A Journal of Urban Issues

1995

Urban Action
1995

produced by

The Urban Studies Program

at

San Francisco State University

Urban Action's 1995 Staff

- **Editing Staff**
  - *Cyd Anderson*
  - *Kim Carpenter*
  - *Elina Coulter*
  - *Elijah Henley*
  - *Rebecca Moore*
  - *Donovan Pyle*
  - *Tiffany Rich*
  - *Christy Riviere*
  - *Ben Rodriguez*
  - *Laura Salas*
  - *Michael Schulte*
  - *Steven Zerebecki*
- **Treasurer**
  - *Elijah Henley*
- **Managing Staff**
  - *Elina Coulter*
  - *Elijah Henley*
  - *Rebecca Moore*
  - *Tiffany Rich*
  - *Michael Schulte*
- **Desktop Publishing**
  - *Matt Schallock*
- **Photography**
  - *Danny Murphy*
- **Faculty Advisor**
  - *Norm Schneider*

From The Editors:

In the process of creating the 1995 edition of Urban Action, the staff has attempted to design a journal that addresses issues, ideas, and problems that take place in the urban world. With this in mind, we encouraged submissions from a variety of areas of study at SFSU. In addition to poetry and photography, we recieved research papers from students enrolled in the departments of Urban Studies, Public Administration, Geography, Psychology, and Sociology. In an effort to represent the diversity of city life, we accepted papers that focus on several relevant topics. These topics include: mental health, economic development, environmental issues, policy analysis, and public education. Each article examines a different aspect of urban life. All the articles in this journal attempt to shed light on the problems associated with the modern urban environment.

The 1995 staff would like to thank the Urban Studies faculty for their support and encouragement. We would also like to thank all the authors who submitted research papers and poetry for publication, Architect George McNeil for the use of his computer facilities, and our faculty advisor Norm Schneider for his patience and understanding. Urban Action has been an important extension of the Urban Studies curriculum for more than 15 years, and it has aways been an excellent way to call attention to student research. A primary reason for the continuing success of Urban Action is the degree of autonomy given to the student staff. Producing a publication is a tremendous amount of work requiring the staff to distribute responsibility and work together to achieve a common goal. Urban Action is an excellent example of the progressive educational opportunities available in the Urban Studies Program.

Sincerely,
Urban Action Staff

Table of Contents

Defining Treatment Models for the Dually Diagnosed Homeless:

The Federal Effort

by Heather Pegas

Midway through the homelessness crisis of the 1980's service providers became aware of a growing sub-population of homeless people. This group suffered from mental illness, as did many homeless people. But in this group, serious mental illness was coupled with severe substance abuse problems - alcoholism, addiction to marijuana, heroin and crack cocaine. This group was called the "dually diagnosed" homeless.

This article outlines seminal research about the dually diagnosed homeless, examines theoretical causes of homelessness, and traces the Federal government's history of serving the homeless in general. One current Federal project for the dually diagnosed homeless is discussed in particular. The program is called the Cooperative Agreements for CMHS (Center for Mental Health Services)/CSAT (Center for Substance Abuse Treatment) Demonstration Program for Homeless Individuals of 1993.

The Dually Diagnosed: What We Know

In the 1980's, many researchers studied the prevalence of co-occurring mental illness and substance abuse, both in housed and homeless populations. Although this area of study is relatively new, and study results are by no means uniformed, research has begun to support a conclusion that dual diagnosis is a large and growing problem, particularly among homeless populations.

For example, an Epidemiologic Catchment Area (ECA) study found that in the general U.S. population the lifetime prevalence of having a mental disorder in combination with some other addictive substance abuse disorder was about 29% (Regier, Farmer, Rae, Locke, Kieth, Judd and Goodwin 1990). Among those suffering from mental illnesses, 47% of schizophrenics (1990) and 32% of those with mood disorders (1990) such as major depression were found to meet the criteria for some form of substance abuse dependence.

> *"...dual diagnosis is a large and growing problem, particularly among homeless populations."*

Studies in psychiatric hospitals also support the conclusion that substance abuse disorders are prevalent among the mentally ill. When drug and alcohol abuse was measured in 59 schizophrenic patients and 60 bipolar manic patients, results revealed that 50% of the schizophrenic patients and 25 % of the bipolar patients abused one or more drugs (Miller, Busch and Tanenbaum 1989). Khalsa, Shaner, Anglin and Wang (1991) found that of 576 patients evaluated in the Psychiatric Evaluation and Admissions Unit of the Veterans Administration Medical Center in West Los Angeles, 39% were deemed to have dual diagnosis.

This was by no means a West Coast phenomenon. In 1986, a New York State report on the dually diagnosed found that approximately 50% of the patients admitted for inpatient psychiatric care

in New York had substance abuse problems that required treatment (Sundran, Platt and Cashen 1986). In New Orleans, Barbee, Clark, Crapazano, Heintz and Kehoe (1989) discovered that of 53 schizophrenic patients referred to emergency crisis services in a general hospital, 47% qualified for a lifetime diagnosis of an alcohol-related disorder.

Statistics specific to the homeless population are extremely varied. In a review of homelessness studies, Fischer (1990) found that the prevalence rate of a mental disorder in combination with an alcohol use disorder ranged from 3.6% to 26%. In a synthesis report of ten National Institute of Mental Health (NIMH)-funded studies, 28 to 37 % of homeless samples were found to be mentally ill (Tessler & Dennis 1989). For those studies reporting on the prevalence of dual diagnosis, 8 to 22 % of the total samples were both mentally ill and abusing substances (Tessler & Dennis 1989).

Regionally, a study of the homeless population of Alameda County revealed that over 58% of Alameda County's homeless are diagnosed with either drug abuse, alcohol abuse, major mental disorder, or some combination of the three (Robertson and Westerfelt 1991). Approximately 10% of the homeless sample were found to be dually diagnosed (1991). Recently, the Interim Status Report of the McKinney Research Demonstration Program for Homeless Mentally Ill Adults (1994), a synthesis report of five model studies nationwide, asserted that 70% of a homeless mentally ill Baltimore sample, 77.7% of a New York City sample, and just over half a San Diego sample had at some point in their lives abused substances.

"Regionally, a study of the homeless population of Alameda County revealed that over 58% of Alameda County's homeless are diagnosed with either drug abuse, alcohol abuse, major mental disorder, or some combination of the three."

These studies also reveal the special problems faced by the homeless dually diagnosed. Tessler & Dennis (1989) found that despite high levels of disability, less than one-third of respondents in New York, Boston, and Milwaukee studies were receiving Supplemental Security Income (SSI), a Social Security Administration entitlement for the disabled. The New York study found that 51 % of the mentally ill subgroup, as compared with 33 % of the nonmentally ill, reported a health problem (Tessler and Dennis 1989). Struening and Padgett (1990), studying the combined influence homelessness, mental illness and substance abuse on health problems, discovered that this group was significantly more likely to suffer from hypertension, diabetes, stomach and liver problems.

The homeless dually diagnosed also face stubborn service delivery barriers. The underlying reason is systemic and institutionalized: mental health care providers and substance abuse treatment providers from the Federal to the nonprofit level have traditionally designed and provided treatment separately. Funding streams have also been strictly separated - one for mental health, one for substance abuse - so that funds specifically for the dually diagnosed may be scarce or nonexistent (Drake, Osher and Wallach 1991).

This underlying problem manifests itself in concrete ways. Blankertz, Cnaan, White, Fox and Messinger (1990) report that the use of

psychotropic medications (for psychiatric disabilities) may exclude the dually diagnosed from substance abuse programs prohibiting all mood-altering drugs. Substance use may keep tnem out of mental health programs. Disruptive behavior associated with both illnesses can keep them out of shelters, and other short-term help facilities (Blankertz, Cnaan, White, Fox and Messinger 1990). The long-term housing situation is no better: obvious and exacerbated problems of alcoholism and substance abuse make these individuals among the least attractive tenants in low-income housing projects (Drake et al. 1991). In fact, Schutt & Garrett (1988) confirm that the dually diagnosed homeless population is more likely to live on the streets than in shelters. This suggests that members of the homeless provider community do not have the skills, knowledge or resources to help the dually diagnosed stabilize emotionally, attain sobriety, and find housing. All of these research findings underscore the need for treatment models which effectively meet the special needs of homeless mentally ill substance abusers.

> *"...the homeless provider community does not have the skills, knowledge or resources to help the dually diagnosed stabilize emotionally, attain sobriety, and find housing."*

The Feds and Homelessness:

A Review of Recent History

The causes of homelessness in the 1980's are varied and complex, and the Federal government waited several years before taking a role in solving the problem.

The early 1980's was a time of rapid deindustrialization. Between 1979 and 1984, 11.5 million workers lost their jobs due to plant shut-downs (Blau 1992). The economy was starting to re-organize around the science industry, with lower wage, lower benefit jobs (Blau 1992). There was a developing Secondary job market consisting of menial, unskilled, often temporary labor (Miller 1991). A Joint Economic Committee study showed that 44% of new jobs created between 1979 and 1985 paid less than $7400 in 1986 dollars (Blau 1992). This change put poor and disabled Americans at high risk of homelessness.

In addition to economic changes, the Reagan administration was decidedly hostile to the welfare programs poor Americans relied on. Aid to Families with Dependent Children (AFDC), for example, was an easy target. Forty percent of recipients were African American, and 16%, Latino. During the Reagan years, $3.6 billion were cut from AFDC, and 442,000 people were removed from the rolls (Blau 1992). The Comprehensive Employment and Training Act (CETA), the major Federal job training program which employed 306,000 people, was terminated (Katz 1986). Between 1982 and 1986, the food stamps program was cut $6.8 billion, and 1 million recipients were pushed off the rolls (Blau 1992). The disabled were hurt by cuts to Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI). In all, 491,000 people were removed from the disability rolls (Blau, 1992), These cuts especially hurt the mentally ill: "although they made up only 11 % of those receiving SSDI, they constituted almost one-third of cases terminated in the first year (1992)."

The income squeeze was accompanied by a low-income housing squeeze. The 1970's and 1980's saw widespread redevelopment

of urban areas, and the conversion of low-income housing into middle-income housing or commercial districts. And the development of new low income housing lagged far behind conversion rates (Morse 1992). Single Room Occupancy Hotels (SRO's), an important source of low-income housing, were decimated during the 1970's and 1980's: approximately 1 million SRO rooms, half of the national total, were lost (Berlin and McAllister 1992). The number of total unsubsidized units that cost less than $300 a month declined from 7.8 million in 1974 to 5.3 million by 1985 (1992). And competition for subsidized units was fierce. In 1983, for example, New York City's housing authority had a waiting list of about 200,000 for its 175,000 units (Leavitt 1992). For those earning between $3,000 and $6,900 a year, the percentage of income paid for rent rose from 42% in 1978 to 55% in 1983 (1992).

The role of mental illness in the homelessness crisis is a subject of ongoing debate. Decreased housing and services for the mentally ill, who did not have the financial or emotional resources to help themselves, (Berlin & McAllister 1992) was likely a major factor contributing to homelessness. Many theorists take this farther, blaming the nationwide psychiatric hospital deinstitutionalization movement of the 1950's, 60's and 70's for homelessness. In this era, vast numbers of psychiatric patients, many of whom had been institutionalized for decades, were released to their communities (Cook 1989). The beginnings of homelessness, however, were not noted until the early 1980's, and there is no conclusive evidence that a direct link between these two factors exists.[1]

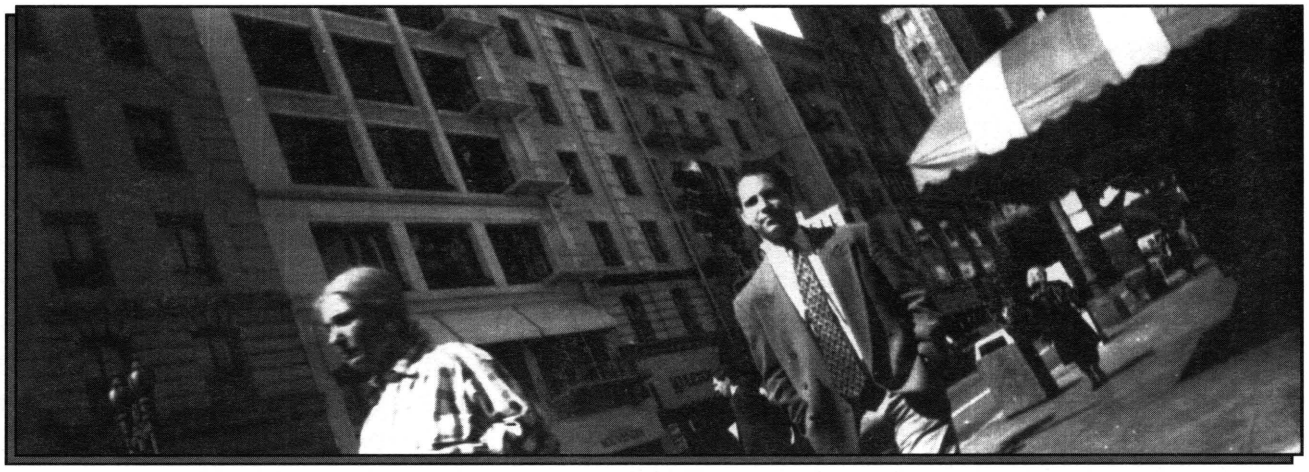
In any case, a combination of major structural changes taking place in America resulted in the most rampant homelessness since the Depression. A 1983 U.S. Department of Housing and Urban Development (HUD) study estimated that between 250 and 350 thousand people were homeless each night (Berlin & McAllister 1992). The 1990 Census Bureau reported 228,000 individuals homeless during one night (1992). Mitch Snyder and Mary Ellen Hombs, in their book Homelessness in America, estimated that 3 million people were homeless during 1983 (Blau1992). Regardless of who was correct, it was painfully clear that this huge problem called for an equally massive Federal solution.

The McKinney Act of 1987

The Stewart B. McKinney Homeless Assistance Act of 1987 (PL 10S77) was signed into law on July 22, 1987. It was the first time the Federal government had formally assumed a role in addressing homelessness (U.S. Department of HUD 1994).

The McKinney Act created 20 programs, administered by seven different Federal departments ranging from obvious contenders like the U.S. Department of Housing and Urban Development (HUD) to less obvious choices like the Department of Defense (Kondratas 1991). McKinney programs include the Emergency Shelter Grants Program, the

1)Priority Home! The Federal Plan to Break the Cycle of Homelessness, published by the Clinton administration in May of 1994, addresses the issue this way: "The increase in homelessness is often mistakenly attributed solely to deinstitutionalization. Although the bulk of deinstitutionalization occurred prior to 1980, most individuals currently homeless have experienced homelessness much more recently. A recent survey by the HHS Center for Mental Health Services indicates that the majority of homeless people...had spent little time in state psychiatric hospitals and that the majority had been homeless for less than three years" (p. 48).



A view from the curb.

Supportive Housing Demonstration Program (including a permanent housing component), a program to rehabilitate SRO housing, and refinements to Section 8 regulations (1991). It also provides education for homeless children, training for adults, block grants to care for the mentally ill, and food programs. The special needs of the dually diagnosed were not addressed by the McKinney Act.

McKinney does offer programs like the Permanent Housing for the Handicapped Homeless Program under HUD which includes housing for mentally ill and dually diagnosed homeless individuals. But these programs are not informed by dual diagnosis research. Another critique of programs like this is that they provide up to half the facility operating expenses for only five years. Thus, McKinney may create good programs which will be forced to curtail critical services when Federal funding expires (Non-Profit Housing Association of Northern California 1990). For this reason, the Non-Profit Housing Association of Northern California has dubbed McKinney "The Five Year Time Bomb."

Perhaps the most important, most often heard critique is that McKinney was intended solely as an emergency relief measure, and that it has not grown beyond these terms (National Coalition for the Homeless 1988). Both the U.S. Conference of Mayors and the General Accounting Office (GAO) have reported that because the McKinney Act is almost exclusively focused on emergency relief, it cannot begin to address the underlying causes of homelessness (Foscarinis 1991).

The Clinton administration has recently acknowledged that it is time to move beyond the emergency provisions of McKinney, recognizing the special problems of homeless populations (U.S. Department of HUD 1994). In Priority Home!: The Federal Plan to Break the Cycle of Homelessness (1994), the administration has identified the special roles of mental illness and substance abuse in homelessness: individuals suffering from both illnesses confront common difficulties in accessing treatment and housing (1994). In fact, mental illness and substance abuse are ranked fifth and fourth, respectively, in a survey identifying top issues in treating homelessness (1994).

In Fiscal Year 1995, the plan proposes enhanced drug treatment capacity for 140,000 hard-core drug users; though not specifically targeted for them, a portion of these treatment spots would be available to the homeless (1994).

As a complement to this plan, Federal agencies have recently implemented

programs designed specifically for homeless subgroups, like the mentally ill and the dually diagnosed. For example, the ACCESS program (Access to Community Care and Effective Services and Supports), administered by the Department of Health and Human Services' Center for Mental Health Services (CMHS), has recently made grants totalling $16.8 million to nine states. These grants will test an array of service integration strategies for the homeless mentally ill (National Resource Center on Homelessness and Mental Illness 1993). Each of nine states will have two funded sites. One site will use a service integration strategy (where a homeless mentally ill person can enter services at any designated location and access showers, food, shelter, referral and services all in one site) and will be compared to another site using traditional services. CMHS randomly assigned the two sites within each state either experimental (service integration) or comparison status. Both sites will have comparable levels of funds to enroll and serve 75-100 homeless mentally ill persons over five years (1993). At the end of the study, CMHS will perform measurements to determine whether the integrated service sites produce better client outcomes than the traditional service sites (1993).

"As a result of increased Federal activity in t he field of homelessness, and ongoing research suggesting the prevalence of co-ccurring mental illness and substance abuse among the homeless, the Federal government has recently begun to define effective treatment specifically for the dually diagnosed homeless."

Targeted Treatment for the Homeless Dually Diagnosed:

A Recent Federal Effort

As a result of increased Federal activity in the field of homelessness, and ongoing research suggesting the prevalence of co-occurring mental illness and substance abuse among the homeless, the Federal government has recently begun to define effective treatment specifically for the dually diagnosed homeless. In 1993, two Department of Health and Human Services (DHHS) agencies, the Center for Substance Abuse Treatment (CSAT) and the Center for Mental Health Services (CMHS), banded together to create the first Federal program for this group (Rickards 1994; Lubran 1994). The program was called Cooperative Agreements for CMHS / CSAT Collaborative Demonstration Program for Homeless Individuals. It was supported by Public Law 102-321 (July, 1992), called Grants for the Benefit of Homeless Individuals, which gave DHHS the authority to make grants to and enter into cooperative agreements with nonprofits and other agencies to improve services for a substance abusing homeless population (Lubran 1994). Encouraged by the work of dual diagnosis researchers like Robert Drake and Fred Osher, who were at the time directing CMHS's Demonstration programs, the agencies decided to focus on homeless individuals with co-occuring disorders (Rickards 1994). CMHS and CSAT reprogrammed monies (in the neighborhood of $50 million) to support this program, and in summer of 1993 sent out Requests for Applications (Lubran 1994).

The goal of the Collaborative Demonstration Program was to "document and evaluate effective [treatment]

interventions which can be used by local programs serving homeless substance abusing persons that treat persons with co-occurring mental illnesses within their service population "(U.S. Department of HHS 1993). The objective was to "document treatment approaches that address the multiple needs of homeless individuals who have co-occurring substance use and mental disorders and to determine their potential effectiveness" (1993). It was hoped through documentation and evaluation that the program would ultimately help individuals "reduce functional impairments associated with mental illnesses, achieve abstinence from alcohol and other drug use, and reduce the days spent homeless by the target population" (1993).

"[the]collaborative demonstration program-comparing the effectiveness of a number of dual diagnosis treatment models-will point out appropriate directions for future dual diagnosis treatment funding."

To achieve the program goals, CMHS and CSAT decided to fund outstanding homeless dual diagnosis providers across the nation to:

produce manuals describing treatment interventions that were effective with the target population;

document the potential effectiveness of the interventions through case studies;

describe how the treatment interventions were implemented (to ease duplication);

develop evaluation plans for conducting a systematic pre-test/post-test assessment of the interventions' effectiveness; and

develop budgets for implementing the evaluation plans

Sixteen projects (of 56 applicants nationwide) were ultimately chosen to participate in this project. These 16 projects served dually diagnosed homeless individuals using a variety of interventions. Approximately half of the projects were government-based community mental health centers, 25 % were nonprofit human services agencies, and the remaining were a mix of hospital, university and research institutions.

The collaborative demonstration program has been underway since September of 1993. During the first phase of this effort, each funded project completed the tasks outlined above, producing a manual focusing on one unique, state-of-the-art aspect of treatment-or intervention-that worked within their agencies. A second phase of this effort began in October of 1994. On the basis of the quality and relevance of manuals produced in phase one, six of the original sixteen agencies were awarded funds to carry out rigorous scientific evaluations of the effectiveness of the interventions described in the manual (U.S. Department of HHS, Request for Applications 1994).

It is hoped that this collaborative demonstration program - comparing the effectiveness of a number of dual diagnosis treatment models - will point out appropriate directions for future dual diagnosis treatment funding (Osher 1994).

Treating the Dually Diagnosed Homeless:

The Future in Federal Government

Today CMHS and CSAT have completed the first phase of the Collaborative Demonstration Project-documentation of appropriate treatment models-and

have chosen six of the original sixteen model projects to receive continuation grants to evaluate their models. Given that the evaluation effort is just beginning, project offfials in both CMHS and CSAT feel that it is too early to tell whether project goals have been met (Lubran 1994; Rickards 1994). But based on models produced, new ideas about the project's utility have developed, and new goals and directions for dual diagnosis programming have been suggested.

Again, although goals cannot yet be evaluated, there is the sense of movement in the right direction at the Federal level, especially given that there was no effort at all in this direction just last year (Rickards 1994). The Collaborative Demonstration Project with its emphasis on documentation and evaluation, is considered critical in laying the foundation for future Federal efforts. The CMHS project officer feels that each of the six continuation grantees adds an important dimension to dual diagnosis treatment in that each serves a different type of individual in a different way (Rickards 1994). For example, Bonita House, Inc. in Berkeley, CA, one of the evaluation grantees, focuses on a dually diagnosed population recently released from psychiatric institutions; Vietnam Veterans of San Diego, another grantee, exclusively serves U.S. veterans (Lubran 1994).

Current program goals are to make the evaluations as strong as possible to show what effective models are able to achieve with the homeless dually diagnosed population; such proof may support Federal allocations for dual diagnosis treatment. The CMHS project officer poses that they will certainly be in a better position to argue for service dollars, as opposed to research and evaluation dollars (Rickards 1994). Also, because the six evaluation grantees are using similar instrumentations and measures, it may be possible to collect demographics and data for all six projects in a single Federal database which may, in turn, support the formulation of national dual diagnosis homeless treatment models (1994). Although each project addresses a different type of population, these national models may provide other programs with effective and tested models to implement (1994).

"The Collaborative Demonstration Project, with its emphasis on documentation and evaluation , is considered critical in laying the foundation for future Federal efforts."

There is also hope at the CMHS level that innovating efforts will follow the documentation and evaluation efforts, that after documenting what is known and proving it works, the Federal government can support innovation on these ideas (1994). CMHS and CSAT hope, in fact, to propose a third phase for the collaborative demonstration project. Some ideas for a third phase include the comparison across sites of all or some of the models evaluated in Phase two, or choosing new programs to implement some of the models which emerged from Phases one and two (Leginsky 1994).

The Feds will almost certainly have to address the issue of funds going into research and evaluation as opposed to direct service provision. Currently, leadership feels that documentation and evaluation of programming for homeless dually diagnosed individuals is appropriate because prior to this Collaborative Demonstration Project there had been no Federal attempt to work with a homeless dually diagnosed population. The groundwork for accessing service dollars had to be laid (Rickards 1994).

But locally there is grumbling about the priority that research, documentation and evaluation seems to have over service and treatment. For example, San Francisco's Department of Public Health was one of the original sixteen phase one grantees, obtaining funding to document dual diagnosis services provided by their Division of Mental Health and Substance Abuse Services. When the Department of Public Health approached the San Francisco Board of Supervisors for authority to apply for the second round of evaluation funding, they were attacked by Supervisor Susan Leal and local homeless providers for seeking research dollars. The San Francisco Examiner reported Leal as being "troubled by the fact that we desperately need treatment beds and this money would go for more study (Ganahl and Taylor 1994)." In September of 1994, Leal followed up her criticisms in a San Francisco Chronicle Open Forum article:

...[One] focus of my hearings was the city's use (or as it turned out, misuse) of nearly $1 million in Federal funds aimed at the hardest to reach population: homeless people with both mental illness and substance abuse problems. We learned that despite an obvious need for more treatment slots, those Federal treatment funds were spent on creating and evaluating a 45 page manual on how to refer homeless people to substance abuse programs - programs that are already seriously overcrowded (Leal 1994).

San Francisco was not one of the six sites selected to receive a second phase of funding, and Supervisor Leal does not address the fact that her Public Health Department could only use the money awarded for the purposes laid out in the Federal RFA. But she does raise some important issues for Federal consideration: when is there enough research, documentation and evaluation? When do we start to put the money into treatment and services?

At the current time, the Federal government does not appear to be proposing dollars specifically for the treatment of the homeless dually diagnosed, and increasingly, as more research and evaluation is performed, they may be called to ask for it.

Regardless, it appears that at the Federal level, the 1990's will be a period of evaluation, reflection and learning with regard to dual diagnosis treatment for homeless individuals. Over the past few years, Federal officials have educated themselves about seminal dual diagnosis research which occurred throughout the 1980's and early 1990's. They have explored various service models, and in 1993 awarded documentation monies to 16 leading projects. They have since chosen several of those original 16 providers to evaluate their models. If these models should prove to be effective, they will be used to redesign and implement dual diagnosis programs nationwide with evaluation results used to leverage Federal service dollars.

The Federal attempt to define the most effective treatment models for this vulnerable population is of critical importance. Their recognition of the problem, and the programs tney have implemented to understand it better are to be applauded. At the same time, it is important to recognize the need for immediate action and relief. It is important to note that Federal action in this arena may take several more years.

In the meantime, the homeless dually diagnosed population may continue to grow. Their problems may become more intractable and complex. They may be treated with less than optimal models by municipal and nonprofit providers, and by programs using McKinney funds. If they are lucky, they will find treatment with model agencies which already have clear ideas about effective treatment.

The author ends this article with the hope that the current Federal effort to find the most effective treatment models for homeless mentally ill substance abusers will succeed, and secondly that results will be made available and service dollars appropriated as quickly as possible. The debate over evaluation as a necessary foundation of service will continue, but the pressing need of homeless people with co-occurring mental health and substance use problems cannot be denied or ignored.

BIBLIOGRAPHY

Barbee, James, Peter Clark, Michael Crapazano, Gerald Heintz, and Catherine Kehoe. 1989. "Alcohol and Substance Abuse Among Schizophrenic Patients Presenting to an Emergency Psychiatric Service. "The Journal of Nervous and Mental Disease, 177(7):40S407.

Berlin, Gordon & W. McAllister. 1992. "Homelessness". In Henry Aaron and C. Schultze, eds., Setting Domestic Priorities. Washington, D.C.: The Brookings Institution.

Blankertz, Laura and Ram Cnaan. 1992. "Principles of Care for Dually Diagnosed Homeless Persons: Findings From a Demonstration Project". Research on Social Work Practice, 2(4):448-464.

Blankertz, Laura, Ram Cnaan, Kalma White, Jim Fox and Karlyn Messinger. 1990. "Outreach Efforts with Dually Diagnosed Homeless Persons." The Journal of Contemporary Human Services, 387-397. Blankertz, Laura and Kalma Kartell White. 1990. Implementation of Rehabilitation Program for Dually Diagnosed Homeless. In Treating Alcoholism and Drug Abuse Among Homeless Men and Women: Nine Community Demonstration Grants. New York: The Haworth Press.

Blau, Joel. 1992. The Visible Poor. New York: Oxford University Press.

Cook, Gale. 1989. "Community Based Mental Healt: A Promise Unfulfilled". California Journal, 20(5):194-197.

Drake, Robert, Fred Osher and Michael Wallach. 1991. "Homelessness and Dual Diagnosis." American Psychologist, 46(11):1149-1158.

Fischer, P.J. 1990." Alcohol and Drug Abuse and Mental Illness Among Homeless Persons:" A Review of the Literature, 1981) 1990. Rockville, MD: National Institute on Alcohol Abuse and Alcoholism and National Institute of Mental Health.

Foscarinis, Maria. 1991. "The Politics of Homelessness." American Psychologist, 46: 12321238.

Ganahl, Jane and Barbara Taylor. July 24, 1994. "Where Has All the Money Gone?" San Francisco Examiner.

House of Representatives. June 19, 1987. Stewart B. McKinney Homeless Assistance Act: Conference Report, Report 100174.

Katz, Michael. 1986. In the Shadow of the Poorhouse. New York: Basic Books, Inc.

Khalsa, Hari, Andrew Shaner, M. Douglas Anglin, and Jung-Chi Wang. 1991. "Prevalence of Substance Abuse in a Psychiatric Evaluation Unit." Drug and Alcohol Dependence ,28:215-223.

