BAY AREA LAWYERS FOR INDIVIDUAL FREEDOM

BALIF ~~c/o Symons & Springer, 474 Gough St, Suite~~ San Francisco CA ~~94102~~
P.O. Box 1983, 94101

May 29, 1984

Editor
Bay Area Reporter
1528 - 15th Street
San Francisco, CA 94103

Re: Proposed Bathhouse Regulations

Dear Sir:

It appears that there may be some continuing confusion in your coverage of the above matter, regarding whether or not Bay Area Lawyers for Individual Freedom ("BALIF") or myself have indicated support for the regulations proposed on April 9, 1984 by Dr. Mervin Silverman.

In this regard, I am enclosing a copy of a letter I sent to Dr. Silverman on April 13th of this year, just several days after his press conference.

I trust that this letter clarifies my own position regarding these regulations. As to BALIF, your readers should be advised that the Organization has not yet taken a formal position. It is anticipated that the issue will be placed before BALIF'S membership within the next several weeks.

I would appreciate your advising your readers of the information contained in this letter, and in the enclosed letter to Dr. Silverman.

Very truly yours,

Steven A. Richter, Co-Chair
Bay Area Lawyers for Individual Freedom

SAR:dp
Enclosure

BAY AREA LAWYERS FOR INDIVIDUAL FREEDOM

BALIF [illegible]
P.O. Box 1983, San Francisco, CA 94101

May 11, 1984

George Agnost, Esq.
City Attorney
City & County of San Francisco
City Hall, Room 214
San Francisco, CA 94102

Re: <u>Proposed Bathhouse Regulations</u>

Dear Mr. Agnost:

Please recall that we spoke briefly in your office on the afternoon of April 9, 1984, after Dr. Silverman announced his intention to seek regulations prohibiting sexual activity at bathhouses and other establishments. As I indicated to you at that time, Bay Area Lawyers For Individual Freedom ("BALIF") is an organization of over 380 lesbian and gay attorneys and law students in the Bay Area. Among our primary purposes is to take action on questions of law and the administration of justice as they affect our Community.

I understand that the regulations which Dr. Silverman requested are now in the process of being drafted by your office. I further understand that they will become available for public comment within the next week or two. This letter is to specifically request that BALIF be provided with a copy of these proposed regulations at the earliest possible time. I would appreciate receiving these regulations at the following address:

Steven A. Richter, Esq.
Gottesman & Richter
235 Montgomery Street, Suite 911
San Francisco, CA 94104

Similarly, I would appreciate your advice as to whether or not a public hearing or hearings will be scheduled on these regulations, prior to their formal adoption. BALIF would also appreciate the maximum notice possible, prior to any such hearing dates.

Finally, in the event you believe our organization's assistance and/or input would be useful to your office, prior

to the adoption of these regulations, please let me know. I am confident that representatives of BALIF would be pleased to share our thoughts, concerns, and research with you.

Thank you for your anticipated cooperation and for your attention to this letter.

Very truly yours,

Steven A. Richter, Co-Chair
Bay Area Lawyers for Individual Freedom

SAR:dp

LAW OFFICES OF
GOTTESMAN & RICHTER
INCLUDING A PROFESSIONAL CORPORATION
RUSS BUILDING, SUITE 911
235 MONTGOMERY STREET
SAN FRANCISCO, CALIFORNIA 94104
(415) 982-9211

ROBERT S. GOTTESMAN
STEVEN A. RICHTER

April 13, 1984

Mervin F. Silverman, M.D.
Director
Department of Public Health
City and County of San Francisco
101 Grove Street
San Francisco, California 94102

Re: Proposed Prohibition of Sexual Activity in Gay Bathhouses and Other Public Facilities

Dear Dr. Silverman:

Please recall my participation in last Sunday evening's meeting in your office with various other community leaders. Please also recall that at the conclusion of Sunday's meeting, those of us in attendance were requested to again be present at your press conference to be held the next day at 11:00 A.M. While you made it quite clear during Sunday's meeting that you were requesting the support of all community leaders who were present, no vote of any kind was taken. Certainly, the request to be present at your press conference was never made contingent upon a declaration of support for your proposal.

I was therefore more than annoyed at hearing my name read at the beginning of your press conference, as one of the leaders present who supported the decision you announced that morning. Perhaps this was an unintentional error; nevertheless, more care should be taken in the future before an assumption is made of anyone's support for a particular decision or policy.

More importantly, I do wish to advise you that I intend to vigorously oppose the action you announced last Monday. I believe that your action will be counter-productive as a public health measure, ineffectual, and have a chilling effect on the constitutional rights of gay men and lesbians in this City. As Dr. Betty Agee, Chief of the Acute Communicative

Diseases Division of the Los Angeles County Health Department recently stated: "Bathhouses don't cause AIDS, people do, and we have no way to police the behavior of people."

Albeit that you mightily strove to make this a medical decision based upon medical research and evidence, it is my feeling that the ultimate decision you made was little more than a political compromise, based upon political considerations.

As the Co-Chair of Bay Area Lawyers for Individual Freedom (BALIF), I intend to strongly urge BALIF'S membership to take the most active role possible in educating our Community on this issue. As neither your Office nor the City Attorney's Office responded favorably to BALIF representatives' past requests for meetings with you, I must assume that your course of action has now been plainly and irrevocably stated. If I am in error in this regard, it would be helpful to hear from you as soon as possible.

Thank you for your attention to this letter.

Very truly yours,

Steven A. Richter

SAR:dp

ROBERT S. GOTTESMAN
STEVEN A. RICHTER

LAW OFFICES OF
GOTTESMAN & RICHTER
INCLUDING A PROFESSIONAL CORPORATION
RUSS BUILDING, SUITE 911
235 MONTGOMERY STREET
SAN FRANCISCO, CALIFORNIA 94104
(415) 982-9211

May 9, 1984

Andrew Alder, Esq.
59 Grandview
San Francisco, CA 94114

Gary Wood
222 Lausatt
San Francisco, CA 94117

Michael Runner
338 Missouri Street
San Francisco, CA 94107

Dear Andrew, Gary and Michael:

Enclosed please find copies of Mervin Silverman's April 9, 1984 Press Statement, a Memorandum written to Margaret C. Crosby on Bathhouse Closure and/or Regulation, and various materials from the State Department of Health Services regarding the possibility of a quarantine for people with AIDS.

I still have no word on the availability of the City Attorney's regulations. Of course, I'll keep you all posted.

Thanks for your help.

Sincerely,

Steven A. Richter

SAR:dp
Enclosures

April 9, 1984

PRESS STATEMENT

SAN FRANCISCO HAS BEEN FACED WITH ONE OF THE MOST COMPLEX HEALTH CARE PROBLEMS IN ITS HISTORY. THE TRAGIC DISEASE OF AIDS HAS HIT OUR CITY MORE SEVERELY THAN ANY OTHER IN THE UNITED STATES EXCEPT FOR NEW YORK. APPROXIMATELY ONE YEAR AGO, THE GAY COMMUNITY IN COOPERATION WITH THE DEPARTMENT OF PUBLIC HEALTH SET ABOUT TO DEVELOP A PROGRAM TO DEAL WITH THIS DISEASE THAT WAS TAKING THE LIVES OF MANY OF OUR YOUNG MEN. THIS PROGRAM HAS BECOME A MODEL FOR THE UNITED STATES. MEMBERS OF THE GAY COMMUNITY HAVE JOINED TOGETHER WITH AN UNPRECEDENTED SENSE OF PURPOSE TO BRING ABOUT SIGNIFICANT CHANGES IN RESPONSE TO THIS CRISIS.

