I, MERVYN F. SILVERMAN, do declare that:

As Director of Public Health for the City and County of San Francisco, my view of the "patient" differs from that of the practicing physician. I am concerned not only with the individual but also with the community. When I encounter individual conduct that leads to illness in the community, my primary objective as a public health official is to halt the spread of the disease.
Selling adulterated foods, operating an unsanitary restaurant, spilling raw sewage on the streets, or accumulating garbage in or about residential houses, can be dealt with swiftly through corrective, prohibitory action. However, when the conduct resulting in disease finds it genesis in deeply ingrained social values and habits, the public health official's task is much more difficult. He must depend in large part on the willingness of the affected population to study the facts and make appropriate changes in their behavior.

This dynamic depends upon the credibility of the public health official in the community. This credibility in turn depends upon both the accuracy of the information he conveys and the willingness of the community to listen. For these reasons, all other things being equal, I ordinarily prefer to conduct an educational campaign designed to convince individuals that changes in conduct are necessary to protect their health and the health of the community. More direct interventions may alienate the community, and cut off lines of communication. The wedge driven between the community and the public health official makes it more difficult for the public health official to succeed in educational efforts. This was the situation I faced when first confronted with AIDS.

As I set forth in my prior declaration, these concerns influenced my early response to the AIDS problem in San Francisco. Dr. Echenberg and Mr. Titus have testified to the same fact in their own declarations. Our initial program was
directed at informing the members of the gay community of the
dangers of this disease and explaining to them what we suspected
to be its most likely causes. In addition, we attempted to meet
with owners of bathhouses and sex clubs in an effort to convince
them that they should communicate similar information to their
patrons. Most of them seemed willing to go along with our
request that they provide information in their establishments
that would explain to their patrons the nature of the disease and
the consequences of certain types of sexual conduct. Not all of
the bathhouse owners complied, but most were willing to go along
with the program, and I was satisfied with that initial response.

These concerns about alienating the at risk community were
expressed in my letters to Larry Littlejohn, dated May 10, 1983,
and September 12, 1983. True copies of those letters are
attached to this declaration as Exhibits A and B and by this
reference are incorporated herein as though fully set forth. I
explained in those letters that I preferred educational efforts
to more direct interventions. I expressed my reluctance to
initiate direct remedies that might undermine any opportunity I
might have to communicate effectively with the population most at
risk.

I was and am convinced that the population which frequents
the bathhouses is at high risk. Bathhouses provide a forum to
communicate with these individuals. Closing down the bathhouses
at that early stage of the epidemic might have driven away the
people we wanted to reach. A breakdown in the lines of
communication before we had conducted an educational effort might have resulted in large numbers of homosexual males engaging in the same activity in other locations because they had not been informed of the true dangers.

In some cases of deadly disease, however, educational efforts prove ineffective, and more drastic remedies must be sought. Where businesses exploit and encourage individual practices that threaten the spread of a lethal disease, direct intervention against them is appropriate.

As the AIDS epidemic progressed, several factors influenced my decision that further, more direct actions were necessary. First, the virulence of the disease became even more striking. It is one of the most severe epidemics of a fatal disease we have ever experienced in the United States. Virtually everyone who is stricken by this disease dies within four years. Second, in spite of efforts to curb conduct that we knew was spreading the disease, the rate of new cases has continued to climb. The number of new cases is now doubling approximately every nine months.

In 1983, we hired Leon McKusick, William Horstman and Arthur Carfagni to study the effects of our educational program and its impact upon the conduct of individuals. We found from these studies that a significant number of members of the gay community either disregarded the information, or chose to engage in the activities even though they knew of the risks of infection. I concluded that we had reached nearly all the people
who were willing to listen to us. The remaining people attending bathhouses were either hardcore devotees of the conduct or people who were impervious to educational efforts designed to protect their own health or that of the community.

I then considered the possibility of drafting regulations to govern the conduct of patrons in bathhouses. After a draft of those regulations was made public, I met with bathhouse owners and operators to learn their viewpoints.

After a very thorough exchange of ideas, the owners realized that my regulations would require them to prevent customers from engaging in sex between individuals involving the exchange of body fluids. I was adamant that my inspectors could not inspect to determine whether condoms or other protective devices were being used. The owners in turn insisted that they could not make such checks. They told me in no uncertain terms that they could assume no responsibility for the conduct of their patrons and that the continued operation of their businesses under the terms of the regulations I had proposed would be impossible. This turn of events convinced me that if dangerous activities were still occurring in the bathhouses, sex clubs, theaters, etc., the only effective remedy was closure.

