AIDS, TESTING, AND PRIVACY: AN ANALYSIS OF CASE HISTORIES

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The following discussion of confidentiality and the right to privacy in the context of Human Immunodeficiency Virus antibody testing is based on the experience of attorneys serving with the AIDS Legal Referral Panel of Bay Area Lawyers for Individual Freedom in San Francisco, California. This panel represents persons with AIDS and AIDS Related Complex and persons suspected to be at risk of infection. The Panel's nearly two hundred attorneys have represented over two thousand clients since 1984 in a variety of legal matters ranging from the drafting of estate documents to representation in employment and insurance discrimination matters.

This discussion is co-authored by attorneys Alice Philipson of Berkeley, California, and Gary James Wood of San Francisco, California, who presently serve as co-chairs of the AIDS Legal Referral Panel.

INTRODUCTION

Over the past several years, numerous American citizens and institutions have called for increased HIV antibody testing as a first response to the AIDS epidemic. See, e. g., Secretary of Defense Memorandum: Policy on Identification, Surveillance, and Disposition of Military Personnel Infected with Human T-Lymphotropic Virus Type III, 10/24/85; Assistant Secretary of Defense Memorandum: HTLV-III Testing, 1/8/86; American Council of Life Insurance White Paper, The Acquired Immunodeficiency Syndrome & HTLV-III

Antibody Testing, 11/25/85; California's Proposition No. 64, November, 1986 Election; U. S. Dept. of State, Dept. Notice, "AIDS Testing", 12/1/86; U. S. Dept. of Labor Briefing Paper: Job Corps AIDS Policy, 2/6/87. With the exception of a handful of particularly punitive proposals (like California's Prop. 64 cited above), these calls stress the need for test result confidentiality for test subjects. It is the conclusion of the instant discussion that, based on the experience of California citizens, this necessary confidentiality cannot be practically guaranteed, and, therefore, further mandatory testing is anathema to the rights of American citizens.

Confidentiality Before AIDS

Prior to the onset of the AIDS epidemic in California, the State had enacted a wide range of laws protecting its citizens from unfair discrimination in employment, housing, public accommodations, and privacy. Of particular importance are the State's Fair Employment and Housing Act (Cal. Gov. C. Secs. 12900 et seq.), which prohibits discrimination based on a handicap or medical condition, and the State's Insurance Code (Cal. Ins. C. Secs. 910 et seq.), which prohibits discrimination against classes of insured citizens if the discrimination has no adequate basis in standard underwriting and statistical methods. Additionally, the Unruh Civil Rights Act prohibits discrimination against disabled and homosexual persons in the use of public accommodations.

Tangentially, by the time the AIDS epidemic had struck California, its Labor Code Sections 1101 and 1102 had been interpreted by the California Supreme Court to protect homosexuals "out of the closet" in furthering gay rights issues in their places of employment. Gay Law Students Association v. Pacific Telephone and Telegraph, 24 Cal. 3d 809, 15 Cal. Rptr. 42, 598 P. 2d 452 (1979). Similarly, several cities, including San Francisco, Los Angeles, and West Hollywood, had enacted ordinances prohibiting discrimination against homosexuals.

Finally, in 1972, the citizens of the State had enacted by ballot initiative a constitutional amendment which secured for them a blanket right to privacy much broader than that of the U. S. Constitution. Cal. Const., Art. 1, Sec. 1. By 1980, this constitutional provision had been judicially interpreted to forbid the unauthorized disclosure of a student's grades, Porten v. University of San Francisco, 64 Cal. App. 3d 825, 134 Cal. Rptr. 839 (1976); to prohibit covert police surveillance in a university classroom, White v. Davis, 13 Cal. 3d 757, 533 P. 2d 222, 120 Cal. Rptr. 94 (1975); to enjoin the enforcement of a housing regulation which effectively prohibited an extended family from residing under the same roof, Atkisson v. Kern County Housing Authority, 59 Cal. App. 3d 89, 130 Cal. Rptr. 375 (1976); and to prevent a private party from sending mail to a wife disclosing her husband's past sexual history, Kinsey v.

