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Your Right to Privacy and the AIDS Virus: A Selective Bibliography

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ABSTRACT. The AIDS (Acquired Immune Deficiency Syndrome) virus has had a profound impact upon the lives of people everywhere. One aspect of this impact can be seen in the invasion into areas that had hitherto been believed by most to be private: sexual activity/preferences, medical records/testing, etc. An intensely personal and private tragedy has become, because of its nature, a matter of public concern. The bibliography which follows addresses the privacy concerns of those infected with the AIDS virus.

In both an intensely personal as well as public sense, the AIDS (Acquired Immune Deficiency Syndrome) virus has entered the consciousness of people everywhere. It is not surprising, given the extraordinary seriousness of the disease and the concomitant effects on society, that few contemporary publications are to be found without some mention of this health problem. Destined, perhaps, to be considered by many to be the most pervasive scourge of the last two decades of this century, AIDS and AIDS-related concerns are important enough to justifiably occupy increasingly central public policy considerations. Non-partisan, cross-cultural, and uniformly fatal, AIDS has become everyone's, and every nation's, business.

From the perspective of law, especially law and its relationship to society, AIDS is also no respecter of easy demarkation. Crossing legal and social science boundaries as readily as it has appeared to cross lines of latitude and longitude, AIDS is as invasive legally as it is biologically.

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The bibliography which follows is descriptive of the degree to which AIDS has penetrated some of the primary structures of society, especially those related to law, ethics, science and politics; and, focuses especially upon the implications for the right to privacy of infected individuals. In an individual sense, the effects of AIDS on the personal and business life of essentially the entire American population have been anything but subtle; Workplace rules, labor-management relationships, individual privacy concerns, not to mention potentially significant effects on interpersonal relationships, have all been directly affected by the advent of the AIDS virus. Employment, education, insurance, and health care law are obvious areas of concern, but questions regarding the criminal justice system, and the degree to which individuals might be expected to suffer an abrogation of their personal privacy rights, are equally important to legal scholars and practitioners.

Divided into general (monographic) and more subject-specific references (periodical articles), this bibliography is structured to assist both individuals interested in a broad overview, as well as those whose research concerns require them to orient their inquiry in more specific directions. The time period covered is from 1980-1992. It is important to note that virtually all of the individual references incorporate their own internal notes and bibliographies which can be of further use to those interested in particular subject areas, or in the approaches taken by specific authors.

**MONOGRAPHS**

Banta, William F. *AIDS in the Workplace: Legal Questions and Practical Answers*. Lexington, Massachusetts: Lexington Books, 1988. An overview description and analysis of federal, state, and local laws relating to AIDS as it affects the employee-employer relationship. AIDS testing is reviewed in terms of theory and practice. The role of the union, and the labor-management agreement (including the elements of labor arbitration and workers' compensation) are also reviewed. Several practical problems associated with AIDS in the workplace are examined from the perspective of the employer, with emphasis being placed in policies, procedures, and checklists designed to assist in the management of employees in light of this health risk. Finally, US government guidelines (ca 1986) are given, as are various legal documents relating to AIDS and employment practices.

of the potential effects on society of the AIDS virus, privacy issues are inevitably raised given the nature of the disease and its modes of transmission. Society is being forced to deal with the issue of reasonable responses to quintessentially private acts. The Supreme Court is at the center of this controversy, and the issue of personal privacy is clearly at the heart of the intellectual and legal debate about what the constitution protects.

This book considers the relationship between the disease and society, and focuses on the underlying tension between the individual concern for privacy and the public concern for social well-being. At the center of the debate are questions involving blood testing and reporting, screening, isolation of those infected, and the politics of public health and public education.

Gunderson, Martin, David J. Mayo, Frank S. Rhame. AIDS: Testing and Privacy. Salt Lake City: University of Utah Press, 1989. The AIDS epidemic poses more than a medical question, alone; its concomitants include ethical, political, legal, social, and personal privacy issues. The unifying theme of this text is the latter of these concerns, privacy. The authors argue that privacy is a fundamental, democratic value that is, in fact, a legal right. Divided into related chapters, the text considers the medical background of the disease, testing issues, privacy, the warning issue, health care workers, and the role of the state. A bibliography is included.

Jarvis, Robert M., Michael L. Clossen, Donald H.J. Hermann and Arthur S. Leonard. AIDS Law in a Nutshell. St. Paul, Minn.: West Publishing Co., 1991. Intended to supplement the casebook AIDS: Cases and Materials, this book considers the AIDS disorder primarily from the legal perspective, and is designed as "a primer that law students could turn to for ready guidance on the legal aspects of the AIDS epidemic." While a brief medical and political context is set forth, several areas of specific interest to attorneys who deal with AIDS are detailed: employment, education, family, insurance, and health care law. Additionally, AIDS is reviewed in light of criminal, tort, public health, and international law. A bibliography is included.