Therefore I employed investigators to go into the clubs for the purpose of ascertaining whether dangerous types of conduct continued to occur. Their reports indicated that significant multiple sexual conducts involving exchange of body fluid were occurring on the premises of many of these businesses. Based
upon all these factors, I concluded that more direct interventions were justified and therefore issued the order directing the closure of the establishments where these activities occurred.

In determining whether to proceed against a particular establishment, I evaluated the reports of the investigators and consulted with members of my staff to determine which clubs were encouraging or allowing customers to engage in types of activities that lead to the spread of the disease. We were not interested in all forms of sexual conduct. If the sexual conduct did not involve the risk of exchange of body fluids, then it was of no concern to us.

The focus of our enforcement efforts has been directed solely at commercial establishments which operate for the purpose of, and profit directly from, the promotion, encouragement and facilitation of multiple sexual contacts involving exchanges of body fluids that we have identified as a dangerous conduct.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 9, 1984 at San Francisco, California.

MERVYN F. SILVERMAN

4655D P11-16
May 10, 1983

Larry Robert Littlejohn
P.O. Box 4763
San Francisco, CA. 94104

Dear Mr. Littlejohn:

Thank you for your letter of May 6, 1983. Because the exact cause or causes of AIDS is presently unknown, and because the facilities of most bathhouses do not present a public health hazard, I feel it would be inappropriate and, in fact, illegal for me to close down all bathhouses and other such places that are used for anonymous and multiple sex contacts. It is my belief that we would insult the intelligence of many of our citizens and it would be an invasion of their privacy to take such an action. What is more important, and what we are striving to do at the Department, and in conjunction with a number of other agencies, is to educate the public, both gay and straight, about the possible causes and means of prevention.

In cooperation with groups such as BAPHR and others, there has been, and continues to be, a great deal of information being generated and disseminated describing all aspects of AIDS. We will, however, consider the possibility of voluntary posting of a sign in bathhouses and other such places.

Again, my thanks for your taking the time to write.

Sincerely,

Mervyn F. Silverman, M.D., M.P.H.
Director of Health

MFS:ls
Larry Littlejohn  
775 Clementina St.  
San Francisco, CA. 94103  

Dear Mr. Littlejohn:

In response to your request regarding the public bathhouses, my policy has been to elicit the cooperation of the bathhouse owners to post signs regarding AIDS and to distribute literature explaining the issues around it. They have complied.

Recent reports by volunteers indicate this has reduced attendance at the bathhouses and that little orgy activity is occurring. I do not share your impression that the sub-culture who use bathhouses would not immediately switch to other locations where we would have less access to posting warnings and providing some education.

My fear is that if the bathhouses were to close the community might perceive that the problem of AIDS is solved. This is, of course, patently incorrect.

There are substantial civil rights issues connected to a policy to close the bathhouses. Given what is known of AIDS at this time I do not believe closure would have the salutory effect you perceive. Since the total situation with this epidemic is dynamic if new information is forthcoming this approach may be reconsidered.

Sincerely,

Mervyn P. Silverman, M.D., M.P.H.  
Director of Health
CALIFORNIA SUPERIOR COURT
CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT NUMBER EIGHT

PEOPLE OF THE STATE OF
CALIFORNIA ex rel. GEORGE AGNOST, )
City Attorney, THOMAS A. )
TOOMEY, JR., Acting City )
Attorney; MERVYN SILVERMAN, )
Director of Public Health, )
Plaintiffs,

vs.

IMA JEAN OWEN, JIM BOB OWEN, )
DONALD G. OWEN, KEITH D. WAYDE, )
THE ACADEMY; RUSSELL W. CULVER, )
161 SIXTH STREET, INC., a )
California corporation, )
THE ANIMALS; DENNIS LIEBELL, )
GEORGE MOGYOROSSY, GARY RICH, )
INC., THE BOOT CAMP; ROBERT D. )
WOLFE, CAROL WOLFE, GERALD I. )
GANZ, ELAINE B. GANZ, DALE S. )
BENTLEY, CLUB BATHS OF SAN )
FRANCISCO; CALIFORNIA BATHS )
CORP., INC., GLEN T. GERBER, )
ROY C. HALL and ALVIN C. )
BUCHIGNONI, Executors of the )
Estate of Robert C. Jerry, )
Deceased, STANLEY KALMEN, )
STANLEY M. FRIEDMAN, WILLIAM E. )
MCNEELEY, CLUB SAN FRANCISCO; )
WILLIAM MOHRDICK, JANET MOHRDICK, )
JACK A. WOLF, FOLSOM GULCH BOOKS; )
GARTMAN ENTERPRISES, INC., a )

