

Behind Closed Doors:

DISCRIMINATION BY PRIVATE CLUBS

New York City Commission on Human Rights
Eleanor Holmes Norton, Chair

BEHIND CLOSED DOORS:

Discrimination by Private Clubs

by Edith Lynton

A Report based on City Commission
on Human Rights Hearings

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Commission on Human Rights
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THE HEARINGS' OBJECTIVES

Pamela K. Backus, who until yesterday was the first and only women member of the Renton, Washington Jaycee Chapter, watched with bitter dismay as her fellow members voted seven to five to drop her. They have been threatened with the loss of their national charter for having admitted her in the first place.

Ms. Backus, a 31-year-old real estate woman, responded to the decision with scorn and fury. "It's a bunch of garbage, its your loss, too. I'm not going to seduce you. I want to learn to run committees, self-confidence and public speaking," said the business woman. The New York Times. September 5, 1974.

According to an abundance of testimony given at hearings into the discrimination practiced by exclusionary membership organizations held by the City Commission on Human Rights in November 1973, this absurd and anachronistic problem prevails, not only in small town clubs but also among those in the largest and most sophisticated urban centers. Until very recently, eligibility for membership in virtually all private clubs and large fraternal organizations, as well as membership organizations of varying types, has been determined first by race, sex and religion, and only second by interests and qualifications. Clubs and membership organizations in general have continued to be white male Protestant strongholds. Their membership policies have been unaffected by shifts in national attitudes and unresponsive to changes in the policies and structures of major social institutions that have taken place during the past twenty years.

Although assessments of the degree to which all forms of ethnic and sex discrimination has decreased in the United States obviously will vary, it must be conceded at the least, that overt discrimina-

tion has been very much on the wane. The stubborn persistence of "white only" or "male only" policies in private clubs is attributable in part to the fact that very little that takes place in the sanctum of the club is overt or openly discussed. Membership determinations generally are made in secret, membership lists are confidential and activities are unpublicized in advance to other than members. This privacy is deemed by clubs to be within their rights, arising from constitutional guarantees of privacy and free association. Although exclusion of minorities and women may not be the reason for secret determinations, the lack of public scrutiny permits the continuance of categorical exclusions no longer publicly acceptable in other settings.

Other fundamental factors also contribute to the static quality of club and organizational policy. The public at large and even civil libertarian activists have tended to consider access to club membership a trivial problem, of concern only to a small circle of the socially elite and therefore not worthy of concerted attack. Thus, the policies of clubs generally have gone unchallenged. Second, private clubs are explicitly exempted from coverage by the provisions of the Civil Rights Act of 1964. This exemption not only prevents any direct attack upon racial or sex discriminatory actions by clubs but at the same time, appears to give a degree of sanction to organizations constructed along ethnic or sex lines.

Recently, there has been an upsurge of interest on the part of civil rights groups and especially among women's rights organizations. As more members of minority groups and more women have been aspiring

to and attaining positions in middle and upper levels of business management and public office and have been engaging in wider ranges of professional activities, they are becoming aware of the significant role played by private clubs and associations in business and professional advancement as well as community leadership. Those who formerly were excluded but now have achieved a modicum of equal opportunity in education and employment are discovering these gains to be partially nullified when access to the clubs and organizations that their colleagues with similar interests, qualifications and career goals enjoy, are denied them solely because of race and sex. And this denial now is perceived by a growing number as more than just a generalized reflection of an imperfect national consciousness, symbolic of the less than full acceptance accorded minorities and women. It is recognized as an actual constraint on personal progress, not as crippling perhaps as exclusion from higher education or skilled work, but nevertheless an unjustifiable and intolerable impairment of the ability to function fully in economic and political spheres. The younger generation, less willing to accept traditional categorical exclusions and more accustomed to protesting against any apparent acts of prejudice and arbitrary discrimination, has begun to challenge club and membership organization policies and some civil rights groups and women's groups have initiated legal action. A few clubs have taken the leadership and voluntarily have changed their membership policies. Others have been induced to do so as a result of judicial determinations. These changes attract increasing public attention and often are front page news. The Elks and the Moose have deleted the racial restrictions in their membership requirements. Girls

can now play on Little League baseball teams. Women may be seated at the tables down at Mory's. The League of Women Voters will need a new name now that its long-standing policy of barring full membership to men has ended. The Association of the Bar of the City of New York now welcomes any lawyer in good standing who applies and pays the dues, in place of the historic requirement that candidates be proposed and seconded by current members and screened by an admission committee, procedures that although not explicitly excluding women and minorities, contributed to the Association's reputation as "a fraternity of legal bluebloods.....operated more like a gentlemen's club than a professional organization."* And most recently, on November 8, 1974, the Gridiron Club, the prestigious organization of Washington newsmen has voted to end sexual segregation.

All of the foregoing with the exception of the modest charter amendment made by the fraternal orders, occurred in mid-1974 or later. The prominent coverage these events received in the media is indicative of how marked a change they represent. And as is to be expected in any activity that is so recent, the changes themselves are spotty and do not yield any consistent pattern or trend. They tend instead to be isolated occurrences varying with the ideological climate of the particular community and the nature of the particular membership organization. And few have been easily accomplished.

In general, the opposition to any outside intervention in organizational policy is strong and relatively unyielding. Voluntary or negotiated change is a rare occurrence. More of the amend-

*New York Times, March 24, 1974

ments to long-standing policies have come only as a result of Court action or the threat of litigation. Among the recent changes publicized in the press, only three were adopted without litigation and of these all required concerted effort over several years to accomplish. The League of Women Voters membership opposed a similar amendment only two years earlier, the City Bar Association has been subjected to years of pressure for open admission, and as recently as the Spring of 1974 the annual Gridiron Club dinner was boycotted by a rival organization of journalists in protest of the Club's exclusion of women.

At present the implications of judicial determinations are somewhat unclear because they have been made on a variety of legal grounds, none of which directly relate to the membership policies of private clubs and organizations. For example, the Little Leagues were adjudged to be a public accommodation and therefore under the jurisdiction of anti-discrimination law. Mory's revision of its Charter represents a triumph of alcohol over male exclusivity; the Board of Governors of Mory's agreed to amend their Charter in return for a reissuance of a liquor license revoked in 1972. The Elks and Moose ended racial restrictions for fear that Court decisions threatened the continuance of a favored tax status. It should be noted, however, that the fraternal orders continue to stand antler-to-antler against the admission of women, a policy that, in their case, has not been challenged.

It was to explore in detail the validity of the charges made against clubs and private organizations policies, the relative merits of legal action and other remedies utilized thus far and the need for additional courses of action that the hearings of

the City Commission were planned. Witnesses invited to testify represent a broad spectrum of concerned organizations and individuals, including executives of major clubs and club associations, leaders in a range of civic organizations, lawyers engaged in the study of the pertinent issues or in actual litigation, officers of regulatory agencies and licensing authorities and activists and professionals in the field of civil rights and women's rights.*

The perspectives of the hearings were established by the Commission's Chair, Eleanor Holmes Norton, in her opening remarks.

Opening Remarks by Eleanor Holmes Norton

These hearings into discrimination by exclusionary private clubs and organizations herald changing times and changing values. After all, it has not been 10 years since federal law first protected the right of blacks to eat in public accommodations; and it is not yet 20 years since the government itself was found to be in violation of its own constitution by segregating the races in schools and other public institutions. The wonder is that the nation could have marched so far into the twentieth century carrying these rather obvious scars.

Such wholesale segregation and ingrained discrimination in the country's public places could hardly fail to consume our major energies. But who among us will feel comfortable if what results is a double standard which commands the banishment of bigotry from public places and sanctions it in private enclaves

*A list of witnesses is appended as A.

of racism, sexism, anti-semitism, and other forms of bias.

Listen to the sound of what it is we would be left with. "Membership in the order is limited to white male citizens of America not under twenty-one years of age..." Until just last month, so read the constitution of the Elks. What conceivable principle, what recognizable interest, what reasonable concern does such language serve? Charter language ruling out entire groups of people - based on some physical characteristic or background heritage - seems perverse to the ears for a reason. With the possible exception of organizations based on shared religious or national affiliation, organizational language that rules out entire groups violates the most ancient of American principles. These principles insist upon individual identity. From this is derived our basic notions of individual worth. Whatever subverts this lofty principle undermines the core of the American tradition. This is why we cannot afford to ignore any form of anti-group exclusivity.

But moral imperatives in matters of prejudice have been slow to take in the American environment. And I confess that it is not the moral issue, compelling as it is, that moves us to this official investigation and hearing. The Commission has found that private exclusionary policies in too many instances threaten public policy barring job discrimination today. For example, this city has 313 clubs with liquor licenses. Their impact in New York, where business and finance in the lifeblood, is enormous. Many serve the same function as restaurants. Business is discussed and consummated. Civic and political activity is initiated.

Women and blacks and Jews, the whole array of New Yorkers who are barred will hardly fare as well as those with free access. And just as often these and other groups will find that employment opportunities in industries where executives frequent such clubs are closed to them.

Perhaps most disturbing, private professional societies in instance after instance still regard themselves as "old boy clubs," excluding members of the profession who belong to certain groups, usually women. Here the nexus to professional advancement is plain. Group exclusion from these learned and professional societies is especially bewildering, disillusioning and intolerable.

These issues arise often in our city, but no clear remedy yet exists. To be sure, discrimination by private organizations presents troublesome philosophical and technical problems. But more is required than case-by-case outrage. My campaign to open the Harvard Club to women graduates of that institution should not have had as its sole recourse the vote of the male members.

This Commission has gone at this issue in several different ways over the years. The New York Athletic Club meet in 1968 caused international outrage when it was learned that the sponsoring club excluded from membership the very blacks it had invited in such large numbers to participate in the meet. The Russian team withdrew and local public and parochial high schools stayed away, but the courts found jurisdiction lacking to vindicate a Commission finding of discrimination by this private club. At other times the Commission has found remedies. A model affirmative action agreement was drawn by the Commission and the

Department of Real Estate eliminating discrimination in two beach clubs on city-owned land in Queens in 1968. And more recently the 40-Plus Club agreed to open its valuable professional referral services to women. But we need more than individual successes. We need a climate in this city that will not tolerate clubs where no women, no blacks, and no Jews are allowed.

