for the proposition that there is no direct correlation between whatever problems children may have and the sexual orientation of their parents. Dr. Kirkpatrick summarized her conclusions as follows:

7. Quoted in Riley, The Avowed Lesbian Mother and Her Right to Child Custody: A Constitutional Challenge That Can No Longer Be Denied, 12 SAN DIEGO L.R., (1975) at 799, 859-860

It looks to us as though no features about these children are specifically related to the mothers' sexual choice. We see some problems in some of the children, but what we're finding are the types of difficulties very commonly seen in the children of divorced parents -- conflict of loyalties, a guilty concern as to the cause of the parents' split-up and anxiety about whether or not they will face further loss.⁸

Pepper Schwartz, a sociologist at the University of Washington, came to the same conclusion when she analyzed the results of her national study of couples, including lesbians with custody. She found there is no detectable difference between the children of homosexual and heterosexual parents.

Perhaps the greatest fear is that children of homosexuals will be homosexual. Richard Green, a psychiatrist at the State University of New York, conducted a psychiatric evaluation of 37 children being raised by lesbians or by transexual parents. Of the 37 children, 36 had no sign of confused gender identity. According to Green, a child takes his or her role models from the whole society, not just from parents or their lovers. A boy learns what a man is from, for example, the television, movies and advertisements.

8. Kirkpatrick, M., Smith, K. and Roy, R., Adjustment and Sexual Identity of Children of Lesbian and Heterosexual Single Mothers; Paper, American Psychological Association (1979)

The data collected to date provides no conclusive basis for the Court's excessive concern with the psychological development of children raised by homosexuals, and the issue should receive no more attention than it does in disputes between heterosexual parents. The commonly expressed fear that custody awards favoring homosexual parents pose a danger to the children's sexual orientation is without foundation and must be laid to rest once and for all.

Judges sitting in the family law Courts must base their decisions on the principle of what is in the best interests of the child. With little evidence available to counteract traditional views, Judges have for decades applied their own moral codes and what was perceived as society's moral code, and have interpreted a child's best interests as living, if possible, in a home where there is a father and a mother. If that was impossible, the next best choice rarely included a gay father or a lesbian mother.

There is no basis in law or in common sense for discriminating between heterosexual and homosexual parents in applying standards of parental fitness. The same applies in any case where one parent does not conform to the socially acceptable norms, e.g., where one parent is blind or has a

history of drug use or is not white. The Court should take into consideration all relevant matters properly bearing on what is in the child's best interest. However, the reality is that the Judge has great latitude in determining the scope of inquiry into what may or may not affect the child and the child's best interests. The homophobic fears of trial Courts distort the application of the appropriate standards which should be utilized in custody suits. Requiring Judges to specify their findings in the written record, in detail, would be one safeguard against judicial bias in homosexual custody cases. It is submitted that to best protect the rights and interests of parents, children and society, the sexual orientation of a parent should be irrelevant unless evidence is presented which shows that the parent's sexual preference is detrimental to the child's best interests. That is exactly what the Supreme Judicial Court of Massachusetts found in the case of BEZIO V. PATENAUDE⁹ wherein the mother's lesbianism was held not to be a bar to custody unless it could be established by the evidence that a nexus existed between the

9. 80 Mass. Adv. Sh. 2133, 410 N.E. 2d 1207 (1980)

mother's homosexuality and her fitness as a parent.

Under the nexus requirement established in BEZIO, the Court negated a per se rule which would create an irrebutable presumption that a parent's homosexuality renders that person unfit as a parent. More importantly, the Court established guidelines designed to reduce the possibility of judicial bias against lesbian mothers and gay fathers.

Recently, the California Supreme Court held that a nexus requirement must be found connecting a parent's disability and the child's best interest. In CARNEY, two minor boys were returned to the custody of their quadriplegic father. The trial Court obviously had its own perceptions of how fathers should relate to sons, e.g., play ball with them. The Supreme Court, however, ruled that whether or not the father could play ball with his sons was only one factor to be considered in determining what custody situation would be in the best interest of the children.

"Myths and prejudices about homosexuals as a group still pervade custody and visitation cases where the parents' sexual orientation is an issue. Stereotypes about

10. In Re the Marriage of Carney, 24 Cal. 3d 725, 598 P. 2d 36, 157 Cal. Rptr. 383 (1979)

homosexuals are as deep-rooted as those about the disabled, and the trial Courts have failed to view the CARNEY standard as applicable to those whose sexual orientation is the factor which places them in the minority and makes them the butt of jokes and the victims of unstated prejudice." 11

The standard stated in CARNEY, requiring a nexus between the attributes of the parent and the possible harm to the child, protects both the minor child and the parent from prejudicial beliefs held by judicial officers. Homosexual parents, in fact all parents, must be afforded the same civil rights now guaranteed to the physically challenged in order to prevent judicial bias from playing a determinative, unchecked role in this very important personal situation. Where the sexual orientation of a parent is not in issue, the Courts invariably insist that a nexus be shown between the parent's alleged behavior and the detriment of the child. In IN RE SARA H.¹² the Court insisted that a nexus be shown between a father's fits of violence while under the influence of alcohol and possible detriment to his children. In this case, the father had killed the children's mother in front of them and also killed a man in a bar.

11. Application and Brief of Lesbian Rights Project As Amicus Curiae, RICHARDS VS. RICHARDS, 2 Civil No. 60409

12. IN RE SARA H., 106 Cal. App. 3d 326, 165 Cal. Rptr. 61 (1980)

It is extraordinary that the solicitude accorded the civil rights of a known killer should be so much greater than that accorded a peaceful gay parent. Yet the lack of a clearly articulated standard for dealing with cases where a parent's sexual orientation is an issue allows this to continue.¹³

It is submitted that without a requirement of a nexus between the parent's attributes and possible detriment to the child, there is no justification for the Court to hear all relevant evidence of each parent's actual, not preconceived, fitness in a custody dispute. Trial Courts need a clear standard that can be uniformly applied in custody disputes involving homosexual parents specifying the degree to which the parent's sexual orientation may be considered in determining the best interests of the child. Absent this standard, the homosexual parent cannot be guaranteed his/her constitutional rights of due process, equal protection, and freedom of association.

Reliance on expert testimony and adherence to a nexus requirement by the Courts will encourage more equitable resolution of custody disputes involving homosexual parents and go far in eliminating the negative impact of judicial homophobia. Psychiatric experts have become an integral part of the child

13. In Re Sara H., 106 Cal. App. 3d 326, 165 Cal. Rptr. 61 (1980)

custody process. Psychiatrists and psychologists, because of their expertise, are better able to evaluate the many behavioral variables than the judiciary. Because Judges are not specifically trained to deal with all the psychological factors operating in a child custody case, they are more prone to reaching decisions based on preconceived notions than on empirical data. The weight to be given expert testimony is up to the Judge. However, it is hoped that the use of expert witnesses will become more prevalent if there is a nexus requirement and that it will assist the Judge in making more objective decisions. It is interesting to note in this regard that pro-heterosexual testimony has failed to empirically substantiate the theory that a child raised in a homosexual home will be adversely affected.¹⁴

14. Kirkpatrick, M., Smith, K., Roy, R. Adjustment and Sexual Identity of Children of Lesbian and Heterosexual Single Mothers; Paper, American Psychological Association (1979)