IN CONJUNCTION WITH THE AIDS FOUNDATION, SHANTI PROJECT AND MANY CONCERNED INDIVIDUALS, WE HAVE ESTABLISHED A CONTINUUM OF SERVICES RANGING FROM EDUCATION AND INFORMATION, SCREENING, OUTPATIENT SERVICES, INPATIENT SERVICES, COUNSELING, IN-HOME SERVICES, AND MANY OTHER ACTIVITIES ALL DIRECTED TOWARDS PREVENTING, TREATING AND, HOPEFULLY, FINDING A CURE FOR AIDS. IN THE PAST YEAR ALONE, HUNDREDS OF THOUSANDS OF PIECES OF INFORMATION HAVE BEEN DISTRIBUTED TO BOTH THE GAY AND THE GENERAL COMMUNITY. HUNDREDS OF WORKSHOPS, TRAINING SESSIONS AND FORUMS HAVE BEEN PRESENTED AND, AS A RESULT OF ALL THIS ACTIVITY ALONG WITH THE MEDIA COVERAGE OF THIS EPIDEMIC, UNHEALTHY SEXUAL BEHAVIOR HAS BEEN CHANGING. THIS IS DOCUMENTED IN THE PLUMMETING FIGURES FOR OTHER SEXUALLY TRANSMITTED DISEASES IN THE GAY COMMUNITY. UNFORTUNATELY, OVER THE LAST FEW MONTHS, THESE NUMBERS HAVE FLATTENED OUT.

WHAT HAS MADE DEALING WITH THIS DISEASE SO DIFFICULT HAS BEEN THE ABSENCE OF RESEARCH-PROVEN INFORMATION ON THE EXACT IDENTITY OF THE CAUSE, THE EXACT MODE OF TRANSMISSION, AND THE ABSOLUTE CURE. THERE IS BASIC AGREEMENT, HOWEVER, AMONG RESEARCHERS AND OTHER EXPERTS IN THE FIELD INDICATING THAT AIDS IS SPREAD THROUGH BLOOD AND SEMEN, AND THAT THOSE GAY AND BISEXUAL MALES THAT INDULGE IN MULTIPLE SEXUAL ENCOUNTERS ARE AT THE HIGHEST RISK. LOCATIONS WHICH PARTICULARLY FOSTER THIS BEHAVIOR INCLUDE THE BATHHOUSES, SEX CLUBS AND THE BACK ROOMS OF CERTAIN BOOKSTORES.

THE QUESTION OF HOW TO DEAL WITH THESE FACILITIES IS ONE THAT I HAVE BEEN STRUGGLING WITH FOR OVER A YEAR. DURING THAT TIME I HAVE MET WITH HEALTH EXPERTS, BOTH LOCALLY AND NATIONALLY, IN AN ATTEMPT TO ASCERTAIN THE COURSE OF ACTION THAT WOULD RESULT IN A REDUCTION IN THE SPREAD OF AIDS. ONE MESSAGE HAS BEEN LOUD AND CLEAR - THAT CERTAIN TYPES OF SEXUAL BEHAVIOR AMONG HOMOSEXUAL AND BISEXUAL MEN WOULD HAVE TO CHANGE IF WE WERE TO BE SUCCESSFUL.

LAST WEEK I MET WITH A PANEL OF NATIONAL, STATE AND LOCAL AIDS EXPERTS AND ASKED THEM FOR THEIR RECOMMENDATIONS. AFTER SIX HOURS OF DELIBERATION CONCERNING ALL AVAILABLE OPTIONS, IT WAS THE OPINION OF THIS GROUP THAT ALTERING THE BEHAVIOR IN THESE BATHHOUSES, SEX CLUBS AND OTHER FACILITIES COULD HAVE AN IMPORTANT EFFECT ON THE INCIDENCE OF AIDS. IT WAS THE UNANIMOUS POSITION OF THIS GROUP THAT ALL SEXUAL ACTIVITY BETWEEN INDIVIDUALS BE ELIMINATED IN PUBLIC FACILITIES IN SAN FRANCISCO WHERE THE TRANSMISSION OF AIDS IS LIKELY TO OCCUR. IT WAS RECOGNIZED BY THIS GROUP OF EXPERTS THAT THIS ACTION, IN AND OF ITSELF, WOULD NOT COMPLETELY SOLVE THE PROBLEM OF THE TRANSMISSION OF AIDS, BUT THAT IN CONJUNCTION WITH THE STRONG EDUCATIONAL CAMPAIGN PRESENTLY UNDER WAY, IT WOULD HAVE A SIGNIFICANT IMPACT.

THERE ARE FEW PRECEDENTS TO THIS ACTION AND I THEREFORE CALL UPON ALL MEMBERS OF THE GAY COMMUNITY TO WORK WITH US AS WE MOVE THROUGH THESE UNCHARTED WATERS TOGETHER. MANY HAVE ALREADY TAKEN THE LEAD IN A COURAGEOUS AND CREATIVE MANNER.

I WANT TO REITERATE THAT THE ACTION WE ARE TAKING HERE TODAY, WITH THE SUPPORT OF AIDS EXPERTS AND GAY LEADERS, IS BUT ONE PART OF A PROGRAM TO REDUCE THE INCIDENCE OF AIDS. BY NO MEANS IS IT A PERFECT ANSWER OR A COMPLETE SOLUTION BUT, HOPEFULLY, WITH THE SUPPORT OF THESE INDIVIDUALS AND MANY, MANY OTHERS IN THE COMMUNITY, WE CAN MORE EFFECTIVELY BATTLE AND EVENTUALLY CONQUER, THIS DREADED DISEASE.

- - - - - - -

DONALD ABRAMS, M.D., ASSISTANT DIRECTOR AND CLINICAL INSTRUCTOR, DEPARTMENT OF MEDICINE, SAN FRANCISCO GENERAL HOSPITAL

RICHARD ANDREWS, M.D., PAST PRESIDENT, BAY AREA PHYSICIANS FOR HUMAN RIGHTS

ROBERT BOLEN, M.D., FAMILY PRACTITIONER AND DIRECTOR, BAY AREA PHYSICIANS FOR HUMAN RIGHTS

JAMES CHIN, M.D., CHIEF, INFECTIOUS DISEASE SECTION, STATE DEPARTMENT OF HEALTH SERVICES

MARCUS CONANT, M.D., CO-DIRECTOR OF KAPOSI SARCOMA CLINIC, U.C.S.F., PRESIDENT, NATIONAL AIDS AND K.S. FOUNDATION, CHAIRMAN OF CALIFORNIA STATE TASK FORCE ON AIDS

JAMES W. CURRAN, M.D., DIRECTOR OF AIDS ACTIVITY, CENTER FOR INFECTIOUS DISEASES, CENTER FOR DISEASE CONTROL, ATLANTA, GEORGIA

DEAN F. ECHENBERG, M.D., ASSISTANT DIRECTOR, BUREAU OF COMMUNICABLE DISEASE CONTROL, SAN FRANCISCO DEPARTMENT OF PUBLIC HEALTH

LEON MCKUSICK, MFCC, PROJECT DIRECTOR, U.C.S.F. AIDS BEHAVIORAL RESEARCH PROJECT

GLENN MOLYNEAUX, M.D., PRESIDENT OF THE SAN FRANCISCO MEDICAL SOCIETY

ANDREW MOSS, PH.D., ADJUNCT ASSISTANT PROFESSOR, DEPARTMENT OF EPIDEMIOLOGY AND INTERNATIONAL HEALTH, U.C.S.F.

MERLE SANDE, M.D., CHIEF OF MEDICINE, SAN FRANCISCO GENERAL HOSPITAL

PAUL VOLBERDING, M.D., DIRECTOR OF AIDS CLINIC AND CHIEF OF MEDICAL ONCOLOGY, SAN FRANCISCO GENERAL HOSPITAL

MEMORANDUM

TO: Margaret C. Crosby

FROM: Julie

DATE: April 06, 1984

RE: San Francisco Bathhouse Closure and/or Regulation

Issue:

What authority may be used by San Francisco officials to close the bathhouses?