Macur, 107 Cal. App. 3d 265, 165 Cal. Rptr. 609 (1980).

By 1985, this right to privacy was extended to prohibit the unauthorized disclosure of medical information. Aden v. Younger, 57 Cal. App. 3d 662, 129 Cal. Rptr. 535 (1976); Div. of Med. Qual. v. Gherardini, 93 Cal. App. 3d 669, 156 Cal. Rptr. 55 (1979); Wood v. Superior Court, 166 Cal. App. 3d 1138, 212 Cal. Rptr. 811 (1985). Additionally, in furtherance of this interest in maintaining the privacy of medical records, the California legislature enacted the Confidentiality of Medical Information Act in 1981. Cal. Civ. C. Section 56 et seq.

As of this writing, the combination of these laws concerning medical privacy require that no medical information be released by anyone (including medical care providers) without a detailed statutory authorization from the patient, a proper subpoena or other order, a legal search warrant, or appropriate legal authority. Cal. Civ. C. Secs. 56.10, 56.11. Violations of the Confidentiality of Medical Information Act are punishable as misdemeanors and can subject the violating party to payment of compensatory damages, punitive damages not to exceed $3000, attorneys' fees not to exceed $1000, and the costs of any ensuing litigation. Cal. Civ. C. Secs. 56.35, 56.36.

AIDS and the New Regulations

Despite the panoply of laws which appeared to protect California's citizens in the trust and privacy they reposed

in their medical care, their homes, and their jobs, the AIDS epidemic brought to California a new hysteria which threatened this trust. By 1984 and 1985, the AIDS epidemic was most often associated with male homosexuals because of its epidemiological pattern at that time so the hysteria was also coupled with otherwise latent homophobia in the State.

The medical community, through both epidemiological studies and followup of selected cases, and the Centers for Disease Control eventually determined that AIDS could not be spread by the sort of casual contact associated with sharing door handles, drinking glasses, hugging, or preparing food. see, e.g., Saviteer et al., "HTLV-III Exposure During Cardiopulmonary Resuscitation", 25 New England Journal of Medicine 1606 (1985); Ho, et al., "Infrequency of Isolation of HTLV-III Virus from Saliva in AIDS," 25 New England Journal of Medicine 1606 (1985); "Summary: Recommendations for Preventing Transmission of Infection with Human T-Lymphotropic Virus Type III/Lymphadenopathy-Associated Virus in the Workplace," 34 MMWR 681 (November 15, 1985); "Heterosexual Transmission of Human T-Lymphotropic Virus Type III/Lymphadenopathy-Associated Virus," 34 MMWR 517 (August 30, 1985). Nonetheless, even in San Francisco, where well-funded and effective groups like the Business Leadership Task Force, the San Francisco AIDS Foundation, and even the Labor and Employment Section of the State Bar, had published information that AIDS was not a concern in the marketplace, AIDS hysteria had taken hold.

San Francisco's Department of Public Health reported that a man exhibiting Kaposi's sarcoma lesions was thrown off a public bus. Several local funeral homes refused to embalm the bodies of AIDS victims. Even some gay businessmen fired employees they suspected of having AIDS. Several insurance companies were redlining by zip code to refuse the issuance of health, disability, and life policies to single men with no dependents. Even a group of nurses at San Francisco General Hospital, which treated a large number of persons with AIDS and AIDS Related Complex, filed a health and safety complaint against the hospital's policy concerning the required treatment of AIDS patients. Banaag, et. al., v. City and County of San Francisco, Labor Commissioner Case No. 11-17001-4 (1985).

These problems were of grave concern to California legislators when the HTLV-III antibody test was licensed for use to screen blood and to detect exposure to the virus. State Rep. Art Agnos (San Francisco), who sponsored California's AIDS testing bill, and his colleagues very carefully considered the competing demands of their bill. On the one hand, the bill had to work toward the purification of the State's blood supply and toward the education of those people who were at risk of exposure to the deadly virus. On the other hand, the people tested for the HTLV-III virus (now Human Immuno-deficiency Virus, or "HIV") had to be assured of their confidentiality in the test results, or the risk of

losing their jobs, homes, and insurance would persuade them to refuse the donation of blood or the necessary testing.