NO. 830 321
PRELIMINARY INJUNCTION
California corporation, "C.I.P.
HELEN GARTMAN, FRANCES WEINTRAUB,
WARREN WEINTRAUB, WARREN S.
WEINTRAUB, RICHARD GARTMAN,
BENJAMIN GARTMAN, HARRY MITCHELL,
JACK'S TURKISH BATHS; RONALD A.
ERNST, JERRY L. LYTLE, JAGUAR
BOOK STORE; ALEXANDER E. DERENZY,
ANTONIO B. ORTEGA, ABDEL R.
DROUBI, THE SAVAGES THEATRE;
RAMIRO Y. CRUZ, SAN FRANCISCO
HEALTH CLUB; VASILIOS GLIMIDAKIS,
TEA ROOM THEATRE; HEINZ KREBS,
THE SLOT HOTEL; JOHN M. MOODY,
WILLIAM ESTEP, DAVID ANDERSON, THE
BATHS; DISCOUNT BOOKS; JACK WOLF, AL
SOLANCHE, DOES ONE through THREE
HUNDRED, inclusive, BLACK AND WHITE
CORPORATIONS ONE through FIFTY, in-
clusive, RED AND BLUE ASSOCIATIONS ONE
through FIFTY, inclusive,

Defendants.

IT IS HEREBY ORDERED that Defendants, and each of them,
their agents, employees, tenants, lessees, successors and
assigns be enjoined and restrained from renting or operating
any and all private rooms within their premises other than those
which are licensed to be operated as hotel rooms.

IT IS FURTHER ORDERED that each operator-Defendant shall
provide employees for the exclusive and sole purpose of observa-
tion of activity on their premises. The number of such employees
shall be one for every twenty patrons based on the average hourly
patronage of each establishment during the hours from seven P.M.
to closing for the three month period June through August, 1984.
Such employees shall survey the entire premises every ten minutes.
Defendants shall expel from the premises any and all patrons
observed engaging in high risk sexual activity, that is, unsafe
sex practices, as defined by the San Francisco AIDS Foundation.
Hon. Roy L. Wonder  
Judge, Superior Court  
Department 8  
481 City Hall  
San Francisco, CA 94102

Subject: People v. Owen, et al.  
(Superior Court No. 830-321)

Dear Judge Wonder:

I have reviewed the language of the Plaintiffs' proposed Modified Preliminary Injunction, and in particular the definition of "high risk sexual activity" contained in the Plaintiffs' Exhibit A. I have adopted and do endorse the language of that interim definition until such time as I have had an opportunity to confer with the San Francisco AIDS Foundation next month regarding this determination. I respectfully urge this Court to do the same.

Very truly yours,

MERVYN F. SILVERMAN  
Director of Public Health

cc: All Counsel
IT IS FURTHER ORDERED that the doors to the individual video cubicles, booths, or rooms be removed.

IT IS FURTHER ORDERED that each operator Defendant shall participate in the education of its patrons toward the prevention of high risk sexual activity including but not limited to that suggested by the San Francisco AIDS Foundation.

Should there be a violation of this preliminary injunction, Defendants, upon written notice from the Plaintiff, shall be given a five day opportunity to cure such violation. Thereafter, Plaintiff, upon written notice to the Defendant, may proceed with all remedies allowed by law.

This preliminary injunction shall be dissolved forthwith or upon notice by either party should the Director of Public Health declare the AIDS epidemic to be terminated.

A copy of this order shall be posted in each room and hallway of Defendants' establishments.

DATED: November 28, 1984

ROY L. WONDER
Judge of the Superior Court
SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT EIGHT

PEOPLE OF THE STATE OF CALIFORNIA ex rel. GEORGE AGNOST, City Attorney, et al., Plaintiffs,
vs.
IMA JEAN OWEN, et al.,
Defendants.

No. 830-321
MODIFIED PRELIMINARY INJUNCTION

IT IS HEREBY ORDERED that Defendants, and each of them, their agents, employees, tenants, lessees, successors and assigns be enjoined and restrained from renting or operating any and all private rooms within their premises other than those which are licensed to be operated as hotel rooms pursuant to Section 160 of Part III of the San Francisco Municipal Code; provided, however, that those Defendant establishments which are licensed as massage parlors pursuant to Article 27 of the San Francisco Police Code may allow the occupation of one and only one room per establishment by a licensed masseur or masseuse for the purpose of giving massages.
IT IS FURTHER ORDERED that each operator-Defendant shall provide employees (hereinafter, "monitors") for the exclusive and sole purpose of observation of activity on their premises. Such monitors shall survey the entire premises every ten minutes. The number of such monitors shall be determined according to the following formula: (a) For the Defendant bookstores, one monitor for each floor or portion of a floor primarily devoted to video/movie booth arcades, and one monitor for any other floor or portion of a floor open to patrons, other than areas primarily devoted to the sale of periodicals; (b) For the Defendant movie theatres, one monitor for any floor or portion of a floor open to patrons; and, (c) For all other Defendants, two monitors for any floor or portion of a floor open to patrons.