Today we will hear testimony from victims of this discrimination, from private organizations themselves, and from those who strive to eliminate this form of exclusion. These hearings will help us strengthen our jurisdiction. They will help us remove yet another taint of bigotry from a city that has always led the way.

THE CURRENT SCENE

According to the testimony at the hearings, current policies of clubs and membership organizations cannot be described with any degree of precision. Clubs are essentially autonomous and independent, operating in total privacy and unaccountable to any public or official agency. Generalizations are impossible to document because membership policies seldom are expressed in by-laws but most often depend entirely on the attitude and actions of individual club leadership. Witnesses agreed, nevertheless, that clubs today are almost exclusively a white male domain, not only the relatively small and socially prestigious individual local clubs, but also the large national organizations and even some professional associations.

Current patterns and trends within private clubs were described by three expert witnesses; Samuel Freedman, Director of the Social Discrimination and Business and Industry Divisions of the American Jewish Committee; Cyril F. Brickfield, President of the National Club Association; and Larry Finkelstein, Contributing Editor of Business and Society Review. Mr. Freedman testified that a 1973 survey of several hundred clubs made by the American Jewish Committee found the barriers of forty years before continuing with only few exceptions. According to Mr. Freedman, club policies are self-perpetuating. Control is passed by one group to the next by selecting those they perceive to be "their kind," and new blood seldom is infused. Most policy questions are settled in small secret meetings. Applicants are rejected

without any stated reason, and those excluded tend to keep their feelings private, rarely electing to publicize what they construe as embarrassing and humiliating estimations of individual worth. The fact that discrimination is largely de facto, rather than de jure or in accordance with stated policy, permits most clubs to deny the existence of racial or ethnic criteria for selection.

Mr. Brickfield reported that the National Club Association first broached the topic of discriminatory membership and guest policies as recently as 1970 at a special conference called for this purpose. Although the Association's position is that determination of membership and guest privileges is the prerogative of the individual club, the Association considers it an essential function to bring pertinent national issues to the attention of its members. The conference, according to Mr. Brickfield, while not productive of any change in Association policy, was effective in increasing sensitivity to the civil rights issues of potential relevance to club policies.* According to Mr. Brickfield, in many communities private clubs control a commanding share of recreational facilities, and moreover, are not merely an extension of family living but "a vital business mechanism." Therefore, the bases for club membership are in his view legitimately open to question.

*The Conference Transcripts indicate how new and how provocative the subject of discrimination is within the confines of club life. In the opening remarks the NCA Counsel noted that it was with "trepidation and many misgivings" that the topic was brought before the membership. See the National Club Association, Conference Transcripts, February, 1970. San Francisco, California.

Mr. Brickfield detects some evidence of change in the elimination of religious and racial barriers in newer clubs and in large city university clubs, changes that reflect the social attitudes of younger members or sometimes are a consequence of increasing economic pressure. He concedes, however, that changes are slow in coming, saying,

The progress to date, I admit, is not good enough. The trend is for fair and equitable treatment. I have no doubt that the young people will bring most of this about. In the meantime, legislation, political action, public relations, community pressure, public meetings and the national and very especially the local press must be fully and continually utilized to bring about decent citizen treatment in the private clubs.

Mr. Finkelstein in his testimony also characterized clubs as markedly resistant to change. In his view traditional patterns of selection persist because most members are unaware of membership issues. He believes that were membership requirements discussed at open meetings, many current members would recognize the inequities in prevailing policies and be willing to eliminate traditional restrictions.

Mr. Finkelstein's testimony extended to trade association policies. As Director of Urban Affairs for the Public Affairs Council he has worked with 200 national corporations in an endeavor to eliminate corporate subsidization of trade associations that discriminate against minorities. Such discrimination he reported to be widespread. He estimated that there have been fewer than twelve black executives in the cumulative history

of the 1,600 national trade associations. Professional associations, however, are more often non-discriminatory, particularly among the learned professions where post-graduate degrees and licensure are the requisites for membership. Nevertheless, witnesses cited instances of exclusion of women by clubs and membership organizations that although ostensibly social in purpose function as professional associations, press clubs that exclude women journalists* and financial and economic clubs that exclude women brokers and security analysts, and others that give only token recognition to minority men.

The Role of Private Clubs

One reason why clubs remain immune from the pressures against discriminatory barriers is that the public persists in regarding the function of clubs to be essentially social and recreational. This view prevails notwithstanding that the "big business deal" consummated on the golf course or in the downtown luncheon club is an accepted part of national folklore. Few people appreciate, however, the integral relationship between clubs and business life. The correlation between club membership and achievement in business and in the professions has been well documented by solid research.**

*The Gridiron Club discussed earlier was among those cited.

**See for example:

Reed M. Powell, The Social Milieu as a Force in Promotion.
Published in digest form by the American Jewish Committee, 1969.

Lewis B. Ward, "The Ethnics of Executive Selection", Harvard Business Review, March - April 1965, Vol. 43, No. 2.

The University of Michigan Institute for Social Research, The Chosen Few; a Study of Discrimination in Executive Selection and Discrimination Without Prejudice: A Study of Promotional Practices in Industry, 1964.

Membership; especially in large metropolitan areas, has been found to be synonymous with success. First, the fact of membership alone is an important earmark of status, one that assumes significance for anyone aspiring to leadership roles in business, the professions or community life. That membership in the right club is prima facie evidence of standing in an occupation was often cited by witnesses. Mark Fasteau,* for example, said that membership in the Recess Club signifies senior partnership in either a law firm or brokerage house. Not only is membership in small socially prestigious clubs an indicator of worth. Witnesses representing several chapters of the Jaycees, a large national organization with a relatively young membership, testified that membership is clear evidence of those considered "comers" by their employers.

The significance of club membership extends well beyond the symbolic value attached to membership. Clubs have much to offer in the facilities, contacts and activities they provide. What clubs offer apparently is increasingly in demand when membership organizations continue to expand despite the effect of inflation on costs and dues. Clubs today are a growth industry. The total number of clubs in 1974 is roughly double that of ten years before, according to National Club Association figures. The hearings furnished many reasons for the continued growth. First, the psycho-social support provided by club identity may be gaining importance as an offset to the anonymity of urban life. On a more pragmatic level, as public facilities of all kinds shrink, become overcrowded or ill-maintained, access to eating

*Author and Cooperating Attorney, ACLU.

places conducive to lunchtime discussion, or the availability of well-equipped meeting rooms can be sufficient attractions. The scarcity of quiet restaurants in the Wall Street district, for example, was reported to be a particular problem. Indeed, according to some witnesses, employers justify their use of facilities that discriminate against minorities or women by the lack of suitable alternatives. But even if alternative meeting rooms and luncheon places were available, so long as business firms as a matter of custom tend to utilize club facilities, eligibility for membership attains significance.

Irrespective of the reason, major companies, banks, law firms and trade and professional associations routinely use club facilities rather than public accommodations for meetings of all kinds, informal and formal. This much was agreed by all witnesses. It is an accepted cliché of executive life that more is accomplished in club bars and dining rooms than in the office. This cliché applies to the informal or even chance meeting. But witnesses testified from personal experience that clubs are the preferred setting for scheduled group meetings ranging from the inner circle of a particular firm, to the leaders in an industry, profession or government agency, to special events at which prominent persons address a select audience on matters of special or general current interest. Gloria Steinem described clubs as,

an important part of the decision-making structure in this country, more important than the board rooms, the executive suites, the union halls or courts or the state legislatures where the decisions are supposed to be made.

Of equal importance to the facilities or the setting clubs provide and of far greater importance especially to the self-employed or to the small business owner is the opportunity to make contacts, to know and be known by colleagues, competitors or the power structure of the community. The informal channels of communication clubs provide may determine who is considered for a job opening or given a contract or a special role in an industry or profession.

Last, club activities, lectures and meetings, have substantive value, keeping members abreast of pertinent trends, and committee work and program participation that offers the opportunity to achieve prominence or distinction in club management may lead to business or community recognition. This is especially true for the larger fraternal or civic organizations. The Jaycees, for example, allows young members the opportunity to demonstrate qualities of commitment and leadership in community service, taken by business management as indicators of managerial potential.

The value attached to club membership is clear when employers sponsor memberships, directly or indirectly subsidize club dues for key executives or promising employees, and use club facilities on a routine or regular basis for entertaining clients and informal and formal meetings. The assumption that membership is essential to business function, moreover, underlies the ability of employers and employees to deduct the costs of membership for income tax purposes as a legitimate business expense. This is general practice, according to witnesses, for many club memberships and virtually

universal in the case of the more obviously work-related memberships in trade and professional associations.

To what extent employers subsidize club membership costs for important executives or others can only be estimated, for no data exists. What proportion of the costs represent genuine business expense is also unanswerable. The true value of club membership is known only to those who are members. Those who have been excluded, only recently have begun to assess the worth of membership. And this may be yet another reason why the self-perpetuating caste lines of club membership have been undisturbed. Bringing about change is slow when the excluded population has accepted exclusion, a problem no more evident than in the case of women who traditionally have been excluded or allowed only limited access to the sanctum of the male club.

CLUB MEMBERSHIP AS A WOMEN'S RIGHTS ISSUE

A considerably larger share of testimony at the hearings focussed on the exclusion of women by clubs than on racial or religious discrimination. Indeed, on a purely quantitative basis one could gain the impression that the access to clubs is predominantly a women's rights issue. This of course would be incorrect. Minority male membership is still at the level of tokenism at best. But the volume and vehemence of the testimony on the part of individual women who have been confronted by closed doors is understandable. So few clubs in New York City are open equally to men and women that it becomes difficult, it was said, to find a place to hold meetings where both will be welcome. The exclusion of women from all forms of membership organizations, anachronistic when compared with the considerable progress toward equality of job opportunities, is so widespread as to give rise to curious policy decisions of employers. For example, Mr. Finkelstein reported that ineligibility for club membership is sometimes given as the reason why women cannot assume executive positions.

The exclusion of women, moreover, is often explicit in club bylaws, unlike racial or religious discrimination that generally results from the application of a secret selection process. The difference is that men of minority backgrounds may apply and some, although apparently only a few, have been admitted as members or accepted as guests in some clubs and associations. In the majority of clubs the exclusion of women is total and absolute and their access as guests is either prohibited entirely or stringently regulated, confined to rear entrances, service elevators and private

dining rooms. One woman told of attending a professional association dinner at a local university club where she was not permitted to wait for her colleagues in the lobby!