By urgency bill effective April 4, 1985, the California legislature adopted the California AIDS Program, at Cal. Health and Safety Code Sections 199 et seq.. The program calls for the funding of pilot AIDS education programs, of an AIDS Mental Health Project, of needs assessment studies, and of alternative test sites at which voluntary antibody testing are provided.

To encourage voluntary participation by those at risk and to facilitate the screening of blood donations, the California legislature also passed in tandem the Acquired Immune Deficiency Syndrome Research Confidentiality Act and the Mandated Blood Testing and Confidentiality to Protect Public Health Act, at Cal. Health and Safety Code Secs. 119.20 et seq. and 199.30 et seq. These latter statutes are to insure that any person tested for the probable causative agent of AIDS is secure in the confidentiality of the test. Cal. H & S C. Secs. 119.21, 199.30. This confidentiality applies to records from research institutions, blood banks, alternative test sites, and medical care providers. No such records can be disclosed if they provide identifying characteristics of the person to whom the test results apply.

In cases where tests results are improperly disclosed, the acts provide for civil penalties, including statutory compensatory, punitive, and cost awards, and for criminal penalties of a one-year prison term and a fine not to exceed

$10,000 or both. Cal. H & S C. Secs. 119.21, 199.37. These acts do, however, allow the disclosure of anonymous statistical test results to the State's Department of Public Health, to the Centers for Disease Control, and to research projects for epidemiological purposes, when such disclosure is authorized by tne tested subject. Cal. H & S C. Secs. 119.21 (j), 199.23 (b), 199.36, 199.39.

These statutes also forbid the use of antibody test results in determining employability or insurability, even when the results are negligently or intentionally disclosed in violation of the statutes. Cal. H & S C. Sec. 119.21(f). The clear purpose of this provision, as drafted and lobbied by representatives from the offices of State Sen. Milton Marks (San Francisco), Mobilization Against AIDS, the San Francisco AIDS Foundation, and San Francisco's AIDS Community Partnership, is to encourage AIDS testing on the assurance that the test results will not affect a subject's job or insurance. Such confidential testing encourages citizens to participate in epidemiological studies, in insuring the purity of the blood supply, and in educating themselves about their exposure to the AIDS virus.

Because the threat of the virus in urban communities has created significant social, economic, and health risks, a continuing number of local governments in California, including West Hollywood, San Francisco, Los Angeles, Berkeley, Oakland, Hayward, Santa Rosa County, Riverside

County, and San Luis Obispo County have enacted legislation which prohibits discrimination against persons with AIDS, persons with AIDS Related Complex, and persons who are suspected to be at risk from discrimination in employment, housing, insurance, and the use of public facilities and accommodations. See e.g., San Francisco Ord. No. 499-85, Art. 38, Secs. 3801 et seq.; Berkeley's Ordinance Prohibiting Discrimination on the Basis of Acquired Immune Deficiency Syndrome (AIDS) and Related Conditions; and Los Angeles City Ord. No. 160289, L. A. City Mun. C. Art. 5.8, Sec. 45-80 et seq.. Much of this local legislation has funded local human rights commissions to monitor and mediate violations, which are subject to civil sanctions. Nonetheless, even this body of local legislation has not been enough to stem the tide of AIDS hysteria.

Although statisics from the Department of Public Health in San Francisco clearly indicate that the AIDS education programs in communities at risk and the antibody testing programs described above have significantly reduced the spread of AIDS in the targeted populations, the associated confidentiality and disrimination regulations have had little impact on the privacy risks associated with the testing programs. Despite the threat of civil and criminal penalties to violators of constitutional, legislative, and local regulations concerning AIDS, many employers, insurance companies, real estate agencies, attorneys, and even health care providers in San Francisco have continued to breach the

privacy associated with HIV testing and AIDS-related diagnoses, discriminating against the victims of the AIDS virus.