In the event any operator-Defendant can submit, together with a declaration under penalty of perjury, competent evidence establishing the average hourly patronage based upon records of that operator-Defendant's business during the hours from seven p.m. to closing for the three month period commencing on June 1, 1984 and ending on August 31, 1984, that operator-Defendant may provide one monitor for each twenty patrons according to the average hourly patronage of the particular establishment between the hours and dates specified above. An operator-Defendant may provide monitors according to this formula ten days after submitting the declaration and supporting documentation to the City Attorney; provided, however, that if the City Attorney objects to the declaration and moves the Court for correction,
The Director of Public Health having defined high risk sexual activity as set forth in Exhibit A hereto, IT IS FURTHER ORDERED that Defendants shall immediately expel from the premises any and all patrons observed engaging in such high risk sexual activity.

In the event that the Director of Public Health, in conjunction with the San Francisco AIDS Foundation, determines that a definition different than that set forth in Exhibit A of this order would be appropriate, he may offer such alternative to the Court for its consideration as a basis for modification of the preliminary injunction. Should the San Francisco AIDS Foundation and the Director of Public Health fail to agree on a definition, the determination of the Director of Public Health shall control.

Each operator-Defendant shall prepare a report of incidents where patrons are expelled pursuant to this order. The report shall describe generally the circumstances leading to the expulsion. Defendants are not required to obtain or report the names of individuals expelled. Copies of these reports shall be served upon the City Attorney once per week during the pendency of this preliminary injunction accompanied by a declaration under penalty of perjury attesting to their accuracy. Said declarations shall be served each Tuesday no later that four p.m. and shall cover the seven day period ending at the close of business on the immediately preceding Sunday.

IT IS FURTHER ORDERED that the doors to individual
the Court shall determine the appropriate formula for monitors. Plaintiffs and individual operator-Defendants may by stipulated order modify the number of required monitors for any Defendant establishment.

Each operator-Defendant shall prepare a report indicating the total number of patrons admitted per day and the number of patrons on the premises on the odd-numbered hours from the hour of opening until the close of business. Copies of these reports shall be served upon the City Attorney once per week during the pendency of this preliminary injunction accompanied by a declaration under penalty of perjury attesting to their accuracy. Said declarations shall be served each Tuesday no later than four p.m. and shall cover the seven day period ending at the close of business on the immediately preceding Sunday; provided, however, that these patronage reports shall not be required of any Defendant establishment that elects to base its number of monitors upon the fixed number formula, rather than upon the average hourly patronage formula.

This duty on the part of the operator-Defendants to monitor the activity of their patrons upon the premises in no way limits or supersedes the authority of the Department of Public Health or any other authorized agency or individual to conduct any and all inspections deemed necessary.
video/movie cubicles, video/movie booths or video/movie rooms be modified as follows: for individual video/movie cubicles where at least 4 feet of clear space exists in front of a booth, removal of the bottom 24 inches of the door shall satisfy the terms of this order; where less than 4 feet of clear space exists, removal of the bottom 39 inches of the door shall satisfy the terms of this order. Defendants shall ensure that no more than one person at a time enters an individual video/movie cubicle.

Should there be a violation of this preliminary injunction, Defendants, upon written notice from the Plaintiffs, shall be given a five day opportunity to cure such violation. Thereafter, Plaintiffs, upon written notice to the Defendants, may proceed with all remedies allowed by law. This five day opportunity to cure shall apply only to the first violation of any kind at any Defendant establishment.

IT IS FURTHER ORDERED that each operator-Defendant shall participate in the education of its patrons toward the prevention of high risk sexual activity including but not limited to that suggested by the San Francisco AIDS Foundation.
This preliminary injunction shall be dissolved forthwith or upon notice by either party should the Director of Public Health declare the AIDS epidemic to be terminated.

A copy of this order, including the attached Exhibit A, shall be posted in each room and hallway of the Defendants' establishments to which patrons are admitted.

DATED: December 21, 1984

[Signature]

HON. ROY L. WONDER
Judge of the Superior Court
Exhibit A

HIGH RISK SEXUAL ACTIVITY

INTERIM DEFINITION

For the purposes of this preliminary injunction, "high risk sexual activity" shall mean:

(a) The placing of the penis of one male on or into the anus or mouth of another male;

(b) The placing of the mouth of one male on the anus or penis of another male;

(c) The contact of the feces or urine of one male with any part of the body of another male; or,

(d) The entry of any part of the body of one male into the anus of another.