Black groups and Jewish organizations were quicker to recognize the impact of the denial of membership than women, perhaps because, unlike women, they could apply and hope for acceptance, or perhaps because they were men. Women, it was alleged, have been conditioned to accept the club as a masculine prerogative. Only recently, as more women have moved into occupations formerly foreclosed to all but the exceptional few and have attained more responsible job levels in business and government, and as women's rights movements have grown in number and in sophistication, has exclusion from clubs been challenged. This exclusion is now being recognized by at least some women as more than an ideological issue, another aspect of male chauvinism. It is being understood for its relevance to equality of employment opportunity, to progress up the occupational ladder as well as to the ability to participate in policy discussions of the firm, industry or profession.

The response to these hearings exceeded the Commission's expectations especially in the number of persons who attended and asked to testify. Some, at first, were understandably reluctant to identify themselves, their employers or the offending clubs. Once the constructive intent of the hearings was perceived, most of them abandoned anonymity and testified with utter frankness to specific examples of exclusion and their damaging consequences.

The following are only some of the many instances of exclusion cited by women who testified at the hearings, based on recent per-

sonal experience:

- A librarian, an acknowledged expert in the field of rare books, is unable to join the Grolier Club, the prestige club in this field. Membership is not only an indicator of expertise but provides access to major world libraries. Members receive professional information not otherwise available. Most important is the practice of recruiting from the club membership for the "cream" of opportunities for librarians.
- Several lawyers are unable to meet with clients or lunch at the club routinely used by male counterparts in their firms. As one commented sardonically, "For the last hundred years the partners' dinner has been held at the Century Association. Women are not allowed at the Century Association. Therefore, no women will be partners."
- A financial expert, president of the firm, cannot belong to a club in the building in which her office is located although her male employees are eligible.
- Trainees on Wall Street cannot attend meetings at many clubs where programs of special interest in finance and economics occur, programs that relate directly to career development.
- A journalist is unable to cover major addresses by public officials given at private clubs.
- A bank trust officer is unable to represent the bank at banking industry meetings at private clubs.
- A junior executive is unable to participate, along with male colleagues, in community-service programs sponsored by a national organization.

These examples clearly show that unequal or limited access to a club facility is not only embarrassing but impairs the ability of

women to function equally with men in fulfillment of job requirements and responsibilities to clients, or achieve full professional or occupational standing. The negative impact of this exclusion on career advancement, perceived by individual women, was confirmed and broadened in the testimony of professionals in management and leaders in women's rights organizations. Lee Christie, a partner in a management consultant firm* specializing in affirmative action, testified that while official policy within a business organization may be non-discriminatory, internal policy often has no effect on the male-dominated outside environment. Mr. Christie considers the interaction between inside policy and the outside world of which private clubs and membership organizations are important elements, to be critical. Exclusion from the work-related network of informal communication by "men only" rules in what are called "social organizations and functions," in his opinion has a severe and chilling effect on women's career advancement. Sexual lines of demarcation foster the view that women's aspirations for managerial roles are aberrations and tend to keep women at the bottom rungs of management or in staff jobs that are mis-labeled as managerial. Mr. Christie said,

Line management, above the first supervisory level, displays a masculinity that in its purity puts Ivory Soap to shame. And the exclusionary membership organizations of prominent men help to keep it that way.

Exclusion from important channels of information, important though it is,

*Wells, Christie Associates. Beverly Hills, California.

is not as devastating for women's careers as exclusion from another informal mechanism, namely, the phenomenon of sponsorship, mentorship or patron-ship.

Another witness, Dr. Norma K. Raffel, presented the problem from the perspective of women's rights organization devoted to securing equal opportunity in education and employment. Dr. Raffel, a leader in the Women's Equity Action League (WEAL) and a member of the Pennsylvania Governor's Commission on the Status of Women, considers exclusion from membership organizations, especially from professional or trade-oriented clubs, particularly damaging. Although the activities of WEAL focus on the professional organizations, Dr. Raffel also is concerned with restrictions in small select clubs and in the "animals," the Elks, the Moose and other national organizations. She said,

Think of the disadvantage to the self-employed women, a real-estate operator or insurance salesman, (sic) or a women politician who is excluded from this important area of social contact. Often women are not considered for positions because they are not trusted or not thought of in professional terms.

Securing equal access to clubs for women differs from eliminating racial or religious restrictions not only because the exclusion of women generally is stipulated in bylaws but also because it arises out of a particular set of prejudices. These differences make discrimination against women more susceptible to challenge in some respects and, in others, more difficult to dislodge.

On the one hand, it is easier to confront the question of discrimination. When the basis of exclusion is explicit in club regulations, clubs cannot deny that discrimination exists nor evade the issue by mere tokenism. The basis is no longer debatable and, moreover, does not require independent proof. The issue thus is framed precisely, permitting litigation to center on the legality of the exclusion rather than on whether discrimination has been practiced. In addition, categorical exclusion changes the issue from one of personal rejection to a neutral problem. These probably are the reasons why the majority of court challenges to club policies reported at the hearings and occurring subsequently have been to open membership to women.*

On the other hand, arbitrary exclusion can be a deterrent to effective challenge. Excluded groups tend to accept exclusion as a reality to which they must adjust. Instead of protesting exclusion they establish parallel organizations. Women's organizations, Jewish country clubs and Black fraternal orders such as the Black Elks are similar attempts to provide excluded groups with some of the aspects of club and organizational life. But men of all races and creeds may have been less conditioned than women to accept exclusion. Traditional differentiation in sex roles pervades all ethnic groups and may have deeper roots than racial or religious distinctions. Therefore, it was said, women more than men have rationalized the separation of the sexes, even to the point of believing a women's organization to be preferable. This is evident when one-third of the members of so politically alert a group as the League of Women Voters, voted

*Court challenges of racial bars have been confined largely to fraternal orders where there are charter restrictions.

in 1974 to exclude men, believing that women need a separate organization to achieve equal organizational skills. It was also feared that once men were admitted they would assume the top positions.

There may be legitimate reasons sometimes for developing separate women's organizations or organizations devoted to a particular racial, religious or ethnic group. In special circumstances a separate organization may be useful to build confidence in newcomers to organizational activity, to develop leadership, or to sharpen the focus on issues of particular relevance to that group. The new breed of professional and business women, however, recognize that separate organizations do not fulfill individual career needs or essential business purposes. One clear indicator that separate organizations are not equal in effect is that employers, according to the testimony, seldom if ever subsidize the costs of membership in women's organizations.

The elimination of sex barriers generally requires formal action, in contrast with most racial and religious restrictions that can be altered by the action of a single sponsor or a small admissions committee. Admitting women may require amending the charter or bylaws and a vote by the full membership. The requirement of a majority vote has often been a stumbling block. The hard fought battle in the League of Women's Voters, discussed before, is indicative of the difficulties of mustering sufficient consensus. The majority view is often traditional and instituting reform may require intensive activity on the part of a progres-

sive minority.

Admitting women to clubs has proven a more emotionally charged issue than might have been anticipated. The opposition to admitting women permeates the entire fabric of membership organizations. A range of witnesses speculated on the underlying reason for the resistance to women club members, a resistance that may be even more stubborn than toward other excluded groups. For example, Katherine Emmett, an attorney with experience in anti-discrimination litigation, noted that in the applause generated by opening of the Elk and Moose lairs to minorities, little attention was given to the fact that women are still unaccepted. The reasons furnished by club officers and members for their staunch defense of the club as a masculine preserve are numerous, ranging from the trivial and practical, expressed as "we haven't enough wash-rooms," to an inability to distinguish sexuality from professionalism or, "I wouldn't want to meet last night's date at lunch," or "wives of married men would not want their husbands attending club meetings if other women were members." Additional arguments are that men will have to modify their language, change their dress style, clubs may devote less of the facilities to sports, or that women would destroy the casual atmosphere and begin to "pretty up the place," all founded on historic assumptions of differences in behavior.

The reasons given for excluding women from clubs are striking in their unoriginality. They have no particular relation to clubs but are identical with those used whenever women seek to enter any area of education, work or recreation that men have come to consider their exclusive province. This has been witnessed most recently

in New York City in regard to employing women as firefighters. The apparent absurdity of the arguments belie the depths to which the separation of the sexes is ingrained. The club is apparently a last stand of male supremacy. Inroads made by women in increased and broadened participation within the work force have not yet reached the level of consciousness necessary to permit consideration of the question in an aura of rationality. For whatever reasons, it is still permissible, apparently, to exhibit and express a degree of overt sexism in settings where explicitly expressed racist or religious biases would not be acceptable.

CHANGE THROUGH VOLUNTARY ACTION

The capacity for self-reform in the case of private clubs, although limited by the closely held manner of selection and policy-formation, nonetheless is not non-existent. It is evident in newer clubs and in isolated examples across the nation. Some clubs that function as professional associations have recently changed their policies with respect to women. The National Press Club, The Inner Circle and most recently the Gridiron Club now are open to women. A few, it was reported, are aggressively recruiting women, as for example the Sales Executive Club and Wings, an aviation association, both in New York City. A sprinkling of downtown luncheon clubs now accept women. One example is The New York Stock Exchange Luncheon Club. And among university clubs, some, but not all, especially those that are affiliated with colleges that now are coeducational, have made the transition without outside pressure.

A New Club

The formation of a new club as a strategy for change was reported at the hearings. Holmes Brown, Co-Chairman of the New Yorker Club, testified to its successful establishment four years earlier to serve as a place where community leaders of all racial and ethnic backgrounds and both sexes could meet in a congenial setting for informal discussions. The New Yorker Club, at the time of the hearings, had 300 members. The only qualification for membership is community leadership. Mr. Brown reported that many corporations have become founding members, donating to the Club both the initiation fees and continued dues and designating either the Chairman

of the Board or a chief executive officer as the actual member. Mr. Brown believes this to be the only fully racially-integrated club in New York City. It has been described by Richard Clarke, the club founder as

An urban golf course, a place where all races and both sexes can meet and talk business the way they are supposed to do in the nation's country clubs.*

The new club is an important model and begins to fill the gap in the club structure of this City, especially in providing racial integration in a social setting. But as is the case with separate organizations for women or minority groups, new clubs may serve best as a transitional tactic rather than a permanent solution. The old established clubs still control the choice facilities and offer the broadest contacts and the greatest diversity of activities. Therefore, a new policy by an old established organization has greater significance, not only because of the value of membership offered, but because it constitutes recognition by those in power of the inequity of categorical exclusion.