To illustrate this problem, in 1986 the AIDS Legal Referral Panel of Bay Area Lawyers for Individual Freedom, whose attorneys represent the victims of the AIDS epidemic in San Francisco's Bay Area, posted statistics which indicated that, of its 1035 clients during that year, 8.5% complained of employment discrimination, 6.9% complained of housing discrimination, and 8.2% complained of insurance discrimination. To fully appreciate these statistics, the reader should understand that approximately 60% of the matters handled by the Panel involved the execution of wills and durable powers of attorney; that the discrimination complaints had nearly doubled pro rata over the year from January to December; and that other San Francisco agencies, like its Human Rights Commission, National Gay Rights Advocates, the Legal Aid Society's AIDS and Employment Project, and the Lesbian Rights Project had handled still other matters not represented in these statistics. By the end of 1986 then, it was clear that AIDS discrimination in San Francisco, a city noted for its diverse and liberal environment, had not been curtailed, despite the efforts of well-funded and thorough education programs and the protections provided by serious and thoughtful legislation.

Throughout the period from late 1983, when the AIDS

Legal Referral Panel was formed, through early 1987, when the Centers for Disease Control called for a discussion of mandatory HIV testing, the Panel was devoting a significant portion of its time and resources to eradicating the effects of AIDS disclosures allegedly protected by California legislation. Based on this experience, attorneys from the AIDS Panel have concluded that confidentiality statutes are ineffective, that they should not encourage participation in epidemiological research, and that, because they encourage reliance on unfounded promises, they result in more harm than good to citizens at risk. Therefore, any statute or guideline which encourages or requires HIV antibody testing without well-publicized and severe criminal and civil penalties securing absolute anonymity will more seriously encourage the spread of AIDS than it will prevent it. Such a statute or guideline is thus detrimental to both public health policy and individual privacy rights.

CASE HISTORIES

While California and San Francisco law have provided its citizens with the best regulations by which epidemiological data, medical research, and privacy about AIDS can all be preserved, San Francisco has nonetheless seen widespread breaches of privacy and discrimination linked to the AIDS epidemic. Because of this experience, it is the position of the AIDS Legal Referral Panel that mandatory HIV antibody testing will only subject American citizens, healthy

or sick, to discrimination and breaches of their privacy despite legislative or regulatory intentions to the contrary.

Tne following case histories are exemplary of the types of discrimination and inquiry to which tested citizens are subject. The case histories, though factually correct, do not disclose the full names of the parties involved because the test subjects requested anonymity, the lawsuits arising from the facts have not been filed as yet, or the settlement agreements disposing of the matters require anonymity of the parties. It is the contention of the AIDS Legal Referral Panel that disclosure of the names of parties in this discussion would be a further breach of the confidentiality of the clients and would therefore subject the Panel or its attorneys to claims that the attorneys breached the very confidentiality legislation they were requested to enforce.

The following scenarios arise from matters referred through the AIDS Legal Referral Panel since the enactment of the California AIDS antibody testing legislation described above:

1. "Joseph Cardholder v. American Express Corp."

In late 1986 (subsequent to the passage of California's Health and Safety Code Section 199 et seq., above-described), "Joseph Cardholder" received a mailed solicitation to purchase life insurance from American Express Company, through which Joe had a credit card account. Joe filled out and returned the enclosed life insurance application and returned

it to the American Express office in Marin County, California.

Shortly thereafter, Joe received a letter from American Express requesting him to voluntarily take the HIV antibody test. In its letter, the company cited its concerns about AIDS and indicated it did not want to issue life insurance to people who either had AIDS or may get AIDS. This letter was in direct violation of California Health and Safety Code Section 199.21(f), which specifically prohibits the use of HIV test results to determine insurability. Notwithstanding that this code section had been law for over a year, American Express still maintained its policy of denying insurance benefits to those who tested seropositive to the HIV antibody.

At this time, it is unclear whether American Express will voluntarily change this policy. It is also unclear how many otherwise good risks have been denied the profferred insurance because they refused to take the antibody test or tested positive to the antibody.

2. "Jefferson Bach v. State of California"

In 1986 Mr. Bach held a mid-level governmental administrative position with the State of California. Over lunch one day he disclosed to a co-worker that he had tested positive on the HIV antibody test. He made it clear to his co-worker that this disclosure was meant to be confidential in

the context of their friendship, and he requested that the co-worker keep this information secret from everyone else.