Kondratas, Anna. 1991. "Ending Homelessness: Policy Challenges." American Psychologist, 46:122S1231.

Leal, Susan. September 23, 1994. "The Homeless Wait as Studies Pile Up." San Francisco Chronicle.

Leavitt, Jaqueline. 1992. Homelessness and the Housing Crisis. In Marjorie Robertson and Milton Greenblatt, eds., Homelessness: A National Perspective. New York: Plenum Press.

Leginsky, Walt. Chief, "Homeless Programs Branch, Center for Mental Health Services." November 8, 1994. Interview with Author, Washington, D.C.

Lubran, Barbara. Project Officer, Center for Substance Abuse Treatment. October 13, 1994 Phone Interview With Author.

Miller, Frank T., Fredric Busch and Judith Hertz Tanenbaum. 1989. "Drug Abuse In Schizophrenia and Bipolar Disorder." American Journal of Drug and Alcohol Abuse, 15(3):291295.

Miller, Henry. 1991. On The Fringe: The Dispossessed in America. Lexington, MA: Lexington Books.

Morse, Gary. 1992. Causes of Homelessness. In Marjorie Robertson and Milton Greenblatt, eds., Homelessness: A National Perspective. New York: Plenum Press.

National Coalition for the Homeless. 1988. Necessary Relief: The Stewart B. Homeless Assistance Act. Unpublished manuscript.

National Resource Center on Homelessness and Mental Illness. 1993. ACCESS Grantees Test Services Integration Strategies. Access, 5(4):13.

Nonprofit Housing Association of Northern California. 1990. The Five-Year Time Bomb: An Analysis of the McKinney Act Housing Programs in California. Unpublished manuscript.

U.S. Department of Housing and Urban Development. 1994. Priority Home! The Federal Plan to Break the Cycle of Homelessness. Washington, D.C.

Biography:

Heather Pegas received her Masters in Public Administration from San Francisco State University in December, 1994. As part of the CMHS/ CSAT Demonstration Program, she is currently performing survey research with dually diagnosed adults in Alameda County, California.

China and the United States:
A Comparison of the Mental Health Professions

by Kevin Hickey

Immigration to the United States contributes to the continuing formation of a diverse society with a multitude of cultural differences. This presents a particular problem to mental health workers, because the foundation of a vast number of diagnoses and treatment methods are based on Western cultural norms. This article examines the mental health professions of China and the United States.

Introduction

In order for mental health professionals to be completely effective in the treatment of their patients, they must understand the differences that exist between their own culture and the culture of their patient. Immigrants are often subjected to a lack of cultural understanding, which can lead to misdiagnoses and ineffective treatment. With the constant immigration of Chinese to the United States, it becomes quite obvious that the mental health professionals here in the U.S. need to be aware of the differences that exist between the United States and China, with regards to the mental health field. A better understanding of the cultural differences in the mental health field between the U.S. and China can be achieved by examining three particular areas of study: communities' attitudes towards the mentally ill, comparative diagnosing of particular illnesses, and treatment methods available to the mentally ill in each country.

> *"...both Western and Chinese communities are unhappy with having the mentally ill in their midst."*

Attitudes towards the mentally ill

According to Dr. Veronica Pearson, Department of Social Work, University of Hong Kong, a community's attitude towards the mentally ill is derived from the combination of authoritarianism, benevolence, and social restrictiveness viewpoints (165). The authoritarian perspective is based on the idea that the mentally ill are inferior. Next, benevolence is the paternalistic, kindly view of the mentally ill which is based upon humanistic and religious principles. Lastly, the social restrictiveness concept views them as a threat to society. However, in China, the mentally ill are not necessarily viewed as inferior. They tend to be viewed as unable to control themselves, therefore, in need of control by others. Benevolence, where it exists, is more likely to stem from being part of the same political community or shared citizenship, not religious or humanistic principles (Pearson 165). Thus, in general, both Western and Chinese communities are unhappy with having the mentally ill in their midst. Therefore, there is a strong desire in both societies to have them properly diagnosed and treated.

Comparative diagnosing

For cross-cultural research to be valid, a common vocabulary and perception of the disease must exist among those doing the diagnosing. In order to achieve this, a study was conducted at the Shanghai Mental Health Center in December 1986 and January 1987. Using the Chinese Psychiatric Association's Classification System, Chinese physicians diagnosed the newly arriving mental health patients. Next, unaware of the previous diagnosis, Dr. Lori L. Altshuler examined the patients giving her diagnosis, based on the American Psychological Association's Diagnostic and Statistics Manual (872). Thus, a scientific comparative study between the China's diagnostic manual and the United States' diagnostic manual was achieved. After the examination of 116 patients, the results showed that the diagnoses were 89.7% in agreement (Altshuler, et. al. 873). The differences in diagnoses occurred mostly where cultural influences affected the perception of the attending physician.

S. M. Hillier and J.A. Jewell, authors of Health Care and Traditional Medicine in China, 1800-1982, wrote, "Psychiatry, perhaps more than other medical specialties, is culture bound, particularly with regards to 'functional' mental disorders. Symptoms, which are manifested through behavior, are defined, ultimately, by the degree to which the behavior is culturally unacceptable (379). For example, a cross-cultural study by Dr. Eberhard M. Mann, Dr. Bao Ling Li, and associates was conducted to determine the differences in rating Hyperactive-Disruptive behaviors in children (1539). The study was conducted by allowing the various physicians to view video tapes of four eight-year-old boys and then give a diagnosis based on the observed behavior. The study showed substantial differences between the diagnoses of the Chinese physicians and the Western physicians. The Chinese physicians more often than Western counterparts rated the children as possessing Hyperactive-Disruptive Behavior (Mann, et. al. 1541). Since all physicians viewed the same tapes, therefore, showing equal symptom levels, the differences in diagnoses must be attributed to different perceptions of the observers. In China, emotional and cultural conformity are expected from children of pre-school age and upward. While, in the United States, heavy emphasis is placed on individual expression and creativity. Therefore, the Chinese physicians, expecting a particularly high level of behavior control at age eight, rated more of the observed children as being Hyperactive-Disruptive, than did the Western physicians.

"...symptoms, which are manifested through behavior, are defined, ultimately, by the degree to which the behavior is culturally unacceptable."

Treatment

In order to better understand the treatment practices of the mental health professionals in China, Chauncey A. and Sally Alexander and associates of the National Association of Social Workers conducted a tour of the Peking Psychiatric Hospital. Their host, Wu Chen-I, professor of psychiatry, Peking Medical College, stated, "In treating mental health patients, the doctors and medical workers practice revolutionary humanitarianism and use a combination of Chinese traditional and Western-style medicine, including

drugs and psychological treatment" (qtd. in Alexander and Alexander 75). There are a number of similarities between the drugs prescribed in the United States and China. For instance, tranquilizers would be prescribed for excitable patients. Also, the Chinese, as with the U.S., use antidepressants, such as lithium, to treat conditions of major depression (78). The dosage range of prescribed medications in China and the U.S. is not different (Hillier and Jewell 400). However, the differences become vast when you leave the realm of pharmaceutical treatment and enter into psychological therapy.

Both China and the U. S. view mental disorders as being created by the inhibition of the nervous system due to a lack of balance between its excitatory and inhibitory functions, excessive environmental forces, or physiological disease, most of which can be successfully treated with drugs. However, in China there is an additional cause of mental illness, incorrect attitudes or thoughts (Hillier and Jewell 394). In Ross Terrill's The China Difference, contributing writer Orville Schell tells us that in China "mental disease is viewed as a product of political and social forces" (Terrill 28). The aim of Chinese psychological therapy is to treat such causes of mental illness. Chinese psychotherapy is based on the philosophies of Marx, Lenin, and Mao Tse-Tung (Alexander and Alexander 80). It is used to heighten the patient's initiative to conquer their illness, get rid of their symptoms, and consolidate their thoughts (Alexander and Alexander 79). The desired result is to put the individual back into the society through constructive work (Terrill 28). Chinese psychotherapy is designed to achieve conformity, compliance and increased production (Alexander and Alexander 85). This is in great contrast to Western psychotherapy, based on Freud, which encourages freer actions through the uncovering of repressed feelings. Dr. Gabriel Wahl, Professor of Psychiatry, University of Paris, reports that Western psychoanalysis is not used in China, because, according to Marxist ideology, it "elevates the individual above society" (qtd. in Wahl 55). Additionally, frank discussion of sexuality is viewed as immoral, due to strong influence of Confucian morality still present in China today (Wahl 55).

"...in China there is an additional cause of mental illness, incorrect attitudes or thoughts."

Conclusion

In conclusion, upon learning of the similar community attitudes towards the mentally ill, the cultural differences that exist in performing diagnoses, and the treatment methods available in the U.S. and China, a practicing psychiatrist, present in a predominately Chinese community in the U.S., would be better able to treat their patient and serve the community. Shouldn't that be their goal?

Bibliography

Alexander, Chauncey, and Sally Alexander, eds. China View: First NASW Study Tour. Washington, D.C.: N.A.S.W., Inc. 1979.

Altshuler, Lori L., M.D., et. al. "Who Seeks Mental Health Care in China? Diagnoses of Chinese Outpatients According to DSM-III Criteria and the Chinese Classification System." American Journal of Psychiatry. 145.7 (1988): 872-75.

Hillier, S. M., and J. A. Jewell. Health Care and Traditional Medicine in China: 1800- 1982. London: Routledge & Kegan Paul, 1983.

Mann, Eberhead, M. D., et. al. "Cross-Cultural Differences in Rating Hyperactive-Disruptive Behaviors in Children." American Journal of Psychiatry 149.11 (1992)1539-42.

Pearson, Veronica. "Community and Culture: A Chinese Model of Community Health care for the Mentally Ill." International Journal of Social Psychiatry 38 (1992): 163-78.

Terrill, Ross. The China Difference. New York: Harper & Row, Publishers, 1972.

Wahl, Gabriel. "Analyzing China." World Press Review November 1987: 55.

Biography

Kevin Hickey is a junior at San Francisco State University. After obtaining a B.A. in psychology, Kevin plans to pursue a masters degree in social work.

The "M"

The hub bub and hustle of hurry hurry went
h a y w i r e
the train **crashed.**
but time went on
so nobody ever stopped moving

apologetic smiles -and-
worker solidarity lines of
– hey all us taxpayers are being screwed -and-
– the *goddamedsystem* doesn't work since these trains should have been repaired
a long long time ago
but they haven't since the mayor drives a nice luxury car

after five minutes without motion solidarity faded
as the suits and ties and wool skirts
along with the flannel and backpacks
started to lose their calm selves and it all got messy with
– my boss is fuckin gonna kill... -and-
– and it's my first day of...

and an old woman carrying a meshed sack
full of ripe oranges
said –hey it's 9 am
we're in the foggy Sunset and the skies are blue for once!
and everyone looked at
this woman, judging her insane
to avoid thinking about what would happen
if they were actually free

Article 33: History of a Movement

by Edward Kaufman

Article 33 of the San Francisco Police Codes offered, for the first time in the United States, protections to members of the lesbian and gay community. This policy, enacted in 1978, serves as a representation of the growing power of the gay and lesbian movement in the 1970s. As such, it also reflects the shortcomings and political naiveté of the gay and lesbian community at that time. This article addresses the strengths and weaknesses of this policy viewed through a historical context. The present state of the legislation will also be addressed, impacting the future of grassroot efforts of communities to develop and implement policy.

November 27th marks the anniversary of the assassination of San Francisco supervisor Harvey Milk. Milk's rise to the position of supervisor mirrored the political and social clout developing in the gay and lesbian community of San Francisco in the late 1970's. Milk became the first openly gay publicly elected official, demonstrating the growing power of the gay and lesbian community. Milk brought with him to office the belief in the community's power. On the behalf of his community, he championed a bill that would become his most influential act: Article 33 of the San Francisco Police Codes.

Article 33 marked a milestone for gay and lesbian civil rights, becoming the first legislation to extend civil rights protections to all individuals within a municipality. The ordinance covered individuals based on their sexual orientation in the areas of employment, housing, and public accommodations. Finally individuals in the gay and lesbian community had some protection against discrimination.

> *"Finally individuals in the gay and lesbian community had some protection against discrimination."*

The legislation must be looked at within the larger context of the gay and lesbian movement. The events behind the passage of the bill represent the ability of the gay and lesbian movement to flex its political muscle. In the 1970's, this community, although gaining in political power, was weak in comparison to other communities. The bill passed, but the challenges to it and concessions made directly resulted from the community's lack of political pull. The article in its present form, with its weaknesses, still represents some of those concessions. The current possibility of its nullification through preemption can be seen as robbing local communities from developing political power and legislative protection. Finally, the legislation must be looked at through the larger scope of gay and lesbian policy. With these perspectives, Article 33 can be placed within the proper context.

History of Article 33

In 1972, the City and County of San Francisco altered existing chapter 12B of the San Francisco Administrative

Code, adding sexual orientation to the list of protected categories that city contractors could not discriminate against in employment. Altering Chapter 12B marked the first time in United States history that legislation prohibited discrimination against sexual orientation (Brinkin, 1993). Although the scope of the legislation only encompassed companies contracting with the city and county of San Francisco, it served as a milestone in gay rights. Other municipalities across the United States followed suit, but with an exception: their legislation increased protection to all companies within the municipality, not just their contractors.

In San Francisco, an organization named Bay Area Liberationists (B.A.L.) questioned the legality of these emerging types of civil rights laws. Contemporary consensus held the rights of municipalities to enact civil rights laws for their contractors, yet the question centered on whether municipalities could broaden these laws to include all individuals within the municipality. The current opinion held that municipalities could enact laws affecting their contractors, but that to enact larger civil rights laws would over step the municipality's jurisdiction. One B.A.L. member, Matt Coles, remained unconvinced that a broader civil rights law could not be enacted. Increasingly, he began to believe that a civil rights bill could be drafted and passed into law.

This belief coincided with an influential time in local politics, where San Francisco changed its policy regarding supervisorial elections. Originally an at-large process, the elections in 1976 reflected neighborhood constituencies through district elections. Coles believed that with the upcoming elections, it was an ideal time to push a broader sexual orientation civil rights bill.

Coles drafted a prototype of the bill, and supported by his colleagues, approached all supervisor candidates. B.A.L. members asked the candidates if they would sign on to the bill to give it the necessary support. One of these candidates, Bob Gonzales, an incumbent in the elections, was so moved by the legislation that he took the bill and introduced it to the Board of Supervisors in November 1977. The bill then came into the hands of City attorney Thomas O'Connor, who would alter bills and rework them to make them legally binding. O'Connor subscribed to the prevailing view that this bill overstepped the bounds of municipal law. Consequently, O'Connor changed this bill which would prohibit discrimination based on sexual orientation into a bill titled "Housing Discrimination Against Homosexuals." This new bill did not resemble its predecessor at all, the new bill filled with exemptions while simultaneously covering little of the context of the original bill.

Expecting candidates to sign on the bill as a show of support, Coles and his colleagues were surprised by the turn of events. They expected that as candidates took office, the bill would be pushed through the Board of Supervisors, providing Cole's group a great deal of influence in its development. When Gonzales co-opted the bill, however, Coles' group had lost any control over the ordinance. Coles turned for assistance to another supporter of the bill, the Supervisor-elect Harvey Milk. Milk assured Coles that if it could be demonstrated that O'Connor overstepped his bounds in redrafting the legislation, Milk would champion the issue (Coles, 1993). With this information, Coles began developing a draft of the bill that, in essence, would become Article 33.

When Harvey Milk took office, he submitted the new draft of the bill jointly with Supervisors Ruth Silver and Bob Gonzales on January 9, 1978, as an amendment to the previous bill (File 119-78, S.F. Board of Supervisors). On

January 13, the Board of Supervisors submitted the bill to the city attorney, now George Agnost, for approval as to the legality of the form. Two weeks later, Agnost informed Milk that this new draft "covers the same grounds as approved ordinance." Around this time, a hearing was scheduled for March, at the Fire, Safety, and Police Committee regarding discrimination based on sexual orientation. Milk began to get concerned that the draft would not be approved in time for the hearing, which was the ideal opportunity to get Committee approval and then sent for a vote to the Board of Supervisors.

On February 27, 1978, Harvey Milk departed significantly from the usual procedure of bill adoption, sending a correspondence to the City Attorney, requesting an "approval as to form...so that the Committee can consider all possible options" (File 119-78, S.F. Board of Supervisors). This correspondence created a stir over the City attorney's authority, representing the first time anyone had told the city attorney not to change legislation. Agnost reluctantly returned the legislation to Milk on the day of the hearing, stating it "approved as to form only and not as to legality" (File 119-78, S.F. Board of Supervisors).

On March 9th, 1978, Supervisor Dan White chaired the Fire, Safety, and Police Committee meeting, at which they held a public hearing on the topic of discrimination based on sexual orientation. Speakers for the hearing ranged from Assemblyman Art Agnos to gay and lesbian survivors of discrimination. At the hearing's commencement, Supervisor Dan White made an impassioned plea for the support of legislation protecting individuals on the basis of sexual orientation, ironic given San Francisco history. Within the hearing, Supervisor Gonzales had the ordinance "Housing Discrimination Against Homosexuals" tabled, moving that the new version of the bill be co-sponsored by Milk, Silver, and himself (File 119-78, S.F. Board of Supervisors). The Committee recommended the passage of the ordinance and sent it to the Board of Supervisors for a vote.

> *"....The Transgender community, through a movement that combined community members, service providers, and government agencies, lobbied and achieved the protections received by the gay and lesbian community."*

Once before the Board of Supervisors, the board discussed minor changes and voted on the bill on April 20th. The ordinance passed with a 10-1 vote, with Dan White being the only supervisor voting against it. (Coles, 1993) On April 30th it was signed into law by Mayor George Moscone, creating Article 33 of the San Francisco Police Codes.

Since its passage into law, two amendments were made to the Article. Supervisor Carol Ruth Silver sponsored an amendment that would prohibit discrimination to other categories not previously mentioned; those being "race, religion, color ancestry, age, sex, disability, or place of birth" (Article 33). Although existing state and federal law covered these categories, the reason for this amendment was to make a statement that discrimination against these groups would not be tolerated in San Francisco (Brinkin, 1993). And on April 20, 1981, the San Francisco Board of Supervisors added these other protected classes to Article 33.

Recently there has been another community that organized and articulated the need for protection.

The Transgender community, through a movement that combined community members, service providers, and government agencies, lobbied and achieved the protections received by the gay and lesbian community. On January 30, 1995, the term "gender identity" was included to the list of protected categories within Article 33.

Scope of Legislation

Found in the San Francisco Police Codes, Article 33 provides the municipality of San Francisco with a broad civil rights ordinance. It is intentionally placed in the Police Codes, resulting from an attempt to maintain the boundaries of state and local law. The State of California granted municipalities the ability to legislate their police power. In such granting, they may enact laws that affect private entities, as long as state law does not preempt the local law (File 119-78, S.F. Board of Supervisors).

The intent of Article 33 is "... to eliminate discrimination based on race, religion, color, ancestry, age, sex, sexual orientation, disability, and place of origin" (Sec. 3301, San Francisco Police Codes). The remainder of the Article deals with the definition of terms and the areas of coverage and exemptions. Article 33 concerns itself with three areas of possible discrimination: employment, housing, and public accommodations. The legislation also specifies the avenues protected groups can take when other violate the prohibition of discrimination.

In the area of employment, discrimination based on any of the aforementioned categories can be acceptable if the discrimination results from a "Bona Fide Occupational Qualification" (Sec. 3303, San Francisco Police Codes). Other exceptions to the legislation would be any seniority or benefit system excluding disproportionally members of any of the protected groups.

The intent of Article 33 is "... to eliminate discrimination based on race, religion, color, ancestry, age, sex, sexual orientation, disability, and place of origin."

Within the area of housing, the Article protects individuals in housing in the areas of renting, leasing, or lending. In addition, individuals cannot disseminate or post information that would indicate preference or discrimination against any of the protected groups (Sec. 3304, San Francisco Police codes). Two exemptions to this exist: 1) where the owner or the owners family must share a bathroom or kitchen facility with the tenant, or 2) if the structures has less than three housing units.

Public Accommodations in the Article refers to the discrimination that could occur in denying "..directly or indirectly, any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodations" (Sec. 3305, San Francisco Police Codes).

The enactment of the Article empowers the Human Rights Commission of the City and County of San Francisco to enforce the prohibitions. Individuals who believe that they have been discriminated against in any of the three areas may do one of three things. First, they may file a complaint with the Human Rights Commission. Second, individuals might pursue civil action by entering into court proceedings. Third, individuals may do a combination of the two previous options.

When individuals make a complaint with Human Rights Commission, an investigation of the situation may result. If the Commission finds

discrimination, they can attempt to resolve the conflict through conciliation. If this approach does not resolve the conflict, then the Commission can turn the complaint over to the city attorney, who may then decide to prosecute the case.

> *"Article 33 of the San Francisco Police Codes was the first bill in the state to prohibit discrimination against sexual orientation, and therefore, lacks many provisions that would be found in later legislation around the state."*

Weaknesses

Article 33 of the San Francisco Police Codes was the first bill in the state to prohibit discrimination against sexual orientation, and therefore, lacks many provisions that would be found in later legislation around the state. In other municipalities, protective legislation came later when the gay and lesbian community increased its political strength, and did not have such alterations. Many of the Article's weaknesses can be seen as the inability of the gay and lesbian community to garner enough strength so that the legislation could have passed without alteration. This following section centers on areas that this bill lacks or purposely does not cover.

In the original drafting of the bill, there was no thought to small business exemptions. Yet in the ordinance, businesses with less than five employees remain exempted from discrimination in employment. This exemption resulted from an interesting piece of legislative history. When the bill went before the Board of Supervisors for a vote, advocates for the bill wanted to ensure that there was a majority on the Board committed to voting for it. Five Supervisors had committed but they lacked the necessary sixth. The bills advocates approached all of the Supervisors, but no one would give them the necessary majority. Finally, Supervisor Gonzales, who co-sponsored the bill but would not commit to voting for it, began negotiations with Matt Coles. Gonzales would not support the bill because of its effect on small businesses. Gonzales agreed to support the bill only if an exemption would be included regarding small businesses. Rather than lose the bill in a floor vote, Coles wanted to ensure its passage and was willing to agree to a compromise. After much discussion, the two parties decided on a five employee business exemption (Coles, 1993)(File 119-78, S.F. Board of Supervisors).

Exempting small business may have little legislative effect, the reality being that most businesses have at least five or more employees. The problem occurs though for employees working in these exempted businesses; they have no recourse from discrimination at the workplace. An even larger policy issue remains: by exempting small businesses, the San Francisco government indirectly condones discrimination against the earlier protected groups. Any exemption from discrimination can be interpreted as permitting that discrimination, it demonstrates to the public the priorities of this municipal government.

The housing exemption mentioned earlier gives a similar message to the San Francisco public. The difference is that housing exemption of less than three "dwelling units" would affect many more tenants and landlords. Presently, a landlord renting a house can legally discriminate against one of the protected groups. Although the Article covers a considerable amount of the city's housing, removing the exemption would give substantially more tenants recourse

against discrimination.

Another intentional exclusion from the ordinance comes from what the legislation mentions as "Bona Fide Occupational Qualification" (B.F.O.Q.) (Sec. 3303, San Francisco Police Codes). In this situation, the company would need to prove "1) that the discrimination is in fact a necessary result of the bona fide occupational qualification; and 2)that there exists no less discriminatory means of satisfying the occupational qualification" (Sec. 3303, San Francisco Police Codes). Not prohibiting directly these possible qualifications could lead to something called Disparate Impact (Coles, 1993). This term refers to a situation where a policy does not directly discriminate, but the practical effect results in the exclusion of a disproportional number of a particular group. An example which occurred within this municipality was the practice of excluding individuals living in certain zip codes from obtaining jobs. In San Francisco, there is a high density of gays and lesbians within particular areas in the city. In the past, some employers knew this and used this information to discriminate by not accepting individuals from particular zip codes. When the legislation passed, this practice was eliminated because it could not be considered a Bona fide Occupational Qualification.

When other municipalities introduced similar legislation, such Disparate Impact cases are explicitly covered in their drafts. The San Francisco ordinance does not directly allow such cases involving disparate impact, therefore permitting discrimination in some instances. If an individual can prove that a less discriminatory means of meeting the occupational qualification does not exist, then the discriminatory practice may continue. Although case law exists which would support Disparate Impact cases in San Francisco, it should be explicitly covered in the legislation. Implementing language into the Article, stating that "any act which has the effect of discriminating against individuals in the aforementioned categories is prohibited" would clarify this ambiguity.

Another weakness of the ordinance results from the lack of coverage for "perceived" sexual orientation. The Human Rights Commission handles many cases where the complainant did not identify as gay, lesbian, or bisexual, but were perceived by others as being a member of one of those groups. Inclusion of perceived membership of one of the protected classes must be added to prohibit the discrimination that some individuals face. Similar legislation, such as protection from HIV discrimination, deals with the category of perception because of the ambiguity of cases of discrimination.

Probably the most glaring shortcoming of Article 33 is its lack of an administrative remedy. The process articulated in the legislation provides individuals with the opportunity to file a complaint with the Human Rights Commission, yet the Commission itself has no power to remedy any discrimination found. Empowered to mediate between the two parties, the Commission cannot order actions be taken. In other jurisdictions, Human Rights Commissions and departments have been legislated to remedy instances of discrimination. This sends a strong message to the citizens within the municipality of San Francisco, conveying that the government does not consider discrimination against these protected classes to be important enough for the legislative body to do something about it.

Preemption and the Future of Article 33

Much of the future of Article 33 rests on two pending cases in the California Supreme Court. Both center on whether or not state or federal law preempts local law.

The concept of preemption is that larger or more comprehensive legislation, such as that at the state or federal level, superseding or preempting municipal attempts at legislation. These two cases, Delaney vs. Superior Fast Freight and Runkle vs. Superior Court, and their implication are discussed in this section.

The fear of preemption for Article 33 existed through the life of the Ordinance, predating its approval at the level of the Board of Supervisors. Dianne Feinstein, now a California State senator, in 1977 was one of the Supervisors approached for support of the bill by its advocates. Evidence exists in the public record that the reason she may not have been willing to commit to supporting the bill originated from the fact that she received information from the city attorney stating that such legislation would be preempted from state law (File 119-78, S.F. Board of Supervisors). This issue appears to have been subsequently resolved in one of the documents submitted in the public hearing so integral to the passing of the legislation, which directly addressed the issue of preemption by stating the two instances where municipal ordinances may be preempted by state or federal law. In the first instance, preemption occurs if the local law directly conflicts with state of federal law. Second, if the State or Federal government demonstrate an intention to "occupy the entire field" of a particular type of legislation then local law would be preempted. The document argued that both of these conditions do not apply to Article 33, because sexual orientation was never covered by higher law and that no evidence of attempts to cover the field existed.

Since the enactment of Article 33, California has added sexual orientation as one of its protected classes in the California Labor Code. Section 1102.1 states:

"Sections 1101 and 1102 prohibit discrimination or different treatment in any aspect of employment or opportunity for employment based on sexual orientation or perceived sexual orientation"(Section 1102, California Labor Code).

Section 1102.1 represents the state's coverage of individuals based on sexual orientation. As such it has the possibility of preempting local ordinances. In southern California, the case of Delaney vs. Superior Fast Freight contests this situation. In the case, the judge ruled that California's coverage of employment discrimination preempts a municipality's legislation. Currently, this case rests in the Court of Appeals, in hopes that the ruling will be overturned (Coles, 1993). In San Francisco, Article 33 is being questioned directly in Runkle vs. Superior Court which challenges whether or not the state's legislation preempts Article 33.

The outcome of these cases directly affects the administration of Article 33, resulting in two possible outcomes. If the court decides that California has decided to "take on the field" of employment and housing discrimination as evidenced in the coverage within the Fair Employment and Housing Act, then the aspects of Article 33 concerning prohibiting employment and housing discrimination will be preempted. This would not result in nullifying Article 33, only those preempted areas. If one part of the legislation is negated, the rest would stand because of a severability clause in Article 33. What this means is that San Francisco could not prohibit employment and housing discrimination, so citizens would lose the ability to file a civil case in the municipal courts. What would remain is allowing the Human Rights Commission to mediate any disputes regarding these types of discrimination.

The other possible ruling would state that the state law is not attempting to cover the area of employment and housing discrimination. With such a ruling, only protected categories already covered in state and federal law would be preempted. If this occurs, all of the protected classes in Article 33 would be invalid, save places of birth, gender identity and possibly sexual orientation. Protection for individuals based on sexual orientation is contained in the California Labor Code, whereas all the other classes are within the Fair Employment and Housing Act. The California Labor Code does not have the preemption clause that is included in the Fair Employment and Housing Act. This could be interpreted to mean that sexual orientation as a category would not be preempted by the state law. With this interpretation, the ordinance will look almost the same as it did when originally voted on by the Board of Supervisors, protecting only on the basis of sexual orientation and gender identity.

Given the preemption clause within the Fair Employment and Housing Act, it appears probable that the judges in these cases will rule that the state is attempting to occupy the field of employment and housing discrimination. The earlier ruling for Delaney vs. Superior Fast Freight supports this probability. With California Labor code 1102.1, it could also be effectively argued that sexual orientation is covered by the state, nullifying all the protected classes within Article 33. What would be left of Article 33 would be the ability of the Human Rights Commission to mediate any complaints of discrimination in these areas.

