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Former Health Commissioner Indicted Under California Law Criminalizing HIV Transmission

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Former San Francisco Health Commissioner, Ronald Gene Hill, was indicted last September under a seldom-used California law that makes knowingly exposing others to HIV a felony, punishable by up to eight years in prison.[1] Prosecutors charged that Hill intentionally transmitted the AIDS virus to two sexual partners, one of whom sued Hill in 2001 over this matter and won a $5 million judgment.[2] Hill pleaded not guilty.[3]

Holding HIV-positive people liable for the health of their consensual sexual partners, both criminally and civilly, is a growing trend. 23 other states have criminal laws similar to California's.[4] These laws make it a crime for individuals who have HIV or AIDS to knowingly expose sexual partners without informing them of their positive-status.

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Proponents of such laws say that people infected with the virus have a responsibility to their partners to inform them and take precautions to prevent transmission.[5] According to a nationwide survey conducted by researchers at the University of California in the year 2000, 13% of the 1,397 HIV-positive men and women studied had unprotected anal and vaginal sex-the riskiest for HIV transmission-without disclosing their infection to partners.

Critics of such laws, such as AIDS advocates, say the criminalization of HIV transmission is disturbing. Their concern is that criminalizing transmission makes the disease even more stigmatized. Instead, these advocates say, HIV-positive people should be willing to share what they are going through with sexual partners and loved ones. Ann Hilton Fisher, Director of the AIDS Legal Council of Chicago, calls these laws, "cheap legislative substitutes for real public health."[6]

According to Fisher, there are several reasons why these laws do not achieve their goal-preventing the spread of HIV-and are actually detrimental to society. She points out that there is not much evidence that deterrence actually works in the spread of HIV and that in order to have real prevention work, public health officials need to have honest discussions with people about risky behavior. "Once we start criminalizing HIV transmission," Fisher explains, "we run the risk of driving people away from public health because [public health] officials are turning people in."

In 1989 Illinois enacted a law similar to California's that criminalizes knowingly transmitting HIV to a sexual partner without that person's consent.[7] However, Illinois' law, like most other states with these statutes, has a much lower intent standard than California's law which requires "a specific intent" to transmit HIV.[8] In Illinois, not only does the law not require intent, it also does not require that the potential victim actually acquire HIV from the accused.

Although HIV/AIDS advocates prefer the higher standard of the California law because it protects people who do not intend to expose partners to the disease, prosecutors have criticized the standard as being too narrow and a hindrance to prosecutions. As a result of California's specific intent clause, only one person has been convicted under the law since it was enacted in 1998.[9]

In South Dakota, officials recently convicted a rural college basketball player, Nikko Briteramos, for having sex with his girlfriend without telling her he had HIV.[10] South Dakota's law, like Illinois', does not require a defendant to intend to infect their partner nor that a partner be actually infected with the disease.[11] Michael Moore, the state's attorney in this case, said in *The Los Angeles Times* that he would have never been able to convict under California's law. Fortunately for South Dakota's lessened intent requirement, Moore feels

justice was done. However, Fisher has a different perspective on this case. She states that it was Briteramos' public health counselor who turned him in to the police after Briteramos went to get tested for HIV. Fisher warns against any law that deters people from getting tested for HIV and any law that so easily convicts an HIV-positive person.

There have been approximately 300 prosecutions under HIV laws among the approximately 800,000 people with AIDS in this country, according to the HIV Criminal Law and Policy Project.[12] However, 70% of these prosecutions entail spitting, biting or scratching which pose a remote risk of HIV transmission and do not involve transmitting the virus through sexual contact, the most common form of transmission.

As Fisher and other AIDS advocates caution, when enacting these laws, legislators should consider the possibility that they may actually be deterring testing. On both sides of this issue, the question remains as to how effective these laws are in achieving their goal-preventing the spread of HIV/AIDS and protecting the public's health.