Wiley Law Publications. AIDS and the Law. 2nd ed. New York: John Wiley & Sons Inc., 1992. Composed of a series of articles dealing with AIDS, this reference looks specifically at how the disease has affected the various aspects of American law. In particular, the social and legal consequences of AIDS are considered as they impinge upon the workplace, the family, the education system, the insurance industry, and the
criminal justice system. Additionally, the areas of confidentiality, discrimination, and quarantine are also considered. In each article, extensive case citations are provided.

**PERIODICAL ARTICLES**

Abbott, Debra A. "Workplace Exposure to AIDS. (Symposium on AIDS and the Rights and Obligations of Health Care Workers)." *Maryland Law Review* 48:1 (January 1989): 212-245. This article explores the relationship between employees and employers regarding AIDS. It considers the place of OSHA (Occupational Safety and Health Act), state common-law tort duties, and various privacy considerations related to the privacy of employee diagnoses. The article concludes by suggesting that the risk of workplace exposure is too low to justify the invasion of employee privacy in general.


Brandt, Edward N. "Introduction: Health Care Workers and AIDS." *Maryland Law Review* 48 (1989:1): 1-11. The introduction to this symposium on AIDS and the rights and obligations of health care workers considers the disease and its effects on the medical profession. It offers an overview of the disease relationship to the health care worker who both faces risk of infection and has the primary duty to warn third persons who might be at risk of infection.

Branham, Lynn Sanders. "Opening the Bloodgates: The Blood Testing of Prisoners for the AIDS Virus." *Connecticut Law Review* 20:4 (Summer 1988): 763-811. The author presents a discussion of the "legal questions concerning the blood testing of prisoners, whether state or federal, for the AIDS virus." One of the issues explored is the extent to which prisoners retain a right to privacy, and how far that right is, or should be, extended.
Brill, Alida. "AIDS: Privacy’s New Prism" in *Nobody’s Business: Paradoxes of Privacy*. Reading, Mass.: Addison-Wesley Publishing Company, 1990. pp. 99-119. The author sees AIDS "as privacy’s minefield." This disease has forced us to confront our belief in a right to privacy from many angles. In so doing, we are confronted with the fact that the "fundamental borders" of this right have not been clearly delineated.

Campbell, Emily. "Mandatory AIDS testing and privacy: a psycholegal perspective." *North Dakota Law Review* 66 (Summer 1990): 449-494. The author examines the idea of universal AIDS screening, that is, screening the entire population for the AIDS virus. The concept of privacy and the constitutionality of such a testing program is discussed.

Clossen, Michael L. "Mandatory disclosure of HIV blood test results to the individuals tested: a matter of personal choice neglected." (Health Law Symposium) *Loyola University Of Chicago Law Journal* 22 (Winter 1991): 445-478. This article, unlike most similar considerations of AIDS and the privacy issue, is concerned with an individuals’ right not to know the results of medical testing for HIV. Generally, most statutes mandate that tested individuals be notified of results, and that they be counseled, where tests indicate infection. The author argues in favor of a freedom not to be apprised of results, and argues further that the public is better served where results are not forced on the persons tested.

_________ "A Call for Mandatory HIV Testing and Restriction of Certain Health Care Professionals." *Saint Louis University Public Law Review*. 9:2 (1990): 421-438. While this author opposes all proposals for mandatory HIV testing of the general population, he supports the idea of such testing for health care professionals who are engaged in activities of a physically invasive nature. A model program is offered as well as an analysis of relevant caselaw.


Connolly, Walter B., Jr. and Alison B. Marshall. "An Employer's Legal Guide to AIDS in the Workplace." *Saint Louis University Public Law Review* 9:2 (1990): 561-585. If AIDS can be construed legally to be a "hardship" employers must be aware of guidelines posed in the federal laws: the Rehabilitation Act of 1973, the OSHA legislation, the Civil Rights Act of 1964, as well as federal labor relations laws. Before employers act, the authors note the obvious need to consider relevant state and federal laws which might impact on their management decisions.

Davie, Suzette Lewis. "Constitutional law--right of privacy--the privacy interests of AIDS-infected blood donors." (casenote) *Cumberland Law Review* 18 (Fall 1987): 267-280. Discusses the case of *Rasmussen v. South Florida Blood Services*, 500 So. 2d 533 (Fla. 1987), which addresses the issue of the right of blood donors to privacy versus the right of an individual to know whether or not he was exposed to AIDS as the result of a blood transfusion. The majority ruled that the rights of the donors "were protected by state or federal constitutions and fell within the judicially recognized zone of privacy."