"As the first local law protecting individuals based on sexual orientation in California, Article 33 must be seen as the start of a process, culminating in the inclusion of sexual orientation on a state level."

Article 33- Policy Context

As the first local law protecting individuals based on sexual orientation in California, Article 33 must be seen as the start of a process, culminating in the inclusion of sexual orientation on a state level. After its inception, its creator, Matt Coles, revised Article 33 and incorporated it into the municipal laws in Berkeley and Los Angeles, and Oakland. By 1991, every major city in California, except San Jose, had some ordinance where protection for sexual orientation could be found. The construction of these local laws changed slightly in each municipality, including different aspects of protection for each municipality.

Gay and lesbian organizers used these local laws to lobby for a state law that would include sexual orientation as a protected class within employment discrimination. The result of this was the 1992 California Assembly Bill 2601. The advocates of the bill effectively convinced business interests, such as the Chamber of Commerce to support it. Originally the Chamber of Commerce opposed the inclusion of sexual orientation in state law, supporting the interests of big businesses; but as all the major cities in California began to include sexual orientation, the interests of big businesses changed. Companies could see that most of their employees were covered in local laws, so a statewide law would create little impact to them. As a result, advocates of AB 2601 enlisted the support of business interests.

AB 2601, with such widespread support, was signed into law in 1992. At that point, AB 2601 became part of the California Labor

Code 1102, adding to it section 1102.1 mentioned earlier (Coles, p.1, 1992). Organizers, by working through local municipalities, created enough pressure and support to lead the California legislature to enact protective state law. Although this method of producing state law is not the preferred, for many groups it represents the only way they can enact legislation (Goldstein, 1993). To attempt statewide support for legislation protecting historically disenfranchised groups would be an exercise in political futility. Working at a grassroots level to garner support, however, communities can change their local laws and then, as their position strengthens, work at the state level.

The two preemption cases currently in the California Court systems, could irrevocably diminish the ability of groups to initiate this grassroots process. If the ruling in the two cases decide that the State covers the field of employment and housing discrimination, then local laws would be preempted. This would rob communities of the opportunity to lobby for local laws and then state laws as their power increased. Any attempt to add protected classes in these fields would have to occur at the state level. That would exclude many communities who need to build their strength through grassroots efforts.

Article 33 must also be viewed in context of policy for gays and lesbians in the United States. Policy for the gay and lesbian community is relatively new, dating back to the civil rights movement of the 60s. At that time, the gay and lesbian community listened to the ideologies of the other movements of the time, and mirrored many of the tactics used by the various groups. The first steps of the gay and lesbian movement began with the recognition of heterosexism in this society. Twenty-five years later this recognition is not enough; the gay, lesbian, bisexual, and transgender community seeks parity with heterosexuals on every level. Article 33 addresses three areas that the community is seeking equality; in employment, in housing, and in public accommodations.

"Twenty-five years later this recognition is not enough; the gay, lesbian, bisexual, and transgender community seeks parity with heterosexuals on every level."

In employment, only state and local legislation directly protects individuals under sexual orientation, redefining the importance of Article 33 and Labor Code 1102.1. Yet many indirect methods can be possible, although no case law exists which would support such methods.

One possibility is to use the federal civil rights protection found in Title VII of the Civil Rights Act of 1964, protecting individuals in the workplace based on "race, color, religion, sex, and national origin" (Harvard Law Review ed., Sexual Orientation and the Law, p. 68). Although there have been efforts to include sexual orientation, they have never met with success. Conceivably though, one could argue a sexual orientation case on the grounds that it is a form of sex discrimination. Case law on this attempt has not met with success. Similar attempts could be tried with the protection of "handicapped individuals" under section 504 of the Rehabilitation Act. In order to use this method, arguments would have to be made about how society considers homosexuality as a "handicap;" gay and lesbian individuals consequently needing protection. This method would perpetuate heterosexism in society, by allowing the

courts to consider gay and lesbians as "handicapped". Obviously, federal legislation would rectify the lack of protection, but the creation and passage of such lies outside the immediate future of the gay and lesbian community. Article 33 stands as the only realistic form of protection available for employment (AB 2601 having little strength in its application). This also holds true for housing discrimination.

Public accommodation deals with individuals who are consumers or are accessing services. The lesbian, gay, bisexual, and transgender community has three avenues of protection in regards to services and public accommodation. (Achtenberg, p.8-3, 1991) The first deals with the common law doctrine of "public interest" businesses, where a business is limited in their ability to exclude individuals from their services. The case law suggests that exclusion can occur based on an individual's conduct, not on their inclusion in a particular group. (Achtenberg, p. 8-6, 1991) The second avenue provided to the gays and lesbians are general civil rights laws. These laws provide certain protections to all individuals by the use of the language "all persons". (Achtenberg, p. 8-8, 1991) Article 33 embodies the last avenue, which is protected-class civil rights laws. These laws provide protection to individuals of certain groups that have been identified in the legislation. Article 33 protects individuals based on their sexual orientation, among other classes, within the body of that law.

> *"The issue then becomes how will fledgling communities enact legislation. How will their voices be heard? "*

Synthesis

Although Article 33 may be celebrated as the first attempt to provide protection for individuals based on sexual orientation in San Francisco, it must be placed within a larger context. Article 33 represents an attempt by the gay and lesbian community to enact legislation protecting gays and lesbians. Its passage represented the political might of the community, but the events involved with its passage and the subsequent alterations to the bill, represented the political naiveté of the community. Article 33 exists as a piece of history, for the bill's struggle would never have occurred toda. The San Francisco gay and lesbian community has had 15 years in which to mature and become more politically savvy. In the legislation regarding domestic partners passed in San Francisco in 1989, the community demonstrated this increased strength and knowledge of politics.

Article 33, in some ways, heads down the path of legislative antiquity. Many of the protections it wields, duplicates existing state and federal law. But in other ways, its format can be used as a vehicle for other communities to gain political strength. If the courts find the bill preempted by state law, then the grassroots attempts at creating legislation will end. For the gay and lesbian community in California, these grassroots attempts are no longer necessary, the community can affect change on the state and national level. The issue then becomes how will fledgling communities enact legislation. How will their voices be heard?

Bibliography

Achtenberg, Roberta ed. Sexual Orientation and the Law. New York: Clark, Boardham, Callaghan, 1991.

Brinkin, Larry. Discrimination Investigator. Personal Communication. 1993.

California Labor Code. Chapter 1102. 1992.

Coles, Matt. Gay Rights on the Job. San Francisco: American Civil Liberties Union, 1992.

Coles, Matt. Attorney. Personal Communication. 1993.

"Gay and Lesbian Rights Protection in the United States," Pamphlet. National Gay and Lesbian Task Force. 1992.

Goldstein, Cynthia. Discrimination Investigator. Personal Communication. 1993.

Harvard Law Review, ed. Sexual Orientation and the Law. London: Harvard University Press, 1989.

Meny, Rachel. "Overview of Other Anti-Discrimination Laws which are inclusive of the Transgendered Community," Internal Memo: City and County of San Francisco Human Rights Commission. 1993.

Minnesota Statues 1992 363.01. 1993.

Minneapolis, Minnesota. Minneapolis Municipal Ordinance. Chapters 139, 141, and 142. 1993.

San Francisco, California. San Francisco Administrative codes. Chapter 12. 1993.

San Francisco, California. San Francisco Police Codes. Article 33. 1993.

San Francisco Board of Supervisors. File 119-78. 1993.

San Francisco Board of Supervisors. File 346-80.

Biography

Edward Kaufman is currently a student in the School of Social Work at San Francisco State University and will be receiving his Masters in Social Work in May 1995. His focus has been in macro level practice, specializing in community organizing, community education, and policy work. Currently he is working with the San Francisco Council on Homelessness to organize homeless families and assisting them to be heard in policy issues that impact their lives. He is also currently involved as a representative for the Lesbian Gay Bisexual Transgender Advisory Committee of the Human Rights Commission, the only city body chartered to reflect the needs and concerns of the Lesbian, Gay, Bisexual, and Transgender Community.


CASTRO
ONE NIGHT ONLY!
"THE BILLY NAYER
CHRONICLES"

Economic Development in Emeryville Since the 1980's

by Joan E. Ettlinger

This report will focus on reasons for the City of Emeryville's remarkable growth in the past ten years. The primary reason for Emeryville's economic growth is location! Other important factors include: the City of Emeryville's aggressive pursuit of policies conducive to business retention and expansion; easy accessibility of city staff to developers, the business community and the general public; a general plan that provides a clear road map for Emeryville's current and future development and a large supply of vacant land and older, often vacant, industrial buildings which lend themselves to creative re-uses.

Location

Emeryville's location is singularly the most important reason why the City has developed so prosperously since 1980. Emeryville is located approximately one mile from the I-80 and I-580 interchange, two to three miles from the freeways I-24, I-980 and I-880, approximately 1 1/2 miles from the Bay Bridge, 3 miles from the Port of Oakland to the south and UC Berkeley to the northeast and, in good traffic, within 20-60 minutes of three major airports, Oakland, San Francisco and San Jose. Emeryville is also serviced by several AC Transit bus routes and Amtrak but not BART. However, in order to accommodate the lack of BART service to Emeryville, the City has entered into a private-public partnership with the seven largest employers to provide shuttle service between Emeryville and the MacArthur BART station

"Emeryville's location is singularly the most important reason why the City has developed so prosperously since 1980."

This mix of location, aggressive business retention and expansion/pro-growth policies, vacant land and creative re-uses of older vacant industrial buildings has given Emeryville a great diversity of businesses. It also permits Emeryville to attract large, mid-sized and small companies. For example, Chiron with 2,000 employees and Sybase with 3,000 employees are Emeryville's largest employers. At the other end of the spectrum are small businesses such as engineering and architecture firms, that are one or two people offices. In the mid-range are light manufacturing businesses such as furniture making. Emeryville's policies towards business have also allowed small companies to "incubate" and remain in Emeryville as they continue to grow.

Location is one of the main reasons why Chiron, a biotech firm and the second largest employer chose to locate in Emeryville. Another reason for Chiron's decision to locate in Emeryville when it was beginning to make plans for future expansion in, the 1970's, was low land prices. In the 1970's Emeryville had experienced a decline in its industrial base and had huge tracts of land available at inexpensive prices.

Business Development and Retention

Other factors that influenced Chiron's decision to remain in Emeryville, as well as other companies' decision to remain or locate in Emeryville, are the city's 5 1/2% user tax with a cap making it the lowest in the county. Other policies include business development as its revenue raising source rather than assessment districts, no real estate transfer tax and a "user friendly" permit process that is timely, willing to answer questions and provides more certainty than in other cities such as Oakland. The timeliness of the permit process, in particular, contrasts sharply with Oakland where permits take two or three months at a minimum and must go through several different departments within the Department of Planning and Building.

Sybase, which started in the owner's garage, also illustrates Emeryville's capacity to allow a company to "incubate" and remain in Emeryville as it expands. The company moved to leased office space in Emeryville in 1984 when the owner's garage became too small. As the company grew it was able to remain in Emeryville because there were large, inexpensive tracts of land available for building.

Emeryville also is home to many small entrepeneurships. These businesses range from artists in live-work space to telecommunications companies operating out of spaces/offices in renovated factories.

The following is a sample of the types of businesses in Emeryville: catering, high tech firms, biotech firms, engineering firms, law firms, artists, clothing manufacturers, architects, private schools, skilled trades, real estate, graphic artist, and entertainment.

> *"Transportation is a major issue facing employees in the urban market place."*

Transportation

Transportation is a major issue facing employees in the urban market place. Emeryville's proactive approach to assisting employers in resolving transportation issues further illustrates the City's hospitable and pro-business attitude.

Under the Bay Area Air Quality Management District Regulation 13 Rule Trip Reduction Requirement for Large Employers (known simply as "Rule 1") large employers in each city in the Bay Area must develop transportation plans that encourage employees to use public transportation, vanpools, etc. To this end, large employers located in Emeryville must develop a plan that meets Bay Area Air Quality Management District (BAAQMD) guidelines. Cities have a choice of either administering the plan, if it is approved by BAAQMD, or allowing BAAQMD to handle the administration. If BAAQMD manages the plan, it is at no expense to the city but the cities must comply with BAAQMD's guidelines. If the cities manage their plan, they must pay for it. Emeryville is one of the few cities which will administer its own plan, at its own expense, because this will allow the City greater flexibility in working with employers to address transportation issues.

The public-private partnership involving the shuttle service is a practical example of Emeryville's responsiveness to assisting its business community in complying with government regulation. The partnership, which began in 1994, will start out as a 50-50 venture and over the next five years the city will gradually withdraw from it. At this point the shuttle service will be run

completely by a non-profit transportation management agency under the auspices of the Emeryville Industries Association. However, in the first year of operation the City will assume primary responsibility for operating the shuttle service as well as handling the administration and marketing. In the meantime, the City has assisted the Emeryville Industries Association in writing the grant to Caltrans which will enable the Association to act as the transportation management agency in the future.

The shuttle service runs from Emeryville to the MacArthur BART and has two routes. One route runs along Powell Street and services the Watergate office towers and Watergate condominium complex. The second route runs along Christie Street and services Sybase, Pacific Park Plaza, Emery Bay Apartments, and businesses along Shellmound Avenue.

In the future, the City hopes to expand the shuttle service to less densely utilized/populated areas of the city. In addition to assisting the business community, inclusion of the adjacent residential areas also demonstrates the City's commitment to providing a community that is attractive to homeowners and renters as well as businesses.

In order to accommodate the increased traffic flow into Emeryville, the city is also working with Caltrans to extend the Ashby/Bay Street exit off I-80 in Berkeley to Shellmound Avenue and from Shellmound to 40th Street. 40th Street itself will be extended into Oakland.

"Emeryville has also become a retail and entertainment mecca with three shopping centers."

Retail

Emeryville has also become a retail and entertainment mecca with three shopping centers. In examining Emeryville's emergence as a retail center the analysis of "agglomerative economies in marketing" with their resulting shopping externalities is important to examine.

Until the 1980's, Emeryville had very little in the way of shopping except for the many unsuccessful retail incarnations of The Marketplace, tucked away on Shellmound Avenue near I-80. Today The Marketplace has evolved into an ethnic food pavilion with a multiplex theatre and jazz club nearby. In 1989 Powell Street Plaza was developed and located next to I-80. (It's characteristic location (next to a freeway) and sterile design style does not reflect architecturally Emeryville's turn of the century roots. Looking at the model of agglomerative economies in marketing, Powell Street Plaza does not provide the consumer with an opportunity to comparison shop but it does offer the consumer the opportunity for one stop shopping by clustering many different types of stores together. For example, appliances at Circuit City, sporting goods at Copeland Sports or fabric at New York Fabrics and gourmet food at Trader Joe.

The success of Powell Street Plaza was followed with the opening in 1994 of the East Baybridge Center. This is also a suburban style strip mall housing "big box" businesses. Again, this shopping center does not allow for the shopping externality of comparison shopping however, the consumer expects big box businesses to have the lowest prices and does not necessarily feel the need to comparison shop before making a purchase.

San Pablo Revitalization

Getting away from strip malls, Emeryville is in the process of revitalizing San Pablo Avenue by developing a new streetscape which will include new street lighting, new curbs and other aesthetic improvements as well as encouraging storefront retail development. For example, the owner of one of the cardrooms is interested in expanding his business along San Pablo Avenue and has expressed interest in developing a mixed use retail/residential development on the remaining property on the block. The City is working with the owner to develop a mixed use retail first floor with apartments above. One of the ideas the owner is currently considering is a three story mixed-use development with first floor retail, the shop owner living upstairs on the second floor and the third floor open to anyone.

Kaiser Hospital-Oakland will be relocating to Emeryville. As part of the San Pablo Avenue revitalization, the City has required Kaiser Hospital to build storefront retail on that portion of its property fronting San Pablo and 53rd Street. Additionally, across the street from the Kaiser site on San Pablo Avenue is a lot which straddles the Oakland/Emeryville border. The City of Emeryville is working with Community Development Corporation of Oakland (CDCO), a non-profit housing developer, from Oakland in developing a mixed use project which will have first floor retail and residential rental second floor townhouses.

> *"...Emeryville is committed to providing quality lifestyle tor its residents and developinq affordable housing..."*

Housing

The attention for most people is on Emeryville's economic growth. However, it is important to understand that Emeryville is committed to providing quality lifestyle for its residents and developing affordable housing as well as market rate housing. Since 95% of the City is a redevelopment district, the city is in a unique position to provide affordable housing on a citywide basis.

The residential areas of Emeryville are located in two areas, the older part is primarily known as The Triangle, and it was built in the early part of this century. This area is located east of San Pablo Avenue, west of Adeline and south of 48th Street. The second area is newer and located near I-80. It consists of Watergate condominiums built in 1971 as residential rental and converted in 1979 to condominiums. The other residential developments are Pacific Park Plaza (condominiums) and Emery Bay Apartments.

Emeryville requires all developers who are building 30 units or more of housing to include 20% of the units they develop as affordable. The city itself encourages infill housing and has developed several units in the area known as The Triangle. Furthermore, Emeryville is currently working on a project which will provide affordable housing to seniors and families. As part of the agreement with Catellus, developer of the East Baybridge project, 4 acres of land has been set aside to be developed as affordable housing. As mentioned above, the owner of one of the cardrooms is interested in building a mixed use development on his property. At the same time, he is interested in developing adjoining property, which is currently a hotel, as residential. Because the total size of both developments

will exceed 30 units, 20% will, by law, be developed as affordable housing.

General Plan

The General Plan for the City of Emeryville mandates the city to "facilitate the transition of Emeryville into an intensively developed city with a wide range of economic activity, befitting its central location in the Bay Area." It further mandates that the city strengthen its tax base by encouraging economic activity that will generate high taxes, encourage retail development and businesses which will employ Emeryville residents and seek a balance of economic development that will improve the jobs/housing balance for the region. The General Plan instructs the city to do this by clearly setting out the policies to govern its implementation.

The General Plan also sets forth the City's housing objectives which include developing and implementing programs to reduce the cost of new housing and setting forth policies that will enable the City to achieve this. For instance, density bonus for developers who provide affordable housing, low-interest loans to low and moderate income households. The City also includes in its General Plan an objective and policy plan to promote housing opportunities for all economic groups and household compositions. It also encourages live-work arrangements and has converted several former factories to live-work spaces.

> *"The real reason behind Emeryville's growth is a pro-growth / business council and a staff with the vision and creativity needed to implement the policies of the city council."*

Conclusion

My interest in chosing the topic of Emeryville's economic development came from my frustration as an Oakland resident watching Emeryville's impressive economic development in recent years while the city of Oakland is seemingly unable to turn around its own economy. My feeling at the start of this assignment was that although Emeryville is a much smaller city and this automatically lends itself to getting things done more easily, there must be other factors. The real reason behind Emeryville's growth is a pro-growth / business development city council and a staff with the vision and creativity needed to implement the policies of the city council. In other words, everyone is "on the same page."

Just as important as a city council and staff "on the same page" is the General Plan. It provides a road map for the city of Emeryville to follow as it competes in the marketplace of the 21st century. The plan is all-inclusive in its approach, encouraging a wide variety of industries in the belief that a industry, such as manufacturing, will always keep the economy vital. The city also includes liveability issues and encourages people of all household configurations and income levels to live in its boundaries.

Emeryville does possess some of the qualities of edge cities in terms of its economic development. For example, it had huge tracts of available land which were sold cheaply. This land in turn was used to develop industry (Sybase, Chiron) and housing (Watergate, Pacific Park Plaza, and Emery Bay Apartments). The approach Emeryville is limited by it's size and it's abilitiy to develop the sprawl associated with edge cities and will always retain its urban roots.

Bibliography

Staff, City of Emeryville

1993 City of Emeryville, General Plan

Emeryville Chamber of Commerce

Staff, City of Oakland, Office of Planning and Building

Biography

Joan E. Ettlinger is an Urban Studies and Geography major with longstanding interests in housing and land use and more recent interest in economic development. She is currently doing an internship with Community Development Corporation of Oakland, a non-profit housing and community economic development corporation. She has lived in Oakland, California for fifteen years serving on community boards and working on a variety of housing and land use issues.

BCDC Regulation of Noncommercial Boats on San Francisco Bay

by John Dalton

This report explains the basis for BCDC authority to regulate boats owned by the public and kept on San Francisco Bay. It examines the reasons why the basis for its authority led the BCDC to adopt a policy restricting boat use to recreation. It assesses the impact of this restriction on boat owners and finds that some have challenged it when they could not flout it because they wanted to continue to live on their boats. It suggests, after examining the legal basis for the policy, that the restriction would be both more consistent and more enforceable if the BCDC altered it. The restriction should be broadened to accommodate all those who wish to live onboard in existing marinas.

The Agency:

The San Francisco Bay Conservation and Development Commision- The BCDC

By the 1960's, continued, uncoordinated, haphazard filling of San Francisco Bay by private individuals and businesses as well as by local governments had proceeded so far that it threatened the entire Bay in its historical form as a navigable body of water and tidal estuary. The long overdue recognition of this fact by the State legislature finally moved it to declare that such filling was "inimical to the welfare of both present and future residents of the area surrounding the bay."[1]

Fortunately, this recognition caused it to do more than just wring its collective hands. The legislature went on to find that the public has an interest in San Francisco Bay "as the single most valuable natural resource of an entire region."[2] Further, the public interest in this natural resource can serve the public welfare if the public has access to the Bay's shoreline and waters to pursue water-oriented activities.[3]

But the recognition of a public interest in the Bay does not secure or protect that interest. Recognizing that the counties and municipalities around the Bay had shown that they either were not able or were not interested in putting protection of the Bay and the broad public interest before their own local development and tax base, the legislature decided that it was necessary to create a regional planning process by which the "Bay and its shoreline can be analyzed, planned, and regulated as a unit."[4] It declared that a governmental mechanism must exist for evaluating the effect of individual projects on the entire Bay if they involved filling the Bay in any way. The BCDC was the result.[5]

The Issue:

BCDC Regulation of Noncommercial Boats Owned and Berthed on the Bay by the Public.

To begin, it is important to make clear that the boats this report is discussing are the privately owned houseboats, powerboats, and sailboats kept permanently on the Bay by the public primarily for residential or recreational uses.

At the time of the creation of the BCDC, houseboats, unlike barges which they resemble when under tow, fell under the jurisdiction of the local city or county

where they were located and were regulated as housing.[6] Selfpropelled boats, on the other hand, fell under the jurisdiction of and were licensed as moving vehicles by the Department of Motor Vehicles or the Coast Guard. As moving vehicles, they were policed when underway by the Coast Guard and depending on where they were on the Bay by the local police or the county sheriff if they had boats. When these boats were moored or berthed somewhere on the Bay, they were regulated only by local rules governing marina use.[7]

"However, despite these ordinances, some marinas and boats continued to be used for nonwater-oriented purposes."

BCDC Regulation of Boats on the Bay:

Reason for Regulation

When the BCDC was created, it had jurisdiction over the Bay where boats were used and kept, but it was not involved in their regulation.[8] Although it is now taken for granted that the BCDC can also regulate all boats, the rationale for regulation was originally by no means clear. After all, how can an agency set up to control filling of the Bay acquire jurisdiction over boats, especially those normally regulated like vehicles?

But boats when not in use, if they are not then hauled out of the water or in transit, are normally berthed long term in marinas. As part of a marina, they become connected to the land and affect the shoreline that the Commission was organized to protect.

It was in their connection to the land that they became an issue for the BCDC. The issue simply stated is this: boats when not in water-oriented uses can acquire private land-oriented uses that may be inimical to the public interest that the BCDC was set up to protect.[9]

At first, the BCDC did not have to restrict or stop land-oriented uses of boats and marinas because local municipalities, with which the BCDC shared planning authority over shoreline use, were already doing so for other reasons. (This was the one use of the shoreline of the Bay on which, I believe, the BCDC and local municipalities always did agree.) Cities, such as Sausalito, enacted restrictive ordinances because they believed that marinas and boats involved in land-oriented uses had resulted in eyesores inconsistent with the character of the surrounding community. Moreover, as housing and businesses, these boats and marinas were also invariably in violation of numerous local planning, building, and sanitary codes.[10]

However, despite these ordinances, some marinas and boats continued to be used for nonwater-oriented purposes. As a result, the BCDC stepped in, and all marinas and boats moored or berthed on the Bay were gradually brought under BCDC regulation by amendments to the Bay Plan.[11] At about this time, other Regional and State and Federal Agencies were created to and/or became active in protecting the Bay from boats and marinas.[12]

Basis for BCDC Regulation

How was this done? Remember the commission was set up to control filling of the Bay. Boats fell under its authority because the amendment defined boats as "floating fill."

"Floating fill" sounds like an oxymoron. How can fill float? "Fill under the act includes floating structures."[13] Although the Act does not elaborate, this can be taken to mean that a boat moored

or berthed and stationary in one location becomes like fill in that it fills space along the shoreline as surely as would dirt or rock.

The important thing to note here is that boats become fill when they are "moored or berthed for an extended period of time." Such boats cease to be in transit and are ipso facto no longer used primarily for water-oriented purposes.[14] This is fine. Moorings and marinas are designed as places to keep boats when not in use.

However, boats that have become floating fill cannot then be put back into use to serve as floating platforms for some land-oriented use. They cannot be used like an R.V. or a commercial van, a house or office trailer. Why?

The Commission took the line that boats used for such private landoriented uses were inimical to the public water-oriented purposes allowed privately-owned boats on public trust lands of the Bay over which they floated. Since the Commission was set up to protect these trust lands, it must regulate all uses. Regulation in this case meant that people using their boats for private land-oriented purposes must obtain use permits to begin or continue doing so.[15]

"....boats that have become floating fill cannot then be put back into use to serve as floating platforms for some land-oriented use."

Application of the Regulation

Requiring a permit, unfortunately, put a lot of boat owners at odds with the Commission. Many boats tend to be large, expensive investments which are heavily taxed as luxuries. Typically, their owners have viewed their investment and the burden of taxation on them as conveying a right to use them in any way allowable by their design, including residential and commercial uses. This opinion is supported by the fact that such uses are normally permitted elsewhere in California, the United States, and overseas.[16] The BCDC, on the other hand, has taken the view that it was set up for the very reason that San Francisco Bay is different. It cannot go on being treated like any other body of water.

The nature of this conflict has varied depending on the kind of boat involved. Since the primary use of self-propelled boats occurs when they are under way, they can only come into conflict when they are berthed or moored for extended periods in the Bay. But because the primary use of houseboats occurs when they are berthed or moored for extended periods of time, they are always in conflict.[17]

For self-propelled boats, this means that owners can only use their boats as residences when they are in transit. For boats sitting in marinas that qualify as floating fill, the BCDC determines their primary use by how many days a week an owner lives on board. If the owner lives on board more than three days a week, the boat is considered to be primarily a residence and called a "live-aboard" which is forbidden without a permit.[18]

For houseboats, the regulation is different. Because their primary use is always land-oriented, usually residential, they are always floating fill and their owners must obtain a permit to berth anywhere in San Francisco Bay directly from the BCDC. A houseboat in San Francisco Bay without such a permit is considered to be "illegal floating fill" and can literally be expelled from the Bay.[19]

Theoretically, obtaining a permit to live on board any kind of boat is impossible because the BCDC is against any residential uses of the Bay. However, an exception to this rule is made in a few cases.

A boat can obtain a permit if it can find a marina that has room to take it under the marina's allowance from the BBCDC that five and later ten percent of the boats berthed there can be live-aboards.[20] Local jurisdictions can and often do restrict this number even more.[21] This allowance was given by the BCDC because it decided that some live-aboards can provide security from thieves and vandalism for the other water-oriented boats in the marina. In other words, a few live-aboards are allowed only because their presence supports water-oriented uses.[22]

The Impact of BCDC Boating Policy on the Bay

Regulation of boats on the Bay by the BCDC is based on its boating policy. Insofar as this policy has been implemented, marinas around the Bay should hold boats used for recreational purposes. There certainly should be no new houseboat communities. What, in fact, has actually happened?

Survey of Boat Use

To answer this question, it is first necessary to estimate the total number of boats on the Bay. Based on permit files, the BCDC has estimated that there were approximately 670 houseboats docked in San Francisco Bay in 1985. This number is fairly certain since houseboats can be identified and counted. With the rest of the boats, however, the situation is not so clear cut. Based on a Bay Area Boater's survey, of 66

> *"Regulation of boats on the Bay by the BCDC is based on its boating policy"*

marinas located in the Bay Area in 1983, there were 16,295 berths- almost all of which were occupied. In these occupied berths, it is estimated that over 1000 boats may be live-aboards, a figure roughly consistent with five per cent rule then in force and most local rules.[23] There is this caveat, however, according to the BCDC. " Because live-aboard boats have a similar appearance to other boats and because the residential use may be established or terminated at will, the precise number is not known."[24] In other words, there are a lot of boats who could be flouting local and BCDC regulations, and if they are, it is difficult to tell whether or not they are doing so.