Within a week of this disclosure, Mr. Bach was transferred to a private office; his job duties, which had previously involved extensive travel and client contact, were assigned to others; and he was given no further work assignments. Shortly thereafter, the governmental department for which Mr. Bach worked promulgated an official discriminatory personnel policy isolating persons with AIDS from other employees and prohibiting these employees from travel and client contact. This policy was in direct contravention of existing California law, which prohibits AIDS or HIV-antibody-status employment discrimination.

After the intervention of Panel attorneys, this department withdrew its illegal personnel policy. However, by the time the policy was withdrawn, Mr. Bach's job was eliminated, and he was given no other position with the agency. Despite the fact that Mr. Bach was not ill, was still capable of doing his previous job, and caused no harm to his fellow employees because of his antibody status, he was unemployed.

3. "Saul Electric v. City Electronics"

Two months after Health and Safety Code Section 199 went into effect, Saul Electric, a healthy openly gay employee of City Electronics, was told by his employer that he must take the HIV antibody test if he wished to maintain

his employment with the company. Mr. Electric refused, and the company summarily fired him.

AIDS Panel attorneys informed the company that this termination was unlawful and demanded that Mr. Electric be reinstated. City Electronics refused to do so, opting instead to offer him a modest sum of money in settlement of his claim for wrongful termination. Because Mr. Electric realized that his reemployment by the company would be made miserable by his fellow employees because of his forced notoriety, he accepted the money settlement and dropped his claim.

Because he now cannot adequately explain this employment termination to subsequent prospective employers, Mr. Electric remains unemployed at this time, and he has exhausted the money given him by City Electronics. However, Mr. Electric still remains healthy and otherwise employable.

4. "The Cases of the Infected Houses"

In early 1985 and continuing through the end of that year, subsequent to the passage of California legislation prohibiting the disclosure of HIV antibody results, a number of houses once occupied by gay men came onto the real estate market in San Francisco. Some of the homes were owned by gay men still living; others were held by the estates of men who had died of AIDS.

During a period of particularly rash hysteria in the

city, a few prospective buyers made it clear to their real estate agents and brokers that they would not purchase homes once occupied by men who had been exposed to the AIDS virus. As a result, most of the major real estate brokerage houses required HIV disclosures in their standard sales disclosure forms. Despite efforts by AIDS Panel attorneys to convince the brokers that such disclosures were prohibited by state law and amounted to unlawful discrimination in housing, the brokers insisted they had a duty to disclose HIV seropositivity to prospective buyers because this status was a material fact affecting the value and desirability of the property.

Not until the California legislature enacted Civil Code Section 1710.2, which declared that an AIDS diagnosis or an HIV status was not a material fact subject to disclosure, did the brokers cease this practice. In the meantime, numerous homes had been sold for less than fair market value and numerous estates had been held in probate pending the almost impossible sale of real property.

5. "Joe Tenant v. Property Management Corp."

In 1984, the resident manager of a multi-unit apartment building, maintained by Property Management Corp., informed Joe Tenant, who lived in the building, that the manager knew he was an AIDS-carrier. The property manager further expressed his concern to the tenant that AIDS was a communicable disease. A week later the tenant received notification

from Property Management Corp. alleging its duty to warn the building's other tenants that a person with AIDS lived among them.

At that time, California Health and Safety Code Section 199 et seq., California's Fair Employment and Housing Act, and a local ordinance worked to prohibit housing discrimination against persons with AIDS. Additionally, state law prohibited the unauthorized disclosure of a medical condition or of HIV antibody status. Nonetheless, property management companies and real estate brokers still asserted a duty to tenants to inform them of the residency of a person with AIDS.

In 1986, the California legislature enacted Civil Code Section 1710.2 to specifically address this issue. This code section holds that the AIDS diagnosis or the HIV antibody status of a building's occupant is not a material fact affecting the value or desirability of real property. The section also specifically absolves an owner or manager of real property from all liability for failing to disclose that an occupant of the property is seropositive or has AIDS.