Discussion:

It is currently unclear what provisions will be used to close San Francisco's bathhouses. In fact, one recent newspaper account speculates that officials will merely issue new regulations rather than close the establishments. See San Francisco Examiner, April 5, 1984, at A1. However, several provisions have been mentioned by various sources as providing possible authority for closure.

Article 2 of the Health Code regulates contagious diseases. Under Section 72 the Department of Public Health is empowered to quarantine "persons, houses, places and districts when in its judgment it is deemed necessary to prevent the spreading of contagious or infectious diseases." "Contagious disease" is defined as including "every disease of an infectious, contagious or pestilential nature. . .and every other disease publicly declared by the Department of Public Health to be dangerous to the public health." San Francisco, Ca., Health Code Article 2, §77 (1976).

Generally, states and local governments have broad authority, under their police powers, to establish regulations to protect the health of their citizens. See Friendship Medical Center, Ltd. v. Chicago Board of Health, 505 F.2d 1141, 1149 (7th Cir. 1974), cert. denied, 420 U.S. 997, 95 S.Ct. 1438, 43 L.Ed.2d 680 (citing Barsky v. Board of Regents, 347 U.S. 472, 74 S.Ct. 650, 98 L.Ed. 829 (1954). In particular, quarantine laws have been held valid in a number of cases. See e.g., Compagni Francaise De Navigation A Vapeur v. State Board of Health, 186 U.S. 380, 22 S.Ct. 811, 46 L.Ed. 1209 (1901); In re Halko, 246 Cal.App.2d 553, 54 Cal. Rptr. 661 (2nd Dist. 1966). Indeed Halko, a case involving a state quarantine law, the court held that the Legislature is vested with broad discretion in determining what are contagious and infectious diseases and in adopting means to prevent the spread thereof. Halko, 246 Cal.App.2d at 557. See also, People v. Johnson, 129 Cal.App.2d 1, 7, 277 P.2d 45 (4th Dist. 1954).

However, it should be noted that the application of the quarantine laws to the bathhouses presents a rather unique situation. Generally, quarantine laws are applied to contagious persons or infected buildings, although in Compagni a steamship of non-carriers was prohibited from docking in a turbuculosis-infected area. However, in the San Francisco situation it is unclear whether the patrons of any particular establishment are AIDs carriers. Moreover, the buildings themselves are not infected, contagion does not occur through introduction to the bathhouse environment, but only through sexual contact. Finally, it is not clear whether closure of the establishments would reduce the

risk of AIDs since alternative sites of contact may be available.

Therefore, if the Department determined that closure is "necessary to prevent the spreading of contagious or infectious diseases," it is possible that such a determination could be challenged as an abuse of discretion. The "necessity" is questionable when other means may be used to discourage injurious contact.

Moreover, closure raises equal protection issues. If the Department closes the bathhouses, but not private sex clubs, it is arguable that the quarantine laws are unequally applied since the same type of sexual contact occurs in both establishments. However, if there is greater frequency of contact or other circumstances increasing the chance of contracting AIDs in the bathhouses, then San Francisco might be able to meet a "rationale basis" standard. It is possible that a higher standard might apply if a fundamental right were involved. Two possibilities would be the right of privacy or freedom of association. Legal action against the City would be greatly strengthened if the higher standard applied since closure does not appear to be the "least restrictive means."

Equal protection is also implicated since the City's action will be taken against gay bathhouses and disproportionately impact on the gay community. It is arguable that there is a rationale basis for this since the health hazard involves AIDs, a disease predominantly affecting the gay community. However, again, if a strict standard test is used due to the ordinance's interference with the right of privacy and freedom of association, the City may have difficulty showing that it is using the "least restrictive means."

The City may also close the bathhouses by revoking their licenses through Section 2616 of the Police Code. Section 2601 of the Police Code requires each bathhouse to obtain a police permit for the operation of the facility. See San Francisco, Ca., Police Code, Article 26 §2601 (1976). Section 2616 further provides that the Chief of Police, after hearing, may suspend or revoke such permit "upon the representation of the Director of Public Health that such business is being managed, conducted, or maintained without regard for the public health or health of patrons or customers, or without due regard to proper sanitation or hygiene."

It may be possible to challenge this statute on the grounds of overbreadth or vagueness. However, more case law needs to be examined before I can determine whether this is a defensible position, although it is clear that vagueness is aggravated when individual constitutional freedoms are inhibited. See, NAACP v. Button, 371 U.S. 415, 9 L.Ed.2d 405. Freedom of association, equal protection and the right of privacy are also arguably infringed.

If the City decides merely to regulate the bathhouses rather than close them, Section 2633 authorizes the Chief of Police, after public hearing, to make reasonable rules and regulations to carry out the intent of the article regulating public bathhouses. See San Francisco, Ca., Police Code, Article 26 §2633.

At this point it is unclear what method the City will take in dealing with the issue. San Francisco Health Department Director Dr. Mervyn Silverman is supposed to announce a plan on Monday, April 9th. At that point, more specific analysis of the issue may be profitable.

March 21, 1984

James Chin, M.D.
Chief, Infectious Disease Section
Department of Health Services
2151 Berkeley Way
Berkeley, CA 94704

Dear Dr. Chin:

This letter is a request for documents under the California Public Records Act, Govt. Code 62-50 et seq. Pursuant to the provisions of said Act, I would like you to send me copies of all documents in your office relating in any way to the quarantine of people with AIDS.

If there is a charge for the reproduction of these documents, please call me and I'll send you a check.

Very truly yours,

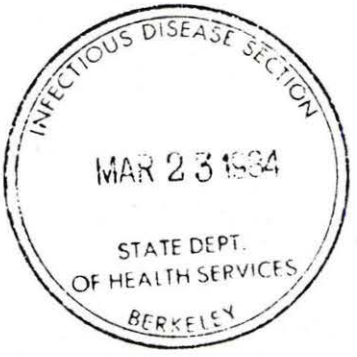
Leonard Graff

Leonard Graff
Legal Director

3/23/83

These are the only documents we have on the subject of potential recalcitrant AIDS patients

JC



NGRA
National Gay Rights Advocates, 540 Castro Street, San Francisco, CA 94114, (415) 863-3624

State of California

Department of Health Services

Memorandum

To : Ramon Perez
Office of Legal Services
Sacramento

Date : December 1, 1983

Subject: Proposed Public Health Action in Response to a Documented "Recalictrant" AIDS Patient

From : James Chin, M.D., Chief
Infectious Disease Section

As we have on a couple of occasions discussed on the phone, questions have been raised as to what public health actions can be taken in response to an AIDS patient who does not follow the recommendations of the health department.

If it can be documented that failure on the part of the AIDS patient to follow recommendations given to him by the health department will result in significant exposure of sexual contacts (who are not aware that he has AIDS) to AIDS, then we recommend the following action be taken.

1. Personal contact by local health department staff be carried out to specifically inform the patient in word and print of the need to adhere to public health recommendations such as abstaining from sexual activities which could transmit a possible AIDS agent to sexual contacts who are unaware that he has AIDS.

2. If the patient either denies that he has AIDS or is openly hostile and refuses to adhere to medical recommendations, the local health department may refer the patient to an AIDS support group and request the support group to contact and counsel the patient.

3. If the patient still denies that he has AIDS and/or refuses to adhere to recommendations, then the local health department will issue orders for his modified isolation. Such orders will detail the need to adhere to public health recommendations and also outline quarantine procedures which will be taken if he is found to be in violation of the orders.