Enforcement of Boating Policy

Since the BCDC promulgated this regulation with the expectation that it would be obeyed, it must be asked how exactly it is to be enforced. Enforcing this regulation is not done by the BCDC. They are not even equipped to monitor blatant dumping and filling. This task has been taken on by volunteer organizations like BayKeepers .[25] In the case of this regulation, they have required that its enforcement be done by the marinas where boats are kept. Marinas around the Bay must obtain a use permit from the BCDC to operate subject to the condition that no more than a certain percentage of the boats in their marina are live-aboards. Boaters berth their boats subject to accepting this condition.[26]

So what actually happens in the marinas? Because there is, in fact, more demand for live-aboard permits than the regulations allow, the owners of boats who got to the marina too late to qualify under the rule and yet still want to live on board are forced to either live ashore or break the rules(source: survey of several marinas by this reporter). Because it is known even to the BCDC that some boat owners are ignoring the permit requirement, the

regulation also requires the harbor master to monitor the nighttime activities of the boat owners in the marina. Not surprisingly, this regulation is resented by the marinas because they are being asked to keep track of how many nights a week a boat owner sleeps on board. It is a regulation which is, practically speaking, unenforceable, especially in the larger marinas. Boats are even sublet as apartments in Sausalito under the noses of the harbormaster! Based on my experience as a former boat owner, I have the impression that there are hundreds, if not thousands, of people breaking the law some or all of the time. When a regulation is so openly flouted, it is useful, I believe, to review the legal grounds on which it is based. Since the BCDC is the dominant planning agency for the shoreline of the Bay, let us look at its legal authority.

Legal Basis for BCDC Regulation:

The Legal Acts Establishing the Regulations

The BCDC regulates boats on the basis of four following acts: first, the California State legislature in 1965 declared that the people of California have a "public interest in the San Francisco Bay."[27] This interest is an easement interest which makes Bay waters public trust lands a property interest founded on the California Constitution.[28] This interest applies "to unfilled and filled tidelands and submerged lands whether they are held in public ownership or by private parties."[29]

> *"The implementation of a public easement right over the Bay under the McAteer-Petris Act immediately created a problem because some of the tidelands were privately owned."*

Second, the McAteer-Petris Act of 1965 was written to define and protect this easement interest by establishing a Commission known as the BCDC to act as a regional planning agency for the Bay.[30] This agency will have the authority "to issue or deny permits ... for any proposed project that involves placing fill."[31]

Third, the BCDC under the powers given to it by the Act drew up The Bay Plan which established the boundaries of the easement and identified the kinds and locations of uses which should occur there based on the goals of the Act.

This Plan laid out a general policy on marinas and live-aboard boats under the heading "Recreational Uses of the Bay" which was then incorporated into the Act by amendment in 1969.[32]

Fourth, the BCDC drew up specific agency policy and regulations consistent with the Act governing live-aboard and houseboat use of the Bay on March 20, 1986.[33]

The Current Legal Status of These Acts:

Statute Law- The McAteer Petris Act

The implementation of a public easement right over the Bay under the McAteer-Petris Act immediately created a problem because some of the tidelands were privately owned. Denying a permit for development could have been considered a taking if a clause in the Act had not provided for the "payment of just compensation for taking or damaging private property."[34] As a result, tidelands, like Mr. Muzzi's in Corte Madera, became public preserves.

In fact, all such disputes over tideland use must have been settled by

negotiation because Shepard's California Citations to Government Codes does not indicate any cases that were filed challenging the right of the State to exercise an easement interest over Bay tidelands for land-based uses.

Agency Law- The Regulation of Boating Use:

Challenges to BCDC Policy

In the past, challenges to the McAteer-Petris Act have not attempted to overturn it. Rather, they have tested the language of BCDC policy and regulations based on the Act as the agency applied them in specific cases. From a review of West's Annotated California Codes and cases cited in Shepards, these challenges appear to have focused on boating use in three areas. First, the exact boundaries of the public easement as defined by The Bay Plan have been challenged. Because only the exact location of the boundaries and not the right to draw boundaries was challenged, these challenges have not affected boats moored or berthed within the Bay.[35]

Second, projects underway and uses practiced at the time the Acts was adopted that did not meet the requirements of the Acts could seek exemptions under the McAteer-Petris Act.[36] Projects and uses denied permits as exemptions often did challenge their denial. These challenges affected the status of both anchor-outs and houseboat marinas on the Bay.

Third, the regulation requiring that all live-aboards must be in marinas was challenged.[37] This challenge mattered to boats that could not find a marina to take them or could not afford what the marina was charging to take them.

Legal Boating Under the BCDC

Examining areas affecting boating use, the following picture emerges of legal boating use under BCDC regulation. In the second area, agency rulings were challenged in specific cases governed by a clause in the Act which allowed exemptions for projects underway and uses occurring on tidelands of the Bay at the time the Act became law. For example, the BCDC allowed the completion of projects such as the Berkeley and Emeryville landfills because of the economic hardship to the community if the projects were stopped. In the cases of anchor-outs and houseboats, it was not so generous. It ruled that that current long term anchor-outs must come into marinas and current houseboats in marinas must be no more than the percentage allowed for liveaboards. This meant that the remaining anchor-outs and most houseboats in marinas found on Richardson Bay, Redwood City, and elsewhere on the Bay became "illegal floating fill."[38]

> *"...anchor-outs and most houseboats in marinas found on Richardson Bay, Redwood City, and elsewhere on the Bay became 'illegal floating fill.'"*

What made them illegal floating fill- different from identical boats that had permits? They were not necessary to provide security for the other boats in the marina. The additional boats were more than the five or ten or whatever percentage that the BCDC and local municipalities decided was a sufficient number. What the basis was for establishing how many are necessary was not made clear.[39]

Despite legal and municipal opposition, several houseboat communities,

notably Galilee Harbor and the Gate Six Cooperative in Sausalito on Richardson Bay, fought the denial of permits in the courts arguing that they were being deprived on their homes. Their cases have been in and out of the courts ever since the BCDC was first established. It now appears that the BCDC will have to allow these nonconforming uses as exceptions to the Plan because these marinas have attempted to conform to local housing and sanitary codes and because they do provide a place for affordable housing not found elsewhere in Marin County.[40]

In the third area, the agency regulation requiring all liveaboards to be berthed in marinas was challenged. This regulation provide that both licensed boats and houseboats could obtain permits if they could find a marina with space to take them as liveaboards. The challenge has not come from licensed boats that cannot find such space because it is so easy to flout the rule. Instead, it has come from anchorouts who cannot afford to berth in a marina. When I last checked, Sausalito Yacht Harbor was charging over ten dollars a foot a month to berth there and a good deal more for liveaboards. With a big boat, renting a berth would be equivalent to renting an apartment ashore. At this juncture, the court has also allowed long time anchorouts to remain on the Bay under certain conditions.

The problem for houseboats built since the Act was adopted, however, is different because they cannot even be on the Bay unless they are already in a marina with a permit from the BCDC declaring them "legal floating fill." As a result, the number of houseboats on the Bay is governed by the number of marinas with available berths for live-aboard use.[41]

"The Acts adopted by the State legislature creating the BCDC were designed to protect San Francisco Bay."

Public Policy Issues Behind the Acts

The Acts adopted by the State legislature creating the BCDC were designed to protect San Francisco Bay. The key principle behind these Acts is what is known as public trust doctrine , "a key legal doctrine used to protect public interests." It holds that "the public good is best served by protecting certain lands, bodies of water, and resources."[42]

According to the media, this doctrine is today "under siege all around the San Francisco Bay Delta estuary" because individuals and groups interested in the development of privately-owned lands with public easements are challenging how public trust doctrine defines what constitutes the public interest.[43] Could not a marina or a hotel be a better use for the public of a given piece of the shoreline than to leave it as undeveloped tideland?

What does constitute the public interest? How should trust doctrine be applied? Three issues, it seems to me, arise when this principle is applied. First, in any given case, is the doctrine being correctly applied? Second, when it is applied, what happens to private lands within the area of the public trust? And third, what private rights remain consistent with uses of public trust lands?

When this principle is applied to San Francisco Bay, I draw the following conclusions from the issues raised based on the previous discussion: first, no one has disputed, as far as I am aware, that the Bay is a vital, irreplaceable regional resource that was in danger of being destroyed in anything resembling its historic form as an estuary back in the 1960's. No one has disputed that if the

public trust doctrine is to be applied at all, it should be applied in this case. The public should have an easement interest in the Bay.

Second, the McAteer Petris Act reconciled the public trust doctrine with private existing ownership of tidelands by recognizing that compensation should be paid in cases where a taking had occurred. This outcome seems entirely consistent with cases such as Berman v Parker.[44] If there is a dispute here, it is over what constitutes a taking a much wider legal issue.

The third issue is what, I believe, has raised controversy because of BCDC restrictions on the uses of the shoreline. In the case of marinas and boats, the following question arises: what is wrong with a residential houseboat community, such as the Gate Five Cooperative, being located on public trust lands? It is argued that private residential uses should not be allowed on public trust lands, such as the Bay, because it is comparable to allowing squatters in Yosemite. Yet unlike houses in Yosemite, marinas are recognized by even the BCDC as appropriate water-oriented uses that do belong around the Bay. It has also long been acceptable public policy to lease public trust lands in National Forests, e.g., in Eldorado National Forest in the California Sierras, to the public for private residential use.

It is also argued that the Bay as public trust land should be used for water-oriented purposes only. By the BCDC definition of wateroriented, recreational boating is ok but residential boating is not. It is not ok because it does not have to be done on the water. Yet where is comparable affordable housing in the Bay Area?[45] And it is argued that if it is done on the water, it will tend to block public access to the water and water- oriented activities. The problem is that it is by no means clear that liveaboards have any more impact on the Bay or on public access to the water than do recreational boats. Supposedly, more shoreside facilities have to be provided for liveaboards further blocking public access. But given that public access to the water is provided by the marina, the public that the shoreside facilities would be blocking is the public that keeps boats in the Marina the liveaboard and recreational boat owners themselves.

> *"...the regulation of live-aboards should be relaxed insofar as it does not permanently alter fill along the shoreline so as to further restrict access to or narrow the size of the Bay."*

In my opinion, the regulation of liveaboards should be relaxed insofar as it does not permanently alter fill along the shoreline so as to further restrict access to or narrow the size of the Bay. The idea of illegal floating fill and the ten percent rule represents a kind of zoning restriction that unreasonably excludes certain kinds of housing. It is also almost impossible to enforce. I would suggest that insisting on a regulation that allows some liveaboards but not others for reasons which seem arbitrary to many and are openly flouted tends to undermine respect for the law. The proper use of public trust lands in the case of liveaboards of all kinds should be through the regulation of the numbers of marinas allowed around the bay rather than the number of liveaboards in any given marina.

End Notes :

1. California Government Code, Section 66601.
2. California Government Code, Section 66600.
3. California Government Code, Section 66602.
4. California Government Code, Section 66600.
5. California Government Code, Section 66601.
6. Telephone interview with Sausalito City Planner.
7. BCDC Staff Report, Houseboats & Liveaboard Boats, 1985, pages 2833.
8. Ibid, page 12.
9. Ibid, page 1.
lO. Marin Independent Journal, "Chapter Closes on Houseboat Turmoil," page A1, May 2,1994.
11. BCDC Staff Report, Houseboats & Liveaboard Boats, 1985, page 1. Reason given for report is clarification of BCDC position, but the reason for change in position is the refusal of boating community to cooperate with BCDC policy.
12. Agencies involved include the Regional Water Quality Control Board, The State Land's Commission, the Army Corps of Engineers, & the Environemtal Protection Agency.
13. Ibid, page 18.
14. Ibid
15. Ibid, pages 1718.
16. See note #10. What is permitted elswhere is based in part on my own experience. On the East Coast, liveaboards have been permitted along the Intercoastal Waterway. They are permitted in the West Indies and in the Mediterranean.
17. Ibid, page 6.
18. Ibid, page 13.
19. Ibid, pages 1718.
20. Ibid, pages 7377.
21. Ibid, pages 2833.
22. Ibid, page 18.
23. Ibid, pages 910, 14-15.
24. Ibid, pages 13-14.
25. BCDC appears to operate like most local planning departments. It issues permits and responds to complaints but has only a couple of inspectors to see if its policy is being violated. Baykeepers has volunteer staff who police the Bay for violations. (Baykeepers are located in Fort Mason in San Francisco.)

26. Ibid, pages 1718.
27. California Government Code, Section 66600.
28. BCDC Staff Report, Houseboats & Liveaboard Boats, 1985, 2224.
This discussion is based in part on an interview with a BCDC planner.
29. Ibid, page 22.
30. California Government Code, Section 66601.
31. California Government Code, Section 66604.
32. BCDC, The Bay Plan, 1969, page 21.
33. BCDC Staff Report, Houseboats & Libeaboard Boats, 1985.
34. California Government Code, Section 66606.
35. California Reporter: vol. 117, page 327.
36.BCDC Staff Report, Houseboats & Liveaboard Boats, 1985, pages 1819.
37. Marin Independent Journal, "Forbes Island may return to Marin," April 1,1994.
38. Ibid, "Chapter closes in houseboat turmoil," page Al,May 2, 1994.
39. BCDC Staff Report, Houseboats & Liveaboard Boats, 1985, compare pages 7071 with page 7576.
40. Marin Independent Journal, "Chapter closes in houseboat turmoil," page A1, May 2, 1994.
41. BCDC Staff Report, Houseboats & Liveaboard Boats, 1985, page 73.
42. Marin Independent Journal, "Save the Bay conference will review public trust doctrine," May 3, 1994, page B1.
43. Ibid, "Ruling called threat to bay," page A1, May 5, 1994, and "Bayfront property value to soar," page B1, May 8, 199444.
44. David L. Callies & Robert H. Freilich editors, Cases And Materials On Land Use, in American Casebook Series, St. Paul, Minn., 1986, West Publishing Co., page 213.
45. BCDC Staff Report, Houseboat & Livaboard Boats, 1985, pages 1112, 1415. Discussion of these boats as affordable housing. Note that on a unit basis both kinds of boats as forms of housing are much less expensive than comparable housing ashore.

BIOGRAPHY:

The author is a graduate student in Geography. He used to live on board his sailboat in a marina on the Sausalito waterfront.

Days

without meaning, consequence, action
I am inert
surrendered to television blue light
trying to make translucent
images of brutality and hatred
by reliving sweet nostalgic childhoods I conjured
and replaying film loop love affairs
through a dense fog screen -
a filtered touch up glow
like that of an fading actress
all in muted peach tones

I smoke breath sit am
inert
gaseous light bubblelike
apathetic yet wondering
what life is really like for others
Haiti Belfast the strip the wall

does news ever briefly pause,
pregnant with possibility?
could the world ever completely stop
resting on its axis to dream?

I sit within
armchair powerlessness
confined to 5 o clock or 11 o clock segments
distance is air twice removed

Wildlife Faces The City

by David M. Hall

CONFLICTS AND OPPORTUNITIES AT THE GOLDEN GATE NATIONAL RECREATION AREA

Growing urban areas are fragmenting and destroying open space and wildlife habitats. The Golden Gate National Recreation Area (GGNRA) serves an important role in preserving this shrinking resource. The GGNRA's proximity to urban areas provides recreation for humans but this use has its impacts on wildlife. Research and studies are being conducted by scientists, park personnel and volunteers to increase knowledge of wildlife requirements and human-induced impacts to facilitate efficient wildlife management. Examples include the inventorying and monitoring of vertebrate species in the Marin headlands and research on the Western Snowy Plover (Charadrius alexandrinus) and human disturbance at Ocean Beach, San Francisco.

As the twentieth-century draws to a close and human population levels continue to rise, the demand for housing and urban facilities increases. While these urban centers grow, the outer edges of metropolitan areas have become sprawling extensions composed of residential single-unit lots and shopping centers. One of the trade-offs of his growth is a fragmentation and loss of open space. As these spaces shrink wildlife loses habitat.

This urbanization and fragmentation process which has steadily increased since the end of World War II, has helped to emphasize the importance of open space for recreation and wildlife habitat and led to the creation of many regional, state and national parks and reserves. One such park is the Golden Gate National Recreation Area (GGNRA). The GGNRA was formed by an act of Congress in 1972 as a unit of the National Park System and encompasses over 300 square land kilometers of California's central coast. [As well it is part of the Point Reyes-Farallon Islands National Marine Sanctuary, and the United Nations Central California Coast Biological Reserve dedicated in August 1989].

> *"The GGNRA was the most visited unit of National Park System in 1992 with nearly 20 million visitors..."*

The GGNRA was the most visited unit of National Park System in 1992 with nearly 20 million visitors (Howell 1993). The key to the GGNRA's high number of visitors is its accessibility. It is located directly bordering and within one of the largest metropolitan areas in the United States—the San Francisco Bay Area. Its boundaries fall within Marin, San Francisco and San Mateo Counties bordering rural, urban and suburban populations. Because the region is highly urbanized, the Bay Area's open space has a variety of owners. Along with Point Reyes National Seashore, the GGNRA includes lands managed by the National Park Service, other public agencies including the California State Park System,

Marin Municipal Water District and the San Francisco Watershed. Additionally, there are private lands within GGNRA's authorized boundaries such as Audobon Canyon Ranch and those that are in the process of acquisition such as historic ranches in the Point-Reyes area.

Because of its geographic isolation, the GGNRA lands contain a large number of endemic species. Eleven of these species are federally listed as either threatened or endangered (Howell 1993). The GGNRA's wildlife biodiversity, therefore, is an important resource which needs to be protected and sustained. Pressures are often put on wildlife populations by the adjacent human populations of urban areas. This article lists a number of issues facing wildlife managers at the GGNRA but focuses specifically on two current activities being conducted to catalog and protect that wildlife. Wildlife issues and concerns currently being considered at the GGNRA include the following:

•*management, monitoring, and control of exotic and invader species such as the red fox (Vulpes vulpes);*

•*native animal management and monitoring;*

•*special management and monitoring of endangered, threatened and rare species such as the snowy plover (Charadrius alexandrinus) at Ocean Beach;*

•*studying the effects of grazing on wildlife patterns in the Point Reyes area; and*

•*handling concerns and complaints from neighbors and park users such as the unconfirmed sighting of a mountain lion (Felis concolor) at Sweeny Ridge in San Mateo County (Chow, personal interview).*

The two projects which will be examined are the inventorying and monitoring of terrestrial vertebrates in Marin County led by Dr. Judd Howell, research scientist for the United States Department of the Interior's National Biological Service, California Pacific Science Center, and the project being created to protect the Western Snowy Plover (Charadrius alexandrinus) by Nola Chow, wildlife biologist for the GGNRA. Both of these individuals were interviewed regarding the history and current status of wildlife at the GGNRA.

Part of the current problem faced by wildlife managers is a lack of knowledge. According to Howell (1993), there is a need for inventorying of wildlife resources and natural resource monitoring programs. Howell, a wildlife biologist with the GGNRA for the past 10 years and now part of the National Biological Service, has spent the last two years specifically inventorying and monitoring GGNRA wildlife. This task is important because in many cases the population sizes and dynamics and even the species themselves are unknown. Before the National Park Service can protect the wildlife and analyze their relationships to human activities, they must find out what actually exists and in what qualities and quantities.

"Before the National Park Service can protect the wildlife and analyze their relationships to human activities, they must find out what actually exists and in what qualities and quantities."

An inventory performed in 1990 (Howell 1991) serves as an example of what has been done. With the help of volunteers from Earthwatch, an environmental advocacy group, a study site was chosen in the Marin Headlands District of the GGNRA. At 140 randomly selected sites in coastal scrub and prairie habitats, volunteers and biological technicians established trap sites with track plates, pitfall traps and Sherman live traps in order to sample wildlife

population levels. The project is an example of how the GGNRA is working to inventory vertebrate species diversity with the help of volunteers who make such work possible. The plan is to continue these surveys as long-term examinations of the effects of human use on the diversity of vertebrates in central coastal California.

In addition to these types of inventories, Howell is carrying out research in coordination with a number of graduate students to investigate wildlife/human relationships including:

•*studies on gray foxes (Urocyon cineroargenteus) and bobcats (Felis rufus) with Seth Riley, a graduate student at U.C. Davis, on their ecology including human contact;*

•*studies with a graduate student at Humboldt State on Tule Elk (Cervus elaphus) and their reintroduction into human adjacent lands at Point Reyes peninsula; (Howell, personal interview) and*

•*future studies tracking and inventorying coyotes (Canis latrans) in the GGNRA to examine how they are interacting with local residents including ranchers and park visitors as well as examining how different groups perceive coyotes in order to help address coyote management issues.*

The second project is one which began early this year at the GGNRA. The Western Snowy Plover monitoring program is being started by Nola Chow and Daphene Hatch, wildlife biologists (studying 60 to 80 birds) which lives at Ocean Beach in San Francisco from late summer through early spring. The Western Snowy Plover was added to the list of federally threatened species in 1993 due mainly to loss of habitat caused by human uses. The birds need proper habitat to nest, feed and take cover on coastal beaches, esturine salt ponds, alkali lakes and at the Salton Sea. It is important that the species have a place to crouch motionless on sandy substrate for camouflage and cover.

> *"The first step in managing human /wildlife issues is to establish a foundation of knowledge upon which to base management decisions."*

Just as wetlands have been lost due to their locational desirability, so too has the habitat of the Western Snowy Plover been effected by human building and intense recreational usage. These waterfront habitats have been highly impacted and those areas which are left are often popular beaches for humans. Ocean Beach is a good example. Western Snowy Plovers use small depressions in the sand to hide, and they use the thin strip of beach between the dunes and the upper tide line for all of their activities.

The problem at Ocean Beach is for the most part from unleashed dogs, and to a lesser degree humans. The objectives of the monitoring and inventorying program are to:

1) monitor the status and trend of the population including where they are on the beach and how many there are at given times;

2) monitor and document disturbances to the Western Snowy Plover including how long they flush and whether or not they grow accustomed to it; and lastly,

3) educate the public regarding the status and requirements of the Western Snowy Plover and what effects human activities have on the threatened species.

According to Chow (personal interview), part of the solution to protecting the Snowy Plover may need to address how Ocean Beach is managed. The beach may become a designated "critical habitat" which would limit

certain activities such as bonfires, and provide bigger fines for violators of the leash law. National Park System law requires all dogs to be kept on leashes on Ocean Beach except in the designate "dog-run" areas. It is only the enforcement of these laws which would change. This may cause conflict with human users and will most likely draw fire from individuals who do not want limitations placed on their recreational opportunities.

As is exemplified by the case of the Western Snowy Plover, human activities and needs often conflict with those of wildlife, especially near urban areas. The first step in managing human/wildlife issues is to establish a foundation of knowledge upon which to base management decisions. This necessary data is presently being researched and compiled at the GGNRA by research scientists and wildlife biologists such as Dr. Judd Howell and Nola Chow as well as by volunteers who are greatly needed, especially in times of budget cuts now and in the future. While conflicts may increase as human populations grow and urban areas expand, work is being carried out today that will be utilized to ensure appropriate planning and management in the future.

BIBLIOGRAPHY

Literature/Documents

Golden Gate National Recreation Area, National Park Service, Department of the Interior, 1994. Natural Resources Section of the Resouces Management Plan: Golden Gate National Recreation Area.

Howell, Dr. Judd A. 1991. "Coastal Scrub and Prarie Wildlif Inventory, Golden Gate National Recreation Area, California." Published in Proceedings of the Symposium on Biodiversity of Northwestern, California, October 28-30, 1991, Santa Rosa, CA.

1993. "U.S. National Park Service Inventory and Monitoring: A California Park Perspective." The George Wright Forum 10:3. pp. 16-23.

National Park Service. 1980. Golden Gate National Recreation Area / Point Reyes National Seashore General Management Plan / Environmental Analysis.

1993. Golden Gate National Recreation Area, visitor guide and map pamphlet.

Petit, Charles. 1994. "Recreation Area Wildlife Study." San Francisco Chronicle Sec. A, p. 15.

Snowy plover habitat map - handout from interview with Nola Chow - of unknown origin.

Interviews/Communications

Chow, Nola. Personal interview. 3 November 1994. Wildlife biologist, Golden Gate National Recreation Area, National Park Service, Fort Mason Building 201, Bay and Franklin Streets, San Francisco, CA 94123.

Howell, Dr. Judd A. Personal interview. 25 October 1994. Resource scientist, National Biological Service, California Pacific Science Center, Department of the Interior, Fort Mason Building 201, Bay and Franklin Streets, San Francisco, CA 94123.

BIOGRAPHY

David M. Hall is a graduate student earning his master's degree in Geography: Concentration in Resource Management and Environmental Planning. His areas of interest include urban wildlife, open space and issues surrounding the urban/wildlife interface and regional planning. His thesis will examine coyote/human relationships for the GGNRA.

The Siege of A Small American Town:

The Toxic Assault on the Disenfranchised

by Philip M. Klasky

Low-income rural towns, communities of color and American Indian reservations are often targeted by corporations and government agencies as repositories of toxic wastes. Politically and economically disenfranchised individuals and groups are particularly vulnerable to manipulation. The manufacture, disposal and incineration of harmful substances has serious consequences for resident populations and causes adverse health effects, disrupts social cohesion and erodes economic viability. When communities are excluded from land-use decisions within their home space they can develop a sense of powerlessness.

This article explores the effects of the proposal for a radioactive waste repository on the town of Needles, California. I interviewed various people in preparation for this article including Llewellan Barrackman, Vice-Chairman of the Fort Mojave Indian Tribe, members of the Chemehuevi and Colorado River Indian Tribes, city officials, members of the Chamber of Commerce and residents of Needles, California.

A small American town lost a part of its soul today. The city appears the same despite an irrevocable change. At noon the heat bakes the asphalt into a glassy mirage. Mothers wait to collect their children, who are released from the elementary school hurting for a new auditorium. But the simple trust and casual friendship which clinches the deal on a used car, watches a neighbor's house while they visit relatives, and gives credit for medical services rendered has been disrupted. Assumptions of commonality, generalized for the sake of mutual convenience, have turned to suspicions and even hatred.

A splintered group of civic leaders in a small rural community, motivated by fear and exhausted by a ten year siege, have entered into a contract with people they loathe; outsiders they once considered the enemy. But alliances made for convenience can turn treacherous in changing circumstances. Some folks in Needles are saying that the mayor and the city council signed a pact with the devil and sold out the city for cheap.

The small town of Needles lies on the border between California and Arizona where the Colorado River winds cold and slow toward Mexico. The city was once a major stop for the Santa Fe Railroad with a huge roundhouse and 1,500 railroad employees, brakemen, conductors and a construction crew. The city gets its name from majestic pinnacles of rock rising from the desert landscape to the southwest.

Needles is surrounded by the Colorado River Indian tribes including the Fort Mojave, Chemehuevi, Quechan and Cocopah. The reservations are on land valued as aboriginal homeland and for its agriculture and proximity to the River. The Chemeheuvi resort at Havasu Lake attracts Anglo refugees from the urban centers who bring power boats and boom boxes, bags of groceries and carloads of chil-

dren. The Fort Mojave tribe has just opened a casino and hotel on the Nevada side of the river. There is a cultural and economic wall between Needles' city residents and the Indians, but social forays such as mixed marriages and friendships are common.

Needles has eighteen churches, an ample offering for a city with a population of 6,000. There is one high school, a junior high and four elementary schools. The local paper, the Needles Desert Star, prints the photographs of all thirty-five high school graduates, portraits of young men and women dressed in suits and summer formals. The young graduates have designs to travel or attend college near a big city or to simply stay at home, work at their father's body shop or at the new giant grocery store near the edge of town.

In October, 1994, on the front page of the Desert Star next to the story about the latest basketball triumphs of the Needles High Mustangs, an article describes an attempt by a powerful United States Senator from Louisiana to site a nuclear waste dump near the city through an act of Congress (Richards 1994, p. 1).

Ward Valley is located twenty-two miles west of the city of Needles. In this wide, tilting valley of creosote and silver cholla cactus, the nuclear power industry plans to bury cesium, strontium and plutonium in shallow unlined trenches right above an aquifer and eighteen miles from the Colorado River. As America's 112 commercial nuclear reactors reach the limits of their forty year life spans, the nuclear power utilities are searching anxiously to send the wastes away before absconding from their problematic real estate (Bartlett 1985, p. 6).

"The state of California has selected US Ecology (formerly Chem-Nuclear), a toxic waste management corporation with a history of leaking dumps and litigation, to manage and operate the low-level radioactive waste facility at Ward Valley, California."

Hitching his political future to the corporations that promote nuclear power, including Pacific Gas and Electric and Southern California Edison, Governor Pete Wilson has been pushing the dump project with the assistance of the California Department of Health Services, the agency tasked with protecting the health of the residents of the state (Goldstein 1986, p. 3). The Bureau of Land Management is the federal agency responsible for the administration of the land at the proposed dump site. Officials within the Bureau have been working to accommodate Wilson, the Department of Health Services and the corporations which support the project.

The state of California has selected US Ecology (formerly Chem-Nuclear), a toxic waste management corporation with a history of leaking dumps and litigation, to manage and operate the low-level radioactive waste facility at Ward Valley, California (Dresslar 1991, p. 6). US Ecology and its parent company American Ecology have had financial ties to Browning Ferris Industries, a waste management giant which has been convicted of antitrust violations, price-fixing, illegal dumping, security fraud and numerous violations of environmental regulations (Lipset 1990, p. 26). The company has been criticized for its incompetence (Goldstein 1986, p. 3) and the selection of the site has generated much controversy because of concerns about contamination of the soil, ground water and the Colorado River (Hilton 1993).