1. Cal. Health & Safety Code § 120291 (1998); State v. Hill, No. 2127994 [San Francisco Crim. Ct.].
2. *Lister v. Hill*, No. 318443 (San Francisco Super. Ct.).
3. Time Wire Report, *Ex-official Denies Exposing Two to HIV*, L.A. TIMES, Sept. 27, 2003, at Cal. Metro 8; Jaxon Van Derbeken, Ex-S.F. Official Jailed On HIV Charge; Grand Jury Says Former Nurse Passed on Virus Knowingly, S.F. Chronicle, Sept. 18, 2003, at A17.
4. Arkansas, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Missouri, Nevada, New Jersey, Oklahoma, Ohio, Pennsylvania, South Carolina, South Dakota, Tennessee, Virginia, and Washington. HIV Criminal Law and Policy project funded by the CDC, HIV Specific Criminal Transmission Law, available at http://www.hivcriminallaw.org/laws/hivspec.cfm (last visited Oct. 19, 2003)
5. Sabin Russell, *Shift in AIDS Prevention Strategy; Emphasis Now On Accountability of Those Infected*, S.F. Chronicle, Sept. 21, 2003, at A3.
6. Telephone Interview with Ann Hilton Fisher, Director, AIDS Legal Council of Chicago (Oct. 8, 2003).
7. 720 Ill. Comp. Stat. 5/12-16.2 (1989).
8. Cal. Health & Safety Code § 120291 (1998).
9. John M. Glionna, *Law On HIV Infection Little Used; As A Victim Finds, State's Tough Standards Means Few Who Knowingly Pass The Virus Are Prosecuted*, L.A. TIMES, Sept. 10, 2003, at Cal. Metro 1.
10. Id; State v. Briteramos, [Beadle Co., S.D., Cir. Ct.].
11. S.D. Codified Laws §22-18-31 (2000).
12. HIV Criminal Law and Policy Project funded by the CDC, HIV Specific Criminal Transmission Law, available at http://www.hivcriminallaw.org/laws/hivspec.cfm (last visited Oct. 19, 2003).

What Does it Mean to Remain Silent?

Alexis Reed

Any statements you make during a custodial arrest can be used against you, so long as you have been read your Miranda Rights.[1] Evidence found during a search incident to an arrest can also generally be used against you. So, what happens to evidence discovered during an interrogation and search incident to an arrest in which the officers fail to read you your Miranda Rights?

That is the situation that the United States Supreme Court will be faced with when they review United States v. Patane during this upcoming term. In Patane, the defendant was arrested for violating a restraining order.[2] During the arrest, when the officers were reading Patane his Miranda Rights, he interrupted them, and the officers failed to finish reading the remainder of the rights. Patane was later questioned, and during a search of his home, the police found an illegal handgun. The main question in the case now before the Supreme Court is whether that illegal handgun should be considered "fruit of the poisoned tree" for evidence purposes since the police did not properly conduct Patane's arrest and Patane did not truly waive his Miranda Rights.

> "...the Supreme Court will truly have to decide if we still have the right to remain silent and just what the implications of that right are."

The Federal District Court for the District of Colorado found that the gun was illegally obtained and granted Patane's motion to suppress the illegal handgun.[3] The District Court reasoned that there had never been probable cause to arrest Patane. The court held that the investigation leading to the discovery of the gun was invalid and that any evidence from that unconstitutional investigation could not be used against Patane.

The 10th Circuit Court of Appeals agreed with both the District Court and Patane, finding that the evidence was inadmissible.[4] However, the Appellate Court disagreed with the District Court in its rationale. The Appellate Court held that probable cause to arrest Patane did exist.[5] The Appellate Court noted that prosecution conceded that the officers questioned Patane without fully informing him as to his Miranda rights, and the officers' violation of Miranda v. Arizona justified suppressing the illegal handgun for evidence purposes. The Appellate Court held that the gun was fruit of the poisoned tree and that physical fruits of a Miranda violation must be suppressed where necessary to serve Miranda's purpose of deterrence.

The Bush Administration,