The City Club of New York

The City Club of New York is a significant example of a club that modified its membership policies in recognition of a changed society. Donald E. Weeden, President of the Club, testified at the hearings. The City Club, a long-established men's club devoted to civic affairs, amended its constitution in September 1973 to open

*Contact Magazine, Spring 1973, Vol. 3, No. 8, page 41.

membership to women. Because a parallel women's organization existed, the Women's City Club, and because the two clubs shared physical facilities, there had been no pressure for change. A merger had been considered previously but both clubs then believed the continued existence of two clubs with a civic focus superior to a single organization. Although both clubs frequently studied the same civic problem, their analysis and recommendations frequently differed. The existence of two complementary organizations allowed for broader citizen participation and more positions of responsibility.

Recently the membership of the City Club of New York found that some women wished to join their Club, rather than the Women's City Club. The traditional all-male policy was perceived as nothing more than custom and a new constitution was adopted. At the time of the hearings nine women had applied for membership.

The Jaycees

Opening membership to women is not always easily accomplished. The conflicts that can occur are illustrated by the chapters of the national organization known as the Jaycees that recently have elected to admit women. Representatives of the New York City and the Rochester chapters testified at the hearings.*

The Jaycees, founded early in the 20th century as a social club for men aged 18 to 35, grew to become a national civic organization with some 340,000 members and 6,400 chapters. In many cities the Jaycees are affiliated with the Chamber of Commerce and serve as

*Chapters in Philadelphia and New Orleans also have opened their membership to women.

the junior organization to allow young men to participate in community affairs and develop leadership qualities essential to progress in business. Often, the experience in Jaycees activity is a stepping stone to significant public office.

Preston Kodak, President of the Rochester Chapter, testified that most of its memberships are company-sponsored. Employers sponsor membership of junior managerial personnel as a "fringe benefit" and for the training opportunity and exposure to civic issues it affords. The New York City Chapter also has many corporate sponsors. When a woman holding a responsible job with a Rochester public utility applied for membership, her application stimulated a reassessment of the policy of limiting women to an auxiliary membership.* In 1972 the Chapter voted to change its bylaws and admit women on an equal basis.

The New York City Chapter was prodded to accept women by women applicants and by a corporate sponsor. The sponsor, the Manufacturer's Hanover Bank, had obtained an informal opinion from the office of the New York State Attorney General indicating that exclusion of women might be construed as discriminatory and a violation of the State Executive Law provision requiring equal terms and conditions of employment, irrespective of sex. Transition to an open membership encountered some opposition at first, but once the Rochester Chapter amended its bylaws the New York City Chapter followed suit and in 1973 the membership unanimously adopted equal membership for both sexes.

*Many Chapters have had women's auxiliaries, a social rather than civic adjunct to the men's organization, designed primarily for the wives of the members.

These actions provoked strong reactions by the state and national Jaycees who both moved to revoke the charters of the Rochester and New York City Chapters. Neither Rochester nor New York City Jaycees were content to accept revocation nor were they willing to reverse their stand on women's membership. Deprivation of state and national standing not only lessens the prestige and power of the local organization but also deprives them of grants of Federal and state funds to finance community programs. The largest grants come from Federal sources and generally channel through the national organization. Notwithstanding the punitive stance of the state and national organizations, local memberships have steadfastly approved of the revised policy and both business communities have been supportive. The Rochester Chapter solicited the opinion of major corporations and received more than 100 letters in support of membership for women. In New York City equality of membership was endorsed by the Chamber of Commerce and Industry.

This logical and seemingly uncontroversial step has caused a series of law suits including a request for review by the U.S. Supreme Court. The Rochester Chapter first instituted an action against the national Jaycees alleging that Federal involvement in Jaycees activities existed in the form of Federal grants (\$1.5 million of the total national budget of \$3.8 million in 1973 derived from Federal funds) and substantial tax benefits, an involvement that could be construed as governmental support for the policy of discrimination based on sex. This initial action was dismissed on the ground of insufficient state action. The New York City Chapter then instituted suit that thus far has been more successful. The New York City action argues

that the Jaycees is not a private club with a primarily social orientation, but functions as a service organization and a major conveyor of Federal funds, and as such is a quasi-public organization. Thus far a preliminary injunction against the state and national charter revocation has been granted and the case is scheduled for argument in the Second Circuit in December 1974.

The Philadelphia and Rochester Jaycees requested a hearing by the U.S. Supreme Court, but this request was denied on November 18, 1974. Supported by the Department of Justice, the U.S. Jaycees argued successfully that tax-exempt status and occasional grants from government agencies did not constitute enough government involvement to force it to end discrimination based on sex. The outcome of the action in New York is unpredictable, but should the Court uphold the local Chapter's position, the decision could have an impact on membership organizations that engage in community service.*

Whatever the outcome in the Courts, the issue of women's membership in the Jaycees is unlikely to disappear. The chapter in St. Paul, Minnesota voted in November 1974 to end the bar against women subject to approval at the state convention. As more chapters adopt this stance, the U.S. Jaycees may be forced to yield, if only to allow the determination of membership policies by local option. Other organizations, for example the Kiwanis, are being challenged to admit women, and the threat of litigation plus the exposure given to the issue by court action may inspire self-reform.

It should be noted that the U.S. and state Jaycees, in contrast to their stand against membership for women, have been actively re-

*Since the time of writing the Federal Courts ruling in re the N.Y.C. Chapter was reversed by a Federal appeals court ruling that the receipt of Federal funds by a private organization constitutes insufficient state action to subject it to scrutiny under the constitutional standard. New York Times, March 8, 1975.

cruiting male minority members. Traditionally a non-partisan non-sectarian organization but still largely white and middle-class, in recent years it has sought to develop a better racial mix. The New York City Chapter reports 20% to 25% minority members. This can be interpreted as evidence that sexism is more entrenched than racism in clubs, or it can be interpreted as evidence of the potent effect of law especially when access to funding is coupled with clear controls over non-discriminatory use by the recipients. Title VI of the Civil Rights Act of 1964 prohibits discrimination by recipients of Federal funds on the basis of race or national origin, but makes no mention of sex.

The examples of voluntary action to end discrimination presented at the hearings illustrate that voluntary action is easier on a local level than in a national organization subject to the differences in regional attitudes, and the Jaycees experience shows that the legal bases for challenging private organizational policies are problematic. Nonetheless, judicial decisions in other instances have been effective in removing racial and sex barriers.

The Influence of The Business Community

The example of the New York City Jaycees in which a corporate sponsor was the catalyst toward revised bylaws indicates the potential influence of the users of club facilities. George Zuckerman, Assistant State Attorney General testified that the applicability of state law to corporate sponsorship of membership in private clubs indicated by the Attorney General in an informal opinion, however, is not finally determined. Nevertheless, he together with other witnesses considers that the business community and its leaders could

have a significant impact on club policy extending beyond those to which they belong to the entire club structure. Some witnesses believe that if business leaders were sensitized to the issue they would respond. Mr. Zuckerman suggested that if influential groups such as the Edison Electric Institute, The American Gas Association, The American Bankers Association and other business associations would refuse to schedule functions at exclusionary clubs, this act alone could become an impetus for change. Witnesses cited isolated examples in this City and others showing the effect prominent citizens or important business firms have when they disassociate themselves from exclusionary organizations. For example, the San Francisco Bar Association has adopted a policy prohibiting any Association meeting at any private club that discriminates in membership or in the use of facilities on the basis of race, color, religion or sex.

The feasibility of mounting a well-organized campaign on the part of the business community, however, apparently is problematic. Mr. Finkelstein characterized business groups as ambivalent toward regulating club use. Although they sense the discriminatory effect they are reluctant to interfere with or obtain control over an area they prefer to leave to personal choice. Mr. Freedman was equally pessimistic because the financial and industrial leaders are the mainstays of exclusionary clubs. He cited an unsuccessful effort by the American Jewish Committee to engage the support of 1,500 major corporations, 300 headquartered in New York City, by asking them to cease payment of dues for their executives at such clubs. Less than one-third responded, of whom some said the company paid no dues, and

others, that they considered this question of no concern to outside groups. Furthermore, when the American Jewish Committee published a booklet analyzing the impact of club discrimination,* not one business organization or executive was willing to be listed as endorsing the elimination of racial discrimination by clubs.

The majority of witnesses appeared to place little reliance on moral suasion. They attribute even those seemingly spontaneous changes that have occurred to judicial decisions and to the threat of litigation.

*Better Than You: Social Discrimination Against Minorities in America, Institute of Human Relations Press, New York, 1971.

CHALLENGING CLUB POLICIES IN THE COURTS

The major problem faced in challenging the admission policies of membership organizations, even when stated criteria for eligibility obviate the need to prove the basis of exclusion, is the lack of any strictly pertinent statutory grounds. Private clubs are exempt from the public accommodations section of the Civil Rights Act of 1964.* No Federal statute has any direct bearing on private club admissions policies with the possible exception of Section 1981 of the Civil Rights Act of 1866, an act guaranteeing full and equal benefits of all laws to all citizens. This ancient act, intended to obliterate the impact of slavery on black citizens, was first held by the Supreme Court as inapplicable to purely private acts but in more recent years has been construed to cover private acts in employment, insurance sales, or other contractual relationships. In so doing, the courts have at times distinguished between legal and civil rights and purely social rights. Although some complainants have sought action under this century-old statute, the courts have been generally unwilling to construe it to contravene the clear exemption provided in the 1964 Act, a statute which was considered by Congress to be the first Federal legislation prohibiting discrimination in privately-owned public accommodations.

Against this lack of direct regulation of clubs stand the historic rights of privacy and free association used by clubs and membership organizations as the basic justification of their ability to determine eligibility for membership free of any outside intervention. Only recently has action in the courts begun to test whether

*Section 2000a, it should be noted, prohibits discrimination on the basis of race or national origin but makes no mention of sex discrimination.

or not these rights, as they relate to private clubs, are absolute and to what extent they can be abridged if they run counter to other issues of national, state, or local policy.