In 1994, the US Fish and Wildlife Service designated Ward Valley as critical habitat for the threatened desert tortoise (USFWS 1994). The area is considered sacred and of cultural value to the Fort Mojave, Chemehuevi and Colorado River Indian Tribes (Barrackman 1994, pers. comm.)

US Ecology came to Needles in 1985, set up an office and a "community information center," employed local residents for maintenance duties and sponsored school outings, picnics and supported the high school baseball team. The dump contractor provided the schools with a few computers and gave scholarships in math and science. US Ecology took air-conditioned busloads of Needles residents and students on field trips to their radioactive waste dump fifty miles away in Nevada, bag lunches provided.

The company neglects to inform their guests that the dump has leaked dangerous radioactive materials into the surrounding area, that their landfills in Kentucky and Illinois have discharged long-lasting and highly toxic radionuclides into the soil and ground water and that one of their dumps is a Superfund site (Hirsch 1994).

US Ecology promised jobs for the community and benefits for the area Indian tribes. They even insisted that the dump could enliven Needles' economy.

The City of Needles and the Needles Chamber of Commerce have passed numerous resolutions opposing the dump stating their concerns about the safety of the project and the effect of a nuclear dump on property values. When a company representative offered to build a museum and cultural center for the Fort Mojave Indian tribe he was escorted off the reservation (Barrackman 1994, pers. comm.).

The company has insisted that the radioactive waste to be buried at Ward Valley would come from hospitals, biotech companies and research facilities (Dames and Moore 1991). But citing Department of Energy statistics, researchers and activists have asserted that the majority of the longest-lived and most dangerous wastes would come from nuclear power reactors (SOR 1993). Needles residents wanted to be rid of the unwelcome invader, responding like a body to a disease.

Members of the Needles Chamber of Commerce have debated the dump project for years over breakfast in the back room of the Hungry Bear restaurant. The meetings start at 7:00 am so that shop owners can open their businesses on time. Some of the members have fought against the project with fact and fury. Others have proposed that the town seek impact fees.

The proposal for a nuclear dump has had its effects on the town. Developers have withdrawn plans to build housing for a town that may become the nation's nuclear waste repository and new homeowners must sign a contract absolving the seller from liability in case property values would plunge along with the construction of the dump (Vinso 1992). The waitress interrupts a passionate speech about the possibility of contamination of the ground water with the delivery of armloads of hot cakes and hash browns. The proprietor of an auto parts store takes advantage of the break to offer a joke about Mutant Ninja Turtles.

A prominent member of the Chamber recommends that the city ask for compensation should the dump be forced on them and suggests negotiations with the dump contractor and the state of California. One of the meeting participants steps outside to report on the discussion with a cellular phone provided by US Ecology.

On the horizon, the City Manager sees opportunity in enterprises such as a port of entry on the interstate and a penitentiary. A contract with the state to house criminals would bring revenue and an agricultural inspection station on the Interstate would provide a few jobs, at least through the construction phase. "What else can we do?" he says with resignation.

> *"Exhausted from the siege, the small desert town rests in wait. The City's leaders, embroiled in an ugly recall campaign, have lost sight of the small victories won by the diverse coalition of groups fighting against the dump."*

After months of pressure and afraid that remote political machinations in Sacramento and Washington, D. C. would site the dump against their will, city officials gave in to an offer by lobbyists for the dump contractor to trade their opposition for impact fees.

In the birch paneled City Council Chambers, the City of Needles signed a contract which exchanged their rights to challenge the dump in the courts for a promise by,anuclear industry lobby group to shepherd a community compensation package through the state legislature. A surcharge on every cubic foot of waste would be paid to the city.Needles could get as much as $1.5 million per year, $45 million throughout the 30 year operation of the dump. News of the deal spread across town in a flurry of anger and disbelief. Telephone calls flooded the switchboard at City Hall as the council members signed the contract behind closed doors.

The city's leaders say that they made the best decision for Needles, that they seized the moment and tried to bring some resolution to a problem they neither asked for nor fully understood. But the tribes and town residents who had lead the fight against the dump felt betrayed by those who lost faith. The toxic process of systematic predation tears through communities with intense social and economic challenges.

When the Mayor of Needles and the City Manager traveled to Sacramento to testify in support of the compensation legislation, they were rudely dismissed by a committee of preoccupied legislators. The promised support was never delivered and the hopes for reparations died. Needles gambled poorly and lost.

At the river park across the railroad tracks, the children play as if their lives depend on it, swinging on ropes attached to cottonwood trees. They fly high before plunging into the wide, deliberate waters of the Colorado River. Workers home from the railroad yard watch the news and slowly push themselves toward sleep with vodka and grapefruit juice.

Exhausted from the siege, the small desert town rests in wait. The City's leaders, embroiled in an ugly recall campaign, have lost sight of the small victories won by the diverse coalition of groups fighting against the dump.

In 1993, a lawsuit brought by environmental groups and American Indian tribes stalled the dump project in federal court with the protections of the Endangered Species Act. According to the US Fish and Wildlife Service, Ward Valley is some of the very best habitat for the threatened desert tortoise (USFWS 1994). The tortoise has lost half its population in the last seven years due to habitat destruction and the species has been forced to the edge of extinction (Berry 1991).

The lawsuit stopped a federal land transfer and placed the Department of the Interior on a nine-month deadline to designate critical habitat for the federally listed tortoise. A critical habitat designation outlines the geographic areas needed for the recovery and conservation of a listed species (Rohlf 1989, p. 65). After a four month administrative review, 6.4 million acres of critical habitat was set aside the desert tortoise, including Ward Valley (USFWS 1994).

In June, 1994, a state court in Los Angeles suspended the license of the contractor because of concerns about the potential for the contamination of the Colorado River. Scientists with the US Geological Survey have documented the potential for radionuclide migration through fractured media (Hirsch 1994). Secretary of the Interior Bruce Babbitt has directed the National Academy of Sciences to investigate the threat to the Colorado River and the potential for adverse effects on the desert tortoise.

A national coalition of environmental organizations, technical experts, and citizen's groups have had a profound influence on the seemingly inexorable attempts to site the dump, and the resistance of the area American Indian tribes is a constant force, sure and provident.

"A national coalition of environmental organizations, technical experts, and citizen's groups have had a profound influence on the seemingly inexorable attempts to site the dump, and the resistance of the area American Indian tribes is a constant force, sure and provident."

But the decision to site the dump may be taken out of the hands of both stakeholder and the courts. In October, 1994, United States Senator Bennett Johnston from Louisiana introduced a bill which would transfer federal lands at Ward Valley to the state of California, exempt the project from the protections of the Endangered Species Act and preclude judicial review. Johnston leads the Senate in contributions from the country's nuclear power industries. Within a harrowing few weeks, a national grass roots effort to stop Johnston's political maneuvers succeeded.

In a letter to President Clinton dated March 1995, Congressman Don Young and Senator Frank Murkowski, chairmen of the House and Senate Natural Resources Committees have demanded that the administration transfer the land and begin construction on the dump. Activists expect another attempt by Johnston to pass legislation, perhaps in the form of a last-minute "stealth" amendment attached to the bill with bipartisan support.

Out of the ashes of Needles' dance with the nuclear industry a slow but certain resolve is returning to the city. Many area residents remain steadfast in their opposition, some have threatened to move if the dump goes in, and others have fallen into the mire of cynicism and apathy. Those who chose to engage in the battle to save their homes are fighting with the determination of people who have everything to lose.

REFERENCE

Bartlett, Donald L. and James B. Steele. 1985. Forevermore: Nuclear Waste in America. New York: W. W. Norton & Company.

Berry, K. H. 1991. "The Status of the Desert Tortoise Population in California: 1990 data set." Paper presented at the 1991 Desert Tortoise Council Symposium, Las Vegas, Nevada.

Dames and Moore. 1991. Final Environmental Impact Report/Statement for the State of California Indemnity Selection and Low-Level Waste Facility at Ward Valley, San Bernardino County, California. pp. 3.1.4-6, 4.1.9.2.3-4, Figures 3.1.9-2, 4.1.9-1.

Dresslar, Tom. 1991. "Liability at Hazardous Waste Dump." The Daily Journal. December 11, 1991, p. 6.

Goldstein, Alan. 1986. "Serious Problems Linked to Nuclear Waste Dump Firm." Los Angeles Times. January 14, 1986, p. 3, 16.

Hilton, George and Paul Feder. 1993. "Hydrology and Geology of Ward Valley: An Analysis of the Final Environmental Impact Statement/Report for the Proposed Low-Level Radioactive Waste Facility. " Report submitted as comments to the Draft Supplemental Environmental Impact Statement/ Report for the LLRW dump project.

Hirsch, Daniel, et. al. 1994. The Proposed Ward Valley Low-Level Radioactive Dumpsite: Report of the Ward Valley Technical Review Board. Report submitted as comments by the Committee to Bridge the Gap to the National Academy of Sciences Committee on Ward Valley, June 1994.

Lipset, Brian. 1990. "BFI: The Sludge of the Waste Industry." Multinational Monitor. June 1990, p. 26-28.

Richards, Robin. 1994. "Senator Johnston Introduces Ward Valley Transfer Bill." Needles Desert Star. October 17, 1994, p.1

Rohlf, Daniel J. 1989. The Endangered Species Act: A Guide to Its Protections and Implementation Stanford: Stanford Environmental Law Society, 1989.

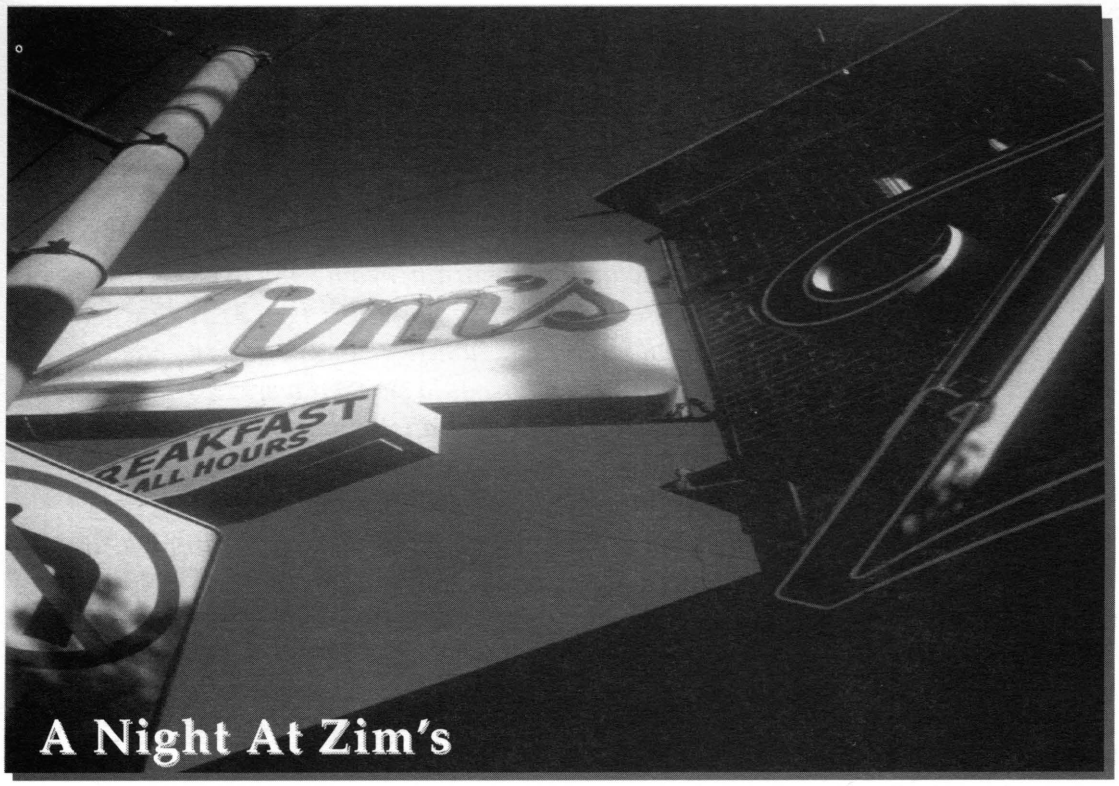
SOR-California Senate Office of Research. 1993. How Safe? Issues Raised by the Proposed Ward Valley Radioactive Waste Facility. Prepared by the California Office of Research as a report to the Senate Rules Committee.

USFWS-U. S. Fish and Wildlife Service. 1994. Recovery Plan for the Desert Tortoise (Mojave Population.! U. S. Fish and Wildlife Service, Portland, Oregon. 170 pages plus appendices.

Vinso, Joseph. 1992. "Economic Impact of the Establishment of a Low-Level Radioactive Waste Facility in Ward Valley." Declaration for legal purposes by Joseph Vinso, Ph. D. of Financial Resources Management, Inc., on retainer to the City of Needles, California.

BIOGRAPHY

Philip M. Klasky is a graduate student in Geography with a concentration in Resource Management and Environmental Planning at San Francisco State University. He is a writer, poet, and environmental activist working on antinuclear, wilderness and endangered species issues.



A Night At Zim's

Mavis tries to remember it all
menus on table one
tabasco at the bar
biscuits and gravy with a side of fries
at table six
What am I doing here she wonders
the death of her husband
took her to places she never thought she'd see
and she felt too old,
too damn tired to begin it all over again

at the age where everyone is either
honey or sweetheart
no one respects her position
no one asks for her life's knowledge and wealth of experience
along with their never ending refills of need
she never became the coffee waitress guru
she once imagined possible
dispensing advice to the youth of America

The cook, too, has a glazed look in his eye
No amount of speed can make this worthwhile he thinks
leaning above the bubbling deep frier
he and Mavis exchange compassionate glances
of exhaustion

The factory worker at table eight is hammered again
Mavis knows nothing good can come of this
he's throwing sugar packets and menus at the dark skinned people
who are stealing our jobs and ruining the country
and shouting for someone to give him
a fucking cigarette
Mavis pulls one out of her pack to shut him up

he tells Mavis
that she's the best friend he ever had

Policy Options for Reducing Bicycle Accidents in San Francisco:

by Elina Coulter

This is an analysis of bicycle accidents in San Francisco. It explores the causes and attributes of the problem and policy tools for accident prevention. From 1989 to 1993, there were 2,353 bike accidents in the city. Hospitalization costs alone averaged $136,000 per year. Since 1989 thirteen cyclists have been killed. The ramifications of these accidents are experienced not only by cyclists, but by others who would ride if it were less dangerous and by the city as a whole in the form of heavy traffic with all its symptoms. Causes relate to marginalization of the bicycle as a form of transportation and include ambiguity in the wording and enforcement of laws, failure of motorists to see bicycles and cyclists' failure to make themselves seen. Policy tools explored here include: clarifying traffic laws; intersection-specific accident reduction programs; widening streets and striping bike lanes, and closing Market Street to automobile traffic.

When most people think of San Franctsco cyclists, they picture raggedy young messengers riding on busy financial-district sidewalks, or commuters with crazed expressions darting between the lanes of traffic at breakneck speeds on Gough Street. "They must be insane," motorists comment with detached awe. In that statement lies much of the problem with bicycle safety in San Francisco. Firstly, bicyclists appear to motorists to be highly vulnerable. Anyone who would subject themselves to such an apparently frightening lack of control must be crazy. Because of the apparent danger to cyclists, people who ride bicycles have, by nature, a proclivity for taking chances, and may in fact take more chances on a bicycle than would the average person. At risk of extending an already over-used term, bicycles, as a form of transportation, are marginalized. The causes of safety risks to cyclists in San Francisco are largely related to the fact that the bicycle is not seen as a valid alternative to autos and public transit. Policies should be conceived and implemented with marginalization in mind as the root of the problem. In the following report, the problem is outlined, causes identified, and policy tools explored which should serve to reduce accidents and bring bicycles into a more prominent position as a form of transportation. A reduction in accidents, employing methods visible to the public will not only save lives and prevent injuries. It will also increase bicycle use by lowering the risk that cycling poses.

THE PROBLEM:

Between 1989 and 1993, 2,353 bicycle accidents occurred in San Francisco. The numbers have varied little from year to year, ranging from 424 in 1989 to 496 in 1992. Most of these occurred as a result of crashes with motor vehicles. Between 1989 and 1993 there were ten fatal bicycle accidents. In 1994, there were three cyclists killed.

Hospital expenses have been calculated as follows: According to the Profile of Injury in San Francisco, hospitalizations of victims of all motor vehicle accidents in the city costs $4 million per year. An average of 3.5 percent of motor vehicle accident victims are cyclists, so the cost of treating these can be roughly estimated at $120,000

for that year. Given that not all bicycle accidents involve a motor vehicle, the cost of hospitalizations for all bicycle accidents is estimated at between $127,200 and $136,800. This figure is based on information in Injuries to Bicyclists: a National Perspective, which lists automobiles as being involved in 86-94% of fatal bike accidents. Unfortunately, neither the city paramedics nor the paramedics billing department was able to adequately estimate the cost of sending ambulances for injured cyclists. Likewise, Officer Moranda of SFPD Traffic Administration reports that the cost of police service involved in bicycle accidents is not recorded separately from that of other accidents.

The public's perception of bicycle safety is uncertain. Because it is difficult to measure quantitatively, it appears that no studies have been published on the matter. There is, however ample evidence that more people would ride bicycles if it was perceived as being safer. Using studies that ask under what conditions they would use a cycle regularly respondents overwhelmingly state that if bike paths were available they would use them. One such piece, by Nigel Unwin of the Manchester Health Authority, asked more specifically about safety. Of 152 noncyclist respondents, 104 gave "too dangerous" as the reason they did not ride bicycles. It stands to reason that the more injury-causing and fatal bicycle accidents that come into the public eye, the more fearful people will be of using a bicycle.

> *"...more people would ride bicycles if it was perceived as being safer."*

PROBLEM CAUSES:

At the root of the problem of bicycle accidents in San Francisco is failure by cyclists, drivers and public planners to see the bicycle as a form of transportation that warrants attention. Bicycles are unlike cars in many obvious ways, and have unique needs which cannot be filled by roads and traffic regulations which are set up to accommodate cars.

One way in which this problem is played out is in accidents which are officially classified as "cyclist at fault." The overall percentage of these in San Francisco is not known. In fatal accidents, however, seven out of ten since 1989 report that the cyclist was responsible. Dave Snyder, Executive Director of the San Francisco Bicycle Coalition, feels that these numbers represent an injustice to bicyclists. Officer Jim Moranda of SFPD Traffic Administration and Pete Tannen, the San Francisco Bicycle Coordinator, agree that most fatal and injury bicycle accidents are legally the fault of the cyclist; frequently, however, these accidents are preventable by the motorist. Furthermore, a study by Allan F. Williams concluded that cyclist responsibility was negatively correlated with age. According to Williams, only 34 percent of cyclists aged twenty-five and older were probably responsible for accidents in which they were involved. Most of the cycling accidents in San Francisco, unlike the country as a whole, occur with cyclists who are between the ages of twenty and forty. Between 1991 and 1993, 81 percent of reported accidents in San Francisco involved a bicyclist over age 17 (Smith 8).

Another area in which the difference in cyclist age plays a role is that of helmet use. Most experts and bicycle advocates agree that more widespread helmet use would greatly reduce the number of injuries and deaths in bicycle accidents nation-wide. Three studies estimate that unhelmeted cyclists are between 4.2 and 19.6 times more likely to incur a head injury than those

wearing helmets (Sacks et al; Wasserman et al; Buccini). Sacks reports that 62 percent of all bicycling deaths are caused by head injuries. And the proportion of those with bicycle-related injuries who sustain head injuries is correlated with age, with younger victims being most prone to head injuries (Sacks et al, Baker et al 59). Sacks found that between 1984 and 1988, 53% of very young children (0-4) who were in bike accidents received head injuries, compared to 14% for the sixty to sixty-nineyear-old group. As stated above, San Francisco's average cyclist age represents an abberation: four-fifths of accidents here involve cyclists over 17. Although helmets greatly reduce the risk of head injuries, their promotion merits the most attention for children, and so will not be given further consideration here. California recently passed a law requiring all cyclists under the age of eighteen to wear a helmet.

The effectiveness of high-visibility clothing in preventing accidents is an accepted fact. High-visibility clothing is more important in San Francisco than safety lights (which are required at night), because 78 percent of all injury accidents here occur between the hours of seven a.m. and seven p.m. (Wilbur Smith Associates). In concurrence with virtually every bicycle safety pamphlet in print, the San Francisco Bicycle Advisory Committee reccomends that cyclists wear "light and bright colored clothing." This is a safety measure whose importance is often understated, *for accidents that can be prevented by the motor vehicle driver seeing the cyclist*. The number of accidents that these represent is unknown. Nonetheless, Dave Snyder (of the San Francisco Bicycle Coalition), and the trainers for the League of American Bicyclists feel that it is substantial. So cyclists in San Francisco not wearing bright colored clothing can be viewed as an indirect cause of accidents in that it causes them not to be seen by drivers.

> *"...Dave Snyder sees the number one cause of bicycle accidents in San Francisco as cyclists' failure to use a full lane."*

Another factor which causes cyclists not to be seen by motorists is cyclists using the portion of the lane to the right of moving traffic. Dave Snyder sees the number one cause of bicycle accidents in San Francisco as cyclists' failure to use a full lane. Five of ten fatal accidents for which some logistical information was available occurred partially as a result of cyclists being between lanes of traffic. These include doorings,(in which the cyclists runs into a car door opened into the bike zone), cyclists passing cars on the right, and making turns assuming autos will leave space on their right for a cyclist they don't know is there. The number of nonfatal accidents which could potentially have been prevented by cyclists using the full lane, between 1991 and 1993 was 191, or about 21 percent of all accidents. In their nationwide training program, "Effective Cycling," the League of American Bicyclists reccomends more aggressive cycling tactics. These include using a full lane when the street is not wide enough to accomodate an auto, a cyclist and a car door. Relegating themselves to a small portion of the far right-hand side of the lane is one way that cyclists play a role in the marginalization of bicycles as a form of transportation.

Passing on the right is a violation of section 21202 of the California Vehicle Code. The San Francisco Comprehensive Bicycle Plan lists passing on the right *when unsafe* the third highest cause of bicycle-at-fault accidents in

the city between 1991 and 1993. The qualifier "when unsafe" implies that there are times when it is acceptable for a cyclist to pass on the right. Because the bike zone is to the right of the lane, the law, as it applies to cyclists is ambiguous.

In many cases, obeying the law is a safety hazard to a bicycle. Passing on the left is an example. When cars are backed up at a stop light, the cyclist is obligated to move to the left lane in order to pass them. Crossing one or more lanes of heavy traffic, then crossing back to the right when traffic begins to move is, doubtless, far more dangerous than continuing forward in the bike zone past halted cars. Another murky area is the part of CVC 21202 which states that a cyclist should use the right side of the lane unless the lane is of "substandard width," defined as "too narrow for a bicycle and a vehicle to travel safely side by side within the lane." But the lack of striped lanes leaves "safely" to be individually defined. Many organizations, including the League of American Bicyclists and the San Francisco Bicycle Coalition, reccomend that cyclists use the full lane in most circumstances. Conversely, many auto drivers appear to feel that cyclists should always use the right-hand part of the lane.

A rarely-mentioned factor in bicycle accidents is the influence of alcohol. Probably the same frame of mind that causes this problem to go unnoticed by many researchers and bicycle advocates is at fault for the problem: even cyclists appear not to consider the bicycle a vehicle, with the same responsibilities and rights as autos. Two recent studies, one by the Johns Hopkins Injury Prevention Center and one by the University of Kuopio in Finland, found that a high proportion (24.1 percent and 23 percent, respectively) of cyclists who were involved in accidents were legally intoxicated (Li and Baker, Olkkonen and Honkanen). There have been no such studies in San Francisco, so the proportion of cycling accidents here for which alcohol may be partially responsible is difficult to estimate. However, the role of alcohol is related to the time of day at which accidents occur, with most alcohol-related crashes happening after 10 p.m. (Lind and Wollin 22). The fact that most accidents in San Francisco take place before 7 p.m. suggests that the responsibility of alcohol is smaller here than it is in other cities.

"A rarely-mentioned factor in bicycle accidents is the influence of alcohol."

Unsafe speed is listed in the Comprehensive Plan as the number one violation in accidents involving bicycles in San Francisco. Of these cases, 66 percent are listed as the fault of the cyclist. This is an area that demonstrates the inadequacy of Vehicle Codes as they apply to bicycles. There are no posted speed limits for bicycles. As stated in CVC 21200, cyclists are subject to the same rights and duties as the driver of a vehicle. But it is highly unlikely that, with average speeds of 15 m.p.h., cyclists could have violated the speed limit in the majority of cases. Only three of the thirteen intersections at which five or more accidents occurred between 1991 and 1993 include steep downgrades. There is no clear demarcation of what constitutes "unsafe speeds" for bicycles. And because bicycles do not come equipped with speedometers, cyclists cannot be expected to know how fast they are going. This is another area in which marginalization of bicycles plays an important role. Speed limits are clearly meant to apply to cars, and the different capacities of bikes were not considered in their posting.

When automobile drivers are at fault in injury-causing accidents, there are three major causes that relate to drivers failure to see and yield to a cyclist with the right-of-way. The causes are, 1)opening car door when unsafe; 2)failure to yeild when turning left; and 3)unsafe turn and/or without signaling. In each of these circumstances, the cyclist is usually visible to a driver who is looking for bicycles. In these cases, if the driver in a car with a normal field of vision looks for cyclists who are riding in the bike zone, the bicyclist will be apparent. Bicycles do not make themselves known as readily as autos. By size alone, a bicyclist takes up a far smaller portion of the drivers field of visions so drivers have to make more effort in order to see them. This is an area in which the city's failure to mark bike lanes plays a role. The U . S . Department of Transportation reports that a bike lane stripe causes motorists to check for traffic in that lane (27). So the lack of a striped lane causes motorists to be less aware of the presence of bicycles and can be viewed as a cause of drivers' failure to look for bikes.

"San Francisco has many 'suggested bicycle routes' which, if they were safer, would adequately fill most of the major recreational and commuter needs of San Francisco cyclists."

San Francisco has many "suggested bicycle routes" which, if they were safer, would adequately fill most of the major recreational and commuter needs of San Francisco cyclists. Of the thirteen intersections that experienced five or more accidents in the last five years, eleven are located on suggested bicycle routes. The other two are one block from suggested routes. Of suggested routes, only four are paved paths separated from car traffic and only one is designated as "bikes only," minimizing pedestrian traffic. The streets of some of the suggested routes have either been widened, or are scheduled to be widened. Currently, nine out of twenty-four existing bike ways identified by the Comprehensive Plan have cycling zones of three feet or more. The majority are not striped. The lack of adequate bike zones is a government failure. When streets were being laid out, planners failed to accomodate the needs of cyclists, as separate from those of motorists and pedestrians. The lack of organization and smaller number of cyclists at that time meant that they were largely ignored .

Obstacles in the road are responsible for an undetermined number of accidents. They may be responsible for many of the 6-14% of accidents that do not involve motor vehicles, but they also may be responsible for others, in which cyclists alter their paths to avoid obstacles, putting themselves in the path of another vehicle.

POLICY TOOLS AND CONSTRAINTS:

Because the root of the problem of bicycle accidents in San Francisco is the marginalization of bicycles as a form of transportation, policies that bring bicycles into the public view, both figuratively and literally, should be emphasized. With this in mind, the following analysis of policies to reduce accidents focuses primarily in a few specific areas. These include: 1)clarifying traffic laws as they apply to bicycles; 2)utilizing the Department of Motor Vehicles to disseminate information and possibly institute licensing for bicycles; 3)intersection-specific accident reduction programs;

4)widening streets and striping bike lanes; and 5)closing Market Street to automobiles. All of the above most efficiently bring bicycles into the public eye, helping to promote their use for everyday transportation. Other policies, which deal specifically with some of the problems brought up in the "Problem" section of this report will also be discussed, but in less detail than those that are seen as most efficiently promoting bicycle use by reducing accidents.

Citing cyclists, according to SFPD officer Jim Moranda, is low priority. Relative to violations by motorists, cyclist infractions place few lives in danger. And given that as many as 75% of cyclists in the city regularly break the law, citing them may be the wrong way to probate safety.

At stop signs, San Francisco Police Department Officer Lois Perillo suggests "a dramatic slowing down and an appropriate yielding to the first vehicle at the intersection." The idea that the law should be applied differently to bicyclists than automobiles has not been given much attention, but it seems to be de facto law in cases of stop signs and passing on the right. Another area where the law is applied differently to bicycles is in defining "unsafe" speeds. California Highway Patrol Officer Maher says that the speed limit for bicycles is determined by road conditions and braking ability. But technically, the same speed limits apply to bikes as to cars, so this is an ambiguous area. As stated in the "Problem" section of this report, cyclists were held responsible for 66 percent of accidents between 1991 and 1993, for which "unsafe speeds" were the cause. This analysis suggests that speed limits for bicycles should be more clearly defined.