Edgar, Harold and Hazel Sandomire. "Medical privacy issues in the age of AIDS: legislative options." (The Harvard Model AIDS Legislation Project) *American Journal of Law & Medicine* 16 (Spring-Summer 1990): 155-222. "This article surveys state legislation dealing with HIV related problems in medical privacy and antidiscrimination law." The competing interests of individual privacy rights and the "needs" of third parties to know are discussed, and legislative attempts to balance these competing interests are detailed.


Gostin, Larry. "Hospitals, Health Care Professionals, and AIDS: the 'Right to Know' the Health Status of Professionals and Patients." *Maryland Law Review* 48 (1989:1): 12-54. Both medical professionals and their patients claim a "right to know" regarding potential HIV infection. This article argues that those patients and health care professionals with HIV "should have autonomy and privacy rights to choose whether to consent to an HIV test and to disclose their serologic status," given the low risk of infection and alternative, less intrusive, ways to reduce risk in the hospital setting.

Gostin, Lawrence O., William J. Curran, and Mary E. Clark. "The Case against Compulsory Casefinding in Controlling AIDS-Testing, Screening and Reporting." *American Journal of Law & Medicine* 12:1 (Spring 1986): 7-53. Because the AIDS virus is fatal, it is essential that uninfected persons be protected, and that infected persons be identified. However, the identification process must be, the author argues, voluntary and confidential. Without the assurance of confidentiality, those at risk are much less likely to "volunteer."


Heaney, Gretta J. "The constitutional right of informational privacy: does it protect children suffering from AIDS?" *Fordham Urban Law Journal* 14 (Fall 1986): 927-969. This article addresses the issue of whether or not children enjoy the same rights to privacy regarding the distribution of information about themselves, as do adults. The author concludes, after tracing relevant case and constitutional law, that a child's right to privacy outweighs the right of the public to know.
Hermann, Donald H.J. “Criminalizing Conduct Related to HIV Transmission.” *Saint Louis University Public Law Review* 9:2 (1990): 351-378. While education seems to be a useful tool in helping to prevent the spread of AIDS, other approaches may also be effective. This author considers the value of the state of criminally prosecuting individuals whose deliberate or reckless behavior exposes others to the AIDS infection. The conclusion expressed is that general criminal statutes are inappropriate vehicles for controlling the spread of the disease, while carefully-drawn, HIV-specific statutes might well be more useful in dealing with criminal HIV transmission behavior.

Hermann, Donald H.J. and Rosalind D. Gagliano. “AIDS, Therapeutic Confidentiality, and Warning Third Parties.” *Maryland Law Review* 48 (1989:1): 55-76. Because HIV is associated with psychological, as well as physiological, involvement, the question of therapist-patient confidentiality is involved, as is the dilemma of the therapists’ “duty to warn” third parties at risk of infection. This article considers aspects of state and federal laws authorizing exceptions to confidentiality, and then considers the effects of such rulings.

Isaacman, Scott H. “The Other Side of the Coin: HIV-Infected Health Care Workers.” *Saint Louis University Public Law Review* 9:2 (1990): 439-494. Concerned with the possible consequences of HIV infected health care workers, the author examines the risks posed, the response of health care institutions, and the associated political responses at the federal and state levels. Overall, little risk is found except, possibly, for that posed by health care workers engaged in procedures that are patient-invasive. A level of risk analysis is made, and a sample hospital policy guide is presented.

Kimmey, James R. “Are We Outlawing Motherhood for HIV-Infected Women?” *Loyola University Law Journal* 22:2 (Winter 1991): 479-496. Section 12-16.2 of the Illinois Criminal Code outlaws knowing exposure of another person to HIV disease. This article considers two issues related to this Illinois law: “what does section 12-16.2 accomplish, and does this statute criminalize childbearing by HIV-infected women?” The author argues that this statute is constitutionally offensive, that it is unreasonable, and that it does not withstand the legal concept of “strict scrutiny.”

disease. Education, HIV testing, needle exchanges, and privacy of individuals are considered, as well as a brief discussion of policy implications.


Labowitz, Kenneth E. "Beyond Tarasoff: AIDS and the Obligation to Breach Confidentiality." *Saint Louis University Public Law Review* 9:2 (1990): 495-517. This article provides the legal basis for lawsuits against health care providers who fail to inform those at foreseeable risk of infection. The Tarasoff case, holding a psychotherapist responsible for failing to warn a third party of the threat posed by one of his patients, is at the basis of the author's claim that health care workers must ensure notification of third parties as to their potential risk of infection by that patient.