The legal bases most frequently used for action against private clubs has been the granting of licenses by states and of tax exemptions by both state and Federal government. In both, the question posed is whether the "state action" of issuing a license or allowing a favored tax status assists or encourages organizations in the pursuance of discriminatory acts and is violative of the equal protection clause of the 14th Amendment.

Challenges Under the Licensing Powers

The most celebrated court challenge to the absolute power of private clubs to determine membership policies is the Moose Lodge case*, an action that grew out of the refusal of food service to the black guest of a member, both Pennsylvania legislative representatives, at the Moose Lodge in Harrisburg. The black man filed an unsuccessful suit against the Pennsylvania State Liquor Authority to revoke the Lodge's liquor license. This case moved through the courts with varying results and ultimately reached the U.S. Supreme Court in July 1972, where in a 6-3 decision the Court held that the Lodge could retain its liquor license despite the limitation to "white male caucasians" reversing a lower Federal court ruling. The majority opinion by Justice William H. Rehnquist considered that the issuance of a liquor license cannot be said to foster or encour-

*Moose Lodge No. 107 v. Irvis, 407 U.S. 163 (1972).

age racial discrimination and was insufficient state action to constitute a violation of the equal protection clause.

The Irvis decision, however, was less negative in effect than might seem on the surface. First, the case itself, given wide coverage in the press, caused a new level of awareness of the existence of club discrimination and brought the issue out in the open. Second, in the opinion of lawyers who testified at the hearings to subsequent litigation and who are familiar with the issues, the case dealt only with what the 14th Amendment alone might be construed to require of a liquor licensee, and although it held that the equal protection clause by itself does not invalidate a liquor license granted to a discriminatory club, the decision has no bearing on what any legislature or agency of the government, Federal, state or local, can do in the way of positive action to discourage or prohibit discrimination. Katherine Emmett, for example, the attorney who has represented the complainants in a suit against Mory's exclusion of women, said that the Irvis decision has had little impact other than sensitizing the public to racial discrimination by fraternal orders. She testified that in another Supreme Court decision the Court dismissed an appeal from a State of Maine Court decision upholding the right of the Maine Liquor Authority to revoke a license granted to a local chapter of the Elks.*

Another notable case involving the famous male club, Mory's, associated with Yale University, focussed also on the question of liquor licensing. As already noted, this action has resulted in gaining equal access for women. Ms. Emmett, in her testimony, discussed the arguments presented in this action, First, it was reasoned

*BPOE Lodge No. 2043 v. Ingraham 297 A2d 607 (Me 1972) appeal dismissed - U.S. - 36 L. Ed. 2d 386 (1973)

to be entirely appropriate for a licensing authority to take such action as would discourage discrimination, and well within the broad discretionary powers such agencies have to grant or deny a license to any organization.

In the Mory's case, a second argument held that Mory's was not truly a private club because its provisions for determining membership and guest privileges were loose and unstructured and because members have no voice in the Club's operation, failing even to elect the Board of Governors. Ms. Emmett characterized Mory's as an essential element in the Yale community, open to all male students and faculty and the site of both unofficial and official University meetings. Ms. Emmett and other attorneys testified that a considerable body of case law exists dealing with the criteria that determine whether an organization is a bona fide private club. These include screening membership in accordance with particular association interests or purpose; limiting services to members and to guests under specified conditions; and control by members of the actual operation of the club through an effective self-government mechanism. Failing these principal attributes, organizations have been deemed by the Courts to be public accommodations and thus under the jurisdiction of Federal, state and local anti-discrimination statutes.* A third approach used in the Mory's case was to question whether the club is essentially a professional rather than social organization, for here also there is case law that sets forth the principle that professional organizations cannot refuse to admit individuals as members if exclusion will have a significant

*Much of this case law was laid down in the years immediately following passage of the Civil Rights Act of 1964 when some groups sought to escape from compliance through the subterfuge of identifying themselves as private clubs. For a review of pertinent decisions, see Samuel Rabinove, Recent Litigative and Legislative Challenges to Discriminatory Private Clubs. A paper delivered at the Practicing Law Institute. October 24, 1969.

impact on their professional standing.

The Mory's case was not decided by the Courts, but under threat of litigation resolved through a negotiated settlement. The pivotal force was the finding for the complainants by the State Liquor Control Commission together with the likelihood that the Courts would uphold the Commission's power to so rule. This decision, according to Ms. Emmett, has had a modest impact on other clubs. Some clubs in Connecticut have changed their policies, some, but by no means all. Significant, however, is the fact that the Club of the Connecticut Legislature housed in the State Capitol Building now is open to women. She attributed the changes that have taken place to two factors.

Primarily, the pubs were afraid of losing their liquor licenses. Secondly, I think they were beginning to realize the impact of discrimination on people outside the organization and beginning to see that it was in fact a valid issue and not a joke, which most people thought it was when we started.

Notwithstanding the fruitfulness of challenges to liquor licenses and the apparent significance of alcohol to club life, success apparently depends on the ability to convince a particular licensing authority of the appropriateness and desirability of such action. The results, therefore, will be uneven.

The judicial decisions rendered thus far indicate that there is insufficient statutory basis for the courts to compel a licensing authority to withhold licenses from those who practice discrimination but that it is well within the power of a licensing authority to do so.

Challenges on the Basis of Tax Benefits

Tax benefits accorded to non-profit organizations have been used in the past as leverage against discrimination in private schools

and other tax-exempt organizations, but only recently have they been the basis for challenging exclusions by private clubs. Beginning in 1970 several actions were instituted in New Jersey, Oregon, Wisconsin, the District of Columbia and Connecticut. Tax status as a basis for legal action may be preferable to the right to a liquor license because benefits can accrue to both the state and the organization granted tax-favored status. In contrast with licenses that have value only to the recipients, the intent of granting tax exemptions often is to encourage private and non-profit support of activities in which the state has a vital interest, private schools, voluntary hospitals and other philanthropic services, services that might otherwise be performed by the state.*

In 1971 in an action against the Tax Department of the State of Wisconsin by a black Alderman of Milwaukee, the Federal Court ruled that insofar as tax benefits are afforded to organizations under provisions of the state property tax laws, discrimination in their membership policies on the basis of race are violative of the equal protection clause of the 14th Amendment.** The decision did not cite a particular offending organization. In December 1972, another action in Oregon identified the Elks as the offending organization.*** A similar opinion was rendered, disallowing the granting of state property and corporate excise taxes. Also, in 1972, a significant decision challenging Federal tax policy in the District of Columbia ruled that the Treasury Department may not grant exemptions to fraternal organizations

*See Falkenstein v. Department of Revenue, 350 F Supp. 887 (D. Ore. 1972)

**Pitts, etc. v. Wisconsin Depart of Revenue (E.D. Wisc. 1971) 333 F. Supp. 662

***Falkenstein v. Department of Revenue, supra.

that exclude blacks as members.* The ruling in this case did not apply to the clubs' income tax exemption but to the special tax status granted fraternal orders that invest portions of their funds for charitable purposes, for support of the lodge, and to provide insurance benefits for members. As a consequence of this decision, earnings from investments are taxable and donors of money or property to clubs that practice racial discrimination can no longer claim deductions for these gifts from their taxable income. This decision determined that such special tax status constitutes governmental support and encouragement of the clubs, and fosters the continuance of discrimination.

This decision could have broad consequences. It affects all Elks lodges as well as other fraternal orders including the Moose and the Eagles and, therefore, is not inconsequential. These three groups combined total nearly 3,500,000 members, and in all three the charter limits membership to white males. But the precise impact is not determined by Court decisions. In their opinions the Judges noted potential limitations of the decisions. In the Oregon decision already cited, the opinion states,

This decree will not interfere with any right of any organization to discriminate in membership on the basis of race, but will specify that organizations which choose to do so may no longer qualify for preferential tax treatment.

Similarly, in the McGlotten case, the court stated,

We have no illusion that our holding today will put an end to discrimination or significantly dismantle the social and economic barriers that may be more subtle but are surely no less destructive.

*McGlotten v. Connally, 338 F Supp. 448, 455 (D. D.C. 1972)

The Judge expressed the hope that the decision would "quarantine racism" by eliminating the involvement of the government.

The most recent case decided in August 1974* is noteworthy even though the case was dismissed because of the mootness of the tax argument. The Elks who were the defendants already had deleted the "white only" provision in their bylaws following the McGlotten decision. The opinion discusses the weaknesses of court action. First, the Judge acknowledged the validity of the plaintiff's allegation that despite modification of bylaws discrimination could still prevail. De facto discrimination however, was not within the jurisdiction of the case, no such example being offered. Again, the Judge noted that although the Courts can decide that state action encourages club policies and thus deprive clubs of the benefits of tax status, the club can still choose whether or not to forfeit state assistance. The opinion ends with this caveat,

The immunity we recognize today is a rather limited one. Whatever the freedom of legitimate Elks and Moose lodges to discriminate racially with respect to membership, if they do they stand to forfeit state aid, direct or indirect, which amounts to "encouragement." Moreover, only genuine "private clubs" are exempted from the 1866 and 1964 Civil Rights Statutes. Those who believe that racial exclusion fosters fraternity are free to act out their belief, but they may not promote prejudice for profit. If a lodge were to diverge from the ways of "jolly corks"*** and become an establishment where economic opportunity was the attraction, it would cease to be exempt. To have their privacy protected, clubs must function as extensions of members' homes and not as extensions of their businesses. Racial prejudice will not be permitted to infect channels of commerce under the guise of privacy.

*Cornelius v. Benevolent Protective Order of Elks, not officially reported (U.S.D.C. Conn, Blumenfeld, J., C.V. No. 15150, Aug. 2, 1974).

**The original organization from which the Elks developed.

This statement raises some fundamental questions concerning the rights of privacy and free association. First, is a club, an extension of home or does it provide an essentially economic function? Second, does the state's interest in proscribing a particular form of conduct, namely discrimination, outweigh the right of privacy? Neither question has yet been fully answered by the courts.

THE POWER OF GOVERNMENTAL AGENCIES

From the foregoing discussion of litigative results, it is apparent that certain regulatory agencies may have sufficient power to inhibit discrimination as practiced by private clubs, a power that only infrequently has been used.