> *"The problem of bicycles and the California Vehicle Codes is more than ambiguity."*

The option of applying some laws differently to bicycles warrants more study. Perhaps if cyclists were cited differently and consistently, for instance for not yielding instead of not stopping at stop signs, cyclist behavior could be more predictable and safer without subjecting them to laws that were concieved for autos and were, only by extention, applied to bicycles.

The problem of bicycles and the California Vehicle Codes is more than ambiguity. In many cases, obeying the law is a safety hazard to cyclists. Defining CVC 21202 more clearly and making it known to bicyclists and drivers would help. Still, the issue of "safely" sharing a lane is a matter of perspective: many auto drivers feel uncomfortable passing bicycles which are sharing their lane. They pass by either changing lanes and giving the bicycle full breadth or they grit their teeth and pass quickly and closely, trusting the cyclist to hold his or her line. Adult cyclists do tend to ride straight. Unexpected swerving is usually a problem of cyclists under 16 (D.O.T. 20). However, according to the D.O.T., motorists' misjudgement of space required to pass occurs most commonly with older cyclists (20). The addition of striped bike zones would alleviate this problem, by objectively defining the space required for bicycle use and making it visible to all road users.

High-visibility clothing would be useful in San Francisco, because most accidents occur during daylight hours, when safety lights are less effective, and not legally required. But the fact that most accidents occur during the morning and evening commute hours on weekdays suggests that bicyclists are going to and from work. These would be likely to be wearing clothes which are not brightly colored. But most safety materials emphasize the importance of

wearing bright colored clothing. As a mandate, this would be hard to legislate and enforce, unless strict guidelines were set as to what constitutes "bright." But the option of making inexpensive, reflective armbands or sashes available at low cost and or mandatory may be more viable, and deserves closer attention. At around a dollar an armband, the cost per cyclist would be fairly inexpensive. But the number of cyclists in San Francisco is not known, and the cost of distribution should be investigated.

Safety programs are very useful *for the cyclists who use them*. It has been shown that children who participate in bicycle safety programs in school get in fewer accidents. Predictably, League of American Bicyclists' Regional Director, Alan Fokosh, explains that the cyclists who could benefit most from such courses do not attend. Safety and legal information is already widely available in bike shops.

An option for further disseminating this information is to make use of the Department of Motor vehicles. Currently, the California Driver Handbook explicitly states that drivers must look for bicycles in traffic situations where applicable. However, in the Parent-teen Training Aide, bicycles are not mentioned at all. It states in all circumstances to look for cars and pedestrians, but any discussion of bicycles is absent from the instructions. This is especially unfortunate because when a person is learning to drive is clearly the best time to learn to watch for bicycles. This analysis suggests that the Teen Training Aide would be more complete if it included information on bicycles.

Another way in which the DMV could be utilized is by instituting bicycle licensing. California Vehicle Code 39002 states that a city or county may adopt a bicycle licensing requirement for its residents. Making serious, concrete changes in the licensing infrastructure would involve considerable administrative cost. It should, nonetheless, be considered. Like other measures, such as helmet laws, which validate bicycles as vehicles, a drawback is that choice is limited. But a licensing program would force all groups, bicyclists, drivers and policymakers, to recognize that bicycles are a form of transportation. A bicycle license could be obtained separately or simultaneously with a driver's license. Anyone who wishes to ride a bicycle in the city would simply answer a supplemental set of questions on the driver examination, or separate from the driver examination, if they do not wish to obtain a driver's licenses.

The hills in San Francisco make a limited number of intersections very dangerous, because bicycles gain considerable speed on steep downgrades. There are many options to alleviate this problem. One possibility for keeping cyclists safe when they are speeding down a hill is to include a "bikes only"' signal at traffic lights at crucial intersections, so that cars could not turn right onto a cyclist who approaches fast from behind. However, at most intersections, bike traffic may not be heavy enough to warrant this drastic a measure. In most cases, when the bike signal was green, frustrated motorists and pedestrians would be forced to wait while no bicyclists went by. Another problem would be cyclists who are not willing to wait for the light, and move with the pedestrian or auto flow of traffic instead. one way to alleviate both of these and to allow the cyclist to keep momentum going downhill would be to have a button the cyclist presses at the top of the hill, which signals the "bike only" light below to turn green after the amount of time it will take the cyclist to get to the bottom going twenty-five miles per hour. This would disrupt signal lights that are timed according to the speed of automobiles, but should be considered if the cost is not prohibitive. It

would symbolize acknowledgement that roadways that are set up for autos do not automatically accomodate the needs of cyclists. The option of building ramps for bicycles, which go over the traffic or tunnels that go under at dangerous intersections should also be considered. In Boulder, Colorado, bike paths cover much of the city and avoid encountering auto traffic by routing bicycles under or over street. According to the D.O.T. , this has been an effective measure for reducing accidents and increasing bicycle use in that city.

Another possibility is to prohibit bicycles from using the streets with the steepest downgrades that include dangerous intersections. A parallel street in which cyclists are given the right-of-way could be provided.

Mandating safety inspections for bicycles could be useful in preventing accidents caused by brake failure, chains snapping, and handlebars coming loose These problems are easily preventable at a very low cost. The problem would come in enforcement. Most bicycle owners do not register their bikes, and registration would be the only way to ensure enforcement. Spot-checks with quick-fixes could be useful, but the percentage of accidents caused by mechanical problems in San Francisco has not been measured and is probably very small.

Policies that focus on driver behavior could be very useful in preventing injury to cyclists.The lack of special information for car drivers about bicycles is a government failure. It is difficult to say, however, what kind of an impact a public information campaign by the DMV could have, on the scale of the campaign to inform drivers about legal blood alchohol levels. Bicyclists' rights and responsibilities constitute a major void in the minds of motorists and cyclists alike.

"Policies that focus on driver behavior could be very useful in preventing injury to cyclists. The lack of special information for car drivers about bicycles is a government failure."

Widening and marking bike lanes and bike routes is part of the Comprehensive Plan. But the budget falls short of the scale of the plan. The city has received a grant to widen and mark Valencia Street for bicycle use. Although this is a popular route, it is not a high accident area.

Cyclists are organizing in larger and larger numbers, as demonstrated by the growing popularity of the monthly "Critical Mass" ride. The achievements made by the disabled community, in making curb ramps a standard sidewalk feature in recent years, could serve as an example to cyclists wishing to make three-foot bike zones standard on every street.

Bicycle lanes should be approached in a way that is mindful of past experiences of other cities. In Volume VI of the D.O.T.'s Safety Effectiveness of Highway Design Features, it is stated that a Standard 12-foot outside lane width is not sufficient to accomodate a bicycle and car moving side-by-side. Lanes meant to accomodate bicycles should be at least 13' 8". Lanes already this wide in San Francisco should be marked with signs, visible to auto drivers and bicyclists, designating them as bike routes. The most useful of these could be striped, and designated as bike lanes. In acknowledgement of the fact that bicycles make the most use of streets with the flattest grades and direct routes to and from attractors (common destinations), these should be given priority for widening.

The experiences of other cities have shown that certain types of bike lanes are

most useful in reducing accidents. In Madison, Wisconsin, left-side lanes produced an increase in the number of accidents of cyclists who used them. Boulder's policy of keeping auto and bike traffic completely separate wherever possible showed excellent results. In cities like Davis and Seattle, where the number of standard, right-side lanes was maximized, accident rates were reduced by 53%. This type of bike lane has the advantage of being less expensive than separating bikes from cars. It also keeps bicycles visible to motorists and therefore serves as good p.r., reminding drivers who are stuck in traffic that bicycles do not suffer from the same problem. Disadvantages are that cyclists are forced to breathe more exhaust fumes, and that accident rates are not reduced as dramatically when using this type of lane as they are when bike lanes are separate from car traffic.

> *"Bike lanes serve to reduce accidents in less obvious ways than simply keeping bikes and cars separated from one another."*

Bike lanes serve to reduce accidents in less obvious ways than simply keeping bikes and cars separated from one another. According to the D.O.T., cyclists usually ride near the left margin of the lane. This protects them from car doors which open on their right. It also makes the cyclist more visible to motorists travelling parallel to them, as well as motorists exiting driveways, and crossing or turning from perpendicular streets. The area where bike lanes are least effective in protecting cyclists is at intersections. According to the study cited in the D.O.T.'s report on bicycles, the number of accidents at intersections was higher in Davis (which has bike lanes) than in Santa Barbara (an otherwise comparable city with no bike lanes). There was no longitudinal study, however, to test whether higher cyclist visibility reduced intersection accidents over time. The thirteen areas in San Francisco which experience five or more accidents per year are all intersections. The fact that bike lanes make bicyclists more visible in general, by reminding drivers that bicycles share the road with them, should help to reduce these accidents. But intersections need to be examined and dealt with carefully, as the most dangerous areas for bicycles.

One of the difficulties, as discussed earlier, is that designated bike routes include all but two of the thirteen high accident intersections in the city. Therefore, two policy options are suggested to deal with these intersections. Following the example of Minneapolis, certain crossings could be targeted for an accident reduction project. At these intersections, special provisions should be made, such as bikes-only lights, signs cautioning drivers and cyclists to cross with care, or bike lanes that bypass traffic by going under or over automobile traffic.

Another option that could be used in addition to or instead of accident reduction projects, is to designate bike routes that avoid these intersections. It should be taken into account that routes were located with traffic levels, efficiency, and street grades in mind. Also, it is likely that part of the reason for the higher rate of accidents is precisely because they are bike routes, and thus experience more use by cyclists. Accidents are common at the corner of Scott and Haight Streets, for example, because this is part of the "wiggle", the route that gets riders from Market Street to the panhandle without going up any hills. In this case, it is reccomended to move the route one block east, to Pierce Street, where the street grade is the same, but traffic is lighter. Valencia

Street is another example. Guerrero, one block west, has significantly steeper grades, and Mission, one block east, is extremely congested. But there is a network of small streets in this area. If these were designated bike routes and given the right-of-way at intersections, they would be safer and more pleasant alternatives. The volume of bike traffic should be further examined in order not to disrupt the flow of traffic of cross-streets.

Over half of the high-accident intersections are located on Market and Mission Streets, downtown. Policies dealing with these need to take into account that cyclists using these streets are not recreational riders, but commuters and messengers. These riders need to be provided with an option that is appealing by virtue of speed and efficiency. It is likely that cyclists who use these routes will avoid going even a block out of their way for the sake of safety. So these are streets with intersections that should be targeted with accident reduction projects and/or bikes-only signals or traffic by-passing measures such as tunnels or bridges.

Market Street has long been highlighted as an ideal street on which to prohibit car traffic. Many cities, such as Madison, Seattle, Minneapolis, and Boulder, have designated one or more of the main shopping and business streets downtown auto-free. This option should be considered for Market Street, on which five of the thirteen high-accident intersections are located. Most car drivers avoid Market Street anyway because it is inconvienent. Slow-moving busses and congestion mean that traffic crawls at a snail's pace, and left turns off Market being illegal downtown compounds the inconvenience. If car traffic were banned on Market Street, potentially half of the bicycle accidents in the city could be prevented. This estimate is based on the fact that over one-third of the high-accident intersections are located there, one of which is the intersection where the largest number of accidents occur (seventeen in 1993). In addition to intersections, the two midblock locations with five or more accidents per year are on Market Street. Furthermore, an auto-free Market Street might attract cyclists from parallel Mission street, the second most dangerous cycling street.

Focusing on policies that make the streets more bicycle friendly should reduce accidents while promoting bicycle use. To reduce accidents in the long term, fundamental change is required in traffic regulations, street layouts and intersection logistics. These should include, but not be limited to: clarifying traffic laws as they apply to bicycles, increasing the number of bike lanes available to cyclists and implementing intersection-specific accident reduction plans at problem intersections. San Francisco recently hired, for the first time, a city Bicycle Coordinator, and created a Bicycle Advisory Committee, mostly as a result of grassroots lobbying efforts by organizations like the San Francisco Bicycle Coalition and by the loosely organized activities and demonstrations of those responsible for Critical Mass. The existing organized cyclists, including the San Francisco Bicycle Coalition, should make use of these in working to reduce accidents and raise the awareness of policy-makers and drivers. As auto traffic worsens in the city and public transportation prices rise, more people will probably turn to bicycles, which will become a less marginalized form of transportation, and achieve a stronger voice in the political arena.

WORKS CITED:

Baker, Susan P., et al. Injuries to bicyclists: A National Perspective. New York: The Snell Memorial Foundation, 1993.

Heye, Connie MPH, et al. Profile of Injury in San Francisco. San Francisco: San Francisco Department of Public Health Injury Center, 1994.

Li, Guohua and Susan P. Baker. "Alchohol in Fatally Injured Bicyclists." Baltimore: The Johns Hopkins Injury Prevention Center, 1994.

Lind, Magnus and Staffan Wollin. "Bicycle Accidents." Acta Chiruraica Andinavica Supplement 531 (1986): 21-33.

Olkkonen, Seppo and Risto Honkanen. "The Role of Alchohol in Nonfatal Bicycle Injuries." Accident Analysis & Prevention 22 (1990): 89-96.

Maring, Wit and Ingrid Van Schagen "Age Dependence of Attitudes and Knowledge in Cyclists." Accident Analysis and Prevention 22 (1990): 127-136.

Perillo, Lois. "The Route to a Safe Bicycle Ride." The Noe Valley Voice (1994): 13.

Rice, Dorothy and Ellen J. Mackenzie. The Cost of Injury in the United States: A Report to Congress. San Francisco: The Institute for Health and Aging, The Johns Hopkins University Injury Prevention Center, 1989.

Sackst Jeffrey et al. "Bicycle-Associated Head Injuries and Deaths in the United States from 1984 Through 1988." Journal of the American Medical Association 266 (1991): 3016-3018.

Simpson, A.H.R.W. and J. Mineiro. "Prevention of Bicycle Accidents." Iniury 23 (1992): 171-173.

Smith, Wilbur and Associates. "The San Francisco Comprehensive Bicycle Plan, Technical Memorandum #1." San Francisco: City and County Department of Parking and Traffic, 1994.

Unwin, Nigel. "On Your Bikes." British Medical Journal 21 (1992): 781.

Williams, Allan, PhD. "Factors in the Initiation of Bicycle-Motor Vehicle Collisions." American Journal Dis Child 130 (1976): 370-377.

The American Automobile Association. California Bicycle Laws.

The Department of Motor Vehicles.
1994 California Driver Handbook, and Parent -Teen Training Aide.

The Department of Transportation. Safety Effectiveness of Highways Design Features, Federal Highway Administrations Volume VI, November 1992.

"Suggestions For Safe Bicycling and Bicycle Committee." The San Francisco Bicycle Advisory Committee.

"The San Francisco Biking/ Walking Guide."

San Francisco Police Department, Traffic Collision Reports from nine Fatal bicycle accidents in San Francisco, 1989 to 1993.

Maher, Officer, CHP, telephone interview 14 December 1994.

Miranda, Jim. telephone Interview, 24 October 1994.

Snyder, David. personal Interview, 19 October 1994.

Tannen, Pete. telephone Interview, 24 October 1994.

BIOGRAPHY

Elina Coulter is a senior majoring in Urban Studies, with a minor in history at San Francisco State University.

Speech Restriction as a Policy Tool

by Steven Zerebecki

In recent years, many Universities, private companies and even some municipalities have enacted policies that restrict speech. These "speech codes" would seem to alleviate some of the affect of words that hurt, but also by their nature, they to a certain degree restrict the open exchange of ideas. Although policy makers may have good intentions, and have an interest in protecting those that may be victims of racist , sexist or homophobic taunts, have they looked at the real causes of hate speech? What is hate speech?

Is there one universal definition, or at least do specific policies address the causes that are linked to the definition of hate speech within the policy? Can rational policy walk the line between protecting victims, the first amendment and the specific policy-maker's jurisdiction?

This report examines the use of speech restrictions, also known as speech codes as a tool in policy. Restrictions on speech probably date to the earliest years of human civilization. However, this report focuses on the more recent controversy around the subject, notably the campus speech codes of the 1980s and early 1990s, the American Civil Liberty Union's (ACLU) policy on campus speech codes, and an examination of one corporation's employee policy on speech.

In this report, I attempt to deconstruct the policy in order to speculate on the problem causes and problem attributes that prompted the recommendation and ultimate implication of a policy tool that would restrict speech. It must be clarified that this is a discussion of restricting language, but not necessarily information. As a result this paper does not tackle the issue of censorship of printed or broadcast information. Instead it addresses the verbal communication between individuals who are "face to face." This report lends attention only to speech that is deemed destructive, or negative.

One must acknowledge that there is policy that treats speech as positive, most notably within the First Amendment. I refrain from a discussing of the First Amendment in detail as this is not an analysis of constitutional law. However it should be mentioned that the First Amendment is considered a restraint in restrictive speech policy. With this in mind, First Amendment considerations cannot be avoided altogether. Nonetheless the focus will be on the problem causes, problem attributes and policy tools of speech restrictions within the context of the policy analysis stage three model.

This approach is used to understand why some policy has been formulated that would seem to limit speech, and therefore violate an important American cultural standard. This report is not a critique of the effectiveness of the policy. Instead it is an attempt to connect the policy tool of restricting speech with plausible problem causes and attributes. It is my sense, however that the public debate caused by these policies has done more to alleviate the problem attributes than the policies have themselves.

Campus Speech Codes

The current policy activity around restricting speech on college campuses began in the early to middle 1980's. There was a resurgence of expressions of racism and racist views in the 1980's. The phenomena of "political correctness" (P.C.) was also emerging in this period. It was estimated that in 1990, 60 percent of all colleges had some form of policy restricting bigotry or racial harassment, and 11 percent of the colleges were considering such a policy. Not all of these policies restricted speech per se, but their existence clearly indicates the climate of race relations on campuses.

Policy that limits speech on campuses has varied widely. The University of Michigan instituted a policy that was ultimately struck down as unconstitutional by the Supreme Court. The policy prohibited not only speech, but "any behavior, verbal or physical, that stigmatizes or victimizes an individual on the basis of race, ethnicity, religion, sex, sexual orientation, creed, national origin, ancestry, age, marital status, handicap, or Vietnam-era veteran status." The University of Connecticut instituted a policy that prohibited "inappropriately directed laughter and inconsiderate jokes."

Some campus speech codes were more careful, but seemingly more narrow in terms of what type of conduct they address, directing their policy tools towards problem attributes, but not necessarily the causes. For example, the Stanford speech code (which, incidentally, is one of the few still on the books today, despite court challenges) only directs action towards speech that is considered within the realm of "fighting words." The policy is narrowed even further by only restricting speech that is directed at a person.

"Fighting words" were defined in 1992 by the United States Supreme Court in a decision that made them exempt from being protected under the First Amendment. The court defined "fighting words" in the following manner: "There are certain well-defined and narrowly-limited classes of speech, the prevention and punishment of which have never been brought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous and the insulting or 'fighting' words." Fighting words were defined as two types, words that "by their very utterance inflict injury" and "tend to incite and immediate breach of the peace." It is this concept of "fighting words" that forms the basis to my analysis of policy tools that by their nature, restrict speech.

> *"This opens the door to creating policy that restricts speech in order to protect one's well being."*

Fighting Words and Policy Implications

The first part of the definition of fighting words, that "by their very utterance inflict injury" tends to be rather ambiguous when applying the rationale to policy. "Injury" is not defined. It would be crucial to understand the meaning of injury in order to uncover the problem attribute addressed by this policy tool. Examples of this type of speech can range from that which is merely embarrassing to whom it is directed to that which causes serious emotional distress. This part of the definition does make clear however, that policy directed at restricting speech makes the assumption that speech is somehow connected to an

individuals well-being. This opens the door to creating policy that restricts speech in order to protect one's well being.

The ambiguity of this part of the definition relates to the cause as well as the effect. The issue of intent is not addressed in this part of the definition. Therefore, this policy tool has the possibility of condemning those whose intent was merely to express an idea, not to injure. At least that is the interpretation of some college students. Consider the following: it is the policy tool of restricting speech based on the possibility of injury to another, that some consider the root of the P.C. backlash that has caused some students to "no longer get involved in class discussions where their views would go against the grain of P.C." In the wake of speech code debates at Brown University, graduate and author of the P.C. parody comic strip "Thatch", Jeff Shesol advises students to steer clear of talking critically about abortion or affirmative action, and the codes claiming that P.C. backlash had "resulted in Brown no longer being an open-minded place." There have been other reports of students reluctant to participate in class discussions where the subject may run against the grain of P.C. convention, such as the 1991 incident at New York University where law students refused to participate in a moot court competition because it was "potentially offensive" to gays and lesbians. The case involved a father who was trying to gain custody of his children based on the mother's lesbian status. Students eschewed the representation of the father.

Part two of the definition, speech that "tends to incite an immediate breach of peace" is not as ambiguous as speech that "injures." This is the type of speech that is more clearly connected to the concept of "fighting words." The problem attribute of violence is more clear in this instance. The problem cause however, is not so clear by using the method of deconstruction from the policy tool level. Assuming that rational policy making was the framework within which this policy was formulated, it would follow that the only problem cause speech restrictive policy can address is simply that such "fighting words" were being said. In other words, it is not clear that this policy was designed to address anything that had caused an individual to desire to use speech that would "injure" or incite violence.

Originally published in an article for Dissent in 1991, Nat Hentoff, columnist for The Village Voice and The Washington Post offers an explanation of campus speech restrictions as policy tools. He says, "Because there have been racist or sexist or homophobic taunts, anonymous notes or graffiti, the administration feels it must do something. The *cheapest, quickest* way to demonstrate that it cares is to appear to suppress racist, sexist or homophobic speech," (emphasis added).

In 1991, two California affiliates of the ACLU enacted a policy that pays particular attention not necessarily to First Amendment considerations, but instead to speech as a possible barrier to equal access to education for all members of minority groups. Rather than enacting codes that may enter the realm of protected speech, the ACLU urged campus administrators to censure speech that could form barriers to equal access to education.

"Campus administrators must: speak out vigorously against expressions of hatred or contempt based on race, national or ethnic origin, alienage, sex, religion, sexual orientation, or disability; promote equality, mutual accommodation and understanding among these groups and the balance of the community (including steps to assure diversity within the faculty, administration, staff, and student body to incorporate into the curriculum and extracur-

ricular activities educational efforts to reduce racism and other forms of discrimination)..."

The ACLU policy differs from speech codes in that it does not place emphasis on silencing speech, but instead encouraging more speech and thus keeping consistent with the general idea that college and universities are a "marketplace of ideas." The ACLU's policy was largely a response to the University of California's (UC) harassment policy of 1989. In it, UC made the claim that fighting words constituted harassment when "a hostile and intimidating environment" was created, and when they "interfered with the victims ability to pursue effectively his or her education."

Hate Speech vs. Harassment

There is not one universally-accepted understanding nor one definition of hate speech. Usually it involves derogatory speech (or by some definitions any form of communication) based on a person's or group of persons' ethnicity, race, gender, sexual orientation, age or any number of other characteristics. Definitions of hate speech, however, do not refer to the number of occurrences or to persistency of assault. Human Rights Watch defines hate speech as, "any form of expression regarded as offensive to racial, ethnic and religious groups and other discrete minorities, and to women."

Harassment, on the other hand, has a more universally accepted definition requiring persistent annoyance, and wearing down of the victim. Further, harassment is defined as "a course of conduct directed at a specific person that causes substantial emotional distress in a person and serves no legitimate purpose." Speech prohibited in some speech codes differs from harassment in the respect that it can, conceivably serve the legitimate purpose of sharing of ideas, however abhorrent the ideas may be.

What Gardner, and most other policy makers have done with speech codes is bridged the gap between what is commonly understood as harassment, and a singular instance of speech that: 1. is directed at a member of a minority group, 2. is understood to either psychologically injure the victim or to potentially incite violence, and 3. to stand in the way of the victim's ability to get an equal education.

There has been a blurring of distinction between policies that address harassment and hate speech, and as a result, the policy is more legally and rationally directed at harassment. An example of such policy that does not necessarily address the causes of the harassment but instead only the attributes can be seen in the employee policy towards what seems to be hate speech at BankAmerica Corp. of San Francisco. In the "Treatment of Employees" section of BankAmerica's employee handbook, verbal harassment is defined as "derogatory comments, jokes, slurs, and abusive language" and sexual harassment is defined in part as "an unwelcomed sexual advance that is verbal..." BankAmerica makes no allusion as to the causes of the harassment, nor suggests policy tools to address the causes. Instead, their policy addresses the attributes, and warns that termination may result from the offense. It is conceivable that BankAmerica recognizes its role and jurisdiction as an employer, and chooses not to institute policy that reaches into causes of hate speech or harassment.

Structuring Speech Policy

In the final analysis, policies restricting speech approach their objectives sometimes narrowly, and sometimes very broadly. Often, there is room for interpretation of what the problem attributes and caus-

es of hate speech are. Uniformly, it is recognized that hate speech may injure its victims and have the potential to incite violence. Policy for the most part fails to address the causes of hate speech, with the exception, perhaps of ACLU's policy that encourages censure of the speech through continued discussion and promotion of equality in dialogue. In other words one should counter the hate speech with more and perhaps better speech.

I do not wish to underestimate the value of quickly alleviating the pain caused by hate speech that speech codes seems to accomplish. However, it seems that rational policy-making would do more than simply alleviate a single attribute. Long term rational policy would need to address the possible causes of the problem attributes: different forms of social oppression that result in speech directed towards injuring or inciting violence based on ethnicity, gender, race, sexual orientation, etc.

Conclusion

Although efforts to avoid ambiguity in defining what speech is to be restricted have been exhaustive by some policy-makers, it must be recognized that constraining freedom of expression will be an outcome of any speech restriction. Similarly, without serious consideration, and affirmation to the community that there will be no ambiguity in enforcement and determination of intent, a backlash of uncertainty and unwillingness to exchange ideas could prevail on campuses. In that spirit, Benno Schmidt, former president of Yale University offered this: "freedom of thought must be Yale's central commitment. It is not easy to embrace. It is, indeed, the effort of a lifetime... Much expression that is free may deserve our contempt. We may well be moved to exercise our own freedom to counter it or to ignore it. But universities cannot censor or suppress speech, no matter how obnoxious in content, without violating their justification for existence..."

On some other campuses in this country, values of civility and community have been offered by some as paramount values of the university, even to the extent of superceding freedom of expression. Such a view is wrong in principle and, if extended, is disastrous to freedom of thought. The chilling effects on speech of the vagueness and open-ended natures of many universities' prohibitions are compounded by those who commonly assert that vague notions of community are more important to the academy than freedom of thought and expression. This is a uncertain time for freedom in the United States.

> *"...it must be recognized that constraining freedom of expression will be an outcome of any speech restriction."*

Bibliography

Alter, Jonathan "On Hate: Censure, not Censor," from Newsweek, February 14, 1994, p. 48.

Altman, Andrew "Liberalism and Campus Hate Speech: A Philosophical Examination," from Ethics, University of Chicago, January 1993, pp. 302-317.

American Civil Liberties Union of Northern California "ACLU Policy Concerning Racist and Other Group-Based Harassment on College Campuses," ACLU-NC and ACLU-SC, 1991

BankAmerica Corporation Working at BankAmerica: A Summary of Our Policies, Rules, and Guidelines, BankAmerica Corp., 1994.

Berman, Paul Debating P.C.: The Controversy over Political Correctness on College Campuses, Dell Publishing, 1992.

Black, Henry Campbell, Blacks Law Dictionary, 6th edition, West Publishing Co., 1990.

Walker, Samuel Hate Speech: The History of an American Controversy, University of Nebraska Press, 1994

Biography:

Steven Zerebecki is a Junior in the Urban Studies program at SFSU studying policy analysis with a specific interest in non-profits serving urban regions. Steven has worked at the American Civil Liberties Union of Northern California for the past year where he continues his interest in civil rights that began two years ago while student teaching in Political Science at De Anza College.

Defense Worker Retraining Policy: An Overview

by Therese Knudsen

As the economy changes and entire industries downsize, what happens to the workers employed in those industries? This article examines an industry that has been downsizing for the last several years - the defense industry. The article describes one of the of the problems resulting from cuts in the defense budget - displaced defense workers, and offers an overview of federal retraining policy designed to aid those workers. The article also examines elements of successful defense conversion programs and looks specifically at the retraining efforts of a base scheduled to close in 1996.

During the Cold War years, the government spent billions of dollars building up national defense. Now that the Cold War is over, defense spending is headed in the opposite direction. While this is good news for those who are anxious to see the money spent elsewhere, it is bad news for those working in the defense industry. Millions could lose their jobs by the time the government has finished scaling back defense spending to peace time levels. What happens to these displaced workers? This article will focus on four main issues that will help to answer this question. First, I will configure the problem. This will include: a brief historical perspective of defense spending cuts since World War II; a look at how many dollars have been cut from the defense budget and how many workers will potentially be displaced; and the effects defense downsizing will have both on local communities and defense industry workers. Second, I will outline current congressional and presidential policies designed to aid dislocated defense workers, including some of the politics involved with these policies. Third, I will examine elements of successful defense conversion programs. The first part of this analysis will look at four characteristics found in successful defense conversions. The second part will look directly at the planned conversion project for Mare Island Naval Shipyard, a base scheduled to close in 1996. Finally, the fourth area I will touch upon, is the distributive nature of defense conversion and retraining programs.