Despite the passage of this Civil Code Section, which was heavily lobbied by real estate interests in the State, it took serious efforts by AIDS Panel attorneys to convince Property Management Corp. in this case to withdraw its plan to place notices of Mr. Tenant's antibody status in every mailbox in the building. In the meantime, of course, Mr.

Tenant's status had already been disclosed by the manager to the company and to untold others.

6. "John Citizen v. City Health Project"

City Health Project sent out a call for volunteers within San Francisco's gay community to participate in an epidemiological study to determine the level of AIDS infection in the community. This call requested gay men to undergo voluntary HIV antibody testing, the results of which were to be confidential.

John Citizen, a health gay man, responded to this call. He went to City Clinic, received counseling and educational materials, and submitted to a blood test for confidential research purposes. He was given a paper to sign which described the confidential nature of the project and informed him that his identity could never be traced back to his blood sample or to his test results. The document further alleged that the test results could not be disclosed by City Clinic to anyone else in such a way that the information could be identified with him.

Six months after his participation in this project, John Citizen, a healthy twenty-four-year-old, applied for health insurance. As part of his health insurance application, he signed a broad authorization to release his medical records to the insurer. His application was subsequently denied.

Investigation by AIDS Panel attorneys revealed that

City Project had used a local hospital to process the blood testing. This hospital had included in Mr. Citizen's records a bill for the HIV test. Therefore, when the hospital sent Mr. Citizen's records to the insurer, the fact of the "confidential" HIV test was disclosed. Presumably then, the insurance company had denied Mr. Citizen's insurance on the basis of confidential information which should not have been disclosed to it in the first place.

7. "Thomas Policy-Holder v. Life Insurance Company"

Mr. Policy-Holder purchased a $150,000 life insurance policy from Life Insurance Company. One and one-half years after he had purchased the policy, Life Insurance Company sent a standard medical records release to Mr. Policy--Holder's clinic, requesting updated information on Mr. Policy-Holder's medical status. As life insurance policies are uncontestable after two years, Life Insurance Company said that this is a standard procedure it uses with all policy holders whose two-year policy anniversaries are approaching to assure that their client's risk status has not changed during the period between policy issuance and the two-year date.

Mr. Policy-Holder's medical clinic released records to the insurance company. Despite the state law's prohibition against the disclosure of HIV antibody results, the clinic released results of Mr. Policy-Holder's seropositivity as a

part of the records sent to the insurance company. Apparently, not even the fact that an authorized disclosure is a misdemeanor pursuant to Health and Safety Code Section 199.21 deterred the clinic from disclosing the test results.

Similarly, Health and Safety Code Section 199.21(f) makes antibody status an impermissible ground on which to determine insurability. Nonetheless, after the insurance company received these records, it rescinded Mr. Policy-Holder's insurance policy. The rescission was accomplished by the company's mailing Mr. Policy-Holder a premium refund check. Since that time, Life Insurance Company has refused to accept premium payments and reinstate the policy. Mr. Policy-Holder is now uninsurable.

8. "Paul Employee v. County Clinic and Private Employer"

Paul Employee went to a County Clinic to have a confidential HIV test taken. He was asked to leave his name, address, and day and night phone numbers, so that the Clinic could call him with the test results when they were available. Before the test results came in, Mr. Employee changed his residence address. One month after he had taken the test, Paul Employee received a telephone message at his place of employment from County Clinic stating that he should come into the Clinic for his test results and counseling.

Because Mr. Employee was an openly gay man at work and

his supervisor was therefore suspicious of him, he was called into his supervisor's office to discuss the phone message. The supervisor demanded to know the nature of the test Mr. Employee had taken and the results of this test. When Mr. Employee declined to answer these inquiries, his supervisor put him on suspension.

With the intervention of AIDS Panel attorneys, Mr. Employee was reinstated at work and was given pay for the period of time he was suspended. However, Mr. Employee was so harassed thereafter that he left the job within six months.