Licensing Authorities

The principal attack on club discrimination has come through the controls over liquor licenses, but these controls have been used only in response to actual complaints filed. This has occurred not only in Connecticut but recently also in Massachusetts and Illinois. Prior to these hearings, the Massachusetts Alcoholic Beverage Control Commission revoked liquor licenses of the major fraternal orders in which racial restrictions are explicitly expressed in organizational charters. Since the hearings, the Illinois Liquor Control Board revoked the license of the Chicago Club following a complaint filed by a women journalist who was denied the access she required to report on an address given by a Federal official. The Attorney General of the State of New Mexico rendered an opinion that the State Alcoholic Beverage Control Board could suspend or revoke the license of anyone practicing racial discrimination.

No licensing authority has on its own initiative taken any action nor developed a general policy restricting licenses to those who do not practice discrimination. In three jurisdictions, two cities and one state, legislation has made licensing contingent on non-discrimination. By resolution, the Minneapolis City Council has set non-discrimination standards for liquor licensing and the City of Madison, Wisconsin and the State of Maine have also controlled liquor licenses

in action that is broader in scope.* None, incidentally, prohibit discrimination based on sex.

No action has been taken in New York State, and George Zuckerman, Assistant Attorney General, in his testimony at these hearings, doubted whether the New York State Liquor Authority would act unless new legislation were enacted. First, the existing state statute under which the Authority operates does not speak to the question of discrimination by licensees. Second, although in his opinion the State Liquor Authority has the power to deny a license on this basis, he believes the current personnel of the Authority would be unlikely to do so. For example, the SLA interprets the Irvis decision to signify an insufficiency of authority on the part of the agency to revoke licenses of exclusionary clubs. However, he believes it well within state powers to amend the pertinent statutes to restrict licenses to non-discriminatory organizations.

Tax Departments

According to some witnesses, the taxing authorities, state and Federal, similar to the liquor licensing boards, if they deemed it an appropriate course of action could curb discriminatory policies without the necessity of Court action. They could deny the deductibility from income taxes of dues paid to discriminatory organizations. This, it was alleged, would be a powerful weapon against club discriminatory policies. The likelihood of this occurring in New York State, at least, apparently is doubtful. According to Mr. Zuckerman, when the New York State Tax Department was approached to determine what action it would take as a consequence of the McGlotten decision, indications were that the Tax Department would follow the lead of the Internal Revenue Service, accepting without further review the

*To be discussed later on in this report.

official list of tax-exempt organizations published by the IRS.

Other witnesses added that decisions based on tax status have had very relatively little impact on club policies because of weakness in their enforcement.

Another aspect of the tax status of private clubs, the so-called "five percent" rule, may have an impact on club policies. Under this rule of the IRS, clubs may not derive more than five percent of gross receipts from non-membership sources to retain their tax-exemptions. Mr. Brickfield noted that the impact of inflation on the cost of operating clubs may force them to increase outside sources of income. Clubs may have to choose between the revenue available to them by leasing space for public functions or the special tax-exemptions and in addition raise the question of whether they are then in fact public accommodations subject to non-discriminatory prohibitions. Moreover, through this rule, the IRS can control the relation of corporate users to clubs. Recently, the IRS ruled that unassigned corporate memberships in a country club are considered identical to relations with the general public and thus counted toward the five percent of revenues permissible from outside sources. Only when a company pays the dues of an individual member can those dues be considered bona fide membership income.*

Other state and city agencies can affect clubs policies. In 1969, the New York City Real Estate Department directed clubs that lease municipal property to adopt affirmative action. This policy has been adopted by other cities, Miami and Detroit, for example. This restriction applies mainly to boating and beach clubs.

That power to control club discrimination exists in a range of governmental agencies is clear and this power when used can be an

*The Wall Street Journal. October 23, 1974.

important buttress to the work of those agencies charged with eradicating discrimination. At the federal level, for example, administrative agencies such as the FCC must take the responsibility for discrimination practiced by the businesses they regulate. Action initiated by administrative agencies at all levels of government, although desirable, is unlikely alone to be sufficient to bring about the thorough changes in club policies and in employer use of club facilities that are demanded.

The same can be said for relying on the impact of economic forces. While current cost pressures may result in a loosening of restrictions in some clubs, such changes as occur may be only temporary. If discrimination by clubs or other membership organizations has a distinctly detrimental effect upon minorities or women, over and beyond the choice of social associations, a more direct approach to the problem is indicated.

Federal Agencies

The Office of Health Education and Welfare has had an effect on on-campus fraternities, significant because among them are organizations that are tantamount to professional associations. But, here again, action has come only after sustained activity on the part of concerned activist groups.

One example is Phi Delta Kappa, a professional educational fraternity that until November 1973 was open only to men. The charter excluded women even though women comprise more than half of teaching and allied professional personnel. Notwithstanding active pressure by women's groups, the move to admit women was voted down by the fraternity as recently as 1971. The Women's Equity Action League challenged the exclusion under the Educational Amendments

Act of 1972 of which Title IX prohibits sex discrimination on the part of any educational program receiving Federal funds. Pressure on the Office on Health Education and Welfare to enforce Title IX by filing complaints resulted first in the creation of special staff within HEW to enforce the Act. According to Dr. Norma K. Raffel of WEAL, the special staff was inadequate in size and inexperienced and, therefore, required prodding. Finally in November 1973, HEW issued a ruling that both sexes be admitted equally if the fraternity was to remain on campus.

Subsequent to the Commission's hearings, in June 1974, HEW issued a set of proposed regulations for implementing the Educational Amendments Act with respect to sex discrimination to take effect in 1975 aimed at ending discrimination in education. These regulations would end the existence of on-campus facilities including occupation-oriented fraternities that discriminate on the basis of sex. The scope of the guidelines currently are threatened by pending Congressional action to amend Title IX to exempt on-campus fraternities and sororities. The charter of Phi Delta Kappa already has been amended to admit women, but other fraternities, as for example, business management organizations such as Delta Sigma Pi and Alpha Kappa Psi have not taken action. If this amendment should be enacted, WEAL and other concerned groups will press for distinguishing between those that are professional in orientation as against those that are entirely social.

In another direction, the Office of Management and Budget issued a memorandum to the Federal Executive Boards and to the Chairmen of the Federal Executives Association prohibiting the use of facilities

of private organizations that practice discrimination except when the purpose is to change that policy. This directive, issued as a result of negotiation by the American Jewish Committee, according to Mr. Freedman, has not been entirely effective. He reported that some Federal agency meetings have taken place at racially restricted clubs since the issuance of the memorandum. Despite the difficulty of securing total compliance in large bureaucratic organizations, a statement of policy carries considerable weight. But statements of policy must be given adequate dissemination in a manner that assures that all levels of staff understand their purpose.

Anti-Discrimination Enforcement Agencies

The ability of agencies charged with enforcement of statutory prohibitions against discrimination to affect the policies of private clubs was a subject discussed at the hearings. Because state and city statutes generally follow the Federal act in exempting private clubs from coverage, such agencies have no direct control over club policies. Nonetheless, their awareness of the existence of widespread discrimination by clubs and the connections between employment opportunity and membership has stimulated some agencies to search for ways to influence the policies of membership associations.

The question of what jurisdiction the New York City Commission on Human Rights has over private clubs and membership organizations has been given careful study. The Commission has made it a policy when writing affirmative action agreements with employers to include a section barring corporate participation in clubs that hold to discriminatory practices. This approach has proven effective in many instances and has obviated the need for engaging in elaborate

investigation and litigation. A focal purpose of these hearings, however, was to determine whether other approaches are indicated especially in the form of new legislation or amendments to existing statutes.

Action By The Pennsylvania Human Relations Commission

The Pennsylvania Human Relations Commission, through its involvement in the Irvis case, developed what Roy Yaffe, Assistant General Counsel of the Commission, described as a four-part approach. First, the Commission probed the limitations of the Pennsylvania Human Relations Act to determine whether it provided any effective tools for combatting exclusionary membership policies. Second, it began aggressively to work to strengthen the law and third, to stimulate local municipalities to enforce local control to the fullest. Fourth and perhaps the most effective, it has worked to develop cooperative action within a range of regulatory and licensing agencies in the state.

In line with the first approach, the Commission moved to test its jurisdiction over clubs under the public accommodations section of State anti-discrimination law by filing suit, charging that when the Moose lodge opened its bar and dining facilities to other than members, those facilities were no longer exempt from coverage but became public accommodations. This suit was carried to the U.S. Supreme Court where it was dismissed on the interpretation of a specific aspect of the Pennsylvania law. Despite the outcome, Mr. Yaffe considers this a potentially productive course of action and urged other jurisdictions to initiate similar suits where applicable.

With respect to legislation the Pennsylvania Commission has sought an amendment to the State Liquor Code making non-discrimination a condition for licensing. In addition, the Commission has urged all Mayors to issue executive directives to State and local agencies similar to that promulgated by the Governor in 1971 who urged all State departments to restrict State grants, licenses and other services to non-discriminatory recipients.

Last, the Commission endeavored to develop a cooperative working relation with the Liquor Control Board and other licensing agents and persuade them to issue regulations stipulating non-discrimination as a requirement for licensing. The argument advanced was that failure of the Liquor Control Board and other agencies to act could lead the public to believe that the State acquiesces, if not encourages, the policies of private clubs.

Unfortunately, these activities of the Pennsylvania Commission have borne little fruit. The proposed legislation died in committee and the Pennsylvania Liquor Control Board is reluctant to take any independent stand but prefers to rely on Court decisions. Mr. Yaffe anticipates that the Attorney General will issue an opinion stating that the Liquor Board has the authority to control discrimination by licensees by revoking licenses but probably will not mandate such action. The failures in efforts to solve this problem through the licensing agencies had led the Commission to consider how it can utilize provisions under Title VII of the Civil Rights Act to prohibit business use of discriminatory club facilities, shifting the focus from control of clubs to controlling business use of clubs.