> *"...current cutbacks are relatively small compared to those after World War II, the Korean War and the Vietnam War.*

DISCUSSION OF THE PROBLEM:

HISTORICAL PERSPECTIVE

Scaling back defense spending from war to peace time is not a new policy for the government. In fact, current cutbacks are relatively small compared to those after World War II, the Korean War and the Vietnam War. In the 1991 annual economic report, the president's Council of Economic Advisers wrote that "Since the economy successfully adapted to more rapid reductions following World War II and the Korean War, there is little reason to think that the present changes will be troublesome." (Congressional Quarterly Almanac, 1992, p. 512).

Critics argue, however, that there are at least two differences between the 1990s and the periods following WWII and the Korean War. First, the national economy of the late 1980s and early 1990s is not as strong as it was during previous downsizings. It is more difficult to absorb job losses when an economy is flat or in a recession than when it prospering. Second, many defense companies do not have civilian production to return to like manufacturers of the 1940s and 1950s did. Before WWII began, most firms produced consumer goods and went into defense production as a result of the war. However, when the Cold War began, many firms started to specialize in the production of sophisticated defense equipment and technology. As a result, these firms are now unprepared for alternative production (Congressional Quarterly Almanac, 1992, p. 512). These two conditions contribute to the difficulty displaced defense workers have when looking for new work.

A LOOK AT SOME NUMBERS

Just how deep do the current spending cuts go and what impact will they have on the labor force? In 1986, the Pentagon's budget was at a high of $371 billion (Smith, 1993). The Defense Reauthorization Bill for fiscal year 1995 authorizes $263.8 billion to the Department of Defense (Congressional Press Releases, August, 11, 1994, Lexis/Nexis data service). The difference between the figures represents a 29% reduction over a 9 year period. In terms of labor, at its height, the defense industry employed 6.7 million people, accounting for approximately 5.6% of the labor force. A Federal Reserve study estimates that a total of 2.6 million people could loose their jobs due to defense cuts between 1987 and 1997 (Smith, 1993). While these numbers are substantial, they are relatively small when compared to the size of the overall national economy and labor force. Regional economies dependent on the defense industry as a source of income and jobs will be most impacted by current defense cuts. Because the federal government purchases 59% of its defense products from just 10 states, these states will likely feel the negative economic effects associated with defense cuts more than most others. These states include California, Texas, New York, Virginia, Massachusetts, Ohio, Pennsylvania, Florida, Connecticut, and New Jersey. (Smith, 1993).

"For communities relying heavily on the defense industry for economic stability, this chain reaction can be devastating."

DEFENSE PROBLEM AS AN ECONOMIC PROBLEM

The effects of the government's policy to reduce defense spending are far reaching. As the Department of Defense closes bases across the country, both military personnel and civilians who work at these bases are subject to layoffs. As the Department of Defense buys fewer military goods, defense contractors and sub-contractors experience reduced sales and profits. These employers, in an effort to lower costs, are forced to reduce their work force. Consequently, local economies suffer since laid-off workers have no income to purchase goods and services sold by other businesses in the area. For communities relying heavily on the defense industry for economic stability, this chain reaction can be devastating.

Individuals who make up the community, however, feel the devastation of job and income loss more personally. An example of one type of displaced defense worker is 38 year old Kevin McGowan.

For 20 years, McGowan welded steel plates on the hulls and decks of warships at the Philadelphia Naval Shipyard. The Shipyard is scheduled to close in 1995, and McGowan will have to take his highly technical skills elsewhere and find a new employer. With so few ships built in the US, his options are limited (deCourchy Hinds; 1993). A different type of worker displaced by defense downsizing is 44 year old Pete Roullard. Roullard, who has a Ph.D. in laser physics, used to design lasers for the "Star Wars" defense system for Rockwell International. While he may have more options than Mr. McGowan due to his level of education, finding a job in his field or one that pays close to his previous salary of $75,000 will be quite difficult (Murray; 1993).

Since government policy allocated money for defense build up in the 1980s, does it have a plan for alleviating some of the pain involved with the downsizing of the 1990s? What will displaced defense workers, like McGowan and Roullard, do for work? Retraining is an option that may improve their chances for re-employment. Does the government have a retraining policy for these ex-defense workers?

GOVERNMENT RETRAINING POLICY FOR DISPLACED DEFENSE WORKERS

CONGRESSIONAL LEGISLATION

To begin the process of reducing military expenditures at the end of the Cold War, Congress passed legislation in 1988 and 1990 which created independent commissions to make base realignment and closure recommendations. Three rounds of recommendations that occurred in 1988, 1991 and 1993 have resulted in the closure of 70 bases out of a total of 495 (Capitol Hill Hearing Testimony, May 4, 1994, Lexis/Nexis data service). Under the current law, one final round is scheduled for 1995. The Pentagon estimates that the bases to be closed in this round will eliminate as many jobs as the past three rounds of base closures combined (Idelson and Towell; 1994).

To ease some of the pain that will be felt by those who lose their jobs as a result of the closures, Congress has provided three principal opportunities for worker retraining. The legislation is carried out through the Department of Labor and is funded through the Department of Defense. The first and largest federal provision for worker retraining is found under Title III of the Job Training Partnership Act (JTPA) and is called the Economic Dislocation and Worker Adjustment Assistance program (EDWAA). The main function of this program is to provide rapid response training, basic readjustment services, support services and needs-related payments for displaced workers (National Economic, Social, and Environmental Data Bank, 1994, CD-ROM). In 1990, a provision of the Defense Authorization Bill transferred funds to JTPA for retraining and employment-assistance programs targeted specifically at displaced defense workers (Congressional Quarterly Almanac, 1992, p. 510).

The Defense Diversification Program (DDP), another program designed to aid displaced defense workers, came about through a provision in the 1993 National Defense Authorization Act. DDP is also carried out through Title III of the JTPA. This program makes grants available to states, substate grantees, employers, representatives of employees, labor-management groups and others, to provide training, adjustment assistance and employment services to dislocated defense workers. The target population includes members of the military, De-

partment of Defense civilian employees and defense industry employees (National Economic, Social, and Environmental Data Bank, 1994, CD-ROM). Funding comes from the Department of Defense budget.

A final grant program available for defense worker retraining is the Defense Conversion Adjustment (DCA) program. Another product of the Defense Authorization Act of 1993, this program provides similar services as the DDP but includes skills upgrading. For instance, when defense facilities have conversion plans that will prevent closure of the facility or a mass lay-off, DCA grants can be used for programs that provide skills upgrading. Current, non-managerial employees of the facility with obsolete skills can participate in these programs to update their skills in order to facilitate their re-employment efforts. (National Economic, Social, and Environmental Data Bank, 1994, CD-ROM).

1992 marked a year in which Congress took on the substantive issue of "defense conversion." This entailed developing an overall plan for the economy and the structure of the nation's defense (Congressional Quarterly Almanac, 1992, p. 509). Worker retraining fell under the defense conversion title of the 1993 Defense Authorization and Appropriation bills passed in October of 1992. Some of the specific retraining initiatives contained in these bills included: $75 million to reimburse companies hiring former military personnel as part of the cost of retraining them; $65 million to help former military personnel and defense industry employees to become teachers; $20 million to establish college training programs in environmental clean-up and to award fellowships to displaced defense workers (Congressional Quarterly Almanac, 1992, p. 510).

POLITICS PRECEDING THE OUTCOMES

While the programs mentioned above are legislative outcomes, political disagreement along party lines was present before the 1993 Defense Authorization and Appropriation bills were passed. Though the bills were passed and signed into law in October of 1992 when George Bush was president, the Bush Administration was philosophically opposed to federal spending programs that aided displaced defense workers. The Bush Administration asserted that the best way to help displaced workers and the defense industry was to improve the overall state of the economy and let the free market take care of the problems. The bills had large bipartisan majorities in Congress, but some Republicans agreed with the Bush Administration. Instead of using defense money on retraining displaced workers, Senator Phil Gramm (R-Texas) said "I want to give [defense savings] back to the American taxpayer. The Democrats want to expand the size of government." (Congressional Quarterly Almanac, 1992, p. 512).

Democrats, on the other hand, accused the President of having no plan to ease the economic hardships that local economies would experience as a result of the cuts. Senate Majority Leader George Mitchell (D-Maine) told reporters on May 21, 1992, "The president has no plan, no program and no plan to have a program." He pointed out that the Bush Administration had pledged spending millions of dollars to aid the former Soviet Union in its military downsizing. He continued "It should be unacceptable to Americans ... that their government has a plan to help convert the economy of the Soviet Union from defense production to civilian production and has no comparable plan in our own country." (Congressional Quarterly Almanac, 1992, p. 512).

Currently, a number of bills that in some way address defense worker retraining or employment needs are before the House and Senate. With the upcoming 1995 base closure round scheduled, retraining and re-employing dislocated defense workers will continue to be relevant issues on the national agenda.

While Congress has taken on the retraining issue, what about the Clinton administration? Does the current administration have a plan for displaced defense workers? Is Clinton taking the same stand as Bush on this subject?

PRESIDENTIAL LEGISLATION

Clinton does not hold the same policy views on dislocated defense workers and businesses as Bush did. The Clinton administration has two main programs that address defense conversion and worker retraining. First, there is the Re-employment Act of 1994. Clinton first made mention of the Re-employment Act in his State of the Union Message in January of 1994. Released in March, the legislation, according to Labor Department briefing papers, is one of "the first steps in building a coherent, integrated re-employment system for the nation." (Behr, 1994). While improving the overall unemployment insurance system is its main policy goal, a $3.4 billion component of the Act would provide income support and long-term training for hundreds of thousands of workers who lose their jobs due to defense and corporate downsizing (Behr, 1994).

The Clinton administration acknowledges that there are underlying problems with the current employment and training system. Workers looking for help from federal programs when making a job transition face "... a duplicative tangle of programs, services and rules," (Bureau of National Affairs, 1994, Lexis/Nexis data service). Some highlights of the Re-employment Act that attempt to fix some of the problems include: establishing a comprehensive system that provides re-employment services, training, and income support for permanently laid-off workers (defense workers would fall into this category); developing a nation-wide labor market data base; developing "one-stop career centers" which would enable workers to obtain information and training services at one location; and allowing every laid-off worker to qualify for assistance, regardless of the reason for displacement (Bureau of National Affairs, 1994, Lexis/Nexis data service; Stamps, 1994). This Act, if made into law, would not only help displaced defense workers, but other dislocated workers as well.

The second Clinton administration program that would help both the defense industry and displaced defense workers is called the Technology Reinvestment Project (TRP). Though TRP was created by Congress before Clinton was elected, he has thoroughly embraced the program. TRP, through eight Department of Defense programs, stresses technology deployment, technology development and manufacturing education and training (National Economic, Social, and Environmental Data Bank, 1994, CD-ROM). It provides federal matching grants to defense contractors, government agencies, and academic institutions for research and development of dual-use products that have applications in both defense and commercial sectors. In addition, it funds clearinghouses that provide training and networking opportunities to defense and commercial firms (Benenson, 1994). Although the 1995 Defense Authorization bill included $625 million for TRP, the accompanying appropriations bill allocated only $550 million for the program (Congressional Quarterly Weekly Supplement; November 5, 1994, p. 3190).

POLITICS INVOLVED WITH TRP

There are critics of TRP on both sides of the political spectrum. Conservatives feel that TRP diverts defense department funds and borders on industrial policy, allowing the government to choose winners and losers. Liberals see the program as a type of corporate welfare program that supports defense contractors.

Other aspects of the TRP which may limit its appeal in Congress are the program's provisions protecting it from pork barrel politics. TRP supporter Patricia Schroeder (D- Colorado) says "In Congress, it's not so popular because we want to porkify everything. You can't guarantee the money is going to come to your district; there's no way to rig it." (Benenson, 1994). Even if there is no way to "rig" who gets the money, some members of Congress complained when California was awarded 38% of the TRP funding in February of 1994. White House and Defense officials maintain that the awards are based on merit and the large allocation of funds is due to the large defense technology base in California (Vartabedian, 1994). Some wonder if California's large share has anything to do with Clinton's political standing in the electoral vote-rich state (Neikirk, 1994). By helping to improve the state's economy with federal grant money, Clinton could possibly reap political benefits at the polls in 1996.

As states, local governments, private industry, research facilities and other organizations obtain federal grants for defense conversion and retraining, what are they doing with the money? What makes a program successful?

> *"As bases close and restructure, are any guidelines available for a successful conversion?"*

ELEMENTS OF A SUCCESSFUL PROGRAM:

DEFENSE CONVERSION

As bases close and restructure, are any guidelines available for a successful conversion? Business Executives for National Security (BENS) has researched this very question. BENS, a national, non-partisan organization of business leaders, is working to strengthen national security by promoting better management of defense dollars, supporting measures that will strengthen the economy and make it more competitive, and finding practical ways to prevent the use of destructive weapons (Federal News Service; 9/94; Lexis/Nexis data service). Erik R. Pages, Ph.D., is Director of the Defense Transitions Project at BENS, and has researched successful conversion initiatives over the past several years. He has found four characteristics facilitating a successful conversion. First, wide community participation is a crucial element. The input received from a local community in which a base has closed or defense industry has restructured can provide a wide array of redevelopment options and political support to see the plan through to completion. Second, successful conversion programs establish a partnership between public and private sectors. BENS' experience with base closures has shown that conversion efforts are more effective when government and business work together on the project. A third element for a successful program is a focus on business development. New businesses must be created and existing businesses need to become more competitive. Page's final component to a successful conversion is the

need for a compelling vision of the future. Instead of looking to the best quick-fix, communities need to look at the best long-term solution for economic stability. That is a difficult task, given the massive lay-offs that come with base closures, but necessary if the conversion is to be successful in the long run. He points to the example of many air force bases that convert a military airport into a civilian airport with little success. These communities fail to look beyond the most seemingly apparent solutions. He refers to Fort Ord, near Monterey CA, as an example of a forward thinking project. Fort Ord plans to develop a marine and environmental sciences technology system through the California State University and University of California systems (Federal News Service; 9/94; Lexis/Nexis data service).

By incorporating these four elements into a conversion plan, the plan may have a better chance of succeeding. This, in turn, will create economic stability for the community and jobs for its residents.

While those elements may help planners with reuse development proposals for bases scheduled to close, what about the dislocated workers? Will they be trained for the new jobs?

MARE ISLAND CONVERSION PROJECT

Mare Island Naval Shipyard, thirty miles northeast of San Francisco, is scheduled to close on April 30, 1996. This decision is a result of the Base Closure and Realignment Commission's 1993 round of closure recommendations. As a result, 5700 civilian employees are expected to loose their jobs (Strong, 1994). The city of Vallejo, whose economy will be severely affected by the closure, did not waste time wallowing in the bad news. The mayor, along with key employees and community people, formed an inclusive committee to begin developing reuse plans for Mare Island. Their plan foresees a mix of light and heavy industry, a campus for a number of local colleges, some new housing, a marina, open space, and retraining programs that use existing facilities.

What is impressive about the Mare Island program is their dedication to retraining the soon-to-be dislocated workers. Workers are already being trained with environmental clean-up skills so that they will be able to participate in the post-closure clean-up of the base. A fully staffed job placement service, set up on the base, is successfully finding employment for job seekers. Searches are made easier with the use of computer databases and placement assistance provided by the service. More than 437 workers have found jobs at other military installations between October 1993 and May 1994 through a special program called Priority Placement Program (PPP) (Strong, 1994). PPP is a nation-wide database of dislocated workers that the Department of Defense must use to fill vacant positions. A final element that will aid Mare Island's retraining efforts is the $8 million DDP grant they were awarded in May of 1994. The grant will be used for vocational, academic and on-the-job training for employees with skills that won't transfer easily into the private sector (Strong, 1994; Visher, Sloan, and Baker, 1994, p. 3-15).

One question often surrounding the task of retraining is, "retraining for what?" While many of Mare Island's reuse plans have the potential to create jobs, full redevelopment of the base is likely to take twenty or thirty years (Strong, 1994). That is one of the reasons Bill Grandath, a former Mare Island employee, and Jose Ortiz, a dean at Solano Community College, teamed up to form a training strategy that would prepare workers for jobs in

the near future. In addition, they were frustrated with some of the existing programs offering to retrain workers for jobs in data entry or the fast food industry. Instead, they looked to new businesses and facilities that create jobs. For example, a Veterans Administration Hospital planned for Travis Air Force Base and a new Kaiser hospital scheduled to locate in Vacaville will have construction and medical jobs to fill. Local oil refineries will be another source of employment for skilled tradespeople in the near future. These refineries will need workers to retro-fit their facilities to meet new clean air requirements. Grandath and Oritz aim to design an 18 month program that will train workers for identifiable jobs in the building trades, environmental cleanup, finance and accounting, health care and small business ownership (Strong, 1994).

With these broad ranging retraining efforts in place, Mare Island workers have more than one opportunity to find a new job or training program as the base prepares for closure.

DEFENSE AS DISTRIBUTIVE POLICY

While federal defense conversion and training policies, programs, and grants provide opportunities for those affected by defense downsizing, should the federal government be responsible for funding this assistance? Should Cold War veterans have access to programs designed especially for them? Murray Weidenbaum, the director of Washington University's Center for the Study of American Business, notes that "When the Fed raises interest rates, construction workers loose their jobs, but they don't get preferential treatment." (Smith, 1993). While some of the programs mentioned above aid all dislocated and unemployed workers, others are specifically targeted at defense workers and the defense industry.

Randall Ripley and Grace Franklin, in a definition of distributive policy, state, "Distributive policies and programs are aimed at promoting private activities that are argued to be desirable to society as a whole and, at least, in theory, would not or could not be undertaken without government support," (Ripley & Franklin, 1991). The federal government spent billions on the defense industry in the 1980s and justified these expenditures as necessary for national security. Many of the defense products designed and produced as a result of this investment would not have come about without the government's support. Now that the Cold War is over, the government is unable to justify such large expenditures. The lack of these expenditures, or subsidies, to the defense industry is what is causing the economic hardship. Members of Congress lobby to keep the subsidies coming to their state or district. For example, Senator Trent Lott (R - Miss) was concerned about deep cuts in defense affecting the major defense contractor in his state, Ingalls Shipbuilding. He said "...if we can keep on a planned, controlled, steady decline, we can cope with it... The best thing I can do for my constituents is to keep those ships coming," (Congressional Quarterly Almanac, 1992, p. 509).

The subsidies are still available. They may not be as large, but they now come in the form of grants found in national defense conversion and retraining policies and programs.

CONCLUSION

In conclusion, defense cut-backs will continue throughout the decade. While regional economies dependent on the defense industry will be most affected by the cuts, individual displaced workers with obsolete skills have the most to lose. Retraining is an option that may improve their re-employment chances. Through policies developed by Congress and President Clinton, displaced workers have the opportunity to participate in federally sponsored retraining programs. Although research has been done to determine what makes conversion and retraining programs successful, many of the programs are still in their early stages. These programs should be tracked carefully as they progress. For as our society continues to change, other industries may need to downsize as well. With proper oversight of the defense conversion and retraining programs, important lessons can be learned and applied to the next industry that needs them.

REFERENCES

Behr, Peter. March 8, 1994. Clinton to Unveil $3.4 Billion Retraining Plan. Chicago Tribune.

Benenson, Bob. 1994. $575 Million Project Is Heart Of Clinton Conversion Effort. Congressional Quarterly Weekly Report, 2000-2003.

deCourcy Hinds, Michael. October 17, 1993. Workers Turn to Retraining as Military Cuts Jobs. New York Times.

Idelson, Holly, P. Towell. 1994. House and Supreme Court Take Hands Off Stance. Congressional Quarterly Weekly Report, 1404.

Murray, Kathleen. March 21, 1993. Engineers New to Plowshares. New York Times.

Neikirk, William. 1994. Defense Conversion Grants: Smart cash or corporate pork? Chicago Tribune.

Ripley, Randall, and Grace Franklin. 1991. Congress, the Bureaucracy, and Public Policy, 5th ed. California: Brooks/Cole.

Smith, Lee. 1993. Can Defense Pain Be Turned To Gain? Fortune, 84-96.

Stamps, David. 1994. Reinventing Retraining. Training, 43-50.

Strong, Marilee. 1994. Swords into Plowshares. San Francisco Focus, 24-31.

Vartabedian, Ralph. February, 24, 1994. State Reaps 38% of Latest Funds for Defense Conversions. Los Angeles Times.

Visher, Mary, E.L. Sloan, and E. Baker. 1994. Overcoming Barriers To Re-employment And Worker Mobilization Strategies. Presented at the Human Resources Committee meeting of the East Bay Conversion and Reinvestment Commission, Oakland, CA.

Bureau of National Affairs. 1994. Daily Labor Report. Special Supplement Report No. 49 March 15, 1994-Re-employment Act of 1994, Lexis/Nexis on line data service, Dayton, OH.

Congress Ups Defense Conversion Spending. 1992. Congressional Quarterly Almanac, XLVIII, 509-513.

Congressional Quarterly Weekly Supplement. 1994. 3190, 3191.

Federal Document Clearing House, Inc. 1994. Federal Press Releases. Defense Reauthorization Bill, Lexis/Nexis on line data service, Dayton, OH.

Federal Document Clearing House, Inc. 1994. Capitol Hill Hearing Testimony, Testimony May 4, 1994 - Robert Bayer Deputy Assistant Secretary of Defense Department of Defense Senate Armed Services/Military Readiness and Defense Infrastructure FY 95 Defense Authorization, Lexis/Nexis on line data service, Dayton, OH.

Federal Information System. 1994. Federal News Service. Erik R. Pages, Ph.D. Business Executives for National Security before the House Committee on Public Works and Transportation Subcommittee on Economic Development, Lexis/Nexis on line data service, Dayton, OH.

National Economic, Social, and Environmental Data Bank. 1994. US Department of Commerce, Economic Development Administration, Defense Technology Conversion, Reinvestment, and Transition Assistance, CD-ROM: DA OECI BAVDY017

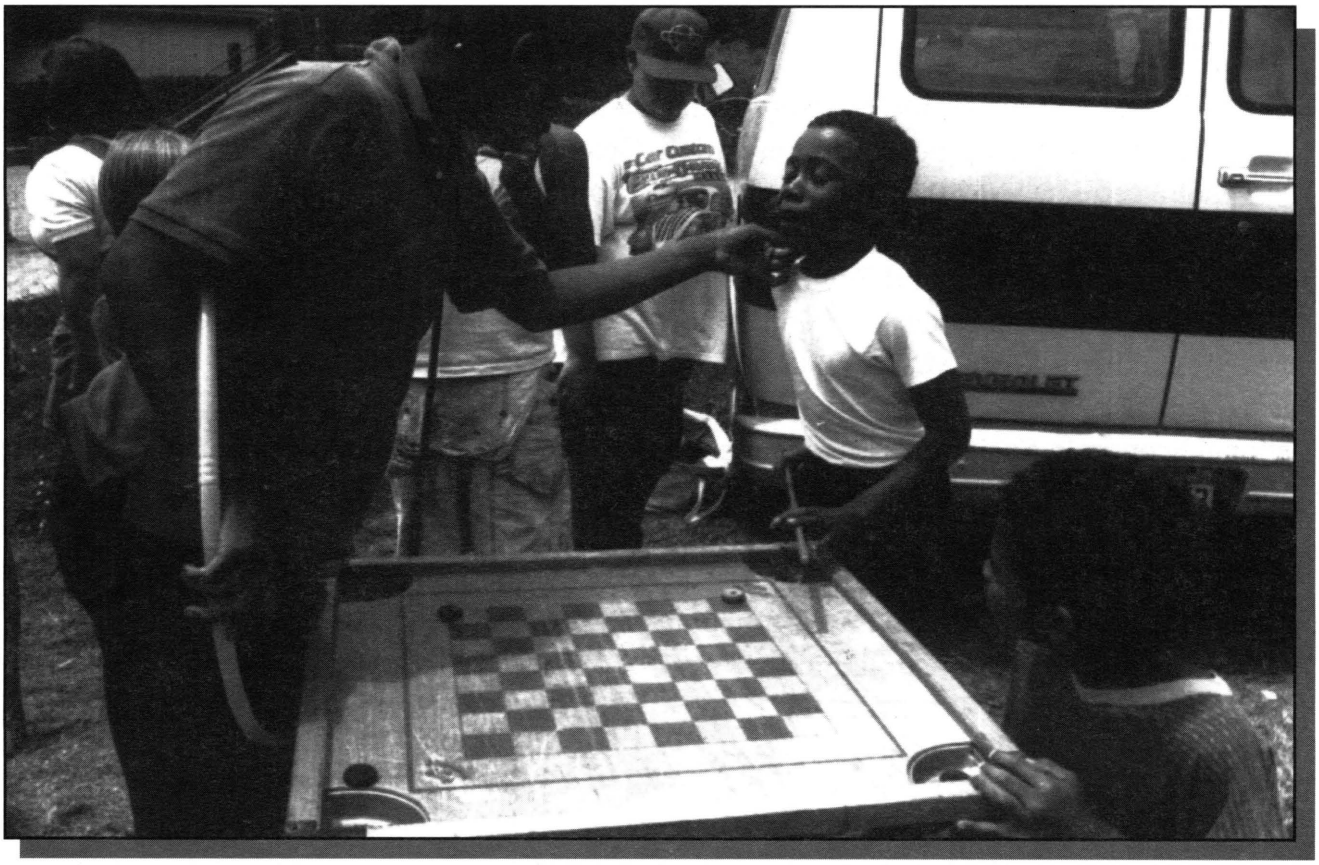
National Economic, Social, and Environmental Data Bank. 1994. US Department of Commerce, Economic Development Administration, Economic Dislocation and Worker Adjustment Assistance, CD-ROM: DA OECI ICARY032

National Economic, Social, and Environmental Data Bank. 1994. US Department of Commerce, Economic Development Administration, Job and Employment Services for Military, Civilian, and Defense, CD-ROM: DA OECI ISGDM041

National Economic, Social, and Environmental Data Bank. 1994. US Department of Commerce, Economic Development Administration, Dislocated Workers Program, CD-ROM: DA OECI UCARM137

Biography

Therese Knudsen is a first year graduate student focusing on policy analysis in the Public Administration program at SFSU. Her interests include labor, employment, and economic development policy issues. Currently, Therese is completing an internship at the Private Industry Council of San Francisco, a non-profit organization responsible for administering government funds to promote and foster employment opportunities.



Fever Dream

Full of Life Now

Full of life now, compact, visible
I, forty years old the eighty-third year of the States,
To one a century hence or any number of centuries hence,
To you yet unborn these, seeking you.

When you read these I that was visible am become
invisible,
Now it is you, compact, visible, realizing my poems,
seeking me,
Fancying how happy you were if I could be with you and
become your comrade;
Be it as I were with you. (Be not too certain but I am now
with you.)

—*Walt Whitman, The Calamus Poems*

You are with me yes Walt
comrades we are of different wars
clutching each other,
witnessing together
the unraveling threads of a great quilt
the fabric of our lives
as I anticipate being with the unborn
epidemic days from now
to to wail in the throats of new borns
and rage in the crash of the roaring sea
and sing in the back of young minds
haunting melodies of immeasurable beauty
and unyielding anger

As I write this
the twenty-fourth year of *my life*
in a fever dream where the words come
so much more naturally than in waking hours

I will be there as you reassemble tattered edges
young man and I will be *your* comrade
loving you with the fates
and the muses
becoming more compact and infinately more visible
with you and those after you

December, 1994

Issues of Equity:

The Desegregation of San Francisco Public Schools

by Amy Wong

At the core of policy making is the fragile balance between equity and efficiency, fairness and cost effectiveness. The following article explores the complex role that equity plays in policy analysis, and addresses the call for "equal treatment" in the field of education. As a case study, the Consent Decree of 1983, a controversial legal settlement which mandated the desegregation of public schools in San Francisco, is analyzed to highlight the various uses of equity in the formation of a policy which continues to impact the educational system of the San Francisco Unified School District.

INTRODUCTION

Issues of equity revolve around the distribution of goods and services within society, whether among individuals or members of subgroups. Equity concerns not only those benefitting from a proposed program, but also those responsible for carrying fiscal or social burdens needed to implement the program. The first section of this paper will address different forms of equity, such as horizontal and vertical equity, as well as explore some of the various interpretations of equity. When possible the examples used to illustrate definitions of equity have been drawn from articles which address education systems in order to elaborate on the complexities within this one social and political area.

The second section of this paper will be an analysis of the Consent Decree of 1983, a federally mandated policy to eliminate racial and ethnic segregation in San Francisco public schools. The Consent Decree will be used as a case study of how issues of equity are addressed within the context of a legal document concerning the educational system of one school district, the San Francisco Unified School District (SFUSD).

The concept of equity takes on many different shapes and forms in terms of how the problem of racial segregation is outlined in the court proceedings as well as in the remedies which are then proposed in the settlement hearing. The legal documents give great attention to the disproportionate burden, or impact, which minority students of certain city districts experience due to SFUSD admittance and tracking policies, and residential sector policy, both formal and informal. The legal ruling of the Consent Decree determined that members of specific racial/ethnic subgroups were adversely burdened by the inequitable education programs that the SFUSD had maintained as of the 1950s. Consequently the court ordered that a process of desegregation was necessary to ensure equal access to quality public education for all students.