4. If the patient ignores the modified isolation orders, then the local health department will quarantine the patient's residence by posting a placard at his residence which indicates that a person with a communicable disease which can be transmitted by intimate contact resides in the household.

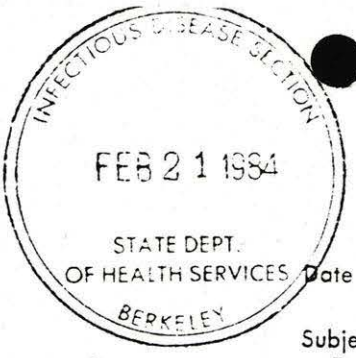
Please let me know whether the course of action which I have outlined would encounter any significant legal problems regarding confidentiality and privacy for either local health departments or the State Department of Health Services.

cc: Dr. Braff
Dr. Heindl
Dr. Smith
Dr. Conant
Dr. Acree

State of California

Department of Health Services

Memorandum



To : James Chin, M.D., Chief
Infectious Disease Section
2151 Berkeley Way, Room 708
Berkeley, CA 94704

Date : February 16, 1984

Subject: Enforcement of Public Health Recommendations to Prevent Exposure to AIDS

From : Sharon Mosley
Office of Legal Services
714 P Street, Room 1216
Sacramento, CA 95814
8/492-1186

You referred to our office a memorandum setting forth a proposed procedure for responding to actions by AIDS patients who violate recommendations of the health department and endanger other individuals by exposing them to AIDS. You have asked whether the outlined procedures present problems with respect to the rights of confidentiality and privacy.

The State and local health officers have broad authority to take such measures as may be necessary to prevent the spread of disease. Health and Safety Code §3053, 3110. More specifically the State (H&S 3051) and the health officer (H&S 3123 and 3285(d)) may require isolation (strict or modified) or quarantine for any case of contagious infectious, or communicable disease when necessary to protect the public health. These measures may include a quarantine of the person (H&S 3051) or of a place (H&S 3050).

22 Cal.Adm. §2520 states:

> "Quarantine is defined as the limitation of movement of persons or animals that have been exposed to a communicable disease for a period of time equal to the longest usual incubation period of the disease, in such manner as to prevent effective contact with those not so exposed. If the disease is one requiring quarantine of the contacts in addition to isolation of the case, the local health officer shall determine the contacts who are subject to quarantine, specify the place to which they shall be quarantined, and issue instructions accordingly. He shall insure that provisions are made for the medical observation of such contacts as frequently as necessary during the quarantine period.

22 Cal.Adm. Code §2515 states:

> "Isolation is defined as separation of infected persons from other persons, for the period of communicability in such places and under such conditions as will prevent the transmission of the infectious agent."

If the disease does not require strict isolation from all contact with other persons, the local health officer shall issue appropriate instructions of modified isolation, prescribing the isolation technique to be followed. 22 Cal.Adm. Code 2518.

Pursuant to H&S Code §3285 a health officer shall advise the district attorney of violations of isolation or quarantine orders. Violation of an isolation or quarantine order is a misdemeanor pursuant to H&S 3351.

Additionally, H&S 3353 provides that any person afflicted with any contagious, infectious or communicable disease who willfully exposes another person is guilty of a misdemeanor. Such willful exposure could, of course, occur even though no isolation or quarantine order had been issued.

Within this legal framework, if an individual has committed such a misdemeanor, we do not believe that his confidentiality or privacy rights will weigh heavily when balanced against the pursuit of measures which are determined necessary to protect the public health and prevent the spread of disease.

The procedure which you have described appears to be applicable in situations where conduct contrary to the public health interest has been documented. In this case the issuance of modified isolation orders or referral to the district attorney may be necessary earlier in your procedure. If there are reasonable grounds to believe that medical recommendations are being violated, which may jeopardize the public health, the issuance of such orders should perhaps be step 1 in your procedure rather than mere "recommendations".

Step 2 in your procedures includes referral of the patient to an AIDS support group and a request that the support group contact and counsel the patient. It is not clear whether this would involve giving the name of a patient who had not so consented to such a group. It is also unclear at what point such a referral would be made.

We would strongly caution against the release of names. Medical information obtained by the Department is confidential pursuant to Civil Code §1798.3 and shall not be disclosed except under specified circumstances (Civil Code §7198.24). Additionally, a patient's right to privacy is guaranteed pursuant to California Constitution Art.I, §I.

As we suggested above these rights are not absolute and must be weighed against the necessity of protecting the public health. Some of the considerations used to determine whether the need to disclose confidential information outweighs the privacy right would include:

1. The degree of threat to the public health;

2. Whether other reasonable alternatives are available;

3. Whether the proposed action is reasonably likely to attain the desired result.

Obviously, the release of a patient's name based upon mere speculation regarding the person's activity or because of a hostile attitude would be difficult to justify.

If the involvement of support groups is determined to be a necessary and effective means of protecting the public health in this matter, we recommend obtaining a patient's consent to the referral and avoiding any involuntary disclosure of identities unless the threat is documented and such disclosure is a reasonable and necessary means of protecting other persons from exposure to AIDS.

Also, we are concerned that step 4 cannot be justified as a necessary alternative reasonably related to the desired goal. Quarantining an AIDS patient's residence and posting a placard on the residence does not appear to respond to the problem posed. There appears to be no need for a quarantine of a place. We find no statutes or regulations which authorize the posting of a placard. (However, we note that H&S 2561, which was repealed in 1957 provided for placement of placards.) In many instances an AIDS patient may not reside in the community or locality where he is likely to be sexually active. In many cases, public exposure of this information would serve no productive purpose and would result in an unwarranted invasion of privacy.

If you would like to discuss this matter further, please do not hesitate to call.

SM:th
cc: Donald Lyman, M.D.
Kathleen Acree, M.D.

ACLU-NC Gay Rights Chapter -- AIDS RESOLUTION -- Draft -- 4/11/84

The AIDS epidemic represents a major public health crisis, the proportions of which -- its human toll, the medical challenges, the societal costs -- can scarcely be exaggerated. Concerted efforts and extensive resources are required: to conduct the scientfic research essential for discovering the cause and cure for AIDS; to disseminate to the public accurate, up-to-date medical information, and to educate in particular members of identified high-risk groups (gay men, drug addicts, recipients of blood transfusions) about the factors thought to be associate with AIDS incidence and about the measures thought likely to reduce individual susceptibility.

The widespread concern and attention focused on AIDS contribute to a realistic understanding of the disease and appreciation of the epidemic's public health threat. At the same time, however, the apparent inablity thus far to prevent or cure the disease, or to check its persistent spread, provokes mounting frustration, impatience, and the all-too-human desire to settle for -- and even to seek out -- any proposals which at least serve to convey the appearance that "something is being done" to combat AIDS. Generalized societal "AIDS anxiety" results, for example, in attempts to identify and to blame scapegoats (e.g., AIDS victims, gay sex, "life in the fast lane", etc.), and in willingness to consider and to undertake even extreme measures, however ill-considered or impractical or simplistic, and however counter-productive, costly, or even dangerous their consequences. Thus the AIDS dilemma increasingly presents controversial moral, legal and political issues, in addition to the obvious medical and public health concerns.

The enormity and urgency of the crisis cry out for creative, multi-faceted, vigorous, and above all effective responses. Similarly, all "anti-AIDS measures" -- those already initiated, currently proposed, and yet-to-be formulated -- deserve impartial, thorough, and rigorous scrutiny. The purported justification, the intended results and probable success, and the immediate impact and indirect consequences of even those measures thought to be required by considerations of public health necessity cannot escape being analyzed and evaluated in light of their social and human costs, and in terms of

Gay Rights Chapter
Draft 4/11/84
p 2

the unwarranted infringement of protected privacy, associational, and liberty interests, and other civil liberties violations, inevitably threatened by extreme and coercive government action.