The reach of Title VII of the Civil Rights Act of 1964 is analyzed in a memorandum prepared for a suit in Federal Court by the San Fran-

cisco Regional Litigation Center of the U.S. Equal Employment Commission. The complaint charges the Bank of America with sex discrimination because of allegations that it is the continuing practice of the Bank to reimburse employees for dues and other expenses incurred at private clubs, many of which exclude persons from full participation on the basis of sex, race, religion or national origin. The brief raises the question whether Title VII prohibits reimbursement of such expenses where the payment is based on the employer's determination that club participation serves the business interests of the employer. The argument presented is that,

The opportunity to enjoy the business and other benefits of a private club at the Bank's expense is a privilege and condition of employment within the meaning of Title VII: and, under Title VII, a privilege or condition of employment which operates intentionally or unintentionally to segregate or otherwise adversely effect employees because of sex, race, national origin, or religion is unlawful, absent proof of business necessity.*

*Intervenor's Memorandum, Kathleen E. Wells, Barbara Sowers and Kerstin Fraser, and Equal Employment Opportunity Commission v. Bank of America National Trust and Savings Association. U.S.D.C. (N.D. Cal. 1973).

LEGISLATIVE REMEDIES

Most witnesses believe that discrimination on the part of private clubs and membership organizations will only be controlled effectively if new legislation is enacted, legislation designed specifically for that purpose. Discussion of legislative remedies, however, did not yield a clear consensus on its design. The lack of consensus is attributable in part to underlying uncertainties over the constitutionality of statutory control and the feasibility of enactment and enforcement. In addition, there are some who question the desirability of such legislation, in the face of the clear intent of Congress in exempting private clubs, to allow private associational preferences to take shape free from government control. Others questioned whether all clubs should be brought under control or whether those whose purposes are to promote the interests of a particular religion, race or ethnic group should be exempt.

Thus far, legislation that has been enacted or proposed has used the state licensing power to extend anti-discrimination controls that prevail for public accommodations to all licensees. Only one, the State of Maine, has a law in effect, one enacted in 1969 prohibiting any individual or corporation holding any license granted by the State for dispensing food, liquor or any other service to discriminate on the basis of race, religion or national origin. The Maine statute exempts organizations of a particularly religious or ethnic character and exerts no control over sex discrimination. A similar bill was enacted by the City of Madison, Wisconsin. Bills of this type have been introduced in Connecticut, Pennsylvania, Oregon, California, Washington, Alaska and New York, but none have succeeded in passing. A bill of a different type introduced in California aimed to deprive

discriminatory groups of property, inheritance and gift tax exemptions, but this also failed to be enacted. Other than the Minneapolis City Council Resolution, already mentioned, and a Connecticut statute that outlaws discrimination by professional associations licensed by the State, this represents the totality of pertinent legislative activity.

In New York City a bill introduced by Councilwoman Carol Greitzer in May 1974 is now pending. This bill expands the definition of public accommodations under the City Human Rights Law* to include any group that either holds a license to dispense food, liquor or any service, or tax-exempt status under the State or any of its subdivisions, exempting only religious organizations. All such organizations would then be prohibited from discrimination on the basis of race, color, national origin, sex or marital status. This bill is similar to one recommended by the Women's Rights Project of the American Civil Liberties Union in 1973 for enactment by New York State as an amendment of New York Executive law. In its analysis such legislation is well within the police powers and does not transgress constitutional limitations on state or municipal legislative action. According to the ACLU, since the statute does not regulate personal non-commercial relationship, but is tied to the licensing function, collision with constitutionally protected zones of privacy and freedom of association is unlikely. While Federal law does exempt private clubs from the Civil Rights Act ban on race discrimination in places of public accommodations, it does so in language plainly permitting state legislation.**

*Int. No. 582. To amend the Administrative Code of the City of New York, Title B of Chapter I.

**American Civil Liberties Union, Women's Rights Project, "Draft Statute Prohibiting Discrimination in Admission to Membership in Private Business and Professional Clubs," January, 1973, page 4.

The Commission is working closely and continuously with Councilwoman Greitzer, making such modifications to the pending bill as are necessary to overcome objections raised by some City Council members. While the Commission clearly prefers the strongest and most all-encompassing version it is willing to make some concessions in order to secure the passage of legislation to curb discrimination in private clubs. The major thrust of the legislation on the job and occupationally related aspects of club policies will be preserved. Such concessions as are made in 1975 the Commission's considers to be temporary, a first step toward eventually securing the broadest kind of legislation.

Witnesses at the hearings were not overly sanguine about the prospects of either state or Federal legislation directed toward membership policies of private clubs. The failure to secure enactment of legislation in other states, most recently in Pennsylvania, has led some witnesses to consider alternatives, such as confining control to those clubs that serve intrinsic business or professional functions. The hope is that less resistance would be encountered to legislation designed to eliminate discrimination only when membership is shown to have a direct relationship to business and professional participation and advancement.

Analysis of the testimony given at the hearings suggests that there are objective criteria that could be used to determine whether or not membership in a club functions in an integral relationship to economic activity. Such criteria include the proportion of membership drawn from a particular profession, industry or occupation, the subsidization of membership costs by employers, the extent to which membership costs are considered deductible as business expenses for tax purposes, the regular or frequent use of club facilities for informal or

formal meetings by individual firms or business and professional groups, or the routine scheduling of programs and functions that focus on a specific profession, business or industrial interest. Although this data now is unavailable and may be difficult to obtain, there were some who preferred the application of precise standards to general anti-discrimination law. In theory, functional criteria could be added to the operational criteria now used as a test of "privateness," to determine whether or not a club or association was exempt from coverage.

Freedom of Association

Underlying the difficulty of designing and enacting appropriate legislation and the reluctance of the U.S. Supreme Court to review cases of discrimination by clubs are the constitutionally derived rights of freedom of association and privacy. The possible conflict between statutory regulation of clubs and these rights is not only of concern to lawyers who perceive the possibility of a legal problem but it is also a source of anxiety to laymen. There is a strong historic attachment to these rights as a part of guaranteed liberties. Its historic antecedents are plain in a recent decision by Great Britain's highest Court that a working men's club can place a racial bar on membership because, as one of the Judges said, "The law cannot dictate one's choice of friends."*

The rights of free association and privacy are the basic legal defense used by clubs for their policies of exclusion and the ideological rationale subscribed to by executives and members of clubs who oppose outside intervention. And the belief in these rights'

*The New York Times, October 17, 1974. A report of the British Court of Appeals Decision on the inapplicability of the Race Relations Act to the policies of the Docker's Labor Club.

also affects the "outsider," many of whom accept exclusion as the essential attribute of clubs.

From a legal standpoint the Courts in some recent decisions have indicated that the right of free association is not necessarily absolute. From decisions already discussed it is clear that a club can be deprived of certain benefits such as a liquor license or tax exemption if it practices discrimination. The Courts have held that these rights can be infringed upon by a state or a city in the pursuit of a policy as compelling as the fight against discrimination. In the most recent decision, the Cornelius case already discussed above, Judge Blumenthal in his opinion argues that the core of the right of association is political and that the right to privacy does not put the clubhouse on an equal footing with a private home.

The problem, however, is largely one of public education to reach a level of understanding that eliminating categorical exclusion does not impinge upon freedom of association. It does not narrow the choice of associates, but on the contrary widens the range of selection. There is no wish to deny clubs or associations the ability to choose those persons who bring to a group the appropriate mix of qualities, skills, experience, interests and objectives, but to free clubs from a priori barriers based on background factors that are irrelevant to the associational purpose. Selectivity, unconfined by categorical restriction, or by prejudice or xenophobia, can then focus on intrinsic personal qualifications. Elimination of racial, ethnic or sex restrictions does not "dictate one's choice of friends" but gives the choice wider scope.

Cyril Brickfield of the National Club Association expressed it well when he testified,

Much has been said about freedom of association. The argument is that it protects the members. I doubt it. It is usually one, two or three members of the membership committee or the Board of Directors who do the rejecting. In doing so, they are not preserving freedom; they are really denying the freedom of association of the members who wish to bring in an applicant.

When fairness and justice are removed from admission policy, rejection becomes a major issue in the club; divisiveness sets in, and in the end, the total membership suffers.

CONCLUSIONS AND RECOMMENDATIONS

The Commission's concern over the impact of private club discrimination long antedates the convening of these hearings. It has been Commission policy in negotiating conciliation agreements with employers to consider access to or membership in private clubs as a part of the terms and conditions of employment. In sex discrimination cases, in particular, the Commission has investigated the use of private clubs to determine whether they are equally available to both men and women. In addition, the Commission's opposition to any form of discrimination on the part of private clubs and membership organizations has been voiced in public statements. These statements have been directed toward general policy and also to the actions of particular clubs. For example, most recently, the Commission has urged the Ivy League university clubs to open doors to both men and women, and strongly recommended that the U.S. Jaycees reinstate those chapters that have amended their bylaws to end sex restrictions.

The Commission is dissatisfied with the rate of change taking place in clubs and private organizations and therefore is searching for additional methods to eradicate this subtle yet invidious form of discrimination. The hearings served the purposes for which they were called. They were instrumental in heightening public consciousness of the problem. And the comprehensive and detailed testimony presented, upon careful analysis, suggested additional directions for Commission action.

First, the Commission's perception of the significance of private club discrimination was confirmed by the testimony. The

Commission has always considered this form of discrimination to be offensive. Clearly, no instance of discrimination on the grounds of race, religion, national origin or sex can be sanctioned, even to the extent of the sanction implicit when exclusionary policies are tolerated, ignored or unchallenged. And clubs are no exception to this principle. The testimony manifests how thoroughly intertwined this form of discrimination has become with essential business, social and political functions and institutions of the community. Thus, the issue is not only a moral one, but one that has broad practical consequences.

Second, the testimony illuminates the nature of the problem, providing the understanding essential to any successful attack. For clearly, much of discrimination by clubs or other membership organizations resides in informal traditional methods of selection that seldom if ever have been reviewed or assessed, and in actions not intentionally discriminatory but ones that result from adherence to customary associational patterns and to the usage of certain privileges and facilities. Much of the resistance to change shows an inability to understand that freedom of association does not necessarily imply freedom to categorically exclude whole segments of the population on some arbitrary basis, and conversely, that such exclusions are not essential to the right of free association.

Third, the testimony makes clear that although some changes have occurred, the majority of private clubs continue to practice some form of discrimination. Changes not only have been slow in coming and often difficult to achieve, but have been isolated in impact. Some clubs have re-assessed their policies, others have been forced to by outside pressure or by the impact of court deci-

sions. But the problem clearly is not self-liquidating, and the development of consistent application of non-discriminatory policies will require more thoughtful and organized activity.