EQUITY AND EFFICIENCY IN THE CONTEXT OF POLICY ANALYSIS

Policy analysts and decision makers confront two fundamental questions in every act of policy which they face: How efficient is the program? and For whom is the program most efficient or least efficient? The first question deals with issues of cost-effectiveness, such as getting

the most results from the amount of money that the program utilizes while producing the greatest fiscal benefit for both society in general and the client more specifically. The second question, the question of equity, reflects the need to assess whether or not the program is positively impacting the population group who is in most need of the particular service which the program was constructed to provide. The role of equity in policy analysis is as an evaluative criterion that the analyst uses to judge the worth of a particular program.

There is a balance struck in every program design between efficiency on the one hand and equity on the other. It is assumed that whoever bears the costs of a program will be fairly compensated by those who benefit from the same program. For example, public education is a system partially funded by every household's taxes, regardless if there are members of the household who participate in the public education system. Although the students benefit directly from gaining an education, society as a whole benefits also because education is linked with positive externalities for the population. The program works most efficiently when it is paid for by every taxpaying household in society in order to benefit all students in need of an education, including those who would not normally be able to afford the costs of getting an education.

The concept of equity involves the distribution of goods and services among the population, including the redistribution of income. Certain groups are impacted by a policy differently than other groups; one group may bear the entire costs of a program and receive no benefits, while another group may pay very little costs and yet receive overwhelming distributional benefits. Equity does not carry with it the notion that all individuals or subgroups will be treated equally, rather, the objective of equity is fairness. A program designer must consider that a target population can pay for services only according to their ability to pay. If the full costs of a program cannot be covered by the intended users of the program, then the difference must be paid for by other sources, such as other population subgroups. In determining the fairness of a program, the designer must ascertain the level of need for a good or service that a population experiences. This will often depend on moral issues being taken into account. For instance, do children from an impoverished family have a right to an education although the family does not pay as much in taxes as a middle class family who sends their children to the same public school? In an effort to ensure fairness, not equality, the burdens experienced by each family differs, yet they receive the same benefits.

"Equity does not carry with it the notion that all individuals or subgroups will be treated equally, rather, the objective of equity is fairness."

CATEGORIES OF EQUITY

There are four basic types of equity which will be discussed in this paper: horizontal, vertical, transitional, and intergenerational. One must keep in mind that while these definitions of equity contain aspects of fairness regarding the distribution of goods and services among society, they all do not reflect notions of equal, unbiased treatment of individuals or subgroup members. As a function of who pays for a program and who reaps the benefits, equity serves not as an equalizing principle but as a criterion for differentiating between impacted parties.

Horizontal equity is the only form of equity which carries a sense of equality as well as the basic element of fairness. This type of equity means that equal costs and benefits are shared among impacted groups of similar classes. It provides for the "equal treatment of equals" (Patton and Sawicki, p. 205). For example, two taxpaying families of comparable income and wealth send their children to the same school where the kids have equal access to an education and share in the benefits of that education equally.

Vertical equity involves distributing goods and services to individuals or subgroups of unequal standing. In these situations, more costs of a program will be borne by those who have the greater ability to pay in order to serve those who are in need of a service. In France, government subsidies were offered to the private sector of the education system (primarily Catholic schools with a traditionally bourgeois clientele), in an attempt to provide greater access for children of lower income families who were predominantly enrolled in public schools located in urban, working class neighborhoods (Ambler, pp. 457-63). In this case the students in the subgroup of lower income families were given the opportunity of greater access to an education of higher quality without having to pay the costs. The differential socio-economic standings of subgroups in France were not equalized by this program, but an element of fairness was introduced by the government in order to distribute a social service among the diverse subgroups.

"Transitional equity occurs when a new policy introduces a situation for the population as a whole but affects certain members of subgroups or individuals differently."

Transitional equity occurs when a new policy introduces a situation for the population as a whole but affects certain members of subgroups or individuals differently. As I will discuss in the second section of this paper, the Consent Decree of 1983 was a major policy change for the educational system of the SFUSD. One of the policy implications of mandated desegregation was the procedure of busing students to public schools in other neighborhoods which they previously had not had access to. Busing created a situation where minority students, most notably African American students, were impacted unfairly because they were transported from one end of San Francisco to another. Although African American students did not face a financial burden by this aspect of the new Consent Decree because it was funded by the school district, they did face a social burden due to the substantial commute time.

Intergenerational equity concerns policies and programs which have longterm effects for society, in relation to both costs and benefits. The taxes paid this year to fund the public educational system account for more than one year's worth of an education because students develop their abilities over a course of thirteen years until the end of their high school careers (with the exception of those students who leave the public school system). Even beyond a student's educational years are the many years that he will participate as an educated and employed citizen in the community which benefits society in general. To a large extent taxpayers are financing not only a current benefit for students but a benefit for their own future due to the positive externalities involved with education.

DISCRIMINATION AND EQUITY

Historically people in the United States have not been treated as equals. From the period of slavery to the Suffrage Movement and to this day on Indian reservations, members of subgroups have been accorded different treatment in the eyes of society. Discriminatory practices in housing, employment, education, and immigration policies have inhibited certain subgroups on the basis of race/ethnicity, national origin, gender, physical disability, socio-economic status, religious beliefs, or age. Issues of equity must be addressed in the situations of subgroups who have experienced discrimination. It is a conscientious effort on the part of decision-makers to treat subgroups differently in the name of fairness to account for the past discrimination which has hindered the economic mobility of subgroups in this country. Affirmative Action remains a prominent example of a policy enacted to right past wrongs, such as systematic gender and racial/ethnic discrimination, which have kept women and minorities outside of the realms of power in business, politics, and education.

Equity questions, and the coinciding ethical considerations, indicate the complexities associated with the notion of fair, or equal treatment. What is considered a fair action by some policy makers may not indeed impact the target population as intended and may even produce unfair situations for other subgroups involved in the process. Value judgments are inherently involved in policy design because a program limited by its resource base rarely serves all sectors of the population, let alone their particular group needs. Equity depends on determining which sector of the population is in the greatest need and can be served most efficiently without disproportionately burdening another sector unequipped to handle the costs.

"Equity questions, and the coinciding ethical considerations, indicate the complexities associated with the notion of fair, or equal treatment."

The Consent Decree examined the state of the public education system in San Francisco and determined that certain subgroups of the population were burdened by discriminatory policies and practices. Policy actions were developed in an attempt to provide a fair system of education to account for the disadvantaged positions of minority students, primarily of African American and Latino backgrounds. The Court recognized that not only were minority students discriminated against by the school district but also subgroups had experienced historical discrimination in employment and housing which affected their current positions in society. An analysis of equity issues within the specific context of the Consent Decree will highlight the role that equity plays in the making of policy more generally.

BACKGROUND OF THE CONSENT DECREE OF 1983

In 1978, a suit was filed by the San Francisco branch of the National Association for the Advancement of Colored People (NAACP) with the parents of a number of African American students enrolled in San Francisco public schools. Among the defendants in the lawsuit were the San Francisco Unified School District (SFUSD), the California State Board of Education, and the State Department of Education. The NAACP filed the suit with two fundamental goals in mind: "...to eliminate

racial/ethnic segregation or identifiability in any SFUSD school, program, or classroom achieving the broadest practicable distribution throughout the system of students from the racial and ethnic groups which comprise the student enrollment of the SFUSD," ("1983 Consent Decree," p. 5) and to ensure "academic excellence for all students" ("1983 Consent Decree", p. 27). The law suit was a class action suit filed on behalf of all children of school age presently enrolled in schools as well as future students of the district.

The initial intent of the Plaintiffs was to prove that the SFUSD had intentionally maintained a segregated school system as of 1954 via practices such as the siting of new schools, using tracking systems, transferring and reassigning students, assigning faculty in a discriminatory fashion, allocating financial resources in favor of schools with low minority populations, and many other policies with biases against minority students, faculty, and administrators. The NAACP cited that the defendants had violated the 1st, 9th, 13th, and 14th Amendments of the United States Constitution; the Civil Rights Act of 1964; and the constitution of the State of California. In an early trial motion, the Court found that the Plaintiffs could not produce enough evidence to prove the intent of the SFUSD to create a dual system, and subsequently recommended that the two parties negotiate a "fair and equitable" ("1983 Consent Decree," p. 3) settlement proceeding because some of the allegations were indeed factual, though not intentional, and contributed to a segregated school system.

THE CONSENT DECREE OF 1983

In 1983 the parties reached a legally binding settlement agreement which is known as the "Consent Decree." The role of the Court was to rule on whether or not the settlement was a "...fair, reasonable, and adequate..." resolution of the claims alleged in the law suit ("Opinion and Order", p. 2). In essence the Court was responsible for ensuring that the Consent Decree was both equitable ("fair"), and efficient ("reasonable and adequate"). The stipulations of the settlement to implement citywide desegregation are outlined below with subsequent amendments up to November 1993:

A) *Each school must have at least four of the recognized racial/ethnic groups in its student population. (There are nine recognized racial/ethnic groups: Spanish surname, Other White, African American, Chinese, Japanese, Korean, Filipino, American Indian, Other Non-White.*

B) *The maximum percentage that one racial/ethnic group can hold in any regular school is 45%. The maximum in any alternative school is 40%.*

C) *Starting in September of 1983, any school which had a racial/ethnic group that exceeded 45% of the student population would be monitored by the SFUSD to ensure that the percentage of the entering students did not exceed 40% for that particular racial/ethnic group.*

D) *Starting in September of 1983, the rate of allowable transfers and new enrollment for Optional Enrollment Requests was lowered from 43% to 40% at both sending and receiving schools.*

(1) The Plaintiffs sought to prove the Defendants were in violation of the law as of 1954 in conjunction with the decision rendered in Brown v. Board of Education of Topeka Kansas (1954). The Supreme Court determined the practice of segregation in public school systems to be unconstitutional and the policy of "separate but equal" null and void.

E) *Site selection by the SFUSD for alternative schools and magnet programs will be made on the grounds that no racial/ethnic subgroups will be disproportionately burdened.*

F) *Practices such as school openings, closings, conversions, renovations, feeder pattern changes, transportation or boundary changes which disproportionately burden a racial/ethnic group will be avoided.*

G) *Optional attendance and assignment zones will be allowed in an effort towards desegregation.*

H) *The practice of enrolling siblings within the same school will not be allowed in order to bypass the above mentioned maximum enrollment percentages for racial/ethnic groups.*

EQUITY CONSIDERATIONS IN THE CONSENT DECREE

The fact that this policy decision addresses the state of discriminatory practices in the San Francisco public education system creates many opportunities to examine the details of the proceedings to highlight how equity issues were handled. A selection of a few of the major equity issues which were of fundamental importance to this legal decision provide a sense of the flexibility of equity in policy making.

"The fact that this policy decision addresses the state of discriminatory practices in the San Francisco public education system creates many opportunities to examine the details of the proceedings to highlight how equity issues were handled."

First and foremost is the issue of equal access to opportunities for an education. All students who are enrolled in the public school system shall have equal access to an education. The Plaintiffs were aware of this fact and consequently they specified that all children in the district had a right to an education of "academic excellence." This specification indicates that the schools in the city were operating under different standards which put an undue burden upon minority students.

The Consent Decree discusses further the problems of schools particularly in the Bayview Hunters Point district, which is predominantly a poor and working class, African American residential district. The Court gave special designation to specific schools in this area which were clearly shown to be racially segregated numerically both in student population and faculty positions. A number of schools in Bayview were ordered by the Court to be revamped into special magnet schools with improved, challenging academic specializations, such as science or computers, and an enriched faculty with higher academic standards. It was also the Court's intent to have the magnet schools attract students from outside of the area to contribute to the diversity of the population voluntarily. Even though it was more difficult to prove that the schools in Bayview were of lesser quality because it is a subjective matter, the Plaintiffs were able to show evidence that faculty and administrators with low evaluations in their records had been reassigned to these schools over the years. In all sense of the objective of vertical equity, special consideration and treatment were given to certain schools to which the disadvantaged children of Bayview would attend.

The costs of implementing the new policy for SFUSD include the additional costs of revamping schools,

hiring new staff, reassigning faculty and students, and transporting students. SFUSD would then be reimbursed by the State of California. If any of the costs had been placed upon the families of the students enrolled in the public school system, it would have been an undue burden placed upon them. In identifying the district and the state as responsible for the costs of the new policy, the Court intended to award benefits solely to the society at large by improving the quality of the public education system.

The Consent Decree took special issue with the nature of residential housing patterns in San Francisco. The Court recognized that policies outside of the educational realm were in part responsible for the existing situation of segregation in public schools. A request was made to the housing authorities of the city to enlist their aid in minimizing the extent of racial segregation in residential practices, which includes the biases involved in showing available property, the prices which are quoted to subgroups for housing, the location of residents participating in subsidized housing, and the availability of loans for all neighborhoods in the city regardless of race/ethnicity. Although the Court had no authority to mandate a change in housing policy, it did make an attempt to influence the existing status quo in order to provide a more fair opportunity for minority residents.

Regarding the distribution of staff, faculty, and administrators throughout the school system, the Consent Decree provided for the reassigning of SFUSD employees in an equitable fashion. Across the board the racial/ethnic percentages of the employees should match that of the schools in which they were employed. However, the occupation levels, which range from janitor to Superintendent, were not specified. Consequently, a situation arises where a school employs people to fit the appropriate racial/ethnic percentages, but they are not distributed equitably, so that the lower status positions are held by African Americans or Latinos while the stable teaching positions are held by Caucasians. Although the Consent Decree was designed to be a policy that provides a standard of fairness, specifically for African Americans, these loopholes unintentionally place a burden upon the targeted populations.

As a final example of how the question of equity affects the development of policy, the Consent Decree was presented to the public for a "Fairness Hearing" before it was approved by the Court. At this time the public was allowed to comment upon the proposed policy plan in an attempt to address any remaining claims of unfair practices in the public education system. As testimony toward the importance of the role of equity in policy, this legal case included as part of the implementation process discussions regarding whether or not it was a fair policy. One concerned citizen commented that the Consent Decree failed to adequately address the needs of Latino students. The Court responded with the comment that the law suit was filed as a class action suit, thus incorporating all students, regardless of race/ethnicity within its jurisdiction. A class action suit, in this sense, was handled in terms of horizontal equity where all students were participants in the public school system on an equal level. So even though the decision highlights a specifically African American neighborhood for special treatment, a case of vertical equity, the overall impact of the legal decision was equitable for all students as one class.

CONCLUSION

An examination of just one piece of policy indicates the extent to which equity plays in policy development. There were numerous examples of the various forms equity can take, from horizontal equity, which emphasized the equality of the students, to vertical equity, which focused on the disproportionate burdens certain racial subgroups have experienced due to discrimination. Questions of equity are at the heart of policies regarding segregation and they can be interpreted many ways depending on who is analyzing the situation. For example, the citizen who claimed that the law suit was not equitable for Latino students recognized the historical discrimination that Latinos have faced in San Francisco. Yet the Court chose to acknowledge only specific schools in an African American neighborhood for special treatment; this decision was based on the ethical reasoning of the judge.

The fact that the Court was in the role of assessing the settlement agreement for fairness and adequacy shows the balance that must be decided by any policy maker between equity and efficiency. The "Consent Decree of 1983" is a solid example of the use of equity to provide a standard of fairness among individuals and members of subgroups in society.

REFERENCES

Ambler, John S., "Who Benefits from Educational Choice? Some Evidence from Europe," Journal of Policy Analysis and Management, Vol. 13, No. 3, pp. 454-76, 1994.

DarlingHammond, Linda, "Performance Based Assessment and Educational Equity," Harvard Educational Review, Vol. 64, No. 1, pp. 530, Spring 1994.

Hird, John A., "Environmental Policy and Equity: The Case of Superfund," Journal of Policy Analysis and Management, Vol. 12, No. 2, pp. 32343, 1993.

Kranz, Harry, "Are Merit and Equity Compatible?" in The Dimensions of Public Administration, 3rd ed., ed. Joseph A. Uveges, Jr., Allyn and Bacon, Inc. Boston, pp. 344-55, c. 1979.

Patton, Carl V., and David S. Sawicki, Basic Methods of Policy Analysis and Planning, 2nd ed., PrenticeHall, Inc., New Jersey, c. 1993.

San Francisco Unified School District, Department of Integration, "Special Plan for BayviewHunters Point Schools: Update," February, 1994.

United States District Court for the Northern District of California, San Francisco NAACP, et al., vs. San Francisco Unified School District, et al. (Civil No. C781445 WHO), "Opinion and Order: William H. Orrick, United States District Judge," San Francisco Unified School District, 1983.

United States District Court for the Northern District of California, San Francisco NAACP, et al., vs. San Francisco Unified School District, et al. (Civil No. C781445 WHO), "1983 Consent Decree with Modifications Required by Court Approved Stipulations and Orders through November 5, 1993," San Francisco Unified School District, 1993.

BIOGRAPHY

Amy Wong will be attending a PhD. program in Sociology in the Fall Semester of 1995 where she intends to research interracial identity formation with a foundation in racial stratification systems. She is a researcher and coauthor (with Professor Raquel RiveraPinderhughes and students recently graduated from the Urban Studies Program) of an analysis of census data entitled "Poverty and Social Inequality in San Francisco: Focus on Latino Children and Families" (publication date planned for Spring, 1995)

Privatization as a Policy Tool in Public Education

by Michael Schulte

This paper examines the issue of privatization using efficiency and equity as criteria. It then discusses the potential and consequences of privatization in public education, both in the U.S. and European experience.

Privatization

Arguments favoring further privatization look like simple advocacy for increased efficiency, with public production replaced by private production and a net cost savings realized. Any reorganization of the existing delivery system by the introduction of vouchers or further contracting out will also have distributional effects raising the issue of equity.

Over the last half century the failures of markets to include externalities or to provide equitable distribution of resources has led to what has been recognized as private market failure. Market failure is generally seen as the inability of the market system to provide adequate goods and services to some segment of the general population, often those with insufficient incomes. This has led to political pressure for the public provision of these services to alleviate the inefficiency and inequity of private market distribution and allocation. Occuring in numerous areas of basic services ranging from housing to food supply to health care, the debate on the efficacy of service provision by the public sector or the private sector is ongoing.

Privatization as defined by Emmanuel Savas in his book Privatization: The Key to Better Government is "the act of reducing the role of government, or increasing the role of the private sector, in an activity or in the ownership of assets". This act is viewed as appealing, even necessary, by various segments of our society, among them the pragmatic efficiency experts who are attracted to privatization as a tool because of perceived lower immediate costs and less bureaucratic inefficiency. The conservative idealogues find privatization can further their political goals of "the less government the better". The private business sector finds privatization attractive because of the potential for increased profits from expanded commercial opportunities.

Service provision whether provided by a public institution in response to a perceived market failure, or a private institution concerned with gaining a profit from the transaction, or a non-profit institution the institution must still be concerned with cost containment and service quality level. In general the most efficient means of providing the service may not lead to the most equitable distribution or even an adequate quality of service. Cost containment must still be attained no matter what the organizational structure chosen, and must not adversely affect the service level, distribution, or its accessibility.

Methods

The methods of privatization are usually one of three kinds: a) The sale of state owned enterprises which usually occurs in foreign countries, since there are so few existing ones in this country. This is known as the "denationalization of industries" and is part of the "structural adjustment" policies of the World Bank affecting

mainly countries in the developing world. The sale of government assets is used in this country to a limited extent to dispose of excess furnishings or property holdings. b) "Load shedding" is the simple act of no longer providing the service and is used to contain costs in this present era of fiscal austerity. c) Contracting -out services to private companies that are currently provided by public entities is the most prevalent manner of privatization exercised today.

Attractions

> *"The attractions of lower immediate costs are a major motivating factor leading to contracting out services in this country."*

The attractions of lower immediate costs are a major motivating factor leading to contracting-out services in this country. Again this is a response of local governments to austere fiscal pressures experienced as tax revenues drop and the tax burden has shifted in recent history from the commercial and higher income groups to the moderate income groups. This was accompanied by increased political pressure for efficiency and cost containment. Along with lower costs there is a perceived opportunity for increased innovation and entrepreneurship. The contracting out of services is also a way to eliminate the collective bargaining agreements many cities have with their employees. This leads to cost savings in the short term as wages and benefits are reduced, although secondary effects are unclear in the longer term from the decreased "Multiplier effects" in the local economy. With contracting-out risk is lessened for the municipality and transferred to the contractor instead. Finally, one must not discount the libertarian ideological appeal of privatization as a tool for political expediency. It is useful to those who desire to use it as a method to cut the size and influence of government without it appearing that this is the primary goal.

Problems

Problems associated with contracting-out as opposed to providing a service in-house are concerned to a large extent with contract writing and administration. Contracts must be carefully worded to assure quantifiable quality levels and clear means to evaluate them. Loss of control can be a problem for many service areas, especially those not easily measured and for those with more complex service needs. With any contracting there is the potential for kickbacks or bribes and indeed to avoid this is the historical reason some services were publicly provided. Another problem with contracting services are contractors that will low ball a bid to get their foot in the door and either negotiate further increases with change orders or bid low. Once a municipality loses the capacity to provide the service, after a few years, the contactor can increase their bid prices knowing that local competition is inadequate or nonexistent. The issue of cost containment is present with outside contractors or with in-house provision.

Assumptions

The assumptions privatization is based upon and central to arguments in its favor are that competition is going to spur innovation and that the profit motive will better enable an institution to control costs. Analogous to this is that somehow private bureaucracy is more responsive and desirable than a public one.

"Aside from several studies of the economics of public and private waste col-

lection and recent work on transit, very little is known about the real potential of privatization for cost reduction or for improved service quality" (Savas, 1987). These studies of intermediate service delivery point towards the fact that privatization can work for simple, easily quantifiable services. Also illustrated is the difficulty of contracting for more complex services that are more difficult to contractually specify and evaluate for quality performance. "For example, all aspects of the quality of a service are hard to quantify, particularly when the same product may be valued and perceived differently by different consumers" (Rothenberg, 1987). Problems of specifying outputs, of implementing procedures and of evaluating performance in contractual agreements are widespread and serve only to raise the cost of doing business. Poorly specified contracts can lead to negotiation even litigation as conflicts arise with adverse effects on costs or output.

Public Education

The public education system, specifically elementary education, is often seen as being in need of reform. Indeed reform proposals have been routinely touted, among them are various pravatization schemes primarily educational vouchers and proprietary schools.

Funding

In California public education has suffered as state funding has fallen consistently over the last thirty years, which coincidentally has been accompanied by a rise in public school attendance of non-native English speakers. "In the mid-60's California was fifth in the country in per pupil expenditures. By 1978, when the proposition thirteen tax limitation initiative passed, the state ranked roughly in the middle. Now [1993] it ranks fortieth among the states in school spending" (Schrag, 1993). Accompanying the drop in funding has been a drop in test scores. Vouchers are often touted as a solution to declining student test scores and as a means for parents to choose the better schools, thereby introducing competition, as if competition for already scarce resources will somehow improve the situation. It is interesting to note that the people historically favoring less public school funding, have also often been strong proponents of voucher systems.

"In California public education has suffered as state funding has consistently fallen over the last thirty years, which coincidentally has been accompanied by a rise in public school attendance of non-native English speakers."

The profit maximizing motive which is the driving factor to increase efficiency in the private sector also leads commercial interests to eliminate higher costs, e.g. students such as those with special physical or emotional needs. The growth of private schools could lead to further increases in state regulations and more school administration which would stifle the innovation they are presumed to be able to provide.

Capacity

According to the California Department of Education, "In the year 1992-93 the state's private schools enrolled 544,817 students or 10.6% of the states student population". With the implementation of vouchers the assumption is that private schools will open their doors to all comers. New schools will spring up like wildfire in the private sector and public

schools sluggish from years of domestication will be jolted back to life , propelled towards innovation and overdue reform by competition from an enlarged private school selection. As researchers at the Southwest Regional Laboratory in Los Alamitos, California found the explosive growth in private schools proponents expect may not happen. "Already many private schools (60%) are operating at (85%) capacity. Even with a (50%) increase in private schools it would be unlikely to affect more than (1-5%) additional public school students in California" (Convin, Dianda, 1993). With private schools' tendency to accept students that are at grade level or above, this increase in capacity of private schools would hardly provide the necessary "discipline of the market" that proponents of educational choice contend. Instead we might see increased stratificafion of students according to ability and income as has been in some European countries.

American Experience

One of the major problems in evaluating claims voiced by choice proponents is the lack of evidence to support their claims. The Milwaukee, Wis. experiment with public vouchers for private schools involving 630 pupils in 1992 offers limited guidance, being too recent to draw conclusions from. The Baltimore, MD. experience with private management of public schools was again too recent to draw definitive conclusions, although the preliminary studies indicate the inability to meet initial goals in raising student test scores.

European Experience

While elsewhere in the world, such as in Japan, private schools largely serve to fill the gap in demand beyond the public sector provision. The highly competitive environment of intense competition for high test scores on entrance examinations of the best post secondary schools has led to private schools fulfilling this gap in demand for educational preparation.

Private schools have competed with public schools for years in European countries. The European experience has not been the panacea proponents have envisioned. The great irony is that the common man is the real victim of the traditional system. People with money do quite well. They can move to the suburbs in search of good schools or pay for private schools. But most ordinary people in the inner cities, especially the poor and minorities, are stuck. The system provides them with lousy schools, and they have nowhere to go" (Chubb, Moe, 1990).

"The French have publicly subsidized private schools since 1950 and have found that the poor or minorities have not found their educational opportunities vastly improved."

The French have publicly subsidized private schools since 1950 and have found that the poor or minorities have not found their educational opportunities vastly improved. About 18% of students in France are enrolled in private schools with over 90% of them in Catholic schools. The French experience with a pluralistic approach to education provision seems to show students from a lower socioeconomic background that do make it into the private sector schools tend to do better than those that stay in public schools. Although it is unclear the role self selection plays in this process. Those that value education more would tend to favor private over public if they

thought they could get a better education. Ambler (1994) says that choice seems to make it easier for the middle class families to keep their children on track towards higher education in France.

In Britain school attendance is stratified according to class lines and has been the source of some political battles between the Labour Party and the Conservative Party. There have been several reforms designed to enhance open enrollment, but again the middle class seems to have taken greater advantage of this than the working class. Studies do not support the contention that the minorities, the poor and recent immigrants would take disproportionate advantage of educational choice if offered the chance. Access to transportation and adequate information seem to be factors affecting this outcome according to Ambler.

Quality

Consideration of higher achievement in private over public schools (excluding the elite prep schools) is also a hotly contested issue. Often proponents cite the work of (Coleman, 1982, 1985) as their basis in the argument of the superiority of private over public, but the study results have been widely criticized as minor variations unlikely to affect longterm performance. The self-selection of respondents has been cited as a factor here as has the tendency of private schools to take those students who perform at grade level or above, while public schools have to take students much more non-seletively.

"The last thirty years have seen the following changes: in spending disparities as states tried to equalize educational expenditures of localities; proscription of religious practices from public schools; protection of freedom of expression for teachers and students; new laws and funding on behalf of female, handicapped, bilingual and economically disadvantaged students; affirmative action in admissions to special programs and in hiring practices; and a legal attack on racial segregation" (Levin, 1987).

As the schools became more uniform and egalitarian in their practices it was often at the expense of those that had historically enjoyed privileged status. The loss being greatest among those of highest income and social status as well those with certain political and religious views that had taken for granted their ability to foster their views in public schools. These groups seem largely at the forefront of the quest to increase public support for private schools.

Conclusion

In summary, the private market faces intrinsic barriers to adequately providing public outputs of education that are so fundamental to a functioning democracy. Problems of equity caused by the unequal access of parents to transportation and information sources could, in all likelihood, lead to further stratification of the usage of educational resources as seen in the European examples. The test scores of private school students have not been shown to be conclusively different between public and private schools with equal resources. Finally, the burden of proof does not seem to rest with those that advocate private market solutions on either grounds of efficiency or equity.

References

Ambler, John, "Who Benefits from Educational Choice?", Journal of Policy Analysis and Management, V. 13n3, pg. 454-76 (1994)

Chubb, John and Moe, Terry. Politics, Markets and American Schools, Washington D.C.: Brookings Institute, (1990)

Convin, Ronald and Dianda, Marcella, What Can We Really Expect from Large Scale Voucher Programs Phi Delta Kappan, V. 75, n9, pg. 68-74. (1993)

Levin, Henry, "Education as a Public and Private Good", Journal of Policy Analysis and Management, V. 6n4, pg. 628-41 (1987)

Lieberman, Myron, Beyond Public Education, New York, New York: Praeger Publishing (1986)

Rothenberg Pack, Janet, "Privatization of Public Sector Services in Theory and Practice" Journal of Policy Analysis and Management, V6n4 (1987)

Sappington, David and Stiglitz, Joseph "Privatization Information and Incentives", Journal of Policy Analvsis and Management, V6n4, pg. 523-40(1987)

Savas, Emmanuel, Privatization: The Key to Better Government, Catham, NJ: Catham House Publishers (1987)

Schrag, Peter "Bailing Out of Public Education" Nation, V257nlO, pg. 351-54 (1993)

Biography

Michael Schulte is a graduating senior in Urban Studies, planning to do graduate study in City and Regional Planning.