The Gay Rights Chapter urges the ACLU-NC to take the lead in challenging public health measures designed to combat AIDS which pose grave threats to civil liberties interests by seeking to regulate, to restrict, or to eliminate gay men's sexual activities & the bathhouses and other institutions which provide a necessary context for that protected sexual activity,

For example, the Gay Rights Chapter urges that efforts to close or quarantine gay bathhouses and private sex clubs because of AIDS be vigorously opposed. Such action is misguided, ineffectual, and counter-productive as a public health measure (its purported rationale):

- bathhouses don't cause AIDS: exchange of bodily fluids (i.e., activity, not location) is the suspected culprit

- bathhouses represent an ideal but woefully ignored forum to conduct the educational efforts necessary to change sexual behavior and eliminate high-risk practices: the people who have lots of sex go there, and that's where to reach them.

- sexual behavior is personal, intimate, volitional; any effective modification of sexual practices to reduce risk of AIDS must be individually, intimately, volitionally achieved, and can not be legislated or coerced.

- closing the baths doesn't address the underlying, real issue: high-risk sexual practices are not confined to bathhouses (and may be declining there because of AIDS education), but occur everywhere; the real challenge is to modify attitudes toward sex and sexuality in the society at large, and within the entire gay community, not just within the baths

- closing the baths will force gay men to seek alternate places to have sex (Land's End, BV Park, Ringgold Alley, bookstores, carseats) none of which have bathhouse amenities (showers, soap) or can allow for education and behavior transformation efforts, and all of which represent far greater opportunities for increased AIDS incidence than bathhouses

promise which endangers the
basic liberties of gay men
w/o & myself added even a
colorable basis for such deprivation
As the CA Dept of Comm Disease
put it " ——— ."

Similar considerations compel the ACLU to oppose any prohibitions or significant restrictions imposed on sexual activity between or amoung consenting adults, regardless whether occurring behind the closed doors of one's own home or in the privacy of a rented room at the bathhouse. Any such regulation of protected liberty, privacy and associational rights, even when the activity occurs in commercial establishments, is impermissible absent a showing of all but irrefutable public health necessity, supported by clear and convincing, if not outright conclusive, medical and epidemiological evidence.

This letter is to correct the erroneous impression given at your 4/9 press conf. that all "community leaders" identified by you at the beginning of the conference supported your decision ~~attest to your announced regarding the~~ abol of gay sexual conduct of health & other [illegible] stats.

I was present although not on camera. I attended because I wanted to hear your statement & your responses to ?s raised by the press. I was neither asked to support your position nor did I ever indicate such support on my own. When I was "invited" to attend the conf. after ~~Particularly after having attended the firm eval meeting~~ our firm eval. meeting, I had no idea that the invitation was predicated on a "support the compromise" basis.

More imp. I must tell you that after careful agonizing I cannot support your ~~action~~ decision in any way. Albeit that you [illegible] strove to make this "med" decision on a "med" basis it is my feeling that the decision which ~~vet~~ was announced was little more than a [illegible] compromise — a com

NYCLU

New York Civil Liberties Union, 84 Fifth Avenue, New York, N.Y. 10011. Telephone (212) 924-7800

Legislative Department
Thomas B. Stoddard, Director
Alice Green
Madeline Kochen
Norma Rollins

Legislative Office
90 State Street
Albany, NY 12207
(518) 436-8594

April 10, 1984

Dorothy Ehrlich
Executive Director
American Civil Liberties Union
of Northern California
1663 Mission Street, Suite 460
San Francisco, California 94103

Dear Dorothy:

Pursuant to our telephone conversation of this afternoon, I will set forth in this letter my thoughts on the current bathhouse controversy in San Francisco.

As I indicated on the phone, I do not presume to dictate policy to the Northern California affiliate, or to insist that my view is the only view consonant with basic civil liberties principles. However, I do have strong feelings on this issue, and I welcome the opportunity to put these feelings into some coherent form for your consideration.

At the onset, I should say something about my background, on gay rights issues especially. I am, as the letterhead states, the NYCLU'S Legislative Director. I am also an Adjunct Assistant Professor of Law at New York University, where I teach a course on gay rights. I am a co-author of the ACLU handbook The Rights of Gay People, and the author of a chapter on gay rights in a new book just published entitled Lobbying for Freedom in the 1980's.

As I understand it, the San Francisco Health Department is now considering what measures, if any, it should take in regard to public bathhouses in response to the health crisis surrounding the relatively high incidence of AIDS in your city. Possible courses of action include, I believe, the following:

1. Closing down all public bathhouses;

2. Closing down only those public bathhouses frequented by gay people;

3. Prohibiting certain kinds of sexual activity in bathhouses; or

4. Prohibiting most or all forms of sexual activity by gay people in bathhouses.

(My information, which is based largely on conversations over the telephone, may not be accurate in its entirety, but I hope it is substantially so.)

It is my view that the ACLU should reject all of these alternatives as fundamentally anti-civil liberties. There are two principles at stake here: the right to sexual privacy and the right of gay people to the equal protection of the law. I believe that all four alternatives would violate the first principle, and the second, the fourth and possibly the third as well would also infringe the second principle.

The AIDS crisis is real. It threatens human life, and it appears to be growing. The medical data surrounding AIDS is still, as I understand it, inconclusive. Nevertheless, there appears to be some link between AIDS and the nature and frequency of sexual conduct. Insofar as public bathhouses promote such conduct, they may contribute to the spread of this terrible disease.

To admit that we confront a problem of grave significance -- disease-related sexual conduct at public bathhouses -- is not the same issue as whether the government should be the means by which we solve the problem. That is, it seems to me, a fundamental precept of civil liberties. Civil libertarians are naturally distrustful of the government. They recognize its inherent potential for coercion and oppression. Therefore, they turn to the state only when there is no real alternative, at least insofar as criminal or quasi-criminal prohibitions are involved.

I do not believe that anyone has made such a case in regard to public bathhouses and AIDS. There are other, non-government, non-coercive alternatives: boycotts, picket lines, forceful public education compaigns. I have seen little evidence of such efforts in San Francisco(or in New York, for that matter).

Moreover, there are very great dangers to asking the government to step into this controversy. It is a fundamental civil liberties principle that the government should not be in the business of regulating private sexual conduct between adults. If we carve out this exception to that principle, based on the exigencies of the moment, how do we prevent the state from devising other exceptions in other crises? Don't we essentially undermine the validity of the basic principle itself?

If the government should close down bathhouses, shouldn't it also close down backroom bars? If it closes down backroom bars, shouldn't it also close down pick-up bars? If it closes down pick-up bars, shouldn't it also prohibit

all forms of sexual solicitation? If it prohibits all forms of sexual solicitation, shouldn't it also outlaw all forms of sexual contact that promote disease? And so we return to the state of the law that existed in every jurisdiction in the United States up until 1962.

Historically, the government has been the greatest of all oppressors of gay men and lesbians. Until the mid-nineteenth century the penalty for consensual sodomy in most states was death. With this history, and with consensual sodomy still a crime in nearly half the states, it hardly seems appropriate to invite the state to regulate private sexual conduct where now it does not.

Let me add that I do not view alternatives three or four as any less dangerous than alternatives one and two. Indeed, in some ways they are worse, for they single out gay people and gay conduct as forbidden, while leaving unregulated most or all forms of heterosexual conduct. That strikes me as invidious discrimination at its most blatant.