9. Gary U. v. Fredric H. Newton, M.D., John J. Parente, Paul D. Karasoff, Allianz Insurance Company
San Francisco Superior Court No. 870679 (1987)

Plaintiff Gary U. was injured on his job on September 26, 1984, and he applied for workers' compensation benefits. In the course of the workers' compensation case, Mr. U. was sent to defendant Dr. Newton for a medical examination. This examination took place on February 5, 1986. In the course of that examination, Dr. Newton utilized a reusable probe which came in contact with Mr. U.'s blood. Thereafter, while an employee of Dr. Newton's was cleaning the examination area, Mr. U. disclosed to her that he was HIV seropositive and that she should be careful in the sterilization of the probe. He further informed the employee that this disclosure was confidential between them and was issued only for her

protection.

On March 7, 1986, Dr. Newton wrote a workers' compensation medical report wherein he disclosed Mr. U.'s HIV status. He also attributed a flare-up of the symptoms of Mr. U.'s industrial injury, which occurred in the spring of 1985, to "psychsociological and characterological factor brought on by stress associated with" Mr. U.'s HIV status. In fact, Mr. U. had not even been tested for the presence of HIV antibodies until seven months after the alleged flare-up of symptoms.

Dr. Newton sent this report with the unauthorized HIV disclosure to defendants Parente and Karasoff, attorneys for the workers compensation insurance carrier. The attorneys further disclosed Mr. U.'s HIV status to Allianz Insurance Company, which, in turn, made further disclosures within the company and then to the Workers' Compensation Appeals Board and to Mr. U.'s health care providers.

California Health and Safety Code Section 199.20 states that no person shall be compelled in any civil, criminal, administrative, legislative, or other proceedings to identify himself as having antibodies to HIV. The instant action was filed February 5, 1987, to enforce the civil penalties which exist for wrongful disclosure of HIV status pursuant to Health and Safety Code Section 199.21. However, prior to the filing of this lawsuit to enforce civil remedies, both the district attorney for San Francisco County and the Attorney General for the State of California were urged by Mr. U. to

enforce the criminal sections of this same statute. To date, they have refused to take any action to enforce the law.

10. "Prof. William v. State Insurance Company, Medical Information Bureau, Lab"

Professor William had a $100,000 life insurance policy issued by State Insurance Company and sponsored by his professional association. In early 1987, this healthy twenty-nine year old professor applied for an additional $100,000 in coverage through the same company. He was sent a blood test kit by State Insurance Company and was requested to have a blood sample taken and then send the blood sample to an out-of-state Lab.

The blood test kit contained therein an authorization for testing to be done by Lab pursuant to a standing agreement between Lab and State Insurance Company. This release of information and consent form also included a provision that allowed the test results to be shared with the Medical Information Bureau in Boston, which bureau holds, for the benefit of the nation's insurance companies, medical and insurance records of insured citizens.

This release was a standard form release. Midway through the body of the release were the words, "Test for AIDS virus". Further down in the release were the words, "Test for the presence of the HTLV-III antibody". This release is invalid under California state law because it is not a specific informed authorization for the HIV test or the disclosure of the results of this test. Furthermore,

it is prohibited under California Health and Safety Code Section 199.21 (f) to use HIV antibody status to determine insurability. Nonetheless, it is still in use by State Insurance Company.

As of this date, it is unknown whether Professor William will obtain additional life insurance. Prior to the submission of his blood sample, Professor William lined out and initialed those portions of the release which allowed for HIV testing and for release of that information to anyone. Had Professor William not taken these steps prior to submitting his blood sample, the confidentiality of his antibody status would have been violated through disclosure to the Medical Information Bureau and its further disclosure to subsequent insurers requesting information on Professor William. Furthermore, untold other professors may have already had their blood unlawfully tested and the results disclosed to the insurance company and the Medical Information Bureau.

11. Dale S. and Patricia S. v. Paul M., Paul M. v. Marin General Hospital, John Doe, M.D., Marin County Superior Court No. 126201 (1986)

In April 1985, Dale S. came upon asphyxiated Paul M. on the property where Dale S. was working as a night watchman. Dale S. administered mouth-to-mouth resuscitation to Paul M. and called for an ambulance.