Levine, Matthew L. "Contact tracing for HIV infection: a plea for privacy." *Columbia Human Rights Law Review* 20 (Fall 1988): 157-201. Contact tracing is "a process by which public health authorities attempt to identify, treat, and counsel those who have been exposed to an individual known to be infected with a communicable disease." The author addresses some of the key practical and legal considerations in the implementation and design of contact notification procedures, with a good deal of emphasis placed on the need for confidentiality.

Levy, Susan J. "The Constitutional Implications of Mandatory Testing for Acquired Immunodeficiency Syndrome—AIDS." *Emory Law Journal* 37:1 (January 1988): 217-248. The purpose of this article is to respond to the "increasing calls for mandatory blood testing for the AIDS virus." The author begins with a description of the disease itself, discusses the groups that are most at risk, traces the history of the right to privacy, and concludes that the Supreme Court, when asked to make a decision on this issue, will have to weigh an individual's right to privacy against the publics right to know.


Nanula, Peter J. “Protecting Confidentiality in the Effort to Control AIDS.” Harvard Journal on Legislation 24 (Winter 1987): 315-349. While the importance of identifying potential and confirmed AIDS carriers and victims cannot be denied, it is equally important that the privacy rights of individuals who submit to testing be preserved. Without such protection it is not likely that those at higher risk, gay and bisexual men, will volunteer for testing. This article focuses on emphasizing the need to protect the confidentiality of those tested, and examines the possible sources of legal protection. The author includes a model statute encompassing the statutory changes he suggests.


Rothenberg, Karen H. “The AIDS Project: Creating a Public Health Policy—Rights and Obligations of Health Care Workers.” Maryland Law Review 48 (1989:1): 95-211. This project represents the results of a consideration regarding public policy towards AIDS by an interdisciplinary (law, medicine, social work) group of students. They considered four areas: (A) The rights of health care workers with AIDS, (B) The place of testing in the health care institution, (C) Confidentiality issues, and (D) the obligation to treat. Various policy recommendations are offered.

Ryland, Sonya. “AIDS and Right to Privacy.” Southern University Law Review 16:2 (Fall 1989): 393-405. The author discusses a number of privacy cases, and traces the development of the AIDS crisis. The
author anticipates that the right to privacy will be superseded by the public's right to know.


Schulman, David I. "AIDS Workplace Law and Policy: a Systematic Analysis." *Saint Louis Public Law Review* 9:2 (1990): 543-560. The purpose of this article is to assist the Presidential Commission on the Human Immunodeficiency Virus (HIV) in the planning process which it recommends "by examining the impact of the epidemic upon workplace law and policy." The article begins with a discussion of privacy, and other, rights, and "concludes with model guidelines for developing AIDS workplace policies."

Schultz, Gene P. and Charles A. Parmenter. "Medical Necessity, Aids, and the Law." *Saint Louis University Public Law Review.* 9:2 (1990): 379-420. Because the cost of treating AIDS is so great, individuals are unable to provide for their own medical treatment. This article looks at the states' obligation to provide Medicare coverage to AIDS sufferers and concludes that where a state Medicaid plan covers prescription drugs, it must provide drug support to AIDS patients.


Spiegel, Charles. "Privacy, Sodomy, Aids & the Schools: Case Studies in Equal Protection." *Annual Survey of American Law* (1986): 221-253. The author examines the case of Hardwick v. Bowers (106 S. Ct. 2841 (1986)), in which the Court ruled that homosexual conduct could not be protected by privacy arguments. The author agrees that criminalizing homosexual activity is not a reasonable means of controlling the AIDS epidemic (that being one of the arguments used in favor of such legislation), and that the right to privacy should be extended to homosexual behavior.

fusion and subsequently contracted AIDS was denied discovery of the names and identities of the blood donors.” The author concludes that the decision was correct because the donor’s rights must be protected, and the interest of society in maintaining a blood supply must also be preserved.


Weber, Wendy A. “AIDS: legal issues in search of a cure.” William Mitchell Law Review 14 (Summer 1988): 575-652. The author concentrates on the constitutional issues surrounding AIDS, and points out the fact that cases dealing with other diseases have little precedential value given that “AIDS is unlike any other disease previously encountered.” Therefore, this disease requires a legal analysis that deals with it specifically.


Zarembka, Arlene and Katherine M. Franke. “Women in the AIDS Epidemic: A Portrait of Unmet Needs.” Saint Louis University Public Law Review 9:2 (1990): 519-541. It is contended here that the AIDS threat “looks quite different from the perspective of women,” especially to poor women or minority females. The authors argue that Black and Hispanic women especially are subject to discriminatory behavior in the AIDS-sensitive political and social environment.