Let me also state that I have an ulterior motive in writing this letter. San Francisco is being watched, by those in New York, by those in Illinois, by those in Texas and by those in every other part of the country. If San Francisco -- the "mecca of gay culture" -- chooses to close down or regulate its public bathhouses, it will give incentive to other cities throughout the United States to follow its example. If San Francisco, why not Cleveland or Wichita or Albany, New York? And in those places, I can virtually assure you, the actions taken will be far harder to keep within reasonable limits than in San Francisco. San Francisco will have given succor and encouragement to bigots and homophobes throughout the country to regulate, restrict and punish gay people.

San Francisco's actions would also affect litigation, particularly litigation to overturn existing consensual sodomy statutes. We have already seen some indication of this problem in Baker v. Wade, the case involving the constitutionality of Texas's statute outlawing "homosexual conduct." Last year, the U.S. District Court for the Northern District of Texas struck down that statute as a violation of both the privacy and the equal protection guarantees of the federal constitution. That decision has been appealed to the Fifth Circuit, and an organization called "Dallas Doctors Against AIDS" has asked for permission to file an amicus brief in support of the overturned statute. They claim, among other things, that the AIDS crisis provides ample justification for a criminal prohibition on "homosexual conduct". Just imagine how they would welcome supporting evidence from the San Francisco Department of Health!

I would be glad to discuss this matter further with you or with any members of your staff or board. (Incidentally, I have asked Gara LaMarche to send you from New York City a copy of The New York Native with several pertinent articles.)

Warm personal regards,

Thomas B. Stoddard
Legislative Director

TS:jn

4/12
Meeting
in
May
R.A.
Zern

1) draft resolution
   a) we oppose present regs
   b) we oppose any regs to close baths & regs regard consenting adults in private

2) do to ACLU Silverman

3) Memo to Members

4) Prepare Resolutions

4/9 - 3PM @ City Hall
Stopped in to City
Atty ofc - to see
Cottens or Burch &
set apptmt

- instead ushered
in to see Agnost —

- Agnost: 1) inapprop
to see City
research

2) Police Dept,
on request
of Silverman,
will promptly
rep - there
will be a
hearing for
public's comments

Prob a few who
Sh: we want
to see them —

3) New Whitehouse
Steel need
new Ord w/be
dealt w/ later

4/9 - Meeting set up for
530 Thurs @ CRP w/
Mary, Roberta & Ken

4/9 - Post conference

- called Roberta, Len & Mary. (Off #) also L. Corry
- advised

- called Collins, off #
558-3081

X - drafted ltr to City Atty / will not send

3PM - Saw Agnost in his ofc.

4/9/84 11AM / Silverman News conf
Dept Public Health

licensed Places - w/ become part of licensing procedure
- structural changes in facilities may be possible

unlicensed places (will need new legislation
/ w/ be working w/ city atty

(J) get w/ city Atty

"Only a few to still go"
But it may be producing a large # of AIDS cases

PE News Conference 4/8/84

Comments:

I speaks only for self - NOT BACAF

1) Grateful for MS' work

2) issue of bathhouse closure is largely a red herring - blown all out of proportion

Kelly Agee - As CA's Chief of Acute Communicable Disease, said in today's paper: "Bathhouses don't cause AIDS, people do, & we have NO way to police the behavior of ~~people~~."

3) The real issue is how to meaningfully expand the Health Depts Ed. campaign using the bths as I suspect & place TO ed. people I - as TO what kinds of sex are safe.

4) Apparently there will be a need for legis to implement MS Plans - time for comments & health dept TO respond by med. ed.

5) Comfort. & do not believe that the

prohib of sex - or
certain types of sex
in baths or anyplace
else - will be
successful
- country has history
of rejecting gov't
efforts to regulate
behavior - sexual,
social or o/w

- the community
w/need to do it
for themselves -
w/ the help of
bth owners -

5) Depending on what
regs and/or regs are
actually adopted may
well be substan.
legal problems
because - as DR S.
has said "this issue
must be resolved on
a med basis" & I
don't think the
Health Dept or anyone
else - can make
its case stick
= protec.
increase coordination

If reg effec,
Ban sex
its routine
mount. to
a closing

dealing
w/a
protected
class

4/8/84 5PM - 101 Grove St - to 6[45]

Silverman's Panel of Experts

Jim Curran, CDC
Jim Chin, Infec. Dis. - St/Cal
Merle Sande -
Don Abrams
Bob Bolan
Rich Andrews
Paul Volberding
Marcus Conant
Glen Molenaux SF Med. Society
Andrew Moss, epidemiologist
Leon McKusick

- met Tues 4/3, 5-11 PM

Their unan. opinion:
1) no closure
2) but permit no activ. that can transmit AIDS

community w/ have enough time to respond {
"what comes down legally" w/be from Health dept - not police - "they won't touch it"
}

what won't be said to press tomorrow is - a) masturbation w/be OK

Health inspectors w/ do all inspections

Legislation w/ be needed, & w/ go thru Bd of Supes -

w/not call for "public health emergency"

Plan w/not affect st. bathhouses & gay cult. go to eg. grand theatrical N.Ys. lock door, & do what they want -

?s → gay "hotels" (borderline)

but does intend to open up all ~~public~~ private rooms -

No privacy

People using baths w/not be victims - owners w/have to police their facilities or they will be held legally responsible

Press conf tomorrow @ 11AM

Educational campaign - w/be headed by John Hartman -

Klemm says we'll a) change the media a little & emph. that gay community has overwhelmingly complied w/ move to avoid bathhouses & b) be word limit for to bathhouses, but to anywhere that the activity occurs -

? Video OK for ed. but will they refuse to let bathhouse show such films

↳ Key is to emph that ed. campaign → changes in bathhouse req. is only a part → people must take responsibility for their own lives

→ urge compliance by community

4/6 - Mary D. calls -

Don Collins 558 3081
Buck Delventhal

in Atty Atty Ofc. —

have done the work on bathhouse issue

Mary knows Buck - decent fellow -

Jules & R should try & get up meeting w them & us & discuss -

called Collins / Mary

re Bathouse Resolution

- choice: √ as many as you want

- committee exists
- will recommend to Bd
- if anyone wants talk to Jo -

1) ad hoc committee given status

2) Jo position paper to Bd & members

3) make recs to Bd on possible actions we could take

4) Poll members

Page removed for Privacy

Dale Lawrence at CDC

gamma interferon

Retro Virus
LVA Virus
Lymphokine
RNA VIRUS

4/5/84
3[45] PM

Meeting at MRI
Hamilton, Algar, SR, Joe
Bob Schmidt

80 C
not
in
your
genes

4/5/84 AIDS / BALIE

1. Bob's role, if any on bathhouse 'issue' quarantine
 └ NO particular pol. views

2. Legal issues + ramifications

3. Pol [illegible] considerations

1. Mary Dunlap – issue of BALIE's respect
 – review of Atty Opinion
 attack the motion of any step is better than no step
 ⇒ Boblen's med data showing sexual behavior patterns have chgd – gonorrhea declining, etc –

1) the state of
medi [illegible]
2) bathhouses can
be useful
3) better regs
4) only 70 % in SF
are gay - so
bathhouses must
be closed too
5) need for med.
education
6) inverse condemnation

Gary Wood
Michael Rimmer
Gordon Thompson
Andrew Alder
Mary w/chair

Mary
587 8320

Wm
863626

local [illegible]
After 3 pm
1 Sat

BAY AREA LAWYERS FOR INDIVIDUAL FREEDOM

July 19, 1984

Dear BALIF Member:

On Tuesday, July 31, 1984 a special Board of Directors meeting will be held at 7:00 P.M. at the offices of Howard, Rice, et al, Embarcadero Three, Suite 700. All BALIF members who are concerned about the issue of bathhouse regulation are urged to attend. At that meeting, the Board of Directors will decide what position it will take on behalf of the organization with regard to the issue of regulation.

