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national news

Fear and loathing in Maryland

*A gay man is allegedly forced by sheriff's deputy
to submit to HIV test*

by Bob Roehr

John Doe" saw the flashing red lights of the police cruiser and pulled his own car off to the side of the road. He was yanked from the seat, thrown spread-eagle against the rear of the car, arrested, handcuffed and taken to jail.

"You're not leaving until you give up your blood," the sheriff's deputy is alleged to have said. Doe cooperated, believing he had no choice. That forced blood test is how he learned he was HIV positive.

The story began in June 1992 when Doe's partner of two years, "Thomas Smith," got back his HIV test results from the Frederick County, Md., Health Department. He tested positive. The health officials insisted that Smith tell Doe of his status and encourage Doe to come in for his own test. They said they would talk with Doe if Smith could not.

One official then began a series of harassing and accusatory phone calls to Doe, demanding that he appear for testing for some unspecified health problem. Doe was under medical treatment for a severe sinus problem, and demurred. He was under no legal obligation to appear for testing.

The Health Department then went to the county sheriff and together they went to court to obtain a search and seizure warrant "basically seizing his blood," said Sheriff Carl Harbaugh. "It's kind of innovative. It's the first time we've ever done something like that."

Harbaugh based his argument on a 1989 Maryland law forbidding the "knowing transfer or attempt to transfer [HIV] to another individual."

There were two problems with Harbaugh's argument. Neither Doe nor anybody else "knew" what his HIV status was, as he had not yet been tested. Second, there were no first-hand reports of sex, let alone unsafe sex, that could result in the charge being made.

The facts, or lack of them, didn't stop the Health Department, the sheriff's office, nor the court. A warrant was issued on July 31 and carried out on August 3.

There was no informed consent before Doe's blood was drawn, no pre- or post-test counseling. All are required under Maryland law.

"We talked to the state and we filed various notices about the case, fully expecting them to say, this is a horrible mistake and we are sorry," said attorney Deborah Weimer, who runs the AIDS Legal Services Clinic at the University of Maryland Law School. "But that didn't happen."

Doe filed suit on March 11, backed up by Weimer as well as the Public Justice Center, a state advocacy group for equal justice, and the American Civil Liberties Union.

In five separate charges, the suit argues that the actions were an illegal violation of Doe's right to liberty, reckless and malicious in their implementation, and a violation of his privacy. In part due to privacy, the case was filed under a pseudonym.

Doe is seeking \$4 million in punitive damages and \$2 million in compensatory damages. He claims the incident has left him with severe anxiety and depression.

Weimer said they are moving to discovery "but are still hopeful that there will be some resolution of the case that will change the policy and provide compensation for our client."

"It is outrageous to arrest people simply because they are suspected of carrying HIV," said Nancy Paige, Doe's lead attorney. "By litigating this action, we hope to educate Frederick officials, and officials statewide, that people who have been exposed to HIV are still protected by the laws of Maryland and the United States Constitution."

"The notion that, in America, someone could be forced to take a medical test at the hands of the police is just outrageous," said Evan Wolfson, staff attorney with the Lambda Legal Defense and Education Fund.

He called the arrest merely "diverting attention," one of many "fake, get tough measures on AIDS [by government] which do nothing meaningful to stop the spread of HIV."

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