The ambulance carried both Paul M. and Dale S. to Marin General Hospital where Paul M. was revived. While Paul M. remained in the hospital and without his authorizing any disclosure of his medical condition, Dr. Doe, a doctor on staff with the Hospital, informed Dale S. that, by giving rescusitation to Paul M., Dale S. had contracted AIDS and that Dale S.'s wife would thereafter have nothing more to do with him.

Nearly a year later, Dale S. filed suit against Paul M., alleging that Mr. M. had intentionally infected him with a disease. Mrs. S. filed suit alleging loss of consortium due to her husband's sexually transmitted illness. To date, Panel attorneys have found no evidence that Mr. M. communicated the AIDS virus to Mr. S., all medical reports contradict the possibility of such transmission, and both Mr. and Mrs. S. remain healthy.

Because the lawsuit of Mr. and Mrs. S. against Mr. M. has no rational validity and it is based on the improper disclosure by Dr. Doe and the Hospital of Mr. M.'s medical condition, Mr. M. has filed a cross-complaint against the Hospital and Dr. Doe. The matter presently awaits trial.

12. "Mary Parent v. Paul Parent"

In 1985, Mary and Paul Parent, divorced several years before, had joint custody of their minor daughter. Mary, with whom the daughter lived, was a resident of Chicago, Illinois. Paul was a resident of San Francisco. Despite the

fact that she did not charge Paul with any parental problems, Mary refused visitation rights with the child until Paul submitted to an AIDS antibody test. Paul refused to submit to the test while maintaining his right to visit his daughter. The parties still await a decision from a Chicago judge. In the meantime, Mary has successfully profited from AIDS hysteria in her quest to keep Paul from visiting his daughter.

13. "Daniel Student v. Regional School of Religion"

In November 1986 Daniel Student was in a masters curriculum at Regional School of Religion. When he learned that he had AIDS Related Complex, he inquired of the Dean of Student Affairs what special services the school had for persons with his condition. In doing so, he specifically instructed the Dean that she was not to disclose his medical condition to anyone else.

Nonetheless, the Dean disclosed Mr. Student's condition to the President of the School, who immediately required Mr. Student to disclose his condition to fellow students or face eviction from his student apartment. The President further threatened that, if Mr. Student did not disclose his condition to others, the President and Dean would do so on his behalf.

Before AIDS Panel attorneys could respond, the School moved Mr. Student from his shared apartment into isolation. However, Panel attorneys did persuade the attorneys for the

School to cease further disclosure of Mr. Student's condition because such disclosures violated both State law and the Berkeley AIDS Ordinance.

Conclusion: HIV Antibody Test Results Do Not Remain Confidential

The State of California and various local governments therein have enacted the best and most protective legislation available to assure the privacy of California's citizens in their HIV antibody status and in their medical records. Ranging from constitutional provisions protecting the right of privacy to city and county ordinances prohibiting discrimination against persons with AIDS, California's laws assert that a test subject can be secure in the assumptions that his or her test results will not be disclosed to anyone and that, if the results are disclosed, the subject will suffer no undue consequences.

Furthermore, California's protective legislation is based on very careful considerations of the balance between the subjects' privacy rights and the needs of blood purification and of AIDS research. Therefore, this legislation encourages widespread voluntary participation in testing while assuring that the test subjects will not be denied insurance, will not be fired, and will not lose their homes.

However, as well illustrated by the case histories above, legislative promises of privacy are more enigmatic than effective. Despite the civil and criminal penalties

allegedly attached to violations of the legislation and the best efforts of numerous agencies to enforce them, health care providers, testing clinics, insurance companies, employers, parents, schools, property owners, and real estate agents regularly violate the rights of test subjects to their privacy. These violations result in horrendous personal results to the people tested. Many of these individuals already suffer too much from the siege of terrible symptoms of the AIDS epidemic. All of them suffer from the siege of the epidemic's hysteria, which the legislation was meant to prevent.

Simply put, the ever-increasing hysteria associated with AIDS is more powerful than the best intentions and best efforts of citizens desiring to overcome it. Thus, any mandatory AIDS testing will only increase the number of people to whom this hysteria is directed and will not prevent the spread of the epidemic. The voice of experience in this matter therefore demands mandatory testing be prohibited.