Attached for your examination is the outline of a "white paper" which will be presented to the members of the Health and Safety Subcommittee of the Board of Supervisors, the subcommittee which is considering whether or not to change jurisdiction (from the police department to the health department) over the licensing and regulation of the bathhouses. At a June 14 hearing of that subcommittee, Roberta Achtenberg, testifying for BALIF, asked that the Board of Supervisors not take action to change jurisdiction until members of the lesbian and gay community had an opportunity to examine the civil rights/civil liberties implications of this action, and the potential political impact that severe regulation might have on the sodomy law reform efforts taking place around the country. The ACLU Gay Rights Chapter, the American Association for Personal Privacy and BALIF agreed to look into this and issue a report of their findings. At the special Board meeting, additional information will be available regarding the precise content of the report. If you are concerned and want to influence the decision to be made by the Board of Directors of BALIF regarding this important community issue, please make it a point to attend.

If you cannot attend, please send your comments and suggestions to BALIF, P.O. Box 1983, San Francisco, CA 94101. The Board will read all comments submitted before making a decision. The next issue of the newsletter will carry a report on this issue.

BOARD OF DIRECTORS

D R A F T

WHITE PAPER OUTLINE

SUBJECT: "AIDS" AND THE REGULATION OF BATHHOUSES

I. Statement of Purpose
  A. Objectives of Report
    1. Discuss Implications of Subject
      (a) Medical and Scientific
      (b) Legal and Constitutional
      (c) Political and Sociological
      (d) Psychological and Psychiatric
      (e) Theological and Philosophical
      (f) Historical
      (g) Statistical
      (h) Human
      (i) Local and National
    2. Provide Inter-Disciplinary Approach
      (a) Integrity of Legislative Process
      (b) Adequate Input for Informed Decision
    3. Provide Wide Participation
      (a) Accurate Information
      (b) Expertise
      (c) Decision-Making Process Open
        (i) Persons Immediately Affected
        (ii) Persons Potentially Affected
  B. Approach of Report
    1. Gather and Examine Existing Information
      (a) Published Reports
      (b) Unpublished/Unfinished Studies
      (c) Expert Opinion
      (d) Public Opinion
    2. Present Information in Circumspect Context
    3. Present Recommendations
  C. Primary and Secondary Resources and Authorities - Index
  D. Contributors and Participants - Index
II. Summary: Overview of Issues and Conclusions
III. Background Information
  A. Medical and Scientific
    1. History of the Disease
    2. Statistical Information
      (a) The Disease
      (b) The Patients
      (c) Statistical and Methodological Integrity
    3. Causes - Facts and Speculation
    4. Treatment and Cure
    5. Medical Crises in History - Analogies
  B. Personal Privacy Law and Civil Liberties
    1. History
      (a) Persecution and Discrimination
        (i) Criminal Laws - The Foundation
        (ii) Other Governmental Action
      (b) Legislative Solutions

(c) Judicial Solutions
(d) Administrative and Executive Solutions
2. Local, State, and National Perspectives
C. Professional History
1. Psychological and Psychiatric Approach
2. Political and Sociological Approach
3. Theological and Philosophical Approach
D. Public Health Education
1. Role
2. Theories
3. Experience
IV. Responsibility
A. Role of Government
1. Research
2. Public Education
(a) Accurate Statistical Information
(b) Accurate Medical and Scientific Information
(c) Proposals for Solutions
3. Preservation of Public Health and Personal Liberty
B. Role of Business and Professional Community
1. Partner with Government
2. Responsible Action
C. Role of Individuals
1. Self-Education
2. Responsible Action
3. Cost of Liberty: Eternal Vigilance
D. Balancing of Interests
1. Medical Priorities
2. Civil Liberties
3. Constitutional Considerations
4. Misconceptions, Myths, and Stereotypes
5. Precedents
(a) Legal and Constitutional
(b) Historical
V. The Specific Legislation
A. Britt Proposal
B. Britt Amendment
C. Proposed Regulations
D. Considerations
1. Factual Basis
2. Legal and Constitutional Justification
3. National Perspective
4. Historical Perspective
VI. Recommendations
A. A Circumspect Multi-Disciplinary Approach
B. Prognosis
VII. Conclusion

BAY AREA LAWYERS FOR INDIVIDUAL FREEDOM

BALIF c/o Starnes & Springs, 414 Gough St. Suite 4, San Francisco CA 94102

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5/3 Parnassus

Civil Code § 56

1. Medical release
   written
   describing requester + purpose
   signed by patient
   type of med. info.
   purpose of disclosure
   length of validity
   advise patient of rt to receive
   copy of authorization

out of facility

2. Ct. order or subpoena
3. peer review
4. medical research if approved
   pursuant to "Protection of
   Human Subjects" Act
   45 CFR § 46.101 et seq.

w/i facility

no info which ind permit
identification of subject
then cannot be redisclosed except
w/ written auth. or
ct. order or subpoena, etc.

Certain info to next of kin
upon hosp. admission
name . . . sex
reason for admission
gen. nature of injuries.

— Employer

Penalties - comp. damages
$3000 civil damages
$1000 attys fees

New York prisoner case
La Rocca
120 Misc. 2d 697 } 1984
467 NYS 2d 392 } or 1985

→ prisoners refusing to treat pwa in prison

467 So 2d 392

for Sentencing

AIDS: a Legal Epidemic
17 Akron LR 717 (Spr 1984)

AIDS: A New Reason to Regulate?
11 J. of Const. L. 315 (1984)

Judge Baer wants out

Call Steve Pesci

[redacted]

re: Dan [redacted] case

employee Washington Township Hosp., Fremont

12/82 - node biopsy - neg for cancer, suspect for CMV.

July, 1983 - Dr. called Foster - this is an invasion of your privacy - but want Dr. saying no AIDS. Got memo from his doctor.

Hosp. had been talking about this

Foster learned that several employees, etc. had been talking

Claim filed - special relationship

suit filed in approp.

Foster seeks psychiatric treatment - distressed, a little paranoid.

Suit: C/A: Int'l inf. of emo distress
vt of privacy
slander or CCP §6
statutory CC § 56 -
medical records
authorization abuse

Did not sue for prof. negl.:

malpractice c/a not appropriate

Ant. 2 sets.
Thr int – ct on 2/11
Demurrer – 2/26 on Amended Comp.
Depos. set – initial contact doctor Dan's depo.

Don't see big $. – warned Dan costs may exceed recovery.
50% contingent fee.

Didn't allege civil rts. violation.

Q: workers comp cover?
doesn't insulate attorney from outrageous conduct.

I. AIDS Diagnosis guidelines
AIDS statistics

II. Employment cases
Wall Street Journal article
S.F. Examiner

III. Medical evidence re: contagion

IV. Legal theories - good summary - Leonard article
- Contract - at will (Labor C § 2922)
- Implied K
- Bad faith (Tort theory / summary)
- AIDS / antibody legislation - AB 401, 488 (1972) H & S Code § 199.20 et seq.
- right to privacy - Hill v. Davis
- ~~Gov. C §~~
- Labor C. §§ 1101, 1102 - Gay Law Students v. PT&T

Schlei & Grossman, Emp. Disc.

34 Hast. L. J. 1055,

Gov C § 12926 (f)
121 CA3 791 - perceived med. condition

Good job, ~~good~~ specifically
note the circumstances!

Alcoser v SF HRC
120 CA3d 994 - preemption

ALICE PHILIPSON
ATTORNEY AT LAW
2324 Spaulding Avenue
Berkeley, California 94703
(415)465-6264

January 16, 1985

Gary Woods
WOODS & McNAMARA
1915½ Divisadero St.
San Francisco CA 94115

re: BALIF AIDS panel

Dear Gary:

I am closing my file on Mr. [redacted] an AIDS referal from you and the AIDS Foundation. For your records, this was a case involving potential wrongful termination. Mr. [redacted] had had "excessive" absenteeism and tardiness due to his illness. His employer also was unhappy with the quality of his work. Although his employer knew Mr. [redacted] was receiving chemotherapy, his supervisor did not know Mr. [redacted] had AIDS. After reviewing the client's documentation and the recent cases I felt positive something could be worked out to avoid termination.