The Priority For Legislative Action

To fulfill the ultimate objective of eradicating all aspects of discrimination on the part of private clubs, the Commission will seek enactment of appropriate legislation that sets the parameters of membership and guest policies. As long as anti-discrimination legislation exempts clubs from coverage, public policy gives the appearance of sanctioning whatever exclusions they may choose to apply. Moreover, moral suasion, economic pressures, or even Court decisions are unlikely to produce change with sufficient speed or breadth of coverage to satisfy the Commission's objectives. Therefore, the Commission considers the enactment of appropriate legislation of first priority.

In this city, the major strategy proposed is already well underway. The Commission has been active in assisting with the design of legislation introduced in the City Council to regulate clubs and organizations that receive licenses or tax benefits, and the Chair and other Commission representatives have testified at public hearings on the matter. The Commission intends to continue its active support of this Bill and, will work toward successful passage in 1975.

State and national legislation are also desirable and the Commission plans to work towards the introduction and enactment of appropriate legislation in all jurisdictions.

After careful consideration the Commission does not agree with those who would exempt from coverage clubs or associations whose purposes are to serve the interests of a particular religious or ethnic group. Providing exemptions only confuses the issue and complicates enforcement. In the Commission's view they are unnecessary. If a club or association states its objectives and defines eligibility for membership in terms of sufficient interest in those objectives, the problems envisioned, in all likelihood, will be obviated. Moreover, it is unlikely that disinterested persons will apply. As already discussed in connection with pending legislation before the City Council, the Commission is willing to accept such exemptions as are required to secure passage, but will continue its efforts beyond 1975 to secure an all-encompassing version.

Until legislation is enacted and even after its enactment, to insure full implementation, there is much that can be done by clubs themselves and by their principal users to eliminate some of the more injurious aspects of the impact of club policies. Although all aspects of discrimination by clubs are repugnant, it is possible to identify some aspects that deserve the highest priority, those activities that have a clear relationship to equal opportunity in business and the professions.

Arbitrary exclusion from any club or organization is denigrating to those excluded, but when such exclusion impairs the ability of individuals or groups to achieve full participation in the economic life of the community it adds actual injury to the insult. Once this is recognized by those who determine the policy of clubs and those who are the principal members and users of club facilities,

action on the part of clubs and their memberships is more likely to occur.

Action By Club Executives

From the examples presented in the testimony it is evident that some executives of clubs, when faced with pressure to change restrictive policies have been responsive. They have persevered to secure more open policies even when change required amending bylaws and necessitated a majority vote of membership for approval. Most clubs' internal policies are not stated in bylaws but determined by unwritten selection procedures. Deciding to end arbitrary exclusion demands the development of not only a policy, but selection procedures and rules governing the use of facilities by guests that will be free of any form of discrimination. The usual pattern of proposal and seconding by members and screening by small committees obviously is no guarantee of non-discrimination. Often this is precisely the mechanism that permitted exclusion of specific racial or religious groups in the first instance and fostered selective in-breeding. Implementing non-discriminatory policies may require an entirely new approach to recruiting and screening members and the development of clear guidelines for procedural application. Fundamental to such a policy is the formulation of precise criteria of eligibility relevant to the purposes of the club or organization and education of members to the objectives and to the new methods of selection.

It is the executives of clubs who must deal with this problem and must determine how to move a club toward non-discrimination, and devise the steps that will minimize resistance and gain the support of key members. The Commission will lend them the necessary

assistance toward this end. Club that already have changed their membership composition, newly-formed clubs, as well as the National Club Association could provide leadership in this direction. Clubs that no longer discriminate on arbitrary bases are best able to demonstrate that the absence of discrimination does not mean the end of the selection process.

The Commission intends to stimulate action on the part of clubs by calling a meeting of the executives of a range of clubs, including business luncheon clubs, university clubs, and trade and professional associations to discuss the implications of this report. The purpose will be to develop guidelines for membership selection and guest policies.

Public Agency Policy

The Commission believes that no agency of government, Federal state or local should utilize the facilities or participate in the activities of private clubs that practice any form of discrimination. Appropriate steps must be taken to prohibit all government departments, agencies and sub-divisions from participation in any form in the activities of clubs that discriminate on the basis of race, religion, national origin or sex. This prohibition should extend to participation on the part of government officials at least in their official capacity in the activities of private clubs. Public funds should not be used to support organizations that practice discrimination, nor should public officials give the appearance of sanctioning such organizations by making appearances, delivering addresses or presiding at meetings held in exclusionary clubs. It has been customary for political figures from the President on down to use exclus-

ionary clubs as the setting for major speeches of national or local interest to the business community. This practice has lent even further prestige to organizations whose status often rests on discriminatory exclusions.

The Commission intends to move toward securing appropriate action in the City of New York by working with the Office of the Mayor to develop an appropriate statement of policy with respect to public agency use of private clubs. Also, the Commission will lend its influence toward securing appropriate action by State authorities to regulate the policy of all arms of State Government.

Some Federal agencies have already moved in this direction but the problems of implementation noted in the testimony suggest that two additional steps are required: first, dissemination of a policy statement to all levels of staff, and second, the requirement from any club or membership organization of a stipulation of non-discrimination as a condition of use of facilities or participation in activities.

Therefore, the Commission will endeavor to meet with City agency and department heads to discuss the techniques of implementation and the form of policy statement and the stipulation demanded of clubs.*

The Private Sector

Some witnesses who testified believe that club discriminatory policies would crumble under the impact of organized pressure by the business community. Others were less sanguine, considering the

*A model Resolution, drafted by the Commission is appended to this report as B.

prospect for developing adequate pressure as remote. In the past, business firms indeed have been reluctant to intervene in what they consider to be an area of personal choice. The Commission, however, is more optimistic. Major business and professional organizations in this City, as a result of direct experience with formerly excluded groups, are becoming increasingly sophisticated about the arbitrariness of race and sex differences and sensitive to the issues surrounding discrimination. This sensitivity may not have filtered throughout all levels of business and the professions, but the leaders of many major firms and organizations in this City have proven responsive to critical social problems.

In addition, reaching the business community through its own associations rather than individual companies is often a more effective way to break new ground. The City abounds in trade and professional associations that can exert powerful influence on its members. Individual companies are not to be neglected, however, for it must be remembered that it was one bank that was stimulus for the admission of women to the New York City Jaycees.

Trade and professional associations and those companies already in the forefront of community leadership can stimulate individual corporations and firms to analyze relationships to clubs and the job-related impact of membership or access to the club facilities. Major firms must be made to recognize the inequity of sponsoring or subsidizing membership and regularly utilizing the facilities in clubs that on some arbitrary basis would exclude some of their employees.

The Commission plans to meet with the New York Chamber of Commerce and Industry, The New York City Bar Association and other pre-

tigious groups to stimulate the formation of a business and professional task force aimed at ending their participation in discriminatory clubs. The intent will be to develop a resolution to be adopted by associations or individual businesses that states as a matter of policy the avoidance of all forms of participation in exclusionary clubs, and that requires a stipulation of non-discrimination from any club as a condition of membership or use.

Although the Commission puts primary emphasis on legislation and on action by the clubs themselves and their principal members it is the Commission's intent to use its capacities and influence to the fullest extent possible. Not only does it intend to actively support appropriate legislation and to stimulate and assist action on the part of other sectors of government and the private sector but also the Commission is analyzing ongoing judicial decisions to determine whether some aspects of club activities may fall within the jurisdiction of existing equal employment opportunity provisions. The Commission is in contact with other Human Rights Commissions, both state and municipal, and with branches of the Federal Equal Employment Opportunity Commission who are pursuing this approach.

The City Commission on Human Rights intends to continue to press for the elimination of exclusion on the basis of race, religion, national origin or sex wherever it may occur. The Commission does not believe that this pursuit means the end of private clubs or the end of freedom of association or of the right to choose one's friends, but only the end of narrowing these rights by virtue of anachronistic and arbitrary bases of exclusion. It will continue to function as a force in public education until it is broadly recognized that private clubs

are not trivial or elitist concerns and that there is no conflict between freedom of association and freedom from discrimination.

Appendix A

Witnesses who Testified at the City Commission on Human Rights Hearings,
November 13, 1973.

SAMUEL FREEDMAN,
Director, Social Discrimination Division,
Business and Industry Division
American Jewish Committee

ROY YAFFE
Assistant General Counsel
Pennsylvania Human Relations Commission

MARC FEIGEN FASTEAU,
Author; Cooperating Attorney
American Civil Liberties Union

KATHERINE EMMETT
Attorney,
Koskoff, Rutkin, and Bieder

GLORIA STEINEM
Editor,
Ms. Magazine

MURIEL F. SIEBERT
President
Muriel F. Siebert and Company

PRESTON KODAK, President
ERIC PETERSON, Chairperson of the Board
Rochester Jaycees

GEORGE ZUCKERMAN,
Assistant Attorney General
State of New York

LARRY FINKELSTEIN
Contributing Editor,
Business and Society Review

CHRIS CAMPELL (rep.)
Councilwoman Carol Greitzer

DR. NORMA K. RAFFEL
Head, Higher Education Committee
Women's Equity Action League

Anonymous Testimony
Women in the New York City Business Community

JAYNE ROSS
American Women in Radio and Television

SUSAN SMITH,
Fordham University School of Law

HOLMES BROWN
Co-founder
The New Yorker Club

LEE CHRISTIE,
Partner,
Wells/Christie Associates

ELIZABETH SWAIM,
Special Collections Librarian, University Archivist
Wesleyan University

DONALD E. WEEDEN,
President,
The City Club

CYRIL BRICKFIELD
President,
National Club Association

Appendix B

RESOLVED that this [insert "Corporation" or "firm" or other appropriate designation] will not have any relationship with (or participate in any activity or use any facility of) any private club or membership organization that discriminates, in its selection of members or as to guest privileges, because of race, creed, national origin or sex;

FURTHER RESOLVED that this [insert "Corporation" or "firm" or other appropriate designation] will endeavor to obtain confirmation of the maintenance of such a non-discriminatory policy by any private club or membership organization with which it establishes a relationship.