Contact was made with the employers legal counsel. Reference was made to Auston v Kingbury Cotton Oil Co. (1984) Calif. F.E.H.C. and the bad publicity which would result from termination of an AIDS employee. After much discussion with counsel, the client's doctor, personnel supervisors, and my client; a solution was reached avoiding immediate termination. Disability leave and supportive counseling are now available to Mr. [redacted]. His employer will carefully document his case in ~~arbitration~~ anticipation of litigation, and Mr. [redacted] will remedy as much as possible his problems in order to meet legitimate employer concerns.

This case took approximately six (6) hours to complete at a cost to my office of approximately $615.00. Services were donated, with no charge to Mr. [redacted]

I hope you find this information useful. I look forward to further involvement with the AIDS panel.

Very truly yours;

Alice Philipson

AP/cf
cc: [redacted] [redacted]

AIDS SUITS

Continued From Page Three

Gradison said he hopes White, who contracted AIDS after a blood transfusion, will have a chance to benefit from his precedent-setting lawsuit, but he predicts it will be at least two months before the case even goes to trial.

"One of the things you have to realize with Ryan is he only has so many days left on this earth," Gradison said. "Ryan is missing an opportunity here. He does not want to be ostracized for his last days on earth."

Dr. Richard Restak, a Washington D.C. neurologist studying AIDS, said not enough is known about the disease nor how it spreads for judges to make lasting decisions about legal rights of its victims.

"This is not a civil rights issue. This is a medical issue," he said, noting that AIDS may be transmitted by saliva, teardrops or blood.

Spitzer said care must be taken to ensure fear of AIDS does not become a back-door way of discriminating against homosexuals. Most AIDS victims are homosexual men or intravenous drug users.

"Probably everybody would agree that it's a question of where to draw the line," Spitzer said.

National Roundup

Growing Number of Lawsuits over the Legal Rights of AIDS Victims

By ANDREA NEAL

In Kokomo, Ind., the mother of AIDS victim Ryan White sued the local school board when it forced her son to receive instruction by a telephone hookup to the classroom. In New York City, thousands of parents kept their kids home from school after a judge refused to bar an AIDS-infected classmate from enrolling.

The cases highlight the growing dilemma over the legal rights of AIDS victims — a dilemma for schools, employers, landlords and health care providers.

"It's a medical issue which is going to be decided by the courts: Whether AIDS should be treated legally more like measles or more like a handicap," said Arthur Spitzer, an attorney for the American Civil Liberties Union in Washington.

A Labor Department spokesman said it is informal policy to consider AIDS victims covered under the Vocational Rehabilitation Act of 1973, which means federally-funded programs or employers with government contracts cannot discriminate against them.

But communities across the country have adopted divergent policies for dealing with AIDS, prompting lawsuits in at least four states and passage of regulations in Los Angeles and West Hollywood prohibiting AIDS discrimination in schools, jobs and public accommodations.

Keith O'Connor, director of the Lesbian-Gay Discrimination Unit for New York City's Commission on Human Rights, said in the 12-month period ending June 30, 77 complaints were filed by people with AIDS.

Most, he said, involved employment and were dispensed of in minutes with a call to the offender. "All you have to do is say, 'This is illegal,' " O'Connor said. "In an AIDS case, when the people fired them because they had AIDS, you say 'You can't do that.' "

Elsewhere, lawsuits have been filed on behalf of AIDS victims who believe they also are victims of discrimination:

□ A district court in Fort Lauderdale, Fla., is considering whether the government acted illegally when it fired a Broward County budget analyst with AIDS. The employee, Todd Shuttleworth, is seeking $5 million in damages.

□ The New Jersey attorney general sued two local school districts when they refused to admit three students, two with AIDS and one who had been exposed to it, in violation of state guidelines. One of the school boards then passed a resolution designating AIDS an infectious disease, thus giving teachers the right to keep its victims out of classes.

□ A New York state doctor who treats AIDS patients sued the owners of his office building when they sent him an eviction notice. The case was settled out of court and the doctor got to renew his lease.

The dispute over whether AIDS is a contagious disease or a disability eventually may be settled in U.S. District Court in Indianapolis where lawyers for Ryan White filed suit to force Howard County school officials to admit him. The school has said it will not do so unless ordered by a judge.

Michael Gradison, executive director of the Indiana Civil Liberties Union, said White, a 13-year-old with hemophilia, is being discriminated against.

"The medical authorities have been unanimous in saying Ryan poses no peril to teachers or students. It is not contagious like chicken pox," Gradison said. "Thus it becomes a civil rights question. He's being discriminated against by school authorities on the basis of AIDS."

But the legal system is slow and the lifespan of AIDS victims is short, which means some of the cases will be moot before they are settled.

See AIDS SUITS page 10

In the Classroom

Doctor Challenges AIDS Decision

By BARBARA GOLDBERG

NEW YORK *(UPI)* — A pediatrician who has treated children with acquired immune deficiency syndrome testified in court Friday that he disagreed with the city's decision to allow an AIDS-stricken 7-year-old girl to attend classes.

Dr. Arye Rubenstein also said local school officials should know the identity of the student.

"Somebody should know in the school system when there is a child with AIDS (in school)," Rubenstein told a crowded courtroom. "That is something that is a major concern for me."

During the doctor's testimony, about 50 parents with pre-schoolers in tow walked outside the state Supreme Court to protest the city's decision to allow the child afflicted with AIDS to attend classes.

On Thursday night, the 32 local school boards voted to join the lawsuit against the city following what they called schools Chancellor Nathan Quinones' failure to answer adequately questions concerning the transmission of the deadly virus, said Philip Kaplin, president of the Schools Boards Association.

During his testimony, Dr. Rubenstein said youngsters with the deadly disease may appear healthy and physically robust, but their immune systems continue to deteroriate.

The doctor said he examined 128 city youngsters known to have AIDS, and although some appeared to be in perfect health, lab tests showed that in each case the child's immune system was deterioriating.

"My opinion of being optimistic is changing to pessimistic ... as time progresses. In some of the children we thought were stable, suddenly there was a change in their course for the worse," Rubenstein said. "We lost children who looked to us quite healthy at the time."

Name our Humor Column, Win a Lunch with Lois

Who says there is no such thing as a free lunch?

For a song — or rather, a title — for Lois Meltzer's humor column you can win an all-expenses-paid lunch with Lois herself.

And if your winning title is better than average, we'll even include our resident humor-in-business consultant Malcolm Kushner to make it a three-some.

If it's REALLY a great name, one of our editors will make it a table for four.... On the other hand, maybe you'd rather just win lunch with Lois.

THE RULES:

□ Entries must be received by *The Recorder* by Sept. 30, 1985. You can enter as many times as your heart desires.

□ All entries become property of *The Recorder*, and the editors will choose the winning name. We reserve the right to use or — not use —the winning name.

□ You can't sue us for any reason connected with your entry.

□ Mail entries to: Monica Bay, News Editor, The Recorder, 99 S. Van Ness, San Francisco, CA 94103. No telephone calls please.

Gary

Les Dugan - ref'd by Holley Smith of AIDS/mod.

Reed v. King CCA 1983 - 3rd dist

re: disclosure of murder affecting mkt value - held should be disclosed.

Not an isolated case - these disclosures are becoming more common in real estate community here.

Called again @ 4